United Nations
Economic Commission for Africa

A Final Revised Draft Report

Governing the Interface between the African Continental Free Trade Area and Regional Economic Communities Free Trade Areas: Issues, Opportunities and Challenges

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Acronyms

ADR	Alternative Dispute Resolution
AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AfDB	African Development Bank
AIPF	Automotive Industry Policy Framework
ARIA	Assessing Regional Integration in Africa
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUC	African Union Commission
AVE	Ad-valorem Equivalent
BCEAO	Central Bank of West African States
BIAT	Boosting Intra-African Trade
BTA	Bilateral Trade Agreements
CAR	Central African Republic
CBI	Cross-Border Initiative
CEMAC	Central African Economic and Monetary Community
CEN–SAD	Community of Sahel-Saharan States
CET	Common External Tariff
CFTA	Continental Free Trade Area
CIF	Cost Insurance and Freight
CMP	Common Market Protocol
COMESA	Common Market for Eastern and Southern Africa
COMPASS	COMESA Payments and Settlement System
CoO	Certificates of Origin
COS	Import–Export Correspondence Index
CTN	Common Tariff Nomenclature
CUs	Customs Unions
DRS	Duty Remission Scheme
DSM	Dispute Settlement Mechanism
DSB	Dispute Settlement Body

DSU	Dispute Settlement Undertaking
EAC	East African Community
ECA	United Nations Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECCCP	ECOWAS initiative of Coordinating Committee on Consumer Protection
ECIM	ECOWAS Common Investment Market
ECOWAS	Economic Community of West African States
ECTN	Electronic Cargo Tracking Note
EIS	Export-Import Similarity Index
EPA	Economic Partnership Agreements
ETISA	ECOWAS Trade in Services Agreement
ETLS	ECOWAS Trade Liberalization Scheme
EU	European Union
FDI	Foreign Direct Investment
FEWAC	Federation of West African Chambers of Commerce
FTAs	Free Trade Areas
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GTLFP	Great Lakes Trade Facilitation Programme
GVC	Global Value Chains
IAT	Import Adjustment Tax
ICBT	Informal Cross-Border Trade
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Drought and Development
IPL	Import Prohibition List
ISRT	Inter-State Road Transit Convention
KII	Key Informant Interview
LDC	Least Developed Countries
LPA	Lagos Plan of Action
MCP	Monetary Cooperation Programme
MCP	Monetary Harmonization Programme
MDAs	Ministries, Departments and Agencies
MFN	Most Favoured Nation
MIP	Minimum Integration Programme
MRU	Mano River Union
NAC	National Approvals Committee
NAFDAC	National Agency for Food and Drug Administration and Control
NAFTA	North American Free Trade Agreement
NCC	National Coordinating Committees
NCMs	Non-Conforming Measures
NEPAD	New Partnership for Africa's Development
NFPs	National Focal Points
NMC	National Monitoring Committee
NMFP	National Monitoring Focal Point
NTBs	Non-Tariff Barriers
NTMs	Non-Tariff Measures
OAU	Organization of African Unity
OHADA	Organization for the Harmonization of African Business Law
OSBPs	One Stop Border Posts
PACCI	Pan-African Chamber of Commerce and Industry
PAPSS	Pan African Payments and Settlements System
PPD	Public Private Dialogue
PPP	Public Private Partnership

PTA	Preferential Trade Area
RCTG	Regional Customs Transit Guarantee Scheme
RECs	Regional Economic Communities
REPSS	Regional Payments and Settlements System
RETOSA	Regional Tourism Organization of Southern Africa
RIFF	Regional Integration Facilitation Forum
R-index	Restrictiveness-index
RISDP	Regional Indicative Strategic Development Plan
RoOs	Rules of Origin
RVCs	Regional Value Chains
SAATM	Single African Air Transport Market
SABF	Southern African Business Forum
SACU	Southern African Customs Union
SADC	Southern African Development Community
SCD	Simplified Customs Document
SCT	Single Customs Territory
SFM	System or Federal Model
SMEs	Small and Medium Enterprises
SPMs	Supplementary Protection Measures
SPS	Sanitary and Phyto-Sanitary Standards
STR	Simplified Trade Regime
TBTs	Technical Barriers to Trade
TC	Trade Creation
TD	Trade Diversion
TFTA	Tripartite Free Trade Agreement
TIDO	Trade Information Desk Officers
TOAM	Trade Obstacle Alert Mechanism
TREO	Tax Remission for Exports Office
UEMOA	West African Economic and Monetary Union
UMA	Arab Maghreb Union
UNCTAD	United Nations Conference on Trade and Development
UNESCAP	United Nations Economic and Social Commission for Asia and Pacific
VCLT	Vienna Convention Law of Treaties
WAMZ	West African Monetary Zone
WCO	World Customs Organization
WTO	World Trade Organisation

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Executive Summary

Regional Economic Communities (RECs) have a very important role to play in the advancement of Africa's integration agenda, including in the implementation of strategic frameworks such as the African Continental Free Trade Area (AfCFTA). The progress that RECs have made as well as challenges that they have faced over the years in their efforts to promote trade integration among their member states properly position them for such a role. One of the main objectives of the AfCFTA is to accelerate regional and continental integration through the consolidation of Africa's multiple and overlapping trading regimes embodied in pre-existing Regional Economic Communities' Free Trade Areas (RECs FTAs). However, the successful and effective consolidation of Africa's multiple and overlapping trade regimes as envisioned by the AfCFTA requires some careful and thoughtful management/governance.

This report analyses key issues that underpin the interface between the AfCFTA and RECs-FTAs. It proffers actionable policy proposals that would assist in ensuring coherent, coordinated and fully responsive interface between the AfCFTA and RECs-FTAs. The study also provides suggestions on how to leverage the trade integration achievements/successes of RECs for the benefit of the implementation of the AfCFTA as well as lessons that could be drawn from areas of failure of RECs-FTAs towards enhancing effective implementation of the Agreement. Using a combination of research methods, the report, among others, analyses and interprets: the notion of RECs as building blocks of African Economic Community (AEC); relationship among RECs-FTAs, the AfCFTA and the AEC; and mechanisms of building and managing the interface and its implications on effective implementation of the AFCFTA. The interface options analysed are: (a) RECs trade departments can become sub-secretariats of the AfCFTA secretariat; (b) RECs relevant organ can be assigned the role of coordination of the AfCFTA activities; (c) RECs-FTAs can be integrated into the AfCFTA; (d) RECs roles in the area of trade can be transformed into that of customs union management; and (e) RECs can be absorbed into the African Union Commission and African Economic Community.

Key Findings

The central role of RECs in Africa's integration efforts, as well as their relationship with key integration processes, structures and frameworks such as the African Union (AU) and the

AfCFTA derive from the historic Abuja Treaty. The mandates and goals of majority of RECs are aligned to the key aspiration of the Abuja Treaty of establishing the African Economic Community (AEC). However, the pace of RECs progress towards the establishment of the AEC has varied. The Protocol on the relations between AU, the AfCFTA secretariat and RECs is crucial in the interface among Africa's multiple trade regimes and more needs to be done to facilitate the emergence of a consolidated continent-wide trade regime as envisaged in the AfCFTA.

The priorities of RECs differ from one another and some of them have mandates that go beyond the scope of the issues embodied in the AfCFTA. Overall however, RECs have the potential to contribute to the achievement of the goals of the AfCFTA. Key stakeholders in Africa's integration do have different understanding and interpretation of the key provisions of the Abuja Treaty and the place of the AEC in the continent's integration journey. Some RECs have not yet mainstreamed the Abuja treaty into their work programmes and plans and therefore do not consider its provisions as being legally binding on them. This has implications on efforts towards building the interface between RECs-FTAs and the AfCFTA considering that the AfCFTA is a critical phase in the Abuja Treaty. In addition, RECs-FTAs are themselves not homogenous entities and have different provisions and implementation modalities. The contribution of RECs to the objective of AfCFTA starts with their shared and aligned mandates of increasing intra-regional trade, and provision of enabling environments for enterprises development and the emergence of regional value chains (RVCs). The performance of RECs in terms of their contribution to intra-African trade varies but they all face some common challenges such as inability to propel domestic production and economic diversification as well as complexity of FTA provisions implementation.

Regional trade costs are lowered through reduction in weighted average tariffs, management of non-tariff barriers (NTBs)/non-tariff measures (NTMs) and other supportive initiatives. Despite the gradual reduction of imports tariffs in all RECs, the NTBs related to trade costs tend to be more binding than tariffs. Therefore, the concerted effort of RECs to eliminate import tariffs need to be adequately supported by total elimination of NTBs for meaningful trade promotion and development in Africa. These achievements would provide a good foundation for the effective implementation of the AfCFTA provisions. The performance of RECs in trade in services reform is affected by inconsistent commitments of Member States and ineffective implementation of regional protocols and decisions. The AfCFTA can be a stepping stone towards the realization of AEC provided that all key stakeholders take ownership and make concrete commitment to promote its success.

Shared understanding and proper legal interpretation of Article 19 should serve as the basis for the management of multiple trade regimes occasioned by the co-existence (even as transitionary arrangement) of the AfCFTA and RECs-FTAs. Issues of heterogeneity, weak enforcement mechanisms, weak institutional capacities, human resources, and inadequate financing are major inhibiting factors to RECs ability to contribute to the implementation of the AfCFTA and to key AfCFTA/RECs-FTAs interface processes. The attendant changing patterns and directions of trade effects arising from the implementation of the AfCFTA could inadvertently result in rivalries and competition among RECs because of welfare losses. The management of the interface entails close coordination among national, regional and continental strategies for the implementation of the AfCFTA provisions.

General Recommendations

The AfCFTA should operate at a supranational level within the framework of shared sovereignties of Member States and coordination and monitoring mechanisms of RECs. The management of the interface should build synergies among all RECs-FTAs on the one hand and between them and the AfCFTA on the other. In addition, the Agreement should have mechanisms to boost production in all Member States through the development of RVC projects and FTA-induced investment. Also, NTBs elimination mechanism should contain elements of transparency of notification procedures of NTMs; coordination of regional and national NTBs mechanisms; elimination of NTBs in Member States; sustainability plans; safeguard measures; and standstill and rollback commitments on NTBs by Member States. Rules of origin should be designed in a way that they would work for REC's Member States at different levels of development. The entire procedure should be automated and a minimum of 1-year validity of certificate of origin would make it more business-friendly for enterprises.

For the management of the interface and the AfCFTA implementation, campaigns targeted at relevant stakeholders should be organized along three main strategies: (a) public-private dialogue; (b) research and knowledge sharing; and (c) trade and investment promotion. For advocacy and sensitization strategies, the AfCFTA secretariat and RECs secretariat's Trade departments, in collaboration with the private sector, should develop rules of procedure on key stakeholders. The binding criteria should be on: (1) mutual respect; (2) mutual tolerance and understanding; (3) constructive dialogue and positive thinking; (d) common issues of the AfCFTA and RECs-FTAs; and (e) working towards the common interest of Africa.

Specific Recommendations

AU should:

- assess and evaluate the Abuja Treaty to analyse its compatibility with the operations of RECs/RECs-FTAs and the AfCFTA provisions;
- develop an "Interpretative Note" for all relevant texts such as the Lagos Plan of Action and the Final Act of Lagos (1980); the Abuja Treaty (1994); and the Protocol on Relations between the AEC and RECs and how they relate to and underpin the AfCFTA;
- assist RECs to perform their building-block roles, including through institutions building, policies harmonization and coordination, and financial independence; provide them with technical assistance to enhance their understanding and interpretation of the Abuja Treaty, the AEC and the Protocol on relationship between AU and the RECs as well as modalities of integrating them into developmental agenda of their Member States;
- collaborate with the AfCFTA secretariat to develop capacities and skills of key stakeholders in areas of initiating and conducting trade defence investigations, applying appropriate tools for measurement and institutional arrangement; and
- collaborate with the AfCFTA and RECs secretariats to develop cooperation framework and agree on division of roles and responsibilities in the implementation of the AfCFTA.

The AfCFTA Secretariat should:

- ensure that the implementation mechanism of the AfCFTA involves the operationalisation of RECs' Task Force and early warning systems. As a functional requirement, all RECs should be supported with regular capacity building interventions as well as empowered financially;
- collaborate with RECs to develop a monitoring and evaluation system for the AfCFTA implementation comprising measures of compliance and outcomes monitoring as well as impact evaluation;
- leverage on RECs-FTA implementation to develop a roadmap which would serve as a framework for RECs in defining the activities, objectives and priorities for cooperation towards the implementation of the AfCFTA;
- collaborate with RECs to develop a stand-alone mechanism for the AfCFTA NTBs elimination strategies in Africa. The role assignment to RECs in the areas of NTBs, trade remedies and trade dispute settlements should be based on existing capacity and available institutional architecture at the regional level;
- coordinate the efforts of RECs and Member States in trade in services liberalization by engaging in the harmonization of their schedules of specific commitments for trade in services and establishment of appropriate regulatory frameworks;
- conduct a study on appropriate modalities and mechanism of using Boosting Intra African Trade Action Plan, continental value chain, AU trade facilitation strategies, Pan African Payments and Settlement System and legal integration as instruments to manage the interface;
- create a platform to conduct stakeholders' identification and mapping at national and regional levels. The platform should provide useful mechanism for private sector to coordinate and harmonize their positions; engage in trade promotion activities; facilitate infrastructure development and ensure compliance with the provisions in the Agreement; and
- collaborate with RECs secretariat and private sector to develop continental standard operating procedures on border agency cooperation.

Regional Economic Communities should:

- recognize and integrate the Abuja Treaty into their legal instruments as well as mainstream its provisions into their work programmes; and consider integrating the legal provisions of the AfCFTA into their Treaties and FTA instruments;
- use their platforms to facilitate and expedite the process of domestication of the AfCFTA provisions by Member States;
- develop regional implementation strategy through the consolidation of national AfCFTA implementation strategies with the technical support of the AfCFTA secretariat and partner institutions such as ECA, AfDB and UNDP, and develop the regional AfCFTA monitoring and evaluation system;
- develop regional schedules of specific commitments for trade in services and regulatory frameworks; and
- develop Memorandum of Understanding on Rollback and Standstill commitments on NTBs elimination for Member States; and monitor and provide surveillance role for the management of the AfCFTA NTBs elimination mechanism.

Member States should:

- consider ceding some level of sovereignty on trade related matters to the AfCFTA secretariat as a means of enabling it to uphold provisions of the AfCFTA Protocols, and enhance its overall effectiveness;
- domesticate the AfCFTA provisions; develop national AfCFTA implementation plans with the support of the AfCFTA secretariat; and implement these plans;
- abide with Rollback and Standstill commitments on NTBs elimination and develop/deploy national AfCFTA monitoring and evaluation systems;
- collaborate with RECs to develop regional schedules of specific commitments for trade in services and regulatory frameworks; and
- collaborate with the private sector to implement the AfCFTA sensitization and advocacy strategies.

Concluding Remarks

There is no doubt that the AfCFTA provides mechanism that would make Africa and African countries competitive in international markets. The advent of COVID-19 should be regarded as an opportunity to use the Agreement provisions as instruments of economic recovery through trade diversification and promotion of continental supply chain. Building the interface of RECs-FTAs, RECs, and AfCFTA is an important mechanism for the effective implementation of the Agreement and good platform to achieve and sustain its objectives. It is important that the interface be governed by adequate knowledge of key stakeholders' rights and obligations within the principles of close correspondence and subsidiarity. The interface options should strengthen the RECs and make provision for an easier convergence with existing RECs-FTAs. It should be a platform for continuous existence of RECs and avenue of making RECs to concentrate and focus on other trade facilitative and supportive roles in which they have the competency. Importantly, there is need to develop framework and modalities for the harmonization of all operational trade measures in the continent. The AfCFTA secretariat with support of RECs and private sector should address unsupportive trade-related policies and formation of continental value chains. Finally, there should be a mutual understanding of relationship among the AfCFTA, RECs and RECs-FTAs, and synchronization of roles to ensure beneficial coexistence.

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Chapter 1
Introduction and Background of the Study

1.1 Introduction

1. The African Continental Free Trade Area (AfCFTA) agreement covers trade in goods and services, investment, intellectual property rights and competition policy. The main objectives of the Agreement are to; create a single continental market for goods and services, with free movement of business persons and investments; expand intra-Africa trade and enhance competitiveness and support economic transformation in all African countries. The AfCFTA has five major operational instruments; the rules of origin (RoOs); the negotiating fora; the monitoring and elimination of non-tariff barriers; a digital payments system and the African trade observatory. The agreed implementation date of 1 July 2020 was delayed because of the advent of COVID-19, which led to a temporary suspension of the negotiations of outstanding phase I issues such as schedules on tariff concessions, RoOs, and liberalization of trade in services. Nonetheless, the disruptions of the pandemic provide opportunities to leverage the AfCFTA Agreement for economic recovery, including through the diversification of sources of supply chains and localization of production in Africa.

2. The AfCFTA negotiations and implementation would address trade-related constraints in Africa by enhancing trade creation, preventing trade diversion and/or trade deflection. Prior to the outbreak of the COVID-19 pandemic, analyses by the African Union (AU) and United Nations Economic Commission for Africa (ECA)[1] suggested that with effective implementation of the Agreement, African GDP is expected to grow from an estimated US$3 trillion in 2020 to US$8 trillion in 2040 and further to US$16 trillion by 2060. The fragmented African market size is expected to grow to US$2.75 billion by 2060. These developments would be made possible as the creation of the AfCFTA would increase Africa's exports by 4.0 percent (or $25.3 billion), increase real income for African countries in the order of 0.2 percent or $296 million in 2022. It would also increase the intra-African trade by 52.3 percent (or $34.6 billion), mainly in agriculture and food, industry and services sectors, doubling the share of intra-African trade by 2022, and foster the continent's broad-based development, with the ambition of realization of zero tariff for a large percentage of African products (Chauvin *et al* 2015). In addition, the agreement would seek to resolve the challenges of multiple and overlapping memberships and expedite continental integration processes. The AfCFTA's legal instruments establish rules-based governance, certainty and predictability for the business community when trading or investing across borders.

3. The AU launched the operational phase of the AfCFTA in Niamey, Niger on 07 July 2019, following the agreement coming into force on 30 May 2019. As at January 2020, 54 of the 55 AU member States had signed the Agreement and 30 had ratified it. The Agreement is effective in 30 countries, meaning that the rights, provisions and obligations of the Agreement apply accordingly. The pace and speed of AfCFTA negotiations and ratifications has been remarkable, however, some important technical steps have to be put in place before the implementation of the agreement. According to Olayiwola (2020), the AfCFTA (like other trade agreements) may face three major bottlenecks. The first is the financial bottleneck that relates to the fact that any trade policy that would affect national resource mobilization capacity of countries may face some implementation challenges. The second bottleneck is institutional

[1] African Continental Free Trade Area Updated Questions and Answers 2020

capacity and coordination. On many occasions, regional trade policies are negotiated within the platform of fragmenting trade policy processes. Also, implementation anchoring may not be clearly defined at the national and regional levels. The third is the structural bottleneck and this relates to challenges of mainstreaming regional and continental trade policies into national developmental agendas of countries.

4. The AfCFTA has many provisions intended to address these challenges. Article 5 of the AfCFTA states that the process will be "*driven by Member States of the AU, Regional Economic Communities (RECs) Free Trade Areas (FTAs) as building blocks; variable geometry; flexibility and special and differential treatment; transparency and disclosure of information; preservation of the acquis; Most Favoured Nation (MFN) Treatment; national treatment; reciprocity; substantial liberalisation; consensus in decision-making; and best practices in the RECs, in the state parties and international conventions binding AU*". Based on these provisions, the negotiation of the AfCFTA was supposed to be "Member State, RECs and customs territories-driven" process[2], but during the negotiations, the RECs and customs territories were given only observer status[3]. AU Member States were the negotiating parties and the negotiation fora witnessed the prevalence of expression of national interests (Kotcho, 2017). Also, Article 19 of the agreement makes provision for the resolution of incompatibilities or inconsistencies between the AfCFTA and other African trade instruments.

5. All these issues may pose a lot of negotiation and implementation challenges because the AfCFTA may not fully consolidate the REC-FTAs – at least in the short and medium term. This raises an important question: how will REC-FTA members and other AfCFTA parties implement the agreement provisions? This question becomes pertinent because practical experiences of various trade agreements in Africa have shown that negotiation and signing of trade agreements are remarkable achievements. The key issue/challenge however, lies in the effective implementation of various provisions of the agreement.

6. There is therefore need for concrete policy actions and strategies that would ensure a coherent, coordinated and fully responsive interface between the AfCFTA and REC-FTAs, including how to leverage the integration achievements of RECs. To achieve this, the AfCFTA secretariat needs to work closely with RECs to enhance understanding on how Member States stand to benefit from the Agreement. Analysis of various regional trade agreements (RTAs) has shown that countries are willing to implement agreements if the gains outweigh losses. While RECs are recognized as the building blocks of the African Economic Community (AEC), there is also the need to appreciate the fact that RECs are not homogeneous entities and were established independently of each other and differ in both structure and activity.

7. The African Regional Integration Index (2019)[4], shows the heterogeneous nature of RECs and areas of strength and weaknesses of their Member States. In the Southern African Development Community (SADC), the largest economy, South Africa, was the high performer in trade and macroeconomic integration and also led in productive and infrastructural development. The country was however, a low performer in the area of free movement of people. In the case of the Economic Community of West African States (ECOWAS), the largest

[2] Report of the 1st Meeting of African Union Ministers of Trade, 24 May 2016, Annex III 'Definitions for the Continental Free Trade Area (CFTA) Negotiating Guiding Principles'
[3] Rule 15.4, Annex II, 1st African Ministers of Trade report
[4] AU, AfDB and UNECA

economy, Nigeria, with about 65% of regional GDP was an average performer in trade and infrastructural integration and free movement of people and high performer in productive integration and least performer in macroeconomic integration. In the East African Community (EAC), the largest economy, Kenya, was a high performer in trade, productive and infrastructural integration, but average performer in macroeconomic integration and free movement of people. These patterns are similar for other AU recognized RECs.

8. A careful analysis and understanding of diverse issues underlying the nature and workings of RECs and RECs FTAs/CUs and how they interface with the AfCFTA, as well as how they could impact the implementation of the agreement is of paramount importance. To do this, a number of pertinent questions need to be addressed, such as:

1. Are the mandates of RECs in line with the aspiration of AEC; and do the trade liberalization mandates of RECs support the implementation modalities of the AfCFTA?
2. Are the implementation mechanisms of REC-FTAs and their trade in services arrangements appropriate for the implementation of the AfCFTA provisions; and what are the areas of divergence and convergence of the AfCFTA, the TFTA and other RECs-FTAs?
3. Can pre-existing RECs platforms be leveraged to address Non-Tariff Barriers (NTBs), trade facilitation and dispute settlement within the context of the AfCFTA?
4. Does the AfCFTA resolve issues around Africa's multiple trade regimes? If not, what would constitute appropriate policy options to resolve issues of persisting multiple trade regimes on the continent?
5. Can the experiences of RECs with customs unions indicate the best options of economic integration at the continental level?
6. What are the appropriate policy options to build and manage an interface among RECs, REC-TFAs and the AfCFTA?
7. How would a properly managed interface between the AfCFTA and RECs FTAs/CUs enhance private sector development in the continent? and
8. What are the appropriate advocacy and sensitisation policies/strategies for a fully responsive interface among REC- FTAs, RECs and the AfCFTA?

1.2 Objectives

9. The general objective of this study is to analyse and enhance understanding of key issues that underpin the interface between the African Continental Free Trade Areas (AfCFTA) and Regional Economic Communities' Free Trade Areas (RECs FTAs). Flowing from the analyses, the report proffers actionable policy proposals that would assist in ensuring coherent, coordinated and fully responsive interface between the AfCFTA and REC-FTAs. The study also provides suggestions on how to leverage the trade integration achievements/successes of RECs for the benefit of the implementation of the AfCFTA; as well as lessons that could be drawn from areas of failure of REC-FTAs towards enhancing effective implementation of the Agreement.

10. The specific objectives are to;

1. identify and map out potential areas of convergence and divergence between the RECs trade/services liberalization agendas and the AfCFTA;

2. articulate concrete policy actions to Member States and other stakeholders to facilitate a coherent, coordinated and fully responsive interface among RECs and the AfCFTA trade/services agendas;
3. identify key achievements of the RECs in the areas of trade and services liberalisation and propose strategies on how African countries should leverage RECs trade integration achievement towards enhancing the implementation of the AfCFTA;
4. identify areas of failure and key challenges in the implementation of RECs-FTAs; as well as articulate proactive policy options for adoption by AU/RECs Member States to avoid such pitfalls in the process of implementation of the AfCFTA;
5. articulate the role of the RECs in the AEC beyond the AfCFTA and a Continental Customs Union; and
6. propose advocacy and sensitisation policies/strategies to ensure coherent, coordinated and fully responsive interface between the AfCFTA and RECs FTAs.

1.3 General Approach / Methodology

11. The report uses a combination of qualitative and quantitative research methods, including directly leverage existing literature on international trade; as well as material produced by institutions such as UNECA, the African Union Commission (AUC), the African Development Bank (AfDB), United Nations Conference on Trade and Development (UNCTAD) and World Trade Organisation (WTO).

(a) The starting point is desk research and analysis of administrative data to acquire a clear understanding of requirements for the effective implementation of the AfCFTA, the workings and operations of the 8 recognised RECs, the role of the private sector, policy and institutional arrangements for the management of the Agreement and pertinent issues/areas of analysis for building stronger synergies between AU and RECs.
(b) The relationship between RECs-FTAs and the AfCFTA is analysed, including through providing legal interpretation and understanding of relevant AfCFTA and AEC Articles, as well as matching RECs intra-African trade performance using import-export similarity measures. The measure is the degree of commodity correspondence between exports of one region and imports of another region as applied by Geda and Seid (2015). The two forms of this index are the import–export correspondence index (COS) and Export-Import Similarity Index (EIS) (See Annex 1). In addition, the gravity models are used to analyse trade patterns and directions in various RECs as results of the implementation of the AfCFTA (see Annex 2).
(c) The analysis is supported by Key Informant Interview (KII). Key informants were interviewed using a semi structured questionnaire, which was administered through virtual means, to key stakeholders that are involved in the negotiations and would-be implementers of the AfCFTA at the national and regional levels (See
(d)
(e)

(f) Annex 3).

1.4 Report Structure

12. The report is divided into 10 chapters. **Error! Reference source not found.** provides background information on the study and outlines the study objectives, methodology and report structure. Chapter 2 deals with overview of the AfCFTA and the RECs-FTAs in Africa. Chapter 3 addresses RECs trade services liberalization agenda and the AfCFTA.
analyses the application of rules to resolve challenges of multiple trade regimes within the context of the AfCFTA. 154. There is the need to recognise the difficulty inherent in the definition and nature of the AU-RECs relationship as it is governed by numerous texts: The Lagos Plan of Action and the Final Act of Lagos (1980); the Abuja Treaty (1994); the Protocol Relating to the Establishment of the Peace and Security Council (2003); the Protocol on Relations between the AEC and the RECs (signed in 1998 and updated in 2007); the Memorandum of Understanding on Cooperation in the Area of Peace and Security, the Revised protocol of relations between the AU, RECs and Regional mechanisms, as well as the framework to guide relations between AUC, RECs and the AfCFTA. Among these documents, only framework for effective division of labour between the AUC, RECs, member states, regional mechanisms pursuant to Declaration (MYCM/DECL/1(I)) presents definition for subsidiarity. The analysis shows that comparative advantage, regional and continental complementarity principles are interpreted differently by relevant stakeholders. Simply affirming standards may not generate a coherent common approach. In addition, RECs prioritise developing instruments and policies to reach their own goals without seeking to coordinate with the AU. This situation therefore calls for the development of "Interpretative Note" for all relevant texts.

155. Among these numerous texts, there are three key legal instruments that can operationalize the RECs, REC-FTAs and the AfCFTA interface and Agreement implementation even in the context of multiple trade regimes. They are; the Abuja Treaty, the Protocol on Relationship between AU and the RECs and the AfCFTA Article 19. The Abuja Treaty remains the glue that holds the AfCFTA, AEC and RECs together. The AfCFTA Article 19 rules should function as intermediate step for the harmonization of trade regimes to reduce cost of regulations compliance in Africa. This should be supported by the AfCFTA MFN clause, and other preferences. Article 4 (5) of the Protocol on Trade in Goods and Article 4 (4) of the Protocol on Trade in Services outline the sets of preferences that can be granted to State Parties under the MFN provision with other state parties. In addition, the fact that islets would coexist with the AfCFTA, shows that the Agreement does not fully consolidate fragmented markets but leaves a network of better connected and distinct trade regimes.

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

a) continue to monitor developments concerning Third-Party Agreements involving AfCFTA States Parties and report to the AU Summit;
b) develop Reporting Guidelines and Templates for notification of Third-Party Agreements in line with relevant provisions of the Agreement;
c) include a Section on Third Party Agreements in the future Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the RECs; and
d) submit to the next Council of Ministers of AfCFTA for consideration and adoption, the Reporting Guidelines and Templates for notification of Third-Party Agreements and the Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the Regional Economic Communities.

157. It is worthy to note that, even with the implementation of this Decision, the role of AfCFTA rules to address multiple trade regimes may be limited without appropriate legal framework. According to Oppong (2015), Africa pursued economic integration without a legal framework that specifically state the rules of conduct, definition of entities to which the rules apply; rules that form part of the legal system and obligation to obey. As stated, effective economic integration is the product of well-defined legal frameworks and institutions. Therefore, effective application of Article 19 supported with appropriate legal framework should serve as foundation of further rationalization of multiple trade regimes in the context of the Abuja Treaty's objective of establishing an AEC. This would involve addressing the splintered regional spaces, overlapping institutions, duplicated efforts, dispersed resources, and disputes over legitimacy that result from the multiple Treaties. The main benefit of rationalization to RECs is institutional strengthening through the elimination of overlapping functions and efficient targeting of resources.

158. In addition, the framework for effective division of labour among the AUC, RECs, member states, and regional mechanisms can be used to develop a roadmap for each of RECs in terms of the AfCFTA implementation. The roadmap would serve as a framework for RECs in defining the activities, objectives and priorities for cooperation in the implementation of the Agreement. The organization of coordination platform as the principal forum for the harmonization of RECs work and co-ordination of the implementation of the continental integration agenda should be supported with appropriate mechanism to monitor the progress of implementation. The effective division of labour must not make the relevant institutions to be a stand-alone but partners in progress. RECs and their specialized agencies should be strategically placed to closely support Member States by unblocking political and technical challenges relating to multiple trade regimes for effective implementation of the AfCFTA provision. The organization of Annual joint AU-RECs summits would provide the opportunity to evaluate the results of building block role of RECs annually.

159. Within the context of the AfCFTA, the framework that determine the sharing of competences in the six areas of policy formulation, policy adoption, implementation, monitoring, evaluation and reporting, resource mobilization and partnerships should be implemented and periodically reviewed to address changing dynamic trading environments. The development of benchmarks defining the alignments and determining the extent to which

each REC is implementing AU policies can be used to assess the role of RECs in actualizing and implementing the AfCFTA.

4.4 Concluding Remarks

160. To resolve the challenges related to multiple trade regimes, the AfCFTA's structure, incorporation of variable geometry, differentiated approach, and focus on RECs FTAs as building blocks, appear to signal a normative shift in special and differential treatment away from a "defensive" approach towards a more "affirmative" approach that allows the use of substantive law to advance trade development. Within this structure, the AfCFTA, Article 19 should serve as the basis for the management of multiple trade regimes. Adequate legal interpretation would guarantee uniform applications of laws and bring consistency and certainty in the implementation of the AfCFTA. This requires legal integration of trade policies of Member States to allow the AfCFTA to operate at a supranational level. This is because Article 19 has its limitations. First, trade policy space will continue to be an issue. Second, RECs, as is true of WTO rules, allow for flexibility in domestic regulation within limits.

161. In the AfCFTA, the framework for effective division of labour among the AUC, RECs, member states, regional mechanisms should incorporate "best practices" from across the continent. In addition, member states would need to maintain the flexibility to tailor rules and regulations to particular circumstances at the national levels. It is important to ensure that rules are developed in a balanced, inclusive way and member states with less developed legal systems and weaker bargaining power are not neglected. A better understanding of comparative laws, diverse regulatory good practices, and practical solutions would be needed. Also Article 4(2) of the Abuja Treaty and the Protocol on Relationship between AU and the RECs need better understanding and the framework for effective division of labour should contain measurable indicators to monitor progress in the AfCFTA implementation. Also, the spirit behind the letters of Article (6) of the Treaty begs for evaluation. Article 28 needs to be revisited to assess how far the RECs have strengthened in accordance with the Treaty intent. A framework agreement is crucial to establish a functional interface between RECs and the AfCFTA to address multiple trade regimes. Therefore, there is need to review and streamline Treaty provisions in order to harmonize and maximize the potential benefits of RECs.

Chapter 5

documents the role of the RECs in addressing NTBs, trade remedies and dispute settlement in the AfCFTA. Chapter 6 presents the role of RECs and the AfCFTA in the implementation of AEC beyond the continental CU. Chapter 7 provides the political economy analysis of the relationship between the RECs and a continental system of integration. Chapter 8 provides the analysis of scenarios for the interface of the AfCFTA, RECs and RECs-FTAs. Chapter 9 deals with advocacy and sensitization strategies for responsive interface between AfCFTA, the RECs and RECs-FTAs. Chapter 10 compiles summary of findings, conclusion and policy recommendations.

United Nations
Economic Commission for Africa

Chapter 2
Overview of the African Continental Free Trade Area and the Regional Economic Communities' Free Trade Areas

2.1 Introduction

13. This chapter addresses three major questions:

- Are the mandates of various RECs in line with the aspirations of the AEC?
- Is it feasible to leverage the implementation mechanisms of various RECs-FTAs for the implementation of the AfCFTA? and
- Can the AfCFTA Agreement create new opportunities that are beneficial to the regional economic integration efforts?

14. These issues/questions are addressed by presenting an overview of the AfCFTA, mandates of various RECs, REC treaties and their links to the AEC, assessment of trade integration of RECs and areas of convergence and divergence of various RECs-FTAs and the AfCFTA.

2.2 Overview of the African Continental Free Trade Area

15. The Assembly of African Heads of State and Government of the AU at its 18th ordinary session held in Addis Ababa, Ethiopia in January 2012 adopted a resolution to form a Continental FTA by 2017. The AfCFTA came into force on May 30, 2019, intended as a single market for goods and services that would allow free movement of people and capital, and ultimately culminate in a continental customs union. The AfCFTA is the largest Free Trade Area (FTA) in the world since the creation of the World Trade Organization (WTO), comprising of a potential market of 1.2 billion consumers and a combined gross domestic product (GDP) of over US$3.4 trillion (AU, 2019). The AfCFTA is also expected to increase competitiveness through incentivising value addition to African raw materials and promoting regional value chains that would act as precursors for African countries' entry into global value chains (GVC) (UNCTAD, 2018, UNECA, 2016).

16. The conclusion of Phase I negotiations of the AfCFTA and the entry into force of the agreement, means that its provisions now supersede some national laws in state parties. There is therefore urgent need to develop an implementation framework. Also, critical technical components of the agreement need to be finalized before free circulation of African goods and services can be guaranteed. These include: schedules of tariff concessions, rules of origin (RoOs), and schedules of specific commitments for trade in services. For the AfCFTA to deliver its objectives, Eritrea, the only AU Member State that is yet to sign the agreement should do so, and the remaining signatory countries should ratify. At the 12th extraordinary Summit on the AfCFTA held in Niamey, Niger in July 2019, AU Member States agreed to operationalize the Agreement.

17. Hypothetically, any adequately implemented FTA is expected to have significant impacts on i) the total trade of the FTA as a whole, ii) the individual Member State's trade and iii) the distribution of trade gains across members. It is in this context that the AfCFTA is expected to generate significant economic prospects, produce positive welfare effects, generate economic growth and reduce poverty in Africa. However, these overall positive effects tend to conceal some differences within the continent in terms of how individual countries and regions will fare under the arrangement. There is, for example, the issue of asymmetric costs and benefits among countries and regions in terms of trade creation, trade diversion, and trade deflection.

18. One vital channel through which the AfCFTA is expected to boost intra-African trade is tariff removal. Tariffs act as a price wedge between border and domestic prices, making domestically produced goods more attractive and keeping out imported competing goods. Tariffs can also have negative impacts on industrialization, domestic production and consumption. African countries are known to impose higher average tariffs by global standards, leading to low inter- and intra-African trade, as tax on imports becomes tax on exports. Empirically, Mevel and Karingi (2012) estimated that, the total removal of tariff barriers among African countries as a result of the AfCFTA would increase intra-African trade by 52.3% in 2022. However, the removal of tariff barriers is not sufficient to promote intra-trade, it would only be achievable if complementary non-tariff measures (NTMs) are adopted among others.

19. Another significant channel is the development and strengthening of continental and regional value chains (RVCs). This would serve as a link among trade operators in different regions through trade in parts of a commodity across the continent. Advantages of RVCs include using combined competitive advantages of contiguous countries, leading to productivity and competitiveness enhancements, product transformation, market expansion, and increased investment. Africa's participation in GVC is small but growing, dominated by forward integration to Europe and Asia, and driven by Southern and Northern Africa (Conde *et al*, 2015; Obasaju *et al* 2019). Hence, low intra-African trade relative to Africa's trade with the rest of the world is an indication of inadequate RVCs.

20. The AfCFTA is expected to lead to tariff and non-tariff elimination among African countries. This is important given trade protection disparity across African countries and the sensitivity of some products. As an example, Chauvin; Porto and Ramos (2015) show that the applied tariffs (and tariff dispersion) on cotton between African countries are low because of the preferences granted under the existing RECs. However, applied tariffs on tobacco and cereals (including rice) remain high, and trade in manufactured goods is more protected despite the implementation of various RTAs. The effect on trade creation would depend on the competitiveness of countries. This should be supported by effective application of NTMs on goods. This requires transparency in the notification and harmonization of the sanitary and phyto-sanitary (SPS) regulations, and the accreditation and mutual recognition procedures for technical barriers to trade (TBTs).

21. Annex 4 shows that the NTMs application on vegetables and fruits as well as electric and electronic devices display a greater dispersion. The maximum values exceed 100 percent of NTM protection for vegetables and fruits in Benin, and Guinea, and for electric and electronic devices in Senegal. In the case of agricultural and food products, SPS regulation is the main component which constitutes 60 percent of the ad-valorem equivalent (AVE) of the NTMs. However, in manufactured goods such as machinery and vehicles as well as electronic devices, TBTs cover around 50 percent of the AVE NTMs in Africa (Cadot *et al*., 2015).

22. According to Okafor and Aniche (2017), the average protection rate of Africa is 8.7%. Ethiopia imposes an average tariff of 13.3% on its imports from other African countries and faces an average tariff of 19.5% on its exports to the rest of Africa. Only fifteen countries[5] imposed and faced protections which are on the average lower than the continental average. The rest of the African countries are, on average more protectionists than Africa. Nine

[5] Burkina Faso, Comoros, Eritrea, Guinea, Guinea Bissau, Lesotho, Liberia, Malawi, Mali, Namibia, Senegal, Swaziland, Togo, Uganda, and Zambia,

countries[6] experience more trade barriers than Africa. African countries exports faced average protection rates of 9.5% with non-African partners and 12.4% on African countries. This shows that African countries experience a higher protection rates from one another than from non-African countries. For instance, Eswatini faces the highest average tariff when exporting its agricultural products to African countries at 96.7%; and Seychelles imposes the highest average tariff on agricultural products imported from Africa at 53.6%.

23. To overcome some of these challenges, policy and institutional arrangements of the AEC and the AfCFTA should give specific roles to the RECs and RECs Member States. However, while Member States are mandated to develop national strategies for the implementation of the AfCFTA, the Agreement is somewhat silent on the need or/and modalities for developing regional strategies. To be able to develop regional strategies, it is important to carefully examine the operations of RECs in terms of (a) scope and mandates of RECs and their compatibility to the AfCFTA Agreement; and (b) content and implementation strategies of RECs-FTAs, including the Tripartite Free Trade Area (TFTA) in terms of market access strategies, RoOs, NTBs and Dispute Settlement Mechanisms (DSMs). To accomplish this feat, it is useful to assess the performance of RECs-FTAs through identification of areas of success and challenges; policy options for their alignment to the Agreement, and lessons for the implementation of the AfCFTA.

2.3 Regional Economic Community Treaties and Linkages to the African Economic Community

24. The examination of RECs relationship with the AEC vis a vis the AfCFTA is done by reviewing the Original Treaties and/or Revised Treaties, and mandates of RECs. The commitments in the Lagos Plan of Action (LPA) and the Final Act of Lagos were translated into concrete form in June 1991 in the Abuja Treaty, which re-affirmed faith in an integrated continent by Heads of State of the then Organisation of African Unity (OAU). The Abuja Treaty is one of the most important agreements as it outlines the future of Africa for the period of 34 years (1994 to 2028) through continuous six stages of integration processes to achieve AEC (See Table **1**1). The AEC Treaty came into force after the requirement for the numbers of ratification was met in May 1994. The table clearly shows a gradual progress of creating and strengthening the RECs which were to eventually lead to the establishment of African single currency.

Table 1: Stages towards the implementation of the Abuja Treaty

Stages	Duration	Focus
1	5 years	Strengthening existing RECs and creating new ones where needed
2	8 years	Stabilisation of tariff and other barriers to regional trade and the strengthening of sectoral integration, particularly in the field of trade, agriculture, finance, transport and communication, industry and energy, as well as coordination and harmonisation of the activities of the RECs
3	10 years	Establishment of a free trade area and a Customs Union at the level of each REC
4	2 years	Coordination and harmonisation of tariff and non-tariff systems among RECs, with a view to establishing a Continental Customs Union

[6] Cameroon, Equatorial Guinea, Ethiopia, Ghana, Morocco, Mozambique, Seychelles, Tanzania and Tunisia,

5	4 years	Establishment of an African Common Market and the adoption of common policies
6	5 years	Integration of all sectors, the establishment of an African Central Bank and a single African currency, setting up of an African Economic and Monetary Union and creating and electing the first Pan-African Parliament

Source: African Union (2018)

25. From the focus of the Abuja Treaty, one can conclude that some of the key provisions of stages 1 to 4 of AEC are mirrored in the AfCFTA (see Table **1**1). The integration agenda is more than a trading arrangement or a mechanism of promoting cooperation in production based on the creation of a common market. The idea is to integrate national markets and ensure cooperation in production that would lead to improvement of lives in Africa. Article 4(2) of the Abuja Treaty provides the processes of establishing the African Economic Community. The first objective is the strengthening of existing RECs, and the second is the liberalisation of trade and the abolition of NTBs among Member States. These go to the heart of the AfCFTA. The relaxation and eventual abolition of trade restrictions and the evolution towards a common trade policy are pertinent. The Abuja Treaty, clearly provides for the gradual removal of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment.

26. In the spirit of LPA and AEC, the main emphases of regional integration of RECs in Africa are: (a) elimination of barriers to intra-regional trade; (b) creation of common regional policies in trade and trade-related areas; (c) harmonization of various sectoral policies and regulatory framework; and (d) creation of regional institutions for coordination, implementation and monitoring of the integration process. The Treaties of RECs clearly define these pillars and their corresponding mandates. The basic issue relates to the question: are the mandates of various RECs in line with the aspiration of AEC? To address this issue, relevant Articles of RECs' Treaties are documented in Annex 5. Each of the Articles and mandates is discussed and analysed within the context of the AEC. The report focuses mainly on the eight AU recognised RECs and their respective member states as listed in **Error! Reference source not found.**2.

Table 2: Membership in of the Eight Recognised Regional Economic Communities

RECs	Year of Establishment	Members	Number
UMA	1989	Algeria*, Libya, Mauritania, Morocco, and Tunisia	5
CEN-SAD	1998	Benin, Burkina Faso, Cabo Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea-Bissau, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo, and Tunisia	25
COMESA	1981	Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Eswatini, Uganda, Zambia and Zimbabwe.	19
EAC	1999	Burundi, Kenya, Rwanda, South Sudan, Uganda, and United Republic of Tanzania	6

ECCAS	1981	Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea*, Gabon*, Rwanda, and São Tomé and Principe	11
ECOWAS	1975	Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo	15
IGAD	1996	Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda	8
SADC	1992	Angola, Botswana, Democratic Republic of the Congo, Lesotho*, Madagascar, Malawi, Mauritius, Mozambique*, Namibia*, Seychelles, South Africa*, Eswatini, United Republic of Tanzania, Zambia, and Zimbabwe	15

* belong to ONLY one REC recognized by AU
Source: Compiled by the ECA.

27. The Arab Maghreb Union (**UMA)** was established under the Marrakech Treaty of 1989 with the aim and purpose of strengthening ties among five Member States[7]. The major areas of focus are: promotion of prosperity; defending and safeguarding national rights and economic interest; foster and promote economic and cultural co-operation; intensify mutual commercial exchanges and adopting common policies to promote the free movement of people, services, goods and capital within the region. The objectives as stated in Article 2 of the Treaty establishing the union include;(a) strengthening the ties of brotherhood which link the member States and their peoples to one another; (b) achieving progress and prosperity of their societies and defending their rights; (c) contributing to the preservation of peace based on justice and equity; (d) pursuing a common policy in different domains; and (e) working gradually towards achieving free movement of persons and transfer of services, goods and capital among them. There was a plan towards the achievement of economic union. This involved the establishment of free trade, creation of a customs union in 1995 and the formation of a common market in 2000, though Member States have yet to finalize the provisions on the rules of origin.

28. The Community of Sahel-Saharan States (**CEN–SAD)** was formed in 1998 with the primary objective of promoting the economic, cultural, political and social integration of its Member States. According to Article 1 of the Treaty establishing the Community, the aims and objectives are to: (a) establish a comprehensive economic union with a particular focus in the agricultural, industrial, social, cultural and energy fields; (b) adopt measures to promote free movement of individuals and capital; (c) promote measures to encourage foreign trade, transportation and telecommunications; (d) promote measures to coordinate educational systems; and (e) promote cooperation in cultural, scientific and technical fields. In 2000, during the 36th ordinary session of the Conference of Heads of State and Government of the OAU, the CEN-SAD became a regional organization of 29 Member States. An attempt to restructure and revive the organization led to the revision of the treaty. In the community, no free trade agreement is in place.

[7] Algeria, Libya, Mauritania, Morocco and Tunisia.

29. However, the revised treaty emphasized two broad areas where Member States should engage in deeper cooperation: regional security and sustainable development. The CEN-SAD works with other African regional institutions to strengthen peace, security, and stability, and to achieve regional economic and social development through the implementation of the free movement of people and goods in order to eventually establish an FTA. In addition, the community proposed strengthening integration by implementing common development plans in various sectors to complement members' national development plans.

30. The Common Market for Eastern and Southern Africa (**COMESA)** was initially established in 1981 as the Preferential Trade Area (PTA) for Eastern and Southern Africa within the framework of the OAU's Lagos Plan of Action and the Final Act. The PTA transformed into COMESA in 1994, formed a FTA in October 2000 and launched a customs union in June 2009. COMESA is a regional integration grouping of 19 African States. Treaty establishing COMESA shows the interest of the REC in the realization of AEC. For instance, one of the objectives of COMESA as stated in the Article 3(f) is "to contribute towards the establishment, progress and the realization of the objectives of the AEC". Article 178 described how the community intends to relate in order to achieve AEC.

31. Article 4(a) on 'Specific Undertakings" promotes the achievement of the common market as set out in Article 3. Moreover, Article 4(6e) obliges Member States to remove obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence. Also, Article 4(2) put emphasis on free movement of persons, labour and services. The two primary legal instruments are the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements, and the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence. There is also the Regional Customs Transit Guarantee scheme and Yellow Card. The principles and rules for the operation of customs union are contained in the Council Regulations Governing the COMESA Customs Union and the Common Market Customs Management Regulations.

32. The East African Community (**EAC)** was established in 2000 and it is an intergovernmental organisation comprising six East African countries[8]. The Treaty for East African Cooperation was an attempt to restore the East African Common Services Organization (EACSO). The aim of EACSO charter was to create a common currency, a common appellate court, and a common market. The EAC's treaty supports the gradual stages of regional integration towards the establishment of AEC. In view of that, Article 2 of the Treaty establishing EAC stated that the REC will develop through transitional stages. Also, Article 130 (2) stated that the partner states of EAC "reiterate their desire for a wider unity of Africa and regard the Community as a step towards the achievement of the objectives of the Treaty Establishing the African Economic Community". The Customs Union and a Common External Tariff were established on January 1, 2005. On 1st July 2010, the Common Market Protocol came into force (EAC, 2012). The EAC was established mainly to strengthen economic, social, cultural, political, technological and other ties for balanced and sustainable development. Article 5 of the EAC Treaty stated the regional integration processes of the community. These gradual steps involve Customs Union; follow by a Common Market and a final culmination into an EAC Political Federation.

33. The Economic Community of Central African States (**ECCAS)** was established in December 1981. The objective of the ECCAS as stated in Chapter 2 Article 4(1) is to promote

[8] Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan

and strengthen harmonious cooperation and balanced and self-sustained development in all fields of economic and social activity (ECCAS, 1983). Other objectives as stated in Article 4(2) are; (a) the progressive abolition between Member States of obstacles to the free movement of persons, goods, services and capital and to the right of establishment; and (b) the harmonization of national policies in order to promote Community activities. There is a similarity between the aim of the ECCAS as stated in the Article 4(1) establishing the REC and one of the objectives of AEC as stated in the Article 4(1c) of the Abuja treaty. As stated in Article 4(1) establishing ECCAS, "in order to achieve collective self-reliance, raise the standard of living of its peoples, increase and maintain economic stability, foster close and peaceful relations between Member States and contribute to the progress and development of the African continent".

34. ECCAS coexist with the Central African Economic and Monetary Community (CEMAC). The community is made up of six members[9]. It has two main pillars: the monetary union and the economic union. These pillars guide a three-step plan that would lead to the establishment of a common market and the economic union. The process involves the harmonisation of national and elaboration of common economic legislations, and the establishment of free movement of goods, services, capital and persons. As part of the reform of the ECCAS, the Heads of State adopted during their Extraordinary Summit of December 18, 2019 in Libreville, a set of instruments, including the revised Treaty. The Treaty defines a connection of regional integration to continental integration and links the regional objectives to the AfCFTA.

35. The Economic Community of West African States (**ECOWAS)** was established in 1975 with the mandate to promote economic cooperation and integration in all economic spheres among 15 Member States. ECOWAS coexist with two integration institutions: UEMOA, and Mano River Union (MRU). Eight member states constitute UEMOA and it is also referred to as the CFA franc zone. UEMOA is more integrated—with a monetary union, a single currency, and a customs union with a common external tariff preceded by a free trade area. The goal of MRU is to accelerate the economic growth, social progress and cultural advancement of member countries[10]. The goal of ECOWAS is to create a trade bloc and to subsequently establish an economic and monetary union, and even political union. In this regard, the driving force is the full realization of the regional integration objectives and vision 2020 that will lead to an ECOWAS of people. As stated in Article 3 of the ECOWAS Revised Treaty "the aims of the community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African continent".

36. Section 2d called for the "establishment of a common market through the liberalization of trade… and the adoption of a common external tariff and a common trade policy vis-à-vis third countries". The Revised treaty of 1993 shows that the ultimate purpose of ECOWAS is to develop economic integration in the region as well as "…the realisation of the objectives of the African Economic Community" (Article 2(1)). Also, Article 78 stated that "the integration of the region shall constitute an essential component of the integration of the African Continent. Member States undertake to facilitate the co-ordination and harmonisation of the policies and programmes of the Community with those of the African Economic Community." The 5-band

[9] Gabon, Cameroon, the Central African Republic (CAR), Chad, the Republic of the Congo and Equatorial Guinea
[10] Liberia, Sierra Leone, Côte d'Ivoire and Guinea

ECOWAS Common External Tariff provides the platform for trade in goods with the third-party countries and Customs Union of the region. The ECOWAS harmonized VAT programme and ECOWAS Customs Code provide the platforms of customs integration. The principles of ECOWAS customs procedures and valuation are laid down in the ECOWAS Customs Code of 2017. ECOWAS vision 2020 aims at building a democratic and prosperous community and becomes "an ECOWAS of peoples".

37. The Intergovernmental Authority on Development (**IGAD)** is the successor to the Intergovernmental Authority on Drought and Development (IGADD) and was established in 1996 to represent the interests of states in Eastern Africa. Under Article 7 of the Agreement establishing the IGAD, its aims and objectives are to promote joint development strategies; harmonise Member States' policies; achieve regional food security; initiate sustainable development of natural resources; promote peace and stability in the sub-region; and mobilise resources for the implementation of programmes. The IGAD was recognized as one of the strong and viable RECs in July 2006[11]. In response to that, there was a signing of the protocol on the relationship between the African Union and the IGAD. Also, the treaty establishing IGAD shows "that the development of economic cooperation and integration between the countries of the region will contribute to the achievement of the purpose set forth in the Charters of both the OAU and the United Nations". One of the objectives as stated in Article 7(i), is to promote and realize the objectives of the COMESA and the AEC. The objective reaffirms its role as a regional community by concentrating in areas that would have a greater regional impact. Article 13A outlines 20 areas of cooperation among the member States. In view of that, the IGAD (2016) categorized these areas of cooperation into four pillars as it can be seen in Figure 1.

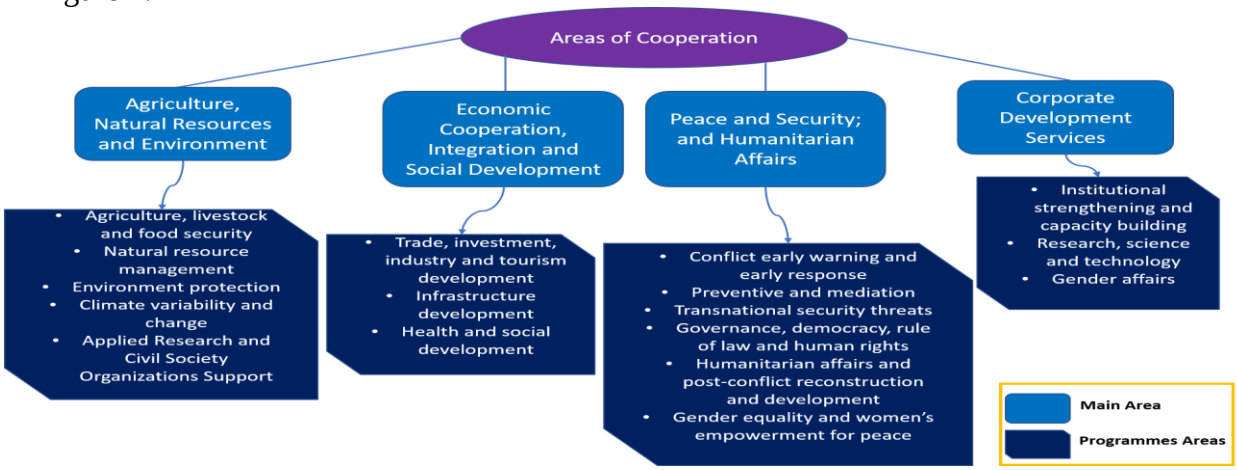

Figure 1: Areas of Regional Integration in IGAD

Source: IGAD (2016)

38. The Treaty establishing the Southern African Development Community (**SADC)** was signed in 1992. The objectives of SADC as stated in Article 5 include; (a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration; (b) evolve common political values, systems and institutions; (c) promote and defend peace and security; (d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States; (e) achieve complementarity between national and

[11] https://au.int/sites/default/files/decisions/9555-assembly_au_dec_111-133_vii_e.pdf

regional strategies and programmes; (f) promote and maximize productive employment and utilization of resources of the region; (g) achieve sustainable utilization of natural resources and effective protection of the environment; and (h) strengthen and consolidate the long standing historical social and cultural affinities and links among the people of the region. More so, Article 24(1) of the treaty establishing SADC says that" … SADC shall maintain good working relations and other forms of cooperation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC…" In the same vein, one of the objectives of AEC is in compatibility with Article 5(1d) of the treaty establishing SADC. In terms of trade and market integration in SADC, the Regional Indicative Strategic Development Plan (RISDP) is the blueprint for regional integration agenda. In 2012, the last five-year phase (2015-2020) of RISDP was reviewed. This was done to align the existing priorities with available resources to enhance industrialization in the region and to fast-track the socio-economic goals. The Revised RISDP has four priority areas as it can be seen in Figure 2.

Figure 2: SADC Revised RISDP (2015-2020) Priority areas
Source: SADC (2017)

39. For trade and economic liberalization, The RISDP outlines a series of integration milestones to achieve. These include formation of a free trade area (FTA) by 2008; establishment of a Customs Union with common external tariffs by 2010; a Common Market by 2015; Monetary Union by 2016, and finally a single currency and an Economic Union by 2018. In this regard, the protocol on trade was amended in 2010 and protocol on trade in service was developed and signed in August 2012. Within SADC, there is the Southern African Customs Union (SACU), which is the world's oldest customs union, founded in 1910. Its five member states[12] maintain a common external tariff, share customs revenues, and coordinate policies and decision-making on a wide range of trade issues.

40. In addition to these RECs, the Tripartite Free Trade Agreement (TFTA) of 2009 involved the blending of the member states of COMESA, the EAC and SADC into a single and inclusive

[12] Botswana, Lesotho, Namibia, South Africa, and Swaziland (Eswatini).

arrangement. The process involved inter-governmental negotiations, and the adoption of an agreement (with annexes) covering existing tariff regimes and other legal frameworks on standards, NTBs, rules of origin etc. The TFTA is built on three pillars (market integration, infrastructure development and industrial development) and there is a parallel agreement on the movement of business people. Negotiations were in two phases, dealing with trade in goods and the free movement of business persons through a committee established by the Tripartite Sectoral Ministerial Committee and negotiations on services and trade related issues. The negotiating principles provided for the *negotiations to be REC and/or Member driven,* but allowed for only States to be members. The negotiations were guided by principles such as variable geometry, flexibility and special and differential treatment, transparency (disclosure of information about tariff arrangements in each REC), the *acquis* of the existing REC FTAs, a single undertaking for trade in goods, substantial liberalization, MFN and national treatment, reciprocity, and consensus.

41. During the negotiation of the TFTA, the *acquis* was limited to tariff liberalisation. RoOs and other trade disciplines were negotiated separately. The negotiations started from the level of integration reached by each of COMESA, EAC and SADC in terms of exchange of tariff concessions and there was no allowance for preferential arrangements. The objective of the TFTA is the traditional linear approach to regional integration with an envisaged focus on customs union. All parties were expected to be part of community provided by the AEC.[13] However, the technical and institutional requirements for such advanced level of integration were absent

42. The analysis of Treaties of various RECs and TFTA shows that the mandates of RECs are in line with the aspiration of AEC in different dimensions and at varying paces; and they also support the implementation modalities of some provisions of the AfCFTA (see **Error! Reference source not found.**). In terms of implementation of mandates, it is also worthy to note that none of the RECs was able to strictly follow the linear progression of regional integration prescribed by the Abuja Treaty. Importantly also, there are marked differences in the aspirations and realities of RECs. The RECs' mandates and objectives cover more issues than the AfCFTA, and their priorities have differed at various points in time. Also, RECs differ in terms of scope, process and level of economic integration. For instance, ECCAS launched their FTA in 2004, but the ECOWAS FTA started in 1990 with the implementation of the ECOWAS Trade Liberalization Scheme (ETLS). The COMESA attained customs union status in 2009 while the feat was achieved by ECOWAS in 2015.

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

[13] Draft Tripartite Agreement, Article 4(6) and Article 40(1).

2.4 Assessment and Evaluation of Trade Liberalisation and Economic Integration of the RECs: Lessons for the AfCFTA

2.4.1 Synopsis of FTA Provisions of RECs in Africa

44. Drawing from the analysis in Section 2.3, the structure of RECs FTAs and the extent to which they can provide lessons for the AfCFTA can be assessed and evaluated within the context of tariff liberalization, NTBs reduction and elimination, RoOs, trade architecture and liberalization sequencing.

45. For the EAC and as documented in Table 3, the main elements of its **FTA** that are similar to the AfCFTA provisions are removal of internal tariffs and NTBs on intra-trade and agreement on a list of products classified as sensitive and therefore requiring additional protection (EAC 2008). The EAC drew a list of products that required protection from competition generated by imported goods. This was premised on the fact that the region had the needed capacity to produce these products. There was also a sequential implementation procedure, whereby Kenya removed tariffs on goods originating from Member States, while Uganda and Tanzania removed tariffs on goods falling under Category A and gradually phase out tariffs on goods under Category B (EAC 2008). Category A includes goods which were zero rated while Category B includes a few goods with tariff rates of between 2 per cent and 10 per cent which were exported from Kenya to Uganda and Tanzania.

46. An integration arrangement of EAC that is deeper than the AfCFTA provisions is the EAC customs union with four major elements; a common external tariff (CET), elimination of NTBs, RoO criteria – which include simplified certificates of origin (CoO) – and removal of tariffs for goods meeting the EAC RoO criteria. The single customs territory (SCT) of 2014 was achieved by the implementation of bilateral country system-to-system interconnectivity and data exchange protocols among Member States. This enabled exchange of electronic documents such as manifests, customs declarations, releases, exit notes and arrival notifications. Another wider and deeper integration arrangement is the EAC Common Market Protocol (CMP) of May 2010. The CMP focuses mainly on four freedoms of movement and integration of their corresponding markets: goods, labour, services, and capital. On the account of Article 2(4), the right of establishment, the right of residence, and the right of free movement of persons play integral parts. To this end, rights of establishment and residence may be added to as the fifth freedom under the Common Market. Article 24 (c) prohibits Member States from introducing new restrictions on the movement of capital and payments connected with such movement.

Table 3: Key features of the FTAs of AU Recognised RECs

	RECs	Year established	Status of integration and institutional architecture	FTA Provisions
1	East African Community (EAC)	2000	Launched common market in 2010	1. removal of internal tariffs and all nontariff barriers 2. agreement on a list of products classified as sensitive 3. EAC RoOs 4. The single customs territory (SCT) of 2014 5. EAC Customs Union

				6. EAC Common Market Protocol (CMP)
2	Common Market for Eastern and Southern Africa (COMESA)	1994	Launched customs union in 2009	1. progressive trade liberalization 2. The Great Lakes Trade Facilitation Programme (GTLFP) 3. Simplified Trade Regime (STR) 4. simplified Certificate of Origin 5. Simplified Customs Document (SCD) 6. COMESA Common Tariff Nomenclature (CTN) 7. The Regional Customs Transit Guarantee Scheme (RCTG) agreement
3	Economic Community of West African States (ECOWAS)	1975	Achieved free trade area status in 1990. Agreed to implement a common external tariff in January 2015.	1. A variable-speed approach. 2. ECOWAS Trade Liberalisation Scheme (ETLS) 3. elimination of non-tariff barriers (NTBs) 4. Inter-State Road Transit Convention (ISRT) 5. ECOWAS Rules of Origin 6. harmonized standards and conformance procedures 7. ETLS task force 8. Capacity building 9. ECOWAS CET 10. ECOWAS Customs Code 11. Monetary Cooperation Programme (MCP).
4	Southern African Development Community (SADC)	1992	Free trade area achieved in 2008	1. Regional Indicative Strategic Development Plan (RISDP) 2. elimination of barriers to intra-SADC trade; 3. harmonisation of customs procedures; 4. trade laws and principles; 5. trade defence instruments 6. competition policy and 7. dispute settlement provisions
5	Economic Community of Central African States (ECCAS)	1983	Launched Free trade area in 2004	1. Central Africa Economic and Monetary Community (CEMAC) trade policy. 2. customs initiatives in terms of automation and rapid clearance declarations. 3. use of reference value for customs valuation purposes. 4. introduction of the electronic cargo tracking note (ECTN). 5. The CEMAC CET
6	Inter-Governmental Authority on Development (IGAD)	1996	No clear timeframe or plan to move towards a free trade area	1. completion of OSBPs, 2. development of international alert 3. harmonisation of regulatory regimes; 4. transparency of custom procedures; and

				5. harmonisation of competition rules.
7	Arab Maghreb Union (UMA)	1989	Draft agreement on establishing a free trade area signed in 2010	1. liberal trade policy and a monopoly over trade 2. Agadir Agreement (AAs) 3. Greater Arab Free Trade Area (GAFTA) 4. gradual elimination of trade barriers 5. industrial and agricultural goods enjoy duty free 6. temporary exceptions from the liberalization schedules of the AAs 7. pan-European RoOs,
8	Community of Sahel Saharan States (CENSAD)	1998	No clear timeframe or plan to move towards a free trade area	1. emphasis on regional security and sustainable development 2. investment in the agricultural, industrial, social, cultural, and energy 3. creation of the African Bank for Development and Trade 4. the Special Programme for Food Security (SPFS)

Source: Compiled by ECA

47. COMESA FTA of 2000 had a sixteen-year period of progressive trade liberalization through reduction of intra-tariffs which is somewhat similar to the sequential approach of the AfCFTA provisions. 18 member states aligned their tariff nomenclature to the COMESA Common Tariff Nomenclature (CTN) at an average of 69% against the 11 member states alignment by an average of 62% in 2015. 14 of them are members of the WTO and 10 ratified the Trade Facilitation Agreement (TFA) as at January 2019. All Member States use automated customs clearance and 16 of them (except Egypt, Mauritius and Kenya) use similar ASYCUDA World. A deeper integration arrangement compared to the AfCFTA provisions is the Regional Customs Transit Guarantee Scheme (RCTG) agreement which was signed and ratified by 13 COMESA member and non-member states were 'party' to the scheme[14]. The scheme is in full operation in the Northern and Central Corridor countries of Burundi, Kenya, Rwanda, Tanzania and Uganda. RCTG Carnet was computerised and integrated with the National Customs Systems of Burundi, Kenya, Rwanda, Tanzania and Uganda. There are 8 operational One Stop Border Posts (OSBPs), six completed and other initiatives are at different stages of development (UNECA 2019).

48. The COMESA RoOs have five (5) independent criteria and goods are considered as originating if they meet any of the criteria[15]. With the exception of small consignments, goods exported under COMESA FTA have to be accompanied by the CoO, which is issued by the designated competent authority in Member States. There are many COMESA provisions that

[14] Burundi, Djibouti, DR Congo, Ethiopia, Madagascar, Malawi, Kenya, Rwanda, South Sudan, Sudan, Tanzania, Uganda and Zimbabwe.

[15] a) The goods should be wholly produced; b) The Cost Insurance and Freight (CIF) value of any non-originating material should not exceed 60% of the ex- work price of the goods; c) Goods must attain the value added of at least 35% of the ex-factory cost of the goods; d) Goods should fulfil the Change in Tariff Heading (CTH) rule; and e) Good must have importance to the economic development of the Member States and should contain not less than 25% of value added.

that more advanced and deeper than the AfCFTA provisions. The Simplified Trade Regime (STR) of 2010 aims to regulate informal cross-border trade (ICBT). The STR put in place mechanisms tailored to the trading requirements of small-scale traders that are decentralized to border areas where informal trade is rampant with the view to facilitate ease of access by small traders. It reduces costs for small traders and increases the speed of crossing the border by the use of a simplified CoO and a Simplified Customs Document (SCD) as well as simplified customs clearance procedures. Trade Information Desk Officers (TIDO) were deployed to some border posts to assist small scale traders with information on border crossing procedures and form filling. In addition, Cross Border Trade Associations are set up to improve the sensitization and use of the STR. Also, the Great Lakes Trade Facilitation Programme (GTLFP) is used to facilitate cross-border trade by increasing the capacity for commerce and reducing the costs faced by traders. COMESA phased monetary harmonization programme is used to consolidate instruments of monetary cooperation; currency convertibility; informal and formal exchange rate unions and coordination of economic policies In addition, COMESA Regional Payments and Settlements System (REPSS) of 2009 is used to link all Member States' national payments systems

49. With the FTA of **ECOWAS**, tariffs on traded goods of Member States are eliminated in accordance with the provisions specified under the ECOWAS Trade Liberalisation Scheme (ETLS) and other relevant Agreements/Protocols. Within ETLS, free movement of goods would require not only zero tariffs but the elimination of NTBs. Another major component is the Inter-State Road Transit Convention (ISRT); and integrated customs procedures. Others are the enhancement of the ECOWAS RoO including its certification procedures; and harmonizing standards and conformance procedures. Agricultural products and handicrafts enjoyed zero tariffs, and this was subsequently extended to include manufactured products of origin in 1990. Taxes and levies were also eliminated. The phased liberalisation of trade in industrial products comprised of two phases: consolidation of customs duties and NTBs, and total trade liberalisation (see Elumaro and Olayiwola, 2020).

50. The ETLS scheme covers three groups of products namely; unprocessed goods which include fish, plant or minerals that have not undergone industrial transformation; traditional handicraft products including those made by hand with or without the use of tools or machineries such as wood, articles of wood, basket works, carpet mats, lace embroidery etc.; and industrial products. It stipulated the scheme for industrial products originating from Member States as well as the timetable for the elimination of tariffs on the said products by the groups of Member States (see Table 4). The Article created three country groups and two sets of industrial products: priority and non-priority industrial products. The groups for industrial products and timetable for the elimination of tariffs on the identified products are documented in Table 4.

51. The ETLS makes provision for institutional architecture of the Enterprise and the National Approvals Committee (NAC) for the processing of the CoO. The approval for ETLS products is not made at the regional level alone but also at the national level. The implementation is facilitated with a range of capacity building activities and sensitization programmes targeting

Member States. In August 2016, the ECOWAS set up the ETLS task force[16], with the aim of fast tracking the implementation of the scheme. The task force combines high level political leaders and practitioners, which were selected and agreed by the Summit of Heads of States and Governments. This taskforce role is to lead observatory missions with a view to build an ETLS monitoring tool to track incoherence (Karaki and Verhaeghe, 2016).

Table 4: ETLS Country and Product Grouping and Tariff reduction Obligations

Group	Tariffs eliminated Period	Rate of reduction of Customs duties and taxes
Group I: Cape Verde, The Gambia, Guinea Bissau, Burkina Faso, Mali, Mauritania, Niger.	10 years	10% reduction each year
Group II: Benin, Guinea, Liberia, Sierra Leone, Togo	8 years	12.5% reduction each year
Group III: Côte d'Ivoire, Ghana, Nigeria, Senegal	6 years	16.6% reduction each year

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

52. ECOWAS deeper integration arrangements compared to the AfCFTA provisions is the establishment of an ECOWAS-CET in 2015 with the aim to intensify and deepen trade integration and development. In addition, the region adopted a variable-speed approach whereby sets of common objectives are mutually agreed upon, to create a common currency which led to the adoption of a comprehensive Monetary Cooperation Programme (MCP) in 1987. The programme sought to create a harmonized monetary system to support sustainable trade growth in the region. The mechanism strengthens the surveillance by reinforcing the institutional framework with the creation of a Joint Technical Secretariat and National Coordinating Committees (NCC). There is regular conduct of half-yearly Joint Surveillance Missions to Member States to assess the status of macroeconomic stability and convergence. Also, there was regular production of Macroeconomic Convergence Reports on the status of macroeconomic stability and convergence in the region

53. The **SADC FTA** is guided by the RISDP and the SADC Trade Protocol which are related to its regional integration agenda. The Protocol has the following provisions: elimination of barriers to intra-SADC trade; harmonisation of customs procedures; trade laws and principles; trade defense instruments; intellectual property rights; competition policy and dispute settlement mechanism. Member states began implementation in 2001 with the aim of gradually liberalising 85 per cent of their intra-regional trade by 2008 and eventually transform the region into a customs union by 2010. The region applied principle of asymmetry – a similar approach like that of the AfCFTA- by taking into account the different levels of economic development amongst Member States as well as the varying economic interests and degree of sensitivities. South Africa reduced sensitive products and front-loaded tariff phase down on 85% of external trade.

54. FTA of **ECCAS** is discussed within the Central Africa Economic and Monetary Community (CEMAC) trade policy which is a deeper integration arrangement compared to the AfCFTA provisions. The main provisions are customs initiatives in terms of automation and

[16] The taskforce is led by the former President of Niger, one private sector representative, one former police representative, one former Nigerian Customs; ROPPA honorary president and NANTS director; and a permanent secretary.

rapid clearance declarations. There is the use of reference value for customs valuation purposes. There is also the introduction of the electronic cargo tracking note (ECTN). The CEMAC CET is used to liberalize trade and harmonize other charges in the region. The **IGAD** plan is to establish a free trade zone among its Member States, much of the area of cooperation is focused on peace and security in the region. The major initiatives that are related to trade reforms are the completion of OSBPs, development of international alert to facilitate trading for peace across volatile borders; harmonisation of regulatory regimes; transparency of custom procedures; and harmonisation of competition rules.

55. In **UMA,** the draft agreement for the creation of FTA was signed by Member States in June 2010. There was the establishment of a Maghreb working groups and development of action plan for trade policy, trade facilitation, production capacity, and trade-related infrastructure, financing commercial transactions, trade information, and integrating the factors of production (UNECA, 2019). The trade policies of UMA are classified into two groups – countries that pursue a liberal trade policy (Morocco and Tunisia), and countries in which the government exercises a monopoly over trade (Algeria and Libya). By 1990s, both Algeria and Libya eased government grip on external trade to enable private sector operation. Despite the existence of partial FTA in UMA, the Member States belong to other bilateral trade agreements as it is expected. These include; Agadir Agreement (AAs) and Greater Arab Free Trade Area (GAFTA). The AA was signed in Rabat, Morocco on 25th February, 2004 with the aim of establishing free trade between Jordan, Egypt, Morocco and Tunisia to increase the intra-trade and trade with the European Union.

56. GAFTA also known as the Pan-Arab Free Trade Area came into existence in 1997. There are 17 member states[17] in which 4 out of 5 (Algeria, Libya, Morocco, and Tunisia) member states of UMA were involved. There was agreement for the 10% reduction in customs fees each year as well as the gradual elimination of trade barriers on industrial and agricultural goods. The AA remains open to other countries in the region, particularly those that enjoy AAs with the European Union and have implemented GAFTA. The Agreement builds heavily on existing regional and bilateral initiatives and some of the temporary exceptions are taken from the liberalization schedules of the AAs. The liberalization of agriculture follows GAFTA and member states abide by pan-European RoOs, even though this measure is potentially incompatible with GAFTA rules.

57. Despite the mandates of FTA of **CEN-SAD**, there is no free trade agreement in place but emphasis is on regional security and sustainable development in the region. The region implemented sectoral policies and programmes to boost regional integration. Several legal and policy instruments were also developed. CEN-SAD operations cover investment in the agricultural, industrial, social, cultural, and energy fields. Some accomplishments include the creation of the African Bank for Development and Trade in 1999 and the Special Programme for Food Security (SPFS) in 1995[18].

58. The TFTA initiative and the North South Corridor of 2009 were attempts to coordinate and harmonize programmes in trade, trade facilitation and infrastructure through improvements to road, rail and ports. It also aims at increasing the power generation and energy trade potential

[17] Algeria, Bahrain, Egypt, Iraq, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen
[18] The SPFS operates in all countries but Libya, Tunisia, and Somalia

of the Southern African Power Pool with new power generation and transmission investments. These led to improved road and rail connections, reduced border times, and related major industrial investments in Mozambique. The private sector also played a large part in the viability of the initiatives as road rehabilitation and maintenance were carried out under a Public Private Partnership (PPP) arrangement with a long-term private concession. For instance, the Chirundu OSBP of 2009 streamline procedures for border crossings, and cutting times for freight crossing the border from days to hours.

59. The synopsis analysis shows that RECs-FTAs are not homogenous entities, and they have different provisions and implementation modalities. Some of these RECs FTA provisions are similar to the AfCFTA provisions, whist some are deeper and wider than what is contained in the Agreement. They were designed and implemented according to the peculiarities of each region. The existence REC FTAs in different dimensions before the negotiation of the AfCFTA trade in goods protocol leaves a very big gap in terms of harmonization of various regional and continental provisions especially when negotiations were not at RECs level and partially involved the harmonisation of other regional trade policies. The organisational structure and the decision-making processes of RECs-FTAs are determined by the Treaties establishing RECs and not AEC or Abuja Treaty. The Summit of Heads of Government provides the political supports, while the Council of Ministers provides the technical support on regional integration matters. Trade negotiations and implementation are coordinated at the Secretariat level with different technical departments. The trade department designs and negotiates an RTA, and many other departments are involved in the implementation. This calls for coordination and collaboration at REC level for effective implementation of trade agreements. This analysis is also an indication that the AfCFTA should be operated within the framework of shared sovereignties of member states and coordination and monitoring mechanisms of RECs in the economic and political realms.

2.4.2 Appraisal of the performance of RECs-FTAs and their potential to contribute to trade within the AfCFTA

60. To assess the appropriateness and suitability of the implementation mechanisms of RECs-FTAs to be leveraged towards the implementation of the AfCFTA and the need to build the interface, there is need to evaluate the effect of these FTAs on trade performance of their respective REC. The appraisal of the performance of REC-FTAs is conducted with a view of getting a better understanding of trade patterns and the contribution of RECs to broader continental trade development. It also involves the assessment of the determining factors of trade patterns and institutional frameworks supporting integration efforts. The analysis of the potentials of the AfCFTA as a tool of trade reforms in Africa can benefit from the evaluation. The descriptive analysis is complemented with econometric analysis to determine the main drivers of trade performance of each REC and how this could be leveraged towards the implementation of the AfCFTA.

61. One of the major achievements of RECs is that the concerted efforts to support and promote intra-regional trade would automatically lead to their enhanced contribution to intra-African trade. As shown by Figure 3, intra-African exports increased by more than seven times from US$8.8 billion in 1995 to US$72.4 billion in 2017. During the same period, intra-African imports also increased from US$7.9 billion to US$59.2 billion. However, between 2014 and 2015, the intra-African trade dropped but increased again in 2017. Effective implementation of

the AfCFTA is expected to change the trend and trade pattern by leverage on economies of scale, drive industrialization, and diversify exports through removal of tariffs, non-tariff barriers, regulatory differences and harmonization of standards.

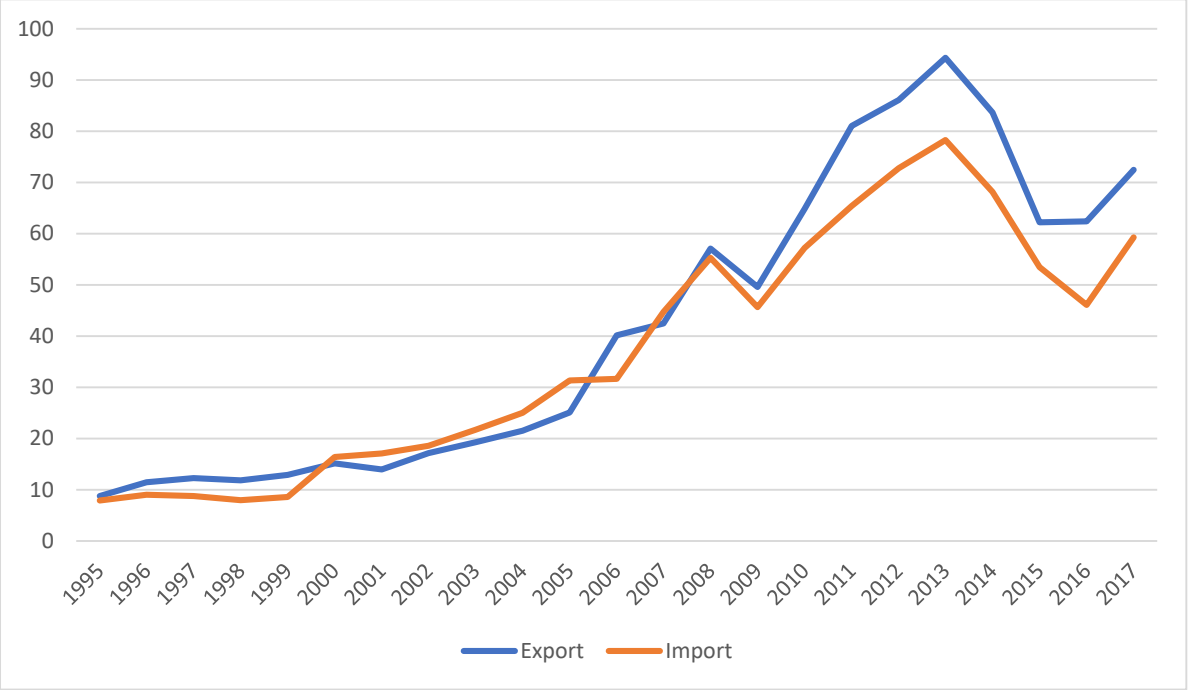

Figure 3: Total Intra-African Trade from 1995 to 2017

Source: Calculated by ECA

62. These trade pattern and trend were in the same directions with contributions of various RECs to the African intra-trade. The positive trend can be the result of the contributions of various RECs intra-trade. Figure 4 reveals that SADC was the major contributor to intra-African trade in terms of imports and exports in the period of 2010 and 2017. The SADC imports as percentage of intra-African imports increased from 47.3% in 1995 to 55.7% in 2015 and 49.9% in 2017. The trend of CEN-SAD is the same as the region recorded a declining trend from 19.8% in 2000 to 16.5% in 2015. The ECOWAS contribution to intra-African imports shows a positive trend as it increased from 10.6% in 1995 to 11.6% in 2017. The analysis shows that the potentials and importance of RECs to continental trade differ and this is clearly shown by their varying contributions to intra-African trade.

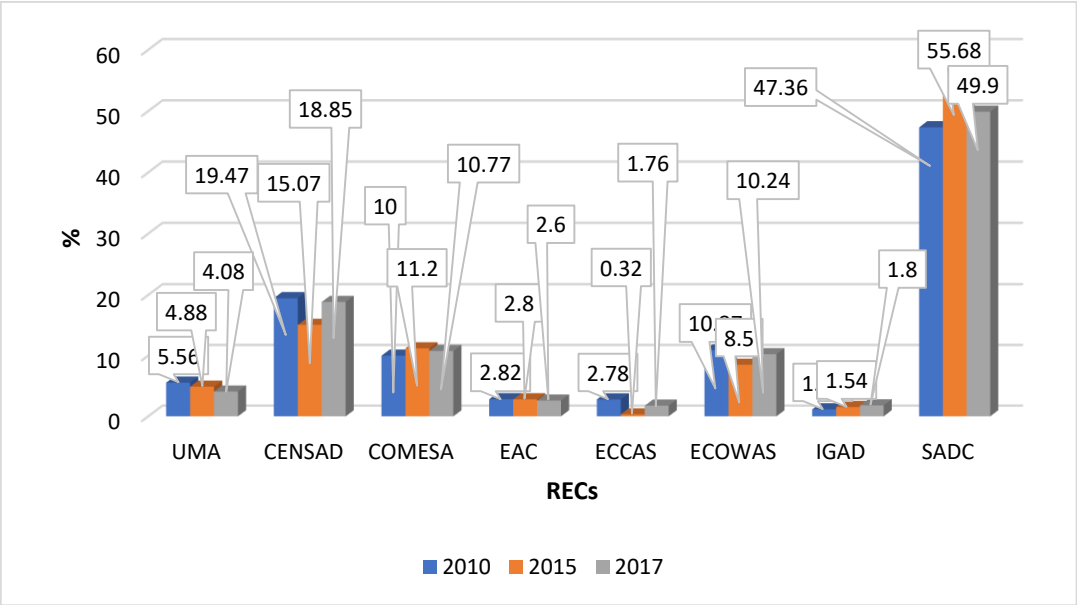

Figure 4: Contribution of each REC to intra-African Imports (in percentage) 2010-2017

Source: Calculated by ECA

63. SADC intra-regional exports was the highest contributor compared to other RECs with an average contribution of 49% to intra-African exports in the period of 2010 and 2017. According to AUC/OECD (2019), South Africa is the SADC most diversified country with an export basket of more than 100 products. Angola and Botswana, had the least diversified economies with top two export products- oil and diamonds- accounting for more than 95% of their exports. Malawi relies on unprocessed tobacco and tea as its main exports, while Zambia depended on copper exports. With the exception of South Africa, the countries in the region do not manufacture goods demanded by others in the region, leading to little regional complementarity and this translated into weak linkages and low stimulus for industrialization.

64. ECCAS contribution to intra-African exports was on the average of 3% in the period of 2010 and 2017. The regional exports were dominated by fuels (oil, gas, coal) followed by minerals and metals. Raw materials represented 90% of exports for Chad and Equatorial Guinea, while manufactured products accounted for just 8% of exports. The region had oil dominated exports (47.7%), followed by refined copper and copper alloys (16.4%). Equatorial Guinea exports crude petroleum oils or bituminous minerals, natural gas, alcohols, phenols, halogenated and sulfonated derivatives, liquid propane and butane, ships, boats and floating craft, and petroleum and other gaseous hydrocarbons. In São Tomé and Príncipe, export products were heating and refrigeration equipment and spare parts for handling equipment. Cameroon main exports products were fruit, lumber, cocoa, and cotton.

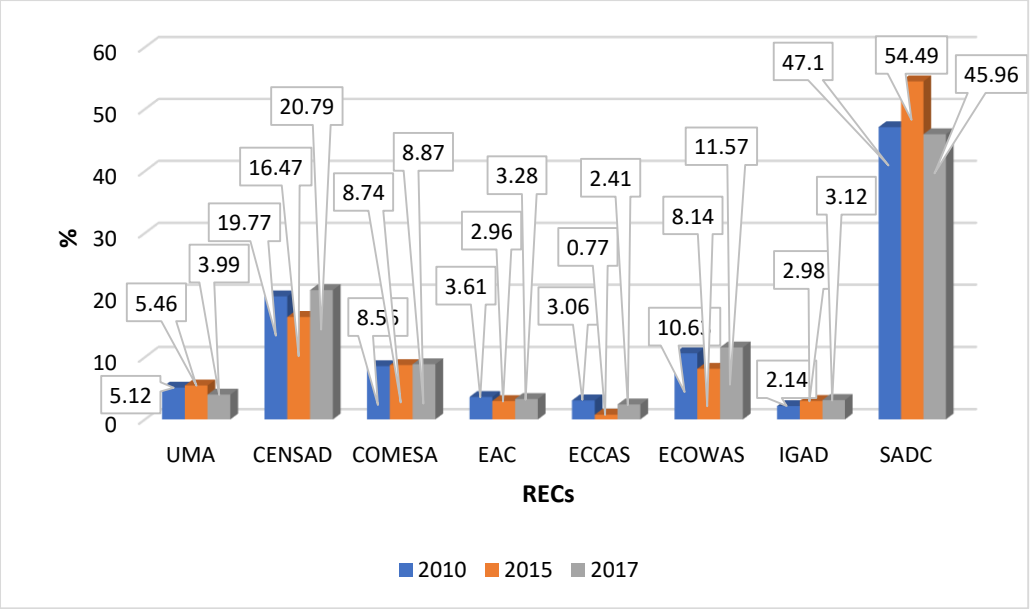

Figure 5: Contribution of each REC to intra-African exports (in percentage)
Source: Calculated by ECA

65. In EAC, the region contribution to intra-African exports was around 2.7%. As documented by the AUC/OECD (2019), the trend of the region contribution to the intra-African exports was the result of the region shares of manufacturing export products that decreased from 20% in 2010 to 12% in 2017. Rwanda shares of exports from agriculture and minerals accounted for 26% and 6%, respectively while Tanzania and Uganda main exports products are stones, glass, minerals and metal. Also the UMA contribution to intra-African exports shows a declining trend as it reduced from 5.12% in 2010 to almost 4% in 2017 (see Figure 5). Oil is the region's leading product (40.3%), followed by manufactured goods (33%), food (13.1%), and gold and metals (10.8%). Agricultural raw materials did not appear in the average export mix, as they account for only 0.7% of total exports. Algeria and Libya rank 18th and 21st in the world for oil production and oil and its derivatives accounted for 99.1% and 96% of their exports. Morocco and Tunisia major exports were manufactured goods: 75.5% of exports in Tunisia and 67.5% in Morocco over the period of 2010 and 2017. Exports from Tunisia and Morocco are limited to clothing, textiles, leather, chemicals, electrical switching equipment, car parts. Mauritania's export basket was also concentrated and dominated by iron ore, copper and gold (52%), and seafood (29%). In COMESA, the manufacturing industry is also very strong in Egypt representing 49.3% of exports.

66. The ECOWAS contribution to intra-African exports shows a positive trend as it increased from 8.1% in 1995 to 11.6% in 2017. Five products constituted 75% and 12 products accounted for 90% of the total exports in 2017. The region specialised in the production and export of raw materials like cocoa, uranium, cotton and mineral resources. Côte d'Ivoire is the leading world producer of cocoa and Burkina Faso has a competitive advantage in cotton with share of cotton in total exports was 64% in 2010 and 25.3% in 2017. Ghana main exports product is cocoa beans with a higher share of exports of 51.9% in 2010 and 25.3% in 2017. Nigeria oil exports accounted for 86.5% and 81.5% of regional exports during the same period. Nigeria is the 12th leading producer of oil in the world and the first in Africa. For the top 13 agricultural products, ECOWAS member states had between five and nine countries among the leading 20 producers in the world in 2017. The region thus has a near monopoly on world production of shea nuts,

fonio, and yams, with over 90% of world production and leads the production of other products such as cocoa beans, cashew nuts and cassava (AUC/OECD 2019).

67. The performance of intra-regional trade in Africa is lower than other RECs outside Africa. As shown in Figures Figure **6** and Figure 7, in the period of 1995 to 2015, the intra-regional exports and intra-regional imports in European Union was 63.8% and 59.7% respectively and 24.2% and 22.7% in ASEAN respectively. In Africa, the best performance was recorded in EAC with 20.3% and 6.8% and SADC with 20.6% and 21.5% respectively.

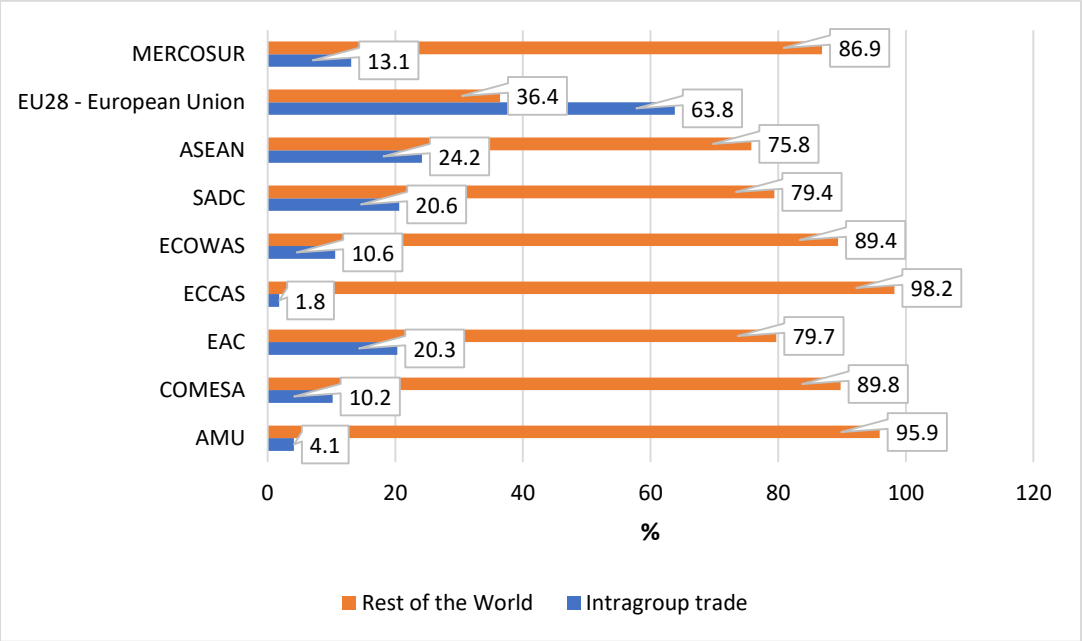

Figure 6: Intra-Regional Exports in the other RECs in the World
Source: Calculated by ECA

68. In UMA, the intra-regional exports and intra-regional imports were as low as 4.1% and 2.5% respectively. On the average, level of Africa intra-trade of around 13% is low compared to approximately 60%, 40%, 30% intra-regional trade in Europe, North America and ASEAN respectively.

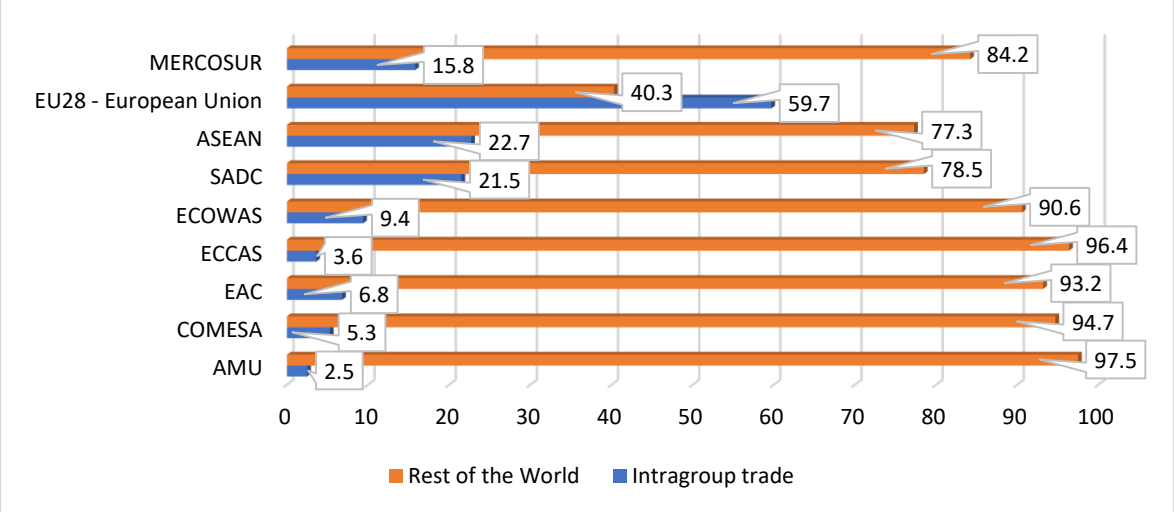

Figure 7: Intra-Regional Imports in the other RECs in the World

Source: Calculated by ECA

69. In addition, RECs-FTAs are used by the private sector operators as stepping stones and frameworks for the development of business initiatives and mobilization of investments. In ECOWAS region, key respondents were of the opinion that the ECOWAS platform facilitated the establishment of enterprises like ECOWAS Bank Transnational, Asky and telecommunication companies which span the economic space of the region. In particular, Dangote Cement Plc (see Box 1) reaps the benefits of scale provided by ETLS. According to key informants from COMESA, EAC and SADC, most of the big manufacturing and services companies such as MTN, Vodacom, Safaricom, Kenya Commercial Bank, and Jubilee Insurance are major beneficiaries of FTA provisions**.** Other beneficiaries are East Africa Roofing's in Jinja Uganda; Mabati Rolling Mills in Kenya; Bidco Company in Kenya and Uganda; Lake Kariba Harvest Ltd Fish Farm, Zambia and Zimbabwe; Illovo Sugar Company in Eswatini, Zambia and Malawi; Palfridge Limited Company in Eswatini; Zimplow in Zimbabwe; Metal Fabricators of Zambia; Egypt Starch and Manufacturing Company; Daqahlia Sugar Manufacturing and Refining Company in Egypt; and Mauritius Sugar Syndicate.

Box 1: Dangote Cement Plc

In ECOWAS region, Dangote Cement Plc is accelerating cross-border manufacturing investment in the region. The Company is investing US$5 billion to build an African cement empire. This includes the US$300 million greenfield cement plant in Senegal which recently rolled out products into the local market, thus contributing immensely to increased cross-border investments within the ECOWAS region and Africa. Cross-border investments or Africans investing in Africa (AIA) is estimated to be growing by more than 30% annually. In Senegal "Dangote Cement is a great project for the country and the consumers … As a Government we look forward to get more revenue from the sector, and for our local communities surrounding the plant, more jobs that will reduce poverty and generate more upstream and downstream activities. Our SMEs will be developed and the multiplier effects on our industries will be beneficial." A representative for Dangote's Distributor West Africa said: "We are already exporting 18 percent of the production to Mali and the total export figure is 40 percent, if exports to other countries are combined. The demand for Dangote Cement is everywhere; we have people coming from Gabon and [Cabo Verde], and [Guinea-Bissau] to buy the product. Dangote Cement is also the biggest quoted company in ECOWAS and the only Nigerian company on the Forbes Global 2000 Companies."

In 2013, a Renaissance Capital research credited Dangote Cement as a major force behind Nigeria's feat in overtaking South Africa as the biggest cement manufacturer in sub-Saharan Africa. As strategy of capturing ECOWAS regional market, Dangote already had cement plants in Ghana and Senegal with good market prospects in other neighbouring countries such as Liberia, Sierra Leone and Cote d'Ivoire which lack limestone, one of the basic raw materials used in the production of cement. The Group is therefore consolidating its cement

business across ECOWAS and the rest of Africa in order to reap the benefits of scale provided by ETLS. According to Dangote "We have 15 countries in the ECOWAS community that is duty-free. [The export market] is big and profitable if you have capacity. Players should be encouraged to export if they have the capacity. We must also meet local consumption"

Source: CDTi, 2018

Box 2: The Madhvani Group of Uganda

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

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

Source: Response from KII, 2020

Box 3: Bakhresa Group of Tanzania

Bakhresa Group is one of the leading Industrial Houses in Tanzania, East Africa. Started in a humble manner with a small restaurant in the Port City of Dar Es Salaam, Tanzania, in 1975. It has emerged as one of the prominent family owned business group in the region. The Group has its operations spread in Tanzania Mainland & Zanzibar, Kenya, Uganda, Malawi, Mozambique, Zambia, Rwanda, Burundi and in South Africa. Plans are in place to spread its wings to other countries. The Group now boasts of a turnover of more than Eight Hundred Million United Sates Dollars and is a proud employer of more than eight thousand people. There are range of companies under its umbrella and with investments primarily in the Food and Beverage Sector, Packaging, Logistics, Marine Passenger Services, Petroleum and Entertainment.

Source: Response from KII, 2020

2.5 REC-FTAs Achievement and Challenges and their Implications for the Implementation of the AfCFTA

70. One of the policy aspirations of some RECs-FTAs is to make tariff charges on intra-intermediate imports to be zero. Also, their existence made many Member States to effect tariff reduction on intermediate imports. As shown in Figure 8**,** weighted average tariffs on intermediate imports in all RECs reduced gradually in the period of 1995 to 2017. In RECs with functional FTA, there exists varying degrees of tariff charges on intra-intermediate imports. On the average, RECs with no functional FTA provisions like UMA and ECCAS had higher weighted average tariffs on intermediate imports compared to SADC, EAC, COMESA

and ECOWAS with a functional FTA. Among RECs with functional FTA, ECOWAS seems to have the highest weighted average tariffs.

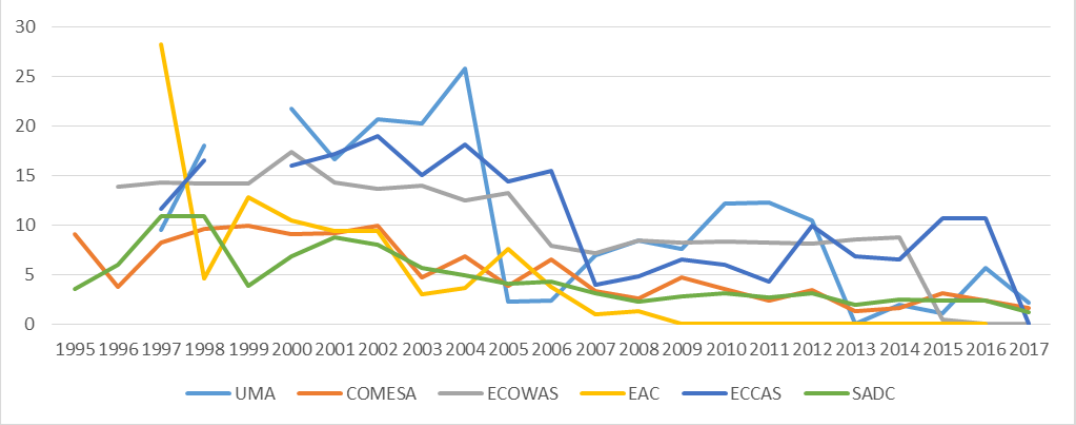

Figure 8: Weighted Average Tariffs on Intra-regional Intermediate Imports of Selected RECs from 1995 to 2017
Source: Computed by ECA

71. It is worthy to note that the positive values of weighted average tariffs on intermediate imports in some RECs is as a result of ineffective implementation of FTA provisions by Member States. The trade costs which cover tariffs and NTMs, trade facilitation, connectivity and logistics, and geographical and cultural/historical/institutional factors associated with international trade reduced significantly in some RECs due to preferences granted under the various RECs-FTAs. As shown in Table 5, trade costs index of ECOWAS reduced marginally on the average of 6.8% in the period of 1995 and 2017. During the same period, the EAC index reduced by 22.5%. A remarkable achievement was recorded in IGAD as the region trade costs index reduced significantly by 59%**.**

Table 5: Trade Costs Index in Africa by Regional Economic Communities 1995-2017

RECs	1995	2000	2005	2010	2015	2017
UMA	129.71	186.79	213.30	171.24	152.41	152.14
COMESA	272.62	277.48	298.17	279.70	290.46	288.23
EAC	184.36	161.56	147.38	124.55	137.59	142.70
ECCAS	213.23	208.56	257.63	262.55	336.21	253.68
ECOWAS	204.04	229.42	236.25	230.21	225.08	213.93
IGAD	482.21	217.82	238.81	180.25	189.09	197.26
SADC	193.48	250.21	257.31	226.02	237.85	236.08
CENSAD	291.46	279.81	275.55	271.50	259.72	253.82

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

72. Other RECs showed some fluctuations in the pattern of the trade cost index. For instance, the index of SADC increased by 53% in the period of 1995 and 2005 but reduced by 8.3% in 2017. The pattern looks the same with COMESA and ECCAS. In 1995 and 2017, RECs like

IGAD, ECCAS and CENSAD had very high trade costs index compared to others, while EAC and UMA had the lowest index.

Table 6: Non-Tariff Component of Trade Costs Index of Regional Economic Communities in Africa 1995-2017

RECs	1995	2000	2005	2010	2015	2017
UMA	100.32	74.78	201.23	164.86	146.60	123.23
COMESA	208.15	191.26	277.06	256.78	263.93	262.37
EAC	74.58	66.83	101.71	98.41	112.81	122.06
ECCAS	112.34	102.25	210.04	209.52	176.03	158.92
ECOWAS	201.23	221.25	177.21	187.61	178.15	180.18
IGAD	356.23	132.58	166.19	136.11	143.26	150.30
SADC	174.13	225.19	231.58	203.42	214.06	212.47
CENSAD	254.34	269.84	206.69	221.25	205.57	213.78

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

73. The EAC and SADC that nearly had zero weighted intermediate tariff witnessed a remarkable increase in non-tariff component of trade cost index as it can be seen in Table 6. In EAC, the non-tariff component increased by 63.6% in the period of 1995 and 2017. The trend looks the same for SADC as the index witnessed 22 % increase in 2017. Regulatory and administrative bottlenecks impose additional costs on regional trade and transportation as SADC countries rank outside the top 100 in efficiency of customs services. These services affect logistics quality and competence, and even timeliness. Limited interoperability and connectivity in the clearance systems between countries are further aggravated by border gates that do not operate on a 24-hour basis, leading to increases in queues and transit times for goods. In 2015, delays at the border between South Africa and Zimbabwe were estimated by transporters to cost truck operators at least USD 400 a day in additional driver time, petty cash, parking fees and the opportunities lost for servicing fewer clients due to longer roundtrips (AUC/OECD 2019).The COMESA and CENSAD had the highest index in 2017 and EAC and UMA had the lowest index. The analysis clearly shows that despite the gradual reduction of imports tariffs in all RECs in the period of 1995 to 2017, non-tariff barriers related to trade costs tend to be more binding than tariffs. Therefore, the concerted efforts of RECs in eliminating imports tariffs need to be adequately supported by total elimination of NTBs for a meaningful trade promotion and development in Africa.

74. Therefore, other achievements of RECs that could be leveraged in support of the implementation of the AfCFTA are directly related to trade facilitation. To a key respondent, the operationalization of the ECOWAS Passport and biometric identification cards is a classic achievement that serves as model for free movement of persons. In addition, COMESA and EAC have commendable achievements in removal of foreign exchange restrictions, taxes on foreign exchange and import and export quotas; and removal of road blocks and easing of customs formalities. The STR, RCTG and institutional arrangement for trade dispute settlement in EAC are other supportive achievements.

75. The true litmus test for RECs commitment to the AfCFTA would be in the effective implementation of provisions of the agreement by their Member States; which requires compliance monitoring and Agreement domestication. The process of domestication is divided

into four steps: the ratification, the transformation, the incorporation and the legislation of provisions. Each step is defined individually by the nature of the Agreement, the force of the provisions, and institutional system of each Member State. As shown in Table 7, each REC has a combination of the AfCFTA State Parties and Non-State Parties. Consequently, this combination would have implications on RECs involvement during the implementation of the Agreement.

Table 7: Status of Ratification of the AfCFTA in Eight Recognised Regional Economic Communities as of May, 2020

RECs	Level of Regional Integration	Member States that had Ratified the AfCFTA	Member States that have not Ratified the AfCFTA	Remarks
UMA	Partial FTA	Mauritania	Algeria, Libya, Morocco, and Tunisia	1 out of 5
CEN-SAD	Partial FTA	Burkina Faso, Chad, Côte d'Ivoire, Djibouti, Egypt, The Gambia, Ghana, Mali, Mauritania, Niger, Senegal, Sierra Leone and Togo	Benin, Cabo Verde, Central African Republic, Eritrea, Guinea-Bissau, Kenya, Libya, Morocco, Nigeria, Somalia, Sudan and Tunisia.	13 out of 25
COMESA	Common Market	Democratic Republic of the Congo, Djibouti, Egypt, Ethiopia, Kenya, Mauritius, Rwanda, Eswatini, Uganda, and Zimbabwe.	Burundi, Comoros, Eritrea, Libya, Madagascar, Malawi, Seychelles, Sudan and Zambia	9 out of 19
EAC	Partial Customs Union	Kenya, Rwanda, and Uganda	Burundi, South Sudan and United Republic of Tanzania	3 out 6
ECCAS	FTA	Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda, and São Tomé and Principe	Angola, Burundi, Cameroon, Central African Republic, and Congo	5 out of 11
ECOWAS	Partial Customs Union	Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Guinea, Mali, Niger, Senegal, Sierra Leone, Togo	Benin, Cabo Verde, Guinea-Bissau, Liberia, Nigeria	10 out of 15
IGAD	Partial FTA	Kenya, Djibouti and Ethiopia.	Eritrea, Somalia, South Sudan, Sudan, and Uganda.	3 out of 8
SADC	FTA	Democratic Republic of the Congo, Mauritius, Namibia, South Africa, Eswatini, and Zimbabwe	Angola, Botswana, Lesotho, Madagascar, Malawi, Mozambique, Seychelles United Republic of Tanzania and Zambia.	6 out 15

Source: Compiled by the ECA.

76. The starting point of RECs involvement is the ability to extend oversight and nudging roles they play in the implementation of their respective FTAs to the AfCFTA and use their position to encourage Member States to speedily ratify the Agreement. As reported by key respondents, there are many impediments to the capability of RECs to perform these roles. These are weak inter-agency coordination and inappropriate monitoring and evaluation systems. Weak compliance and enforcement mechanisms limit the capacity of private entities or Member States to challenge each other in case of non-compliance.

77. The origin of these challenges is traceable to the legal systems among others. For instance, SADC has two dominant legal cultures which include the civil law and common law cultures.

Member States that conform to the civil law culture follow the monist theory[19] while those that conform to common law follow the dualist theory[20]. Also, in ECOWAS region, there is the presence of French and British legal systems. In Francophone Member States with monist legal system, regional laws and regulations can be appealed in courts of Member States. This is not the case in Anglophone Member States with a dualist legal system, where international laws have to be promulgated at national level in order to have the force of law. The multiple legal systems are major impediment to the operationalization of supra-nationalism in RECs as the regional institutions are expected to operate in accordance with the whim and caprice of Member States.

78. The results of gravity models[21] show significant positive relationship between intra-African trade and Gross Domestic Products (GDP) per capita of RECs; and significant negative relationship between intra-African trade and weighted average tariffs of all RECs except UMA and IGAD. The results are pointers to the fact that substantial reductions in trade costs and increase in production in Member States led to improvement in intra-African trade. Also, the empirical results of Annex 2 show that tariffs and GDPs of exporter and importer countries were significant determinants of intra-African trade in the period of 2010 and 2017. In all, five RECs are significantly trade-creating – UMA, EAC, ECOWAS, SADC and CENSAD, while others are neither significantly trade-creating nor trade-diverting. According to nearly all key respondents, the potentials of RECs-FTA's provisions in promoting and increasing domestic/regional production and diversification were not fully explored by Member States. The level of intra-Africa exports as percent of GDP was low and hardily increased beyond 4% in the period of 2010 and 2017. The pattern of trade is influenced by the continent's historical links with the outside world and over 80% of exports had destinations of markets outside Africa, with the European Union and the United States of America accounting for over 50% (Geda and Seid, 2015). To some respondents, this pattern is traceable to inadequate capacity of member states to produce intermediate and final products and other supply-related constraints.

79. In addition, several RECs actively support the creation of regional value chains. Most notably, the Action Plan for the SADC's Industrialization Strategy prioritises six key clusters based on the comparative advantages of each country and the region as a whole: agro-processing, minerals extraction and beneficiation, pharmaceuticals, consumer goods, automobiles, and modern services. In ECOWAS, Burkina Faso, Côte d'Ivoire and Mali launched the first cross-border Special Economic Zones (SEZs) to attract private sector investment in agribusiness, agro-industry and the mining sector. Yet most of these opportunities remain untapped. The level of regional sourcing in Africa remains too weak, on the average of under 15%. The figure is low when compared to Asian countries where intra-regional sourcing in Southeast Asia accounts for more than 80% of exports in industries such as motor vehicles, textiles and apparels, and computer, electronic and optical products (OECD, 2018).

[19] Monism holds that international law and domestic law form part of a single universal legal system and there is hierarchical relationship in which international law is superior to domestic law and prevail in any conflict between the two laws.

[20] A dualist system treats the international and domestic systems of law as separate and independent. The validity of international law in a dualist domestic system is determined by a rule of domestic law authorizing the application of that international norm.

[21] See **Error! Reference source not found.**

80. Heterogeneity exists across RECs in Africa in terms of value addition. The share of intra-Africa value addition in exports is highest in EAC at 25%. In contrast, the continental market only accounts for 4% of value added in exports from UMA. In certain cases, regional value chains are weakened by poor trade facilitation policies which gives room for non-African countries to take advantage. For example, the mining chain in Southern Africa traditionally relied on South Africa as a supply hub for capital goods. However, this position was challenged by more competitiveness imports of capital goods from other non-African countries (Fessehaie and Rustomjee, 2018). Other agro-based value chains remain limited to primary processing. Activities such as marketing, branding and design could be key to capture higher value addition

81. There is also trade facilitation challenge in terms of firm's compliance with RoOs requirements as well as its implementation. The EAC Time Bound Programme study[22] clearly show that all Member States except Rwanda imposed measures with equivalent effect to tariffs on intra-trade, including additional taxes and charges that affect import costs or import unit values. These additional taxes and charges account for 17% of the total number of NTBs. Tanzania imposed most of these additional taxes and charges (40% of the region's total), followed by Uganda (30%), Kenya (20%) and Burundi (10%). EAC CoOs were often recognized at borders partly because of issue of mutual mistrust. Tanzania accounted for 50%, Uganda for 30%, and Kenya and Rwanda for 10% each of the reported cases. Also, in ECOWAS, the ETLS task force in Nigeria reported the existence of multiple CoOs across Member States. There are complaints that some countries issue country-specific CoOs rather than issuing regional CoOs. There are also wrong interpretations of protocols responsible for some CoOs carrying names of countries rather than ECOWAS (see Box 4).

Box 4: Trade Facilitation Issues

Case 1
Another challenge with the ECOWAS RoOs has to do with accusation of unfair competition. The entrance of Dangote Cement to Ghana because of ETLS has received serious protest from local producers due to accusations that Dangote is selling at prices that are below market price. The people of Ghana see Dangote cement as Nigerian cement instead of ECOWAS cement. As claimed by an officer of Ministry of Trade of Ghana "We cannot stop the competition because of the ETLS, but we must make sure they are playing by the rules so that they don't have an unfair advantage over our people."

Case 2
According to UGE-CI, it is difficult for millers to export and sell goods in Mali. The Nigeria Customs Service does not recognize the ECOWAS Certificate of Origin but requires a NAFDAC document and will not allow banana to enter Nigeria ». In Burkina Faso, the Burkina Faso Livestock Act makes food from livestock to be taxed by VAT. To CAPRA-CI which makes spaghetti pasta, Mama and pavani and SODIPAL, « the main challenge of ETLS is that, many border agencies are not duly and adequately informed of ETLS benefits ». On many occasions, the exports products get blocked and delayed especially in Mali. Moreover, massive importation of products from third countries especially pasta from Turkey and Morocco and the protection of certain sectors through the free zone will make ECOWAS products not to be competitive.

Case 3
A case in Sierra Leone aptly illustrates the difficulty in complying with ETLS rules of origin. The country placed a temporary suspension on cement from Senegal on the suspicion that it is essentially from Turkey as the processing in Senegal allegedly does not meet originating requirement under the ETLS. While the authorities in Sierra Leone are seeking clarification on this, the authorities in Senegal raised barriers to any possible imports from Sierra Leone, as retaliatory measure.

Source: CDTi, 2018

[22] See EAC Common Market Scorecard 2016

82. The Imani Development Trust carried out an inventory of the prevalence of NTBs in EAC, COMESA and SADC. The report underscores that the prevailing NTBs tend to be more arbitrary, qualitative and non-transparent. Non-acceptance of SADC/COMESA CoO is due to non-notification of change of verifying signatures, suspicion of authenticity of declaration, temporary bans on selected products, vested interests, and health protection. Prevalence of NTBs is also accentuated by Kalenga (2004) who argues that the scope of NTBs in the SADC region remains extensive and forms a substantial hindrance to intra-SADC trade. Keane *et al*. (2010) revealed that NTBs tend to divert imports from regional partners to non-regional partners. Most of the reported NTBs include competition policy and infant industry protection, TBT and SPS, RoOs and customs procedures. The complaints reported by Namibian importers and exporters against other regional trading partners were related to complicated customs procedures and imports and exports quotas. In addition, the main source of NTBs within SADC relate to trade administration imposed by South Africa against other SADC members.

2.6 Areas of Convergence and Divergence of various RECs-FTA and the AfCFTA

83. In this analysis, the starting point is the scope and coverage of tariff liberalization. Under the AfCFTA, Member States agreed to 90% liberalization of tariffs on trade in goods and the remaining 10% were designated as sensitive (7%) and exclusive (3%). According to the Schedules, developing economies can liberalise sensitive products over 10 years, while least developed countries (LDC) have 13 years to liberalise. Also, countries can take advantage of the available 5 year or less transition period before liberalising sensitive products. Analysis in section 2.2 shows that RECs have different scopes and that the pace of tariff liberalization is not steady. COMESA tariff liberalization is 100 percent, while SADC is 85% and EAC has coverage of more than 95% and ECOWAS is 72%.

84. A key area of convergence is the recognition of the platform provided by the WTO-Trade Facilitation Agreement (FTA) by both RECs and the AfCFTA. There are concerted efforts by the AU and RECs to implement various provisions of WTO TFAs to reduce road blocks; harmonise and simplify customs and transit procedures and documentation; establishment of one-stop border posts; and adoption of integrated border management processes. The AU implementation strategies include simplification and harmonize custom and transit procedures amongst member countries; Customs modernization to streamline border trade; collaboration with World Customs Organization (WCO), UNCTAD and development partners in capacity building especially in risk analysis; and facilitation of SMEs participation in GVCs and improvement in compliance to rules and regulations. The RECs strategies also include the enhancement of understanding of the WTO TFAs for better implementation; development of Regional Committee on Trade Facilitation; facilitation of domestication of WTO-TFA in member states; development of regional Customs Modernization Programme and Joint Border Posts.

85. The potential area of divergence is the application of duties or other charges with equivalent effects and ineffective application of RoOs. The imposition of additional taxes and charges affects import costs and values[23]. As AfCFTA RoOs is at the negotiation and design stage, its consideration should be based on its alignment to the existing RECs RoOs. The focus should

[23] See Annex 7 on additional charges in Nigerian port

be on the determination of the type and ideal way(s) of application of RoOs during the implementation of the AfCFTA. One of the underlying challenges lies in the fact that there is no common binding standard that facilitates the process of designing 'appropriate' RoOs. The WTO agreement on RoOs is not prescriptive to preferential RoOs. For example, Annex 6 documents the summary of the complementarity, differences and implication of AfCFTA RoOs on ECOWAS RoOs. The summary is a pointer to the fact that the AfCFTA may face the complexity of aligning interests across RECs. Here, flexibilities and variable geometry are needed and compromise would be required especially in recognizing the RoOs of RECs. The basic issues are:

a) Does the design of the AfCFTA RoOs support the mutual benefits of stakeholders of RECs? and
b) Can the current and future AfCFTA institutions serve the functions and purposes of RECs-FTAs?

86. The analysis of these issues should determine the appropriate design of the AfCFTA RoOs which should require the harmonization of REC's RoOs. The structure should be able to facilitate RVCs, consider preferential RoOs and draw lessons from the processes of negotiating RoOs in RECs. For instance, it may be practical to map out the best model of RoOs application but there are challenges. This is because RECs neither have the same RoOs nor use the same guidelines. The foundations of REC's RoOs show that while some of them utilized a general approach, AfCFTA RoOs negotiations are based on a product-by-product basis. A general approach includes change of tariff heading, or proportion of domestic value- added or specific technical requirements, which the product needs to satisfy. But AfCFTA RoOs is modelled on a mix of both rules-based and product-specific approach, whereby each product has its own primary RoOs.

87. REC RoO regimes span a wide range of methodological approaches in the determination of preferential origin status. For example, the COMESA and the EAC use similar regimes, but the number of exceptions to the base rule and annexes covering products for which product-specific rules apply are different. The SADC rules are based on the EU RoOs structure. Due to differences, it is expected that the AfCFTA approach would strain institutional infrastructure of RECs in performing supportive role to their Member States during implementation. This may follow by an increasing number of expectations and disagreements among Member States on the make-up of the preferential RoOs as may be based on *an across-the-board* mechanism. Therefore, the purpose of differentiating preferential and non-preferential goods may be compromised by the AfCFTA RoO if preferential RoOs are not recognised.

88. Another major issue relates to the complexity in the implementation of the regional RoOs. According to Estevadeordal and Suominen (2006) Restrictiveness-index (R-index)[24], the ECOWAS and COMESA had simpler and clearer RoOs that were common across products. In general, these RoOs are straightforward, transparent, and predictable and require little or no administrative discretion. Using the R-index, ECOWAS and COMESA had less restrictive

[24] The restrictiveness index is developed from eleven criteria measured by identifying the variants by which each criterion is applied and then subjectively assigning restrictiveness scores to each item according to the likely restrictiveness of the variant. The criteria are (a) Change in tariff classification; (b) Regional value content or percentage criterion (c) Specified manufacturing process test and/or sector-specific rules; (d) Type of cumulation; (e) Provisions that go beyond cumulation (f) Duty drawback (g) Territoriality or outward processing (h) Geographic location of manufacturing process (i) Other effects of RoO (j) Degree of certainty (l) Compliance (m) administration costs and (n) Rigidity

RoOs compared to ASEAN FTA, CACM, NAFTA, and SADC. ECOWAS R-index of 1.87 and COMESA 2.8 were the lowest compared to 5.1 of NAFTA and 4.4 of SADC.

89. Though the RoOs can be simple and transparent, in practice, their implementation may be highly restrictive. For example, to use the ECOWAS RoOs, companies must obtain the CoO for each and every industrial product that they wish to export. This would entail approval from relevant Ministries, Departments and Agencies (MDAs) of Member States and ECOWAS Commission. The dual approval leads to a lengthy process and long waiting time between application and approval of CoO. The process discourages exporters in using preferences but seek means to fast track their exports, not minding the higher cost at which this often comes (CDTi, 2018).

90. The possibility of not using the same Harmonised System of Goods and Statistical Nomenclature in RECs may be another challenge. The headings are used to describe goods according to the legislation and where specific customs duty rates apply – depending on the origin of the goods or other trade policy. Therefore, critical components for harmonised RoOs are; common nomenclature, a management institution, and a technical unit to support the definition and implementation of RoOs. The analysis of the negotiation process of the TFTA could serve as lessons to the design of the AfCFTA RoOs. The key challenge is largely twofold: First, how to agree to common rules applicable to the full TFTA block and the second relates to the application of product-specific 'list rule' annexed to the TFTA RoOs protocol.

91. The basic issue is how to take advantage of the AfCFTA RoOs negotiations to address these challenges? Progress should be made on finding common ground with respect to the RoOs protocol, and the general RoOs provisions. Within the context of the AfCFTA, the outcome of any product-specific RoO deliberation would likely have significant impacts on traders, and would be informed by many national and regional sensitivities. The negotiators should reflect on the joint harmonization work programme of the WTO and World Customs Organization (WCO) relating to non-preferential RoO. This would provide a better understanding of challenges associated with complexities in agreeing to harmonized product-specific rules under the AfCFTA.

2.7. Concluding Remarks

92. The analyses of Treaties of various RECs vis-à-vis the AfCFTA and AEC show that the mandates of various RECs are in line with the aspiration of AEC in different dimensions and speed and they support the modalities for the implementation of some AfCFTA provisions. They also reveal that RECs' mandates and objectives cover more issues than the AfCFTA, and differ in terms of the scope, process and level of economic integration. Some RECs Treaties contain the objectives of the AEC but leave big gaps in the operational legal instruments on which they should operate, and bound by the AEC policy decisions. In view of all these factors, approaches to involve or/and leverage RECs in the AfCFTA implementation require well thought out frameworks and institutional arrangements.

93. Building the interface among RECs, AfCFTA and AEC becomes vital strategy. To manage the interface, AU Member States should be willing to accept ceding sovereignty on trade related matters and allow the AfCFTA Protocols take some precedence over some aspects of their national laws. In addition, the role of the REC judiciary/regulatory bodies can never be

under estimated as a vehicle to achieve this goal. The AfCFTA should ensure the harmonization of the regional regulatory framework and overcome the challenge of compatibility of regulatory alignment.

94. RECs contribution to the objective of AfCFTA in terms of boosting intra-African trade starts with their shared and aligned mandates of increasing intra-regional trade, and provision of enabling environments for enterprises development and RVA. They have institutional arrangements and instruments, organizational structures and the decision-making processes that can be leveraged to serve the implementation of the AfCFTA. The basic instruments used to lower trade costs are tariffs reduction and elimination, removal of NTBs, effective use of NTMs, implementation modalities and other supportive initiatives like peace and security, free movement of people and enterprises, CET and trade information system.

95. Efforts to implement the AfCFTA need to recognize the major factors that have constrained the effective implementation of various RECs FTAs, such as poor infrastructure, high transaction costs as results of various NTBs and low levels of industrialization. This implies that boosting industrialisation in Member States should be a priority of the AfCFTA. This can be done through the development and deployment of various interface mechanisms supporting development of RVC projects, or FTA-induced investment in all regions. The mechanisms should include the introduction of specific RoOs that is simple, business-friendly and trade-facilitative. This calls for a further dedicated study that would address horizontal conflict of laws as related to specific issues of TBTs and RoOs. Specific attention should be devoted to total elimination of NTBs and RECs should have specific and well-defined roles to play. Also, coherent strategic implementation plan for the AfCFTA at national, regional and continental levels should be fully embedded with a reporting framework.

Chapter 3
The RECs Trade in Services Liberalization Agenda and the AfCFTA

3.1 Introduction

96. The main research question of this chapter is that, can the services trade liberalization mechanisms of various RECs provide useful lessons for the implementation of AfCFTA? The basic objectives are: (a) to identify and map out potential areas of convergence and tension in trade in services negotiations; and (b) to articulate policy actions to facilitate harmonization of liberalization agenda of the services sector. Since trade in service is an ongoing aspect of the AfCFTA negotiation, the analysis focuses on RECs mechanisms for addressing barriers to trade in services and assessment of their potential role for AfCFTA approach to services trade integration.

97. Trade in services is an important issue in the AfCFTA, but it is worthy to note that its agenda is more complex than the trade in goods agenda. It involves simultaneous production and consumption and sometimes requires direct contact between producers and consumers. The General Agreement on Trade in Services (GATS) of 1995 contains a number of General Obligations and Disciplines, including MFN treatment and transparency. The GATS distinguishes four modes of supply; cross-border supply of services (Mode 1); consumption abroad (Mode 2); commercial presence (Mode 3) and presence of natural persons (Mode 4).

At the WTO level, some AU Member States have Schedules of Specific Commitments that identify the services for which they can guarantee market access, national treatment and limitations. The schedule may be used to assume additional commitments on specified standards or regulatory principles as applied to each of the four modes.

98. On a global scale, Africa is a small player in the exchange of services. In 2018, Africa represented only 2% of the world's export (UNCTAD, 2019). Invariably, the share of services exports is smaller than that of most other regions with the exception of the Middle East. Nevertheless, Simo (2020) has argued that much of the trade in service in Africa occurs mostly in informal sectors, which makes it difficult to capture all the activities in the continent. The role of services in international trade, and in African trade is greatly underestimated in statistics. It has been argued that because African countries envisaged little economic gains for trade in services, they have been reluctant to incorporate provisions that liberalize trade and investment in services in their regional trade agreements before the AfCFTA (Sauve and Ward, 2014).

99. Within the framework of the RECs trade in services liberalization, the main focus of regional development strategy is the identification of regional priorities putting the developmental aspirations of Member States into consideration. This may require the following: (a) Regional defensive interests: universal access to specific services with regional objectives such as the promotion of corporate ownership by nationals (empowerment) or specific business interests (small business development) may need to be safeguarded by specific approaches and commitments in the negotiations; (b) promotion of regional competition and sector development entails ability to see services liberalization as an opportunity to promote both national and regional competition in certain sectors or to bring in new technology or skills; and (c) offensive interests involving identification of opportunities for regional services and service providers in third party countries.

100. The trade in services integration policy at the regional level has varying degrees of both the negative and positive formats. Negative integration involves collective agreement on national abolition of discriminatory measures. Positive integration is the development and application of harmonized and common policies and institutions in order to fulfil economic and welfare objective rather than the removal of discrimination. The implication is that; positive policy integration intrudes on domestic jurisdictions while negative policy integration does not. These formats are subsequently discussed.

3.2 Addressing Barriers to Services Trade at the Regional Economic Communities

101. According to Kigombe (2012), various RECs are implementing distinct regional integration programmes in trade in services. The analysis provides an overview of the nature and extent of common services policy and regulatory measures with a view to highlight areas in which continental approaches may be relevant. It also describes the economic and trade policy environments characterizing the services sector in RECs, so as to assist the AfCFTA in identifying policy options useful for development of continental trade in services. The main focus is potential areas of convergence and divergence between RECs services liberalization agenda and the AfCFTA.

102.

Table 8 documents various REC treaties and protocols that address liberalization of trade in services. Under GATS, member countries can choose which services to liberalize.

Table 8: Treaties and Protocols Dealing with Trade in Service of RECs in Africa.

RTA	ECOWAS	ECCAS	EAC	COMESA	SADC
'Co-operation in Infrastructure and Services'	Chapter 7 'Transport and Communication' Art.32-33	Chapter 9 'Cooperation in Infrastructure and Transport and Communication', Art.47-49.	Chapter: 17 ''Co-operation in Infrastructure and Services' Art 89-Art 101.	Chapter 11 'Co-operation in the development of transport and communications', Art.84-98.	Chapter 7 'Cooperation' Art.21.a 'Infrastructure and Services'
'Free Movement of Persons, Labour, Services, Right of Establishment and Residence'	Chapter 10 'Cooperation in Immigration', Art.59	Chapter 5 'Freedom of Movement, Residence and Right of Establishment' Art.40.1	Chapter 17. 'Free Movement of Persons, Labour, Services, Right of Establishment and Residence', Art.104.1-2.	Chapter 28 'Free movement of persons, labour, services, right of establishment and residence', Art.164.	Chapter 3 Objectives' Art.5.d
'Co-operation in Tourism and Wildlife Management'	Chapter 7 'Tourism' Art.34	Chapter 14 'Cooperation in Tourism'	Chapter 20 on 'Co-operation in Tourism and Wildlife, Art.115	Chapter 19 'Co-operation in Tourism', Art.138	Protocol on Development of Tourism, 1998
Cooperation in Energy	Chapter 5 'Energy', Art.28	Chapter 11 'Cooperation in Energy...'		Chapter 13 'Co-operation in the development of energy', Art.106-109.	
Development of Services	Vision 2020			Chapter 20 'Development of Services', Art.148	
Investment promotion and protection	ECOWAS Common Investment Market (ECIM) ECOWAS Investment code			Chapter 26 'Investment promotion and protection'	Chapter 7 'Co-operation' Art.21.c 'trade, industry, finance, investment

Source: Updated version of Kigombe, 2012

3.2.1 East African Community (EAC)

103. Apart from relevant treaties documented in Table 9, EAC used the Common Market Protocol (CMP) to commit Member States to liberalization in a number of services sectors as it can be seen in Table 99. This is achieved by a positive list approach and by scheduling only sectors that they are willing to open up. In 2015, Burundi scheduled 74 commitments, Kenya 63, Rwanda 101, Tanzania 59, and Uganda 98. The existence of barriers to trade in services before the introduction of CMP makes Article 16 (5) to commit Member States to refrain from introducing any new restrictions on the provision of services. A number of reforms were undertaken thereby reducing the total number of non-conforming measures (NCMs) from 63 in 2014 to 59 in 2016 (see Table 9).

Table 9: Number of services sub-sectors committed by EAC Partner States in the CMP

Member States/Subsectors	Burundi	Kenya	Rwanda	Tanzania	Uganda	South Sudan
Business	31	15	32	7	33	NA

Communication	6	17	21	17	21	NA
Distribution	3	3	4	2	4	NA
Education	4	4	5	4	5	NA
Financial	9	12	15	16	11	NA
Tourism and Travel	4	3	4	4	4	NA
Transport	17	9	20	9	20	NA
Total sub-sectors	74	63	101	59	98	NA

Sources: EAC Common Market Scorecard of 2014 and 2016

104. Even with what is seen as positive progress, it is noteworthy that all EAC Member States remain non-compliant in their commitments. According to EAC Common Market Scorecard of 2014 and 2016, a review of more than 500 key sectoral laws and regulations of the Member States identified at least 63 measures inconsistent to commitments. Restrictions on services trade still exist, and they were scheduled for elimination before 2015. These measures were most common in Tanzania (17) and Kenya (16), followed by Rwanda (11), Uganda (10), and Burundi (9). Burundi's strong performance on the scorecard is partly due to the fact that some of its sectors are not yet regulated through sectoral legislation.

105. About 75% of the identified measures are national treatment related to and discriminate against services or service suppliers of members. The rest of them affect the MFN principle, involving preferences for service suppliers outside of the EAC. Nearly all inconsistent measures concern multiple modes of services supply, sectoral legislation, and laws that cut across all sectors. The major bottlenecks are the result of the institutional framework for relevant common market legislation which is yet to be in place in all Member States (See Annex 8). Little progress has been made towards CMP implementation and there is limited coordination of schedules implementation.

3.2.2 Southern African Development Community (SADC)

106. In SADC, the Protocol on Trade of 1996 that came to effect in 2000, forms the legal basis for reform process in trade in services. Some of the efforts and a number of the major challenges associated with their implementation are documented in Annex 9. There was the establishment of Regional Tourism Organization of Southern Africa (RETOSA) in 1998. The Protocol on Trade in Services modelled on the GATS and 4 specific services sectors were identified for priority negotiation and there was the establishment of Support to SADC Regional Integration and Multilateral Trading System. Additionally, Member States made commitments under the GATS. Eight Member States made horizontal commitments to the supply of services through commercial presence. Seven Member States made commitments in the financial services sector in which they are all in banking sector. Only three countries made commitments in insurance, and one made horizontal commitments related to foreign investment. A number of commitments were made in the travel and tourism sector, indicating its importance in the region with the potential to increase the flow of FDI and promote economic growth.

107. The major bottlenecks are related to the fact that the scope of the Protocol on trade is wide. Also, there is difficulty of progressively achieving the equivalence, harmonization and standardization of the education and training systems in the region. Moreover, the provision of reliable and sustainable energy in the most efficient manner is another challenge. The ability

to harmonize regional and national policies, strategies and programmes in various areas of trade in services is very weak[25].

3.2.3 Common Market for Eastern and Southern Africa (COMESA)

108. The progress made in COMESA is within the context of Treaty. There was the establishment of a Regional Telecommunications Network[26] and infrastructure programme tied to the Tripartite Agenda. COMESA Regulations on Trade in Services (2009) objectives are to attain sustainable development of the Member States by eliminating barriers to trade in services; enhance cooperation to improve the competitiveness of the markets, expand the depth and scope in line with Article V of the GATS, and to increase, improve and develop the export of services. Each Member State set out in a schedule of the specific commitments to undertake under Article 26 of these Regulations. The Schedule includes terms, limitations and conditions on market access; conditions and qualifications on national treatment; undertakings relating to additional commitments; the time-frame for implementation; and the date of entry into force. There is an opportunity for a Member State to modify or withdraw any commitment to remove restrictions in its schedule at any time after three years from the date on which that commitment enters into force.

109. The major bottleneck is related to staggered implementation of relevant protocols by Member States (See

Annex 10). As at the end of March 2010, only four Member States[27] signed the Protocol on Free Movement of Persons, Labour, Services, and Right of Establishment. There is limited capacity for implementation; and policy coordination is relatively low in Member States. Also, there is low prioritization of integration programmes and ability take the integration agenda forward in some Member States. Overlapping membership in the COMESA/SADC/EAC/IGAD constitutes bottlenecks to regional integration and full implementation of a common market.

3.2.4 Economic Community of Central African States (ECCAS)

110. The ECCAS Treaty strives for the following: freedom of movement, rights of establishment, cooperation in transport and communications, energy cooperation, cooperation in the development of human resources, education, training and culture, cooperation in tourism, and the simplification and harmonization of trade procedures within the region. Article 3 is related to the freedom of movement and right of establishment of nationals of Member States within the region.

111. Main challenges are related to difficult economic geographies and low population densities. The region has the least developed power sector in Africa, and utilities are highly inefficient with respect to distribution losses and revenues. Surface transportation is slow and the most expensive due to cartelization and restrictive regulations on the trucking industry. There is limited road connectivity between CEMAC and ECCAS members, long dwell times at two key ports and low levels of passengers and freight traffic. The region is also known for poor operational performance of railways. Air transport markets dwindle and levels of air connectivity low. The ICT backbone in its early stages and access rates are low and prices in

[25] Source : http://www.unctadxi.org/sections/DITC/SADC/docs/SADC%20Regional/SADCProtocolonCulture.pdf
[26] Source : http://programmes.comesa.int/index.php?option=com_content&view=article&id=42&Itemid=52&lang=en
[27] Kenya, Rwanda, Burundi and Zimbabwe

ECCAS are the highest in Africa. The use of ICT is modest and roaming is far less developed than other parts of Africa (See Annex 11).

3.2.5 Economic Community of West African States

112. The ECOWAS developed a variable-speed integration approach, which led to the subsequent development of competition policy in 2018. Liberalization of services is carried out through regulatory cooperation, harmonization, and mutual recognition. The approach differs from the scheduling of commitments undertaken at the WTO, but the objective is to further broaden and deepen services integration within the region and enhance Member States' competitiveness. Through various trade in services protocols and supplementary protocols, the ECOWAS continues to broaden the coverage and reduce the limitations on market access and national treatment across services sectors, which go beyond efforts at the WTO. The main platforms are the treaty provisions as shown in Table 10 and implementation of the ECOWAS Trade in Services Agreement (ETISA). There was no specific regional approach until July 2016 when a Regional Services Trade Policy was announced. This was based on a Service Policy Review, requested by ECOWAS in the context of UNCTAD support on AfCFTA trade in services.

Table 10: ECOWAS Member States Commitments in Trade in Services

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

Sources: ECOWAS Commission, 2017

113. As shown in Table 10, the tourism and travel, transport and financial sectors generated most interests in the region. For instance, in terms of tourism and travel sector, Nigeria's film industry directly employs about 300,000 people and indirectly, more than 1 million, generating between US$500 million and US$1 billion annually in revenues, is patronized across the continent and outside the continent by the diaspora. The improvement in the investment environment is achieved through the implementation of the ECOWAS Common Investment Market (ECIM). The region adopted the Supplementary Act on Investment Rule which provided the legal framework for treatment of investment and further harmonization of investment policies and code. The ECOWAS Supplementary Competition Act applies to the traditional areas of competition policy. This includes; agreement and concerted practices involving the restraint of trade, the abuse of dominant market positions, and mergers and acquisitions. It contains provision on state aid and public enterprises couched in flexible

language that preserves sufficient policy space for the Member States to pursue pro-developmental policies.

114. The main challenges are non-ratification, non-implementation of protocols, and poor regulatory framework. In practical terms, the non-compliance with the Protocol on Free Movement of Enterprises and Establishment creates difficulties for economic and hamper increased trade in services in the region.

115. Despite the ambitious goals that many RECs set for themselves, the analysis has shown that deeper progress on regional collaboration has so far been negatively affected by weak commitment from Member States (See Annex 12). The review confirms that RECs have not reached higher levels of trade in services liberalization due to inadequate trade-related infrastructure, poor enabling environment; and non-implementation of regional protocols and decisions. RECs services trade liberalization may therefore receive a much needed boost from the AfCFTA services trade liberalization agenda – particularly if the AfCFTA learns from and avoids the pitfalls that have impeded RECs services trade liberalization to attain their full potentials.

3.3 The Potential Role for the Africa Continental Free Trade Area approach to services trade integration

115. Given the basic challenges of regional approach to the liberalization of trade in service, the basic issue relates to the appropriateness of using AfCFTA platform to develop concrete steps to prioritize the service sector and its regulation and liberalization. To increase the potential leverage of the services sector and of services liberalization for the achievement of continental integration, it may be useful to assess whether the existing approach of harmonization of regulatory regimes across regions is sufficient to address the existing barriers to trade in services. Here, the analysis of existing regional services policy review becomes very important. Services liberalization is complex and should be accompanied by adequate policies, regulations and institutional frameworks. Not all services sector across Africa may necessarily be ready for immediate or full liberalization. The AfCFTA may want to consider allowing RECs to coordinate the determination of their Member States priority sectors for liberalization and the ideal sequencing of liberalization.

116. Evidence shows that one of the shortcomings of the African economic integration is the adoption of a linear model, where trade in service is relegated to the final stage. However, AfCFTA breaks new ground by negotiating trade in goods and trade in services concurrently. The Agreement would be the largest one ever concluded, if there is effective implementation. It is therefore necessary, to examine the process of AfCFTA Protocol on Trade in services in terms of achievement of liberalization of service sector in the continent.

117. The scope of the Protocol is as wide as that of the GATS. One of the specific objectives as stated in Article 3(2e)) "is to pursue services trade liberalization which is in line with Article V of the GATS". Like the GATS, the Protocol operates at two different levels. The first set applies across the board to measures affecting trade in services. This includes; MFN principle (see Article 4), and transparency (see Article 5). The second set is applied to sector-specific commitments made by Member States on market access and national treatment. This only addresses the general obligations among them, since members' specific commitments which determine the liberalizing impact of the Protocol are yet to be finalized.

118. Article 7 of the AfCFTA Protocol on Trade in Services advances special and differential treatments approach by noting that state parties should take into account challenges faced by other state parties. It grants flexibilities such as transitional periods, on a case by case basis, to accommodate special economic situations and development, trade and financial needs of the state parties. These provisions go beyond the usual distinctions, which have been based primarily on economic measurements, and allow for "differentiated opportunities" and "targeted supports" based on other factors, such as level of industrialization, size of the agricultural sector, resource endowments, proximity to ports, and conflict status. It also incorporates the need for "special consideration" in (progressive) services liberalization to "promote critical sectors of growth, social and sustainable economic development" as well as "special consideration" for technical assistance and capacity building. The AfCFTA includes other provisions in Article 15 that allow the Council of Ministers to waive obligations based on "exceptional circumstances". Additional flexibilities also exist in Article 14 (balance of payment difficulties), Article 15 (general exceptions), Article 16 (security exceptions), Article 23 (modification of schedules and concessions), and Article 27 (technical assistance and capacity building).

119. The AfCFTA approach would be efficient compared to regional ones if it recognizes the fact that meaningful services liberalization can only be achieved by focusing on the regulatory environment. This environment would determine access for foreign suppliers (market access) and conditions for their local operations (national treatment). The Agreement should devise ways to build on the substantial liberalization already achieved in the regional negotiations. This is because, the reform is about phasing out trade restrictive measures against foreign and national services and suppliers. To the AfCFTA Protocol on Trade in services, the MFN treatment, the rules on market access and national treatment are negative integration tools. However, the implementation of these articles may be difficult because of the diversity in the regulatory measures among Member States. There is need for the convergence of multiple national regulatory policies and standards which can be addressed through harmonization.

120. Harmonization as a tool could create a secured framework to enhance competitiveness, as it would ensure a level playing ground for both local and foreign services and suppliers. A good example is the Organization for the Harmonization of Business Law (OHADA). The main aim of OHADA is to promote integration and economic development among its 17 participating countries[28] and ensure a secure legal and judicial environment in Africa. In addition, mutual recognition can be easily achieved with harmonization of standards. Indeed, Article 10 (1) of the AfCTFA protocol of trade in services recognizes the importance of harmonization for the fulfillment of mutual recognition in the certification of services suppliers.

121. UEMOA and EAC make use of mutual recognition of professional qualifications among their Member States. EAC signed four mutual recognition agreements (MRAs) covering accountancy services (2011), architectural services (2011), engineering services (2012) and veterinary services (2016). Also, UEMOA implemented MRAs relating to accounting, engineering, legal, medical services, amongst others. Equally, efforts are been made by other

[28] These countries are in Western and Central of Africa. They are Benin, Burkina Faso, Cameroon, CAR, Chad Republic, Comoros, Congo, Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, DR Congo, Senegal, and Togo.

RECs such as COMESA and SADC to have MRAs[29]. However, Sawere (2019) argued that by using harmonization tool, the implementation of MRAs can be a lengthy and costly process as well as required confidence and trust building. Thus, effective implementation requires supportive institutional structures i.e. legal and institutional framework to monitor and support MRA implementation, both at the national and REC levels.

122. The pursuit of policy coherence and coordination should not be limited to linkages in the services sector. Many African economies are undergoing structural change marked by agriculture ceding its preeminent role to the services sector, but both agriculture and manufacturing sectors would remain important. This trend towards servicification of economies should be incorporated in the strategy as it would recognize the role of services in facilitating production and exports. The relevant document in this context is the draft Agreement establishing the TFTA. Annex 12 of the agreement contains guidelines useful for negotiations and provides insight on the liberalisation process. The process should be coherent and built on the achievements of RECs. It should also allow Member States to exchange offers and requests on basis of schedules of specific commitments. The commitments include sectors and sub-sectors that have been liberalized under the programmes of the RECs. The AfCFTA can consider and adopt the TFTA measures to simplify the regulatory framework.

123. It may be appropriate to focus on the least complex and least costly elements that generate significant benefits. Different criteria could be considered in making this determination including the status of existing liberalization within RECs; the existence of regional institutions or policies; multilateral commitments at the WTO level, and the selection of specific services sector for liberalization in the context of the AfCFTA. Also, RECs may consider interim agreements or phasing in terms of commitments. Pre-commitments preserve the policy space, while allowing time for the establishment of appropriate regulatory frameworks before liberalization or strengthening regional service suppliers before being exposed to competition.

124. The AfCFTA approach should engage in awareness creation targeting the trade-related institutions at the regional level, the services-specific institutions and the private sector ECOWAS initiative of Coordinating Committee on Consumer Protection (ECCCP) and establishment of a network of consumer protection agencies to facilitate information sharing and exchange can be considered for strengthening consumer protection

125. The AfCFTA approach may also consider sector specific modalities. With respect to transport services, the sector is one marked by insufficient policies and regulations and the prevalence of informal operators. The approach should devise means of increasing efforts to step up effective implementation of the various transport programmes; the adoption and enforcement by states and organizations of the UNCTAD/ITC/WCO/WTO standards, regulations and mechanisms on trade and transport facilitation; establishment of a system for real-time management of road transport information, procedures and documents. Various regional regulations need to be evaluated for relevance.

126. With respect to air transport services, Africa needs to boost its air shipping by reducing airport taxes and fees and by improving safety regulations and compliance monitoring. Guaranteeing air rights to continental carriers rather than distorting markets by supporting

[29] See; https://www.tralac.org/blog/article/14292-afcfta-trade-in-services-a-general-guide-and-issues-for-negotiations-on-mutual-recognition-agreements.html

national carriers, could promote air traffic growth. Air transport in Africa suffers from both high entry and operating costs, strong global competitors, and fragmented markets, resulting in limited economies of scale. For example, African airlines carry less than 3% of passengers in Africa, and 80% of total traffic is flown by non-African airlines (Proparco, 2016). Liberalising routes for just 12 African countries would increase passenger traffic by 81%, creating more than 155 000 jobs and adding an extra USD 1.3 billion (0.1%) to the continent's annual GDP (InterVISTAS, 2014). African airport and navigational service providers are typically government owned monopolies and contribute to higher operating costs for cargo airlines. For instance, landing a 200 tonne aircraft in Johannesburg and Nairobi costs around USD 2 500 and USD 1 500, respectively, while the cost at London's Heathrow Airport is USD 500 (Heinz and O'Connell, 2013). Adhering to safety standards also poses major challenges to the industry. Carriers from 13 African countries are on the European Union's blacklist due to the countries' inability to guarantee safety checks (Proparco, 2016).

127. The AfCFTA approach should focus on regulation of aerospace management, consumer protection, and safety of airlines. New impetus and focus should be given to the sector through regional coordination as the main hurdles to the development of the sector seem to stem from inappropriate regulation at the national level and government inactions given the existing enabling regional and continental protocols and institutional arrangements. To achieve this objective, the Single African Air Transport Market (SAATM) provides the best platform. The SAATM aim is to create a single unified air transport market in Africa and liberalization of civil aviation as an impetus to the continent's economic integration agenda. The SAATM is to be attained through the immediate implementation of the 1999 Yamoussoukro Decision. The granting of Fifth Freedom rights with respect to schedule air services, permits an eligible African carrier to fly between two other African countries on a flight originating or ending in its own country

128. With respect to the financial services sector, the AfCFTA should focus on harmonization of banking supervision, encouragement of banks to engage in cross-border activities and in instilling greater confidence in the stability of the regional financial markets, especially inter-bank deposit and placement markets. The ECIM is a good regional initiative that can be considered by the AfCFTA. As part of the process of encouraging financial integration, each REC can be encouraged to establish a common banking passport and private sector credit reporting. In addition, the strengthening of the legal and judicial support for banking transactions should be pursued, including the legal protection of secured transactions, enforcement of collateral, and the registration and enforcement of property rights and debentures. Finally, a common approach to accounting standards, professional qualification and regulation would help to promote financial integration. Here, the Pan-African Payment and Settlement System (PAPSS) has a formidable role to play. Integration of cross-border payment systems can promote innovation and competition in the financial sector while reducing costs for trading firms. Integrating payment systems and financial markets can bring a variety of benefits. For firms, it can minimise transaction costs and increase predictability of business (AUC/OECD 2019).

129. Although all the RECs envisaged liberalization of trade in services at some point of their formation, it is only EAC that has managed to achieve some tangible trade in services liberalization. Much hope is now on the AfCFTA service agenda to coordinate the efforts in these RECs and Member States towards the trade in services liberalization. Liberalising the

cross-border movement of Africans can drive economic activity. Promoting tourism can boost productive transformation, particularly in Small Island and Developing States (SIDS). In the Seychelles, visa-free travel boosted tourist arrivals by 7% annually during 2009-14, helping the country graduate to high-income status. In the EAC, free movement of persons increased African travel to Rwanda by 22% and grew its bilateral trade with Uganda and Kenya by 50% (AfDB/AU, 2016).

3.4 Concluding Remarks

130. This chapter focused on mechanisms used by RECs to address barriers to trade in services and assess the role of the AfCFTA approach. The analysis shows that regional efforts are limited by low commitment of Member States and inconsistent alignment of regional polices with national regulations. The presence of inadequate trade-related infrastructure, poor enabling environment; and ineffective implementation of regional protocols and decisions limit the efficacy of regional efforts. The AfCFTA approach would be efficient provided that it recognizes the harmonization of regulatory environment for a meaningful services liberalization. There should be convergence of multiple national regulatory policies and standards achievable through harmonization. It should also devise ways to build on existing regional negotiations and take advantage of other pan African institutions.

131. Member states and the RECs need to take advantage of the establishment of Export Trading Companies (ETCs) launched by the Afreximbank in June 2019. This is a fulcrum to assist relatively small companies with export potential and integrating them into global value chains both in trade in goods and trade in services. The ETCs are critical in terms of aggregating products produced by SMEs and the smallholder farmers and even large companies and connecting them with the market. If the model framework is included under the AfCFTA, this will facilitate harmonization of regulations governing trade in services and reduce costs. The PAPSS launched in July 2019 is another platform useful to address fragmented payment and settlement system as well as a limited access to hard currency and the lack of convertibility of most currencies in the continent. PAPSS would localize intra-African trade in terms of currency, reduce transaction costs in intra-regional payments and hopefully formalise a significant proportion of the 40-50 billion U.S. dollars in informal intra-African trade. The RECs should collaborate with Afreximbank and the AU to ensure that a regulatory framework governing intra African payments and settlement is included under the AfCFTA trade in services.

132. The Afreximbank's innovation ecosystem composed of the following digital platforms: (a) African Collaborative Transit Guarantee Scheme; (b) PAPSS; (c) Africa Customer Due Diligence Repository Platform (MANSA Platform); (d) Trade Information Portal; (e) Regulatory Platform; and (f) Customer Online Application which include all Bank products, should work with all African financial institutions to boost their capacity to issues transit bonds. The AfCFTA secretariat should collaborate with Afreximbank for speedy completion of study on Informal Cross Border Traders and Creative Africa Exchange (CAX). The study would be used to identify financial interventions that could be financed by the Bank as well as policies that may need to be put in place by governments to formalise informal cross-border trade. This work will contribute towards formalizing informal trade and will contribute towards the implementation of the AfCFTA. CAX will facilitate investments into the industry through

trade, industrialization and provision of critical infrastructure to support the transformation of Africa through mobilizing continental initiatives such as the AfCFTA and Intra African Trade Fair (IATF).

Chapter 4
Resolving the Challenges of Multiple Trade Regimes: Whose Rules Should Apply in the Context of the AfCFTA?

4.1Introduction

134. This chapter addresses the challenges posed by co-existence of the AfCFTA and RECs-FTAs as analysed in Chapter 2. The basic issue is how should a 'deeper level of integration' referred to in Article 19 of the AfCFTA be understood? The specific objectives are to provide an interpretation that would enhance understanding of the Article and to propose measures for the harmonization of trade regimes to reduce cost of regulations compliance. This is needed to better appreciate the implications of the issue on building the interface among RECs, RECs-FTAs and the AfCFTA; and the effective implementation of the Agreement.

135. Africa is home to at least 30 RTAs. According to UNECA (2006), 47 out of 54 African countries are members of more than one REC. Multiple memberships make it difficult for them to honour their contributions and other obligations to all their RECs. These arrangements are costly and cumbersome to implement because the rules associated with a particular RTA are unique. By belonging to several RECs simultaneously, compliance requirements are duplicated and complicated. Different sets of rules are met by the same traded product in different countries of origin and destination. At the same time, overlapping membership hinders trade standardization and enforcement.

136. In term of the effect of the multiple memberships on regional integration, there are conflicting views. According to UNECA (2004:41) "membership in several communities could maximize the benefits of integration and minimize the losses by spreading risks. This could be especially important for countries with weak economies, which could benefit from gains in each REC". For instance, Member states with multiple memberships in COMESA, EAC and SADC embraced the TFTA with ease. In ECOWAS region, the presence of eight ECOWAS Member States in UEMOA expedited the conclusion of negotiations of ECOWAS CET. The UEMOA CET was used as the platform for the design and implementation of ECOWAS CET (Olayiwola, 2020).

137. On the other hand, UNECA (2006) called for the rationalisation of RECs as a policy proposition to overcome some of the challenges. This served as the main impulse in the AUs recognition of only 8 RECs. The overlapping membership is regarded as one of the potential challenges toward the implementation of "RECs-FTAs as the building block for the AfCFTA". As discussed in Chapter 2, these potential challenges are;

a) complexity of multiple and different tariff regimes and NTBs;
b) difficulty in the establishment of CET and harmonisation of standards;
c) difficulty in the interpretation and enforcement of RoOs at borders; and
d) poor articulation of tariff liberalisation under the different agreements.

138. Mengistu (2015) argues that eradication of multiple memberships should be a demanding agenda in Africa because of associated issues, such as the contradiction and duplication of

activities, overlapping authorities, problems of policy harmonization, and high management and financial burdens on the Member States. The proliferation of RECs and issues regarding overlapping mandates and multiple membership have been long argued as among the factors impeding the realisation of economic integration in Africa,[30] thereby contradicting and even undermining the goal of using RECs as pillars of the AEC.

139. The growth of Treaties and signatories of Member States lead to systemic possibility of conflict of laws. They raise the specter web of conflict of laws with interpretation complexities at the implementation level. Consequently, if left unaddressed, they may lead to high incidence of disputes amongst parties, source of confusion and administrative dilemma (Gathii, 2009). In addition, countries join RECs for economic, political and geographical contiguity reasons[31]. As reported by a key respondent, some countries join RECs without analysing the associated obligations and burdens in terms of obligations of conflicting policies and absorption of regional polices into national legislation. However, the striking issue is how to resolve the associated challenges of multiple trade regimes. Oyejide (2000) suggests principles of variable geometry and subsidiarity which provide a clearer basis for distributing powers and responsibilities across national and regional organizational structure according to the comparative advantage of each in respect of the different functions. Mengistu (2015: 424) argues that "the variable geometry of regions also makes the African integration process more challenging and the existence of too many regional organizations in the African integration [process have made it] difficult to meet the objectives of regional blocs, especially when countries which have different [histories] and levels of integration are coming together". Conversely, in relation to the AfCTFA, Taye (2019) argues that the Agreement will be unsuccessful if all countries are not on board, with the principle of variable geometry being a key area of agreement. This will allow countries to have their own time frame to implement tariff concession and other agreements.

140. Another issue relates to dichotomy between wider and deeper economic integration. Awareness of this dilemma in the AU experience in coping with a larger and more diversified membership has given rise to the concepts of variable speed and variable geometry as a core principle of the AfCFTA. With variable speed, Member States agree to be bound by common objectives, but some members are allowed a longer time to meet these objectives. The principle allows some Member States to move ahead and others can catch up when they are ready. Variable geometry, on the other hand, refers to situations where sub-groups of members wish to pursue deeper and more intensive forms of integration and co-operation on specific issues, while other members wish to remain outside these initiatives on a permanent basis. In building the interface among the AfCFTA, RECs and RECs-FTAs, these principles may lead to multiple economic groupings with overlapping memberships and different integration objectives.

141. The presence of a perceived hegemony in some RECs presents a problem of rationality of pay-offs or benefits of membership. For instance, some members of SADC straddle memberships in other RECs to maximise benefits from other arrangements. UEMOA coexists with ECOWAS to protect the interest of smaller Francophone countries and limit the dominance of size of Nigeria's by having a "common voice" in integration negotiations. Notable examples are South African and Namibian reluctance to sign into the SACU EPA

[30] UN Economic Commission for African Assessing regional integration in Africa II: rationalizing regional economic communities (2006) 51

[31] ARIA II: Most members reported that they have joined more than one REC because of political reasons. Economic and geographical reasons, as envisioned in the Abuja Treaty, was not high on the list of reasons.

negotiations in 2007 and Nigeria not being a party to the ECOWAS-EPA since 2014. Real challenges still lie ahead in dealing with regional transactions in a complex political landscape of Africa. The question therefore is, how realistic is the implementation of the AfCFTA and interface in a situation where there are multiple memberships in AU recognized RECs?

4.2 Analysis of Understanding of Article 19 of the AfCFTA

142. One of the explicit objectives of the AfCFTA is to "resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes."[32] The achievement of this objective would require, among others, the consolidation of various trade arrangements in Africa. The basic question is: can we achieve this objective without a defined legal framework? Article 19 of the AfCFTA agreement guides the relationship between the AfCFTA and Africa's pre-existing FTAs by providing for the resolution of incompatibilities or inconsistencies between the AfCFTA and other intra-African trade instruments. In such cases, the AfCFTA is to prevail, but with one crucial caveat: RECs that have achieved "among themselves higher levels of regional integration" are to persist or maintain such higher integration[33.]

143. Four AU–recognized RECs with FTAs have achieved higher levels of integration than the AfCFTA. The EAC and ECOWAS have customs unions, COMESA has FTA, and SADC also achieve FTA with some exclusions. Article 19 allows the REC trading arrangements to persist as islets of deeper integration within the AfCFTA system. Thus, the AfCFTA does not, in the short term, consolidate the RECs-FTAs. This coexistence poses the question of how treatment between REC-FTA Member States and other AfCFTA State Parties will differ. To address this issue, key informants were asked to provide their basic understanding of the Article 19. The understanding of a key respondent from a REC, is that with the Article 19 the AfCFTA shall prevail to the extent that is stated in the text about the MFN and preferential treatment clauses. In the case where the REC has achieved a deeper level of integration and CU, the prior agreements shall prevail. To another respondent, the provision of Article 19 seeks to make the AfCFTA superior to REC Treaties thereby taking on the toga of Treaty suppression**.** This implies that the Agreement recognizes the fact that sufficient integration has not taken place at regional levels to warrant any seamless integration into the continental agreement. It also provides the room for the superiority of the Agreement provisions over any other conflicting provisions. In essence, the AfCFTA takes pre-eminent position in case of resolution of conflict of supra-nationality.

144. Another respondent was of the opinion that the Agreement provisions would have precedence over any individual or regional arrangement, except wherever there is an exception that is clearly mentioned and agreed upon by the AfCFTA/AU. According to a public sector respondent, the Agreement will have greater span of influence over its components; the RECs and Member States. To another one, the provision of Article 19 establishes a principle of

[32] AfCFTA Article 3(h)

[33] Agreement Establishing the African Continental Free Trade Area, Article 19. (1) In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement. (2) Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.

hierarchy of the legal norm to prevent any possible conflict of text and guarantee that the provisions of the AfCFTA take precedence over conflicting regional texts. On the other hand, the private sector respondent is of the opinion that RECs should be the one to address any inconsistencies with the AfCFTA to avoid any trade disputes.

145. The basic challenge of varying interpretation and understanding of Article 19 is that it may lead to increased cost of regulations compliance among others during the implementation of the AfCFTA. The basic implications of the challenge in the management of the interface can be analysed along three major contexts: (a) The internal coherence of the AfCFTA measures and provisions; (b) The AfCFTA protocols, annexes and provisions versus RECs' trade instruments; and (c) variable ratification of the AfCFTA by RECs member states. The analysis becomes important because there is a huge gap in terms of understanding of the implications of the Article 19 on the implementation of the AfCFTA and co-existence of RECs FTAs and the AfCFTA. The starting point of the challenge is the intent of the drafters that all AU member states would ratify and domesticate the Agreement. Even in a case where all AU members ratify the Agreement, there would still be some challenges because many phrases of Article 19 are not defined and they can be interpreted in various ways.

146. From the responses of key respondents, it is important to note that the "…regional agreement" referred to in the Article is not qualified, thus potentially rendering the scope of the Article much wider than the economic integration agreements. It is thus presumed that the perceived conflict or inconsistency would begat "a specific inconsistency". Thus, there is no distinction between implementation outcomes that create a conflict and one that creates an inconsistency. The words "conflict" and "inconsistency" seem to be cobbled as the same meaning and they are not defined in the AfCFTA. The word "conflict" may be taken to refer to "conflict of laws" but State Party's action may have contradictory connection with more than one jurisdiction. The word "inconsistent" means lacking agreement among parts, not compatible with another fact or claim.[34] It is not certain whether the drafters of the AfCFTA meant different meanings.

147. Nevertheless, the Article provides a caveat to the application of its stated rule by providing that, it is applicable except otherwise provided for in the AfCFTA. Through the use of the word "Notwithstanding" in paragraph 2, Article 19 creates a specific, yet conditional exception to Article 19(1) as it relates to RECs, regional trading arrangements and CU. Markedly, these phrases which are essential to obligations of signatories are not defined, this may leave room for heterogeneous interpretations and implementation as well as preventable disputes or specific trade concerns (see Box 5).

[34] Garner (2009) Black's Law Dictionary 9th ed. Thomson Reuters Minneapolis

Box 5: Implications of AfCFTA Article 19 – EAC Case

In the case of EAC, according to its Single Customs Territory Procedures Manual, which lays down the main principles governing the single customs territory (SCT), imports into the EAC are subject to the CET.[35] All EAC countries apply the CET to imports from non-member States. Impliedly, given that Kenya, Rwanda and Uganda are the only EAC members that have ratified the AfCFTA, in principle, the sanctity of the EAC's CET will likely be sullied by implementation of the AfCFTA tariff concessions by these countries, at least to the extent of resulting deviations to the EAC's CET. Nevertheless, it is worth noting that country-specific deviations from the EAC CET are allowed. The EAC provides for "stay application" scheme under which the Council of Ministers may allow member to deviate from the CET rates for a period of one year. Country-specific waivers are granted by the Council on a case-by-case basis, on justification of any injury or threat of injury, upon request from the Member State. In practice, such deviations are on a limited scope. Consequently, with respect to the AfCFTA's possible tariff concessions of EAC members that have ratified this Agreement, deviations may prove quite substantial thus sullying the sanctity of the CET. Consequently, given that deviations are approved on consensus basis, the likelihood of those EAC members that have not ratified the AfCFTA to grant their consent to wholesale and indefinite stay of application may be untenable. Article 19(1) may be invoked to argue that EAC regime has attained a higher level of economic integration relative to the AfCFTA. Clearly, the alternative will amount to making EAC's CET regime impractical with the effect of annulling the customs union regime. Taking into account the notion that EAC CET comprises: zero on raw materials and capital goods; 10% on intermediate goods; 25% on finished goods; and rates above 25% on some items deemed sensitive, the complication may arise where it is deemed that the implementation of AfCFTA may have implications on tariff revenues of those members that have not ratified the AfCFTA.

Source: Response of KII 2020

In addition, Article 19 provides a caveat to the application of its stated rule by providing that, *it is applicable except otherwise provided for in the AfCFTA***.** The categories of regional integration agreements referred to in Article 19(2) do not follow the Balassian sequential forms of economic integration.[36] Consequently, trade related agreements such as SACU Customs and Excise Legislation[37] may be found to have achieved a level of economic integration that is higher than AfCFTA because the impact of the legislation is trade related (see Box 6). The contextualization of Article 19 has a bearing on the applicability of Article 5 (b)[38].

Box 6: Implications of AfCFTA Article 19 - SACU

Southern Africa Customs Union (SACU) Case

All SACU Member States use similar Customs and Excise Legislation.[39] Taking into consideration the current status of SACU Member States' ratification of the AfCFTA, the Kingdom of Lesotho and the Republic of Botswana were two SACU countries that have not ratified the Agreement.[40] Impliedly, if the two countries have not ratified it, the inconsistencies and/or conflicts will be inevitable. The most obvious would be the

[35] EAC (2014), Single Customs Territory Procedures Manual. Arusha, July 2014.

[36] Balassa highlights forms of economic integration, these being: free-trade area, a customs union, a common market, an economic union and complete economic integration.

[37] https://www.gov.za/sites/default/files/gcis_document/201505/act-91-1964s.pdf

[38] It noteworthy that the preamble of the AfCFTA provides that, "Acknowledging the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA)"

[39] https://www.gov.za/sites/default/files/gcis_document/201505/act-91-1964s.pdf

[40] Tralac (2020) Which Countries have Ratified the AfCFTA Agreement? https://www.tralac.org/resources/infographics/13795-status-of-afcfta-ratification.html

variance between the SACU CET and AfCFTA schedule of tariff concessions where reduced or eliminated tariffs under the latter are at variance with specific tariff lines subject to SACU's CET. From Article 19, such a variance (s) will be justified at least to an extent that it is considered that SACU has achieved a higher level of integration relative to the AfCFTA. Two scenarios can be contemplated in this context. The first scenario could be where SACU has higher import duties relative to the AfCFTA. To the effect that not all SACU members have not ratified the AfCFTA as well as the extent to which SACU members interpret sticking to the SACU CET as falling within the scope of the conditional exception under Article 19(1), those SACU members that have ratified the AfCFTA can arguably invoke this conditional exception. It is important to note that Article 19(1) is not qualified in respect of providing parameters that must be considered to determine whether or not RECs, RTAs or Customs Unions have attained higher levels of regional integration among themselves relative to the AfCFTA. The narrow interpretation of this provision may imply that whether or not RECs, RTAs and Customs Unions have reached such attainment is the responsibility of RECs, RTAs and Customs Unions as opposed to AfCFTA State Parties.

It could be argued that the implementation of Article 19(1) to determination of RECs, RTAs and Customs Unions. By the same token, this may subject the implementation of the Agreement to the consent of countries that have not ratified the agreement, these being members of RECs, RTAs of Customs Unions. As an example, where South Africa, Swaziland and Namibia offer zero rated concessions to AfCFTA State Parties in tariff lines subject to import duties under SACU regime, technically effecting zero rated treatment of the former three countries in line with their commitments under the AfCFTA may be subjected to scrutiny under SACU regime. Under SACU regime, the extent to which Article 19(1) applies may be determined to the effect of rendering SACU import tariffs legitimately worthy of retaining relative to zero-rated AfCFTA tariff duties. Again, this is due to the fact that the AfCFTA does not given parameters that must be followed in invoking Article 19(1). The second scenario could where those SACU countries that have ratified the AfCFTA decide to go along with their schedule of concessions under AfCFTA. In this case and notably the fact that SACU maintain the CET, breaking away from it in a significant way may defile the sanctity of the customs union and possibly lead to its dissolution.

Source: Responses of KII (2020).

148. To a respondent from a REC, the AfCFTA shall prevail to the extent that is stated in the text about the MFN and preferential treatment clauses. In the case where the REC has achieved a deeper level of integration and customs union, the prior agreements shall prevail. It is important to understand the fact that MFN applies on specific measures, whether these are tariffs or non-tariff measures. The interpretation of what constitutes a REC that has achieved a higher level of integration can only be understood in respect of individual measures. For tariffs its clear cut. If a REC has lower level or no tariffs at all regarding a given tariff line, it will be deemed to have achieved a higher level of integration in as far as that tariff is concerned. However, when it comes to NTMs, the interpretation of deeper level of integration may be complex. This is because regulatory measures may be couched in a protectionist or liberal manner. A further challenge in interpretation is left to individual RECs and within RECs this will be left to individual countries interpretation primarily depending on whether they lose or gain. This matter cannot therefore be oversimplified as a matter of MFN and preferential treatment clauses because these clauses have real life application contexts.

149. The issue therefore is, whether Article 19 is reconcilable to Article 5. In this regard, it is important to note that Article 5(b) isolates RECs-FTAs, which constitute building blocks 'for' the AfCFTA. This contextual issue is analysed in Chapter 7 of the report which examines the interpretation implications of the choice of word 'for' versus 'of' in Article 5(b). Another

respondent was of the opinion that the provision of the AfCFTA would have precedence over any individual or regional arrangement, in case of any conflict or inconsistency except wherever there is an exception that is clearly mentioned and agreed upon by the AfCFTA/ AU. The interpretation of trade agreements has to do with or is triggered by implementation of technical measures that may trigger differences among State Parties. There is also a failure to recognise that this may pose a significant challenge to existing members of a REC on the applicable trade regime in a given case in which a dispute may arise. It may also pose a challenge where third parties to a REC, seek to assert their rights under the AfCFTA vis a vis a subset of REC parties that have ratified the AfCFTA. Depending on the choice of REC members that have ratified the AfCFTA, the outcome may go either way, i.e. breaching obligations under the REC or AfCFTA regime

150. The principles underpinning Article 5 of the AfCFTA explicitly refer to "flexibility and reciprocity" to create the space for a rules-based approach to special and differential treatment. While the provisions are relatively comprehensive, RECs and member states may likely grapple with challenges of weak administration as the provisions are not automatic, and exclude member states with less legal and institutional capacity. Inadequate clarity and insufficient tools for monitoring and sharing best practices may also compromise the application of the principles. For example, the AfCFTA's Protocol on Trade in Goods recognizes different levels of development among the state parties and the need to provide flexibilities, special and differential treatment, and technical assistance to state parties with special needs.

151. Also, the Preamble to the Protocol on Trade in Services also acknowledges particular needs of "least developed, land locked, island states, and vulnerable economies in view of their special economic situation and their development, trade, and financial needs." Article 6 of the Protocol on Trade in Goods also supports a more nuanced and differentiated approach: as it provides flexibilities to other State Parties at different levels of economic development or that have individual specificities. These flexibilities include special consideration and an additional transition period in the implementation of the Agreement, on a case by case basis. In the Protocol on Trade in Goods, these include Article 11 (modification of tariff concessions), Article 17 (trade remedies), Article 24 (infant industries), Articles 26 (general exceptions), Article 27 (security exceptions), and Article 28 (balance of payments difficulties), with Article 29 covering technical assistance and capacity building.

152. The treatment of these principles by the Tripartite FTA can provide useful lessons for their implementation. During negotiations of TFTA, the principle of REC acquis was adopted as the negotiations started from the point at which the COMESA, EAC and SADC trade negotiations reached. Tariff negotiations and the exchange of tariff concessions were among Member States of the TFTA that have no existing preferential arrangements in place between them. Those who are in existing FTAs were obliged to trade according to the terms of their existing obligations and would not negotiate new trade liberalization schedules. Negotiations would thus only be between States that have not concluded FTAs with each other (TRALAC, 2015). The relatively slow progress of TFTA should provide a timely warning to the AfCFTA about the dangers of reaching an impressive political consensus while failing to achieve the necessary ratifications and hence delays in actually implanting the Agreement (ECA, AUC, AfDB and UNCTAD, 2019).

153. Within the principle of variable speed, inadequate human and financial resources at the disposal of some member states can slow down the AfCFTA implementation process. The approach of Tripartite Task Force[41] can be adopted by the AfCFTA secretariat to deal with this issue. The task force was put in place to provide mitigating measures such as provision of short-term technical assistance, building analytical capabilities for trade policy formulation and implementation; and imparting trade negotiation skills. In addition, the Task Force also coordinate and manage the negotiation process, ensuring proper conduct of negotiation sessions; proper sequencing and prioritisation of negotiating topics. On completion of the negotiations, the Task Force is also charged with the responsibility of coordinating and managing the implementation of the agreement and shall ensure that an effective monitoring and evaluation mechanism is in place.

4.3: Analysis of Implementation Modalities of Multiple Trade Regimes

154. There is the need to recognise the difficulty inherent in the definition and nature of the AU-RECs relationship as it is governed by numerous texts: The Lagos Plan of Action and the Final Act of Lagos (1980); the Abuja Treaty (1994); the Protocol Relating to the Establishment of the Peace and Security Council (2003); the Protocol on Relations between the AEC and the RECs (signed in 1998 and updated in 2007); the Memorandum of Understanding on Cooperation in the Area of Peace and Security, the Revised protocol of relations between the AU, RECs and Regional mechanisms, as well as the framework to guide relations between AUC, RECs and the AfCFTA. Among these documents, only framework for effective division of labour between the AUC, RECs, member states, regional mechanisms pursuant to Declaration (MYCM/DECL/1(I)) presents definition for subsidiarity. The analysis shows that comparative advantage, regional and continental complementarity principles are interpreted differently by relevant stakeholders. Simply affirming standards may not generate a coherent common approach. In addition, RECs prioritise developing instruments and policies to reach their own goals without seeking to coordinate with the AU. This situation therefore calls for the development of "Interpretative Note" for all relevant texts.

155. Among these numerous texts, there are three key legal instruments that can operationalize the RECs, REC-FTAs and the AfCFTA interface and Agreement implementation even in the context of multiple trade regimes. They are; the Abuja Treaty, the Protocol on Relationship between AU and the RECs and the AfCFTA Article 19. The Abuja Treaty remains the glue that holds the AfCFTA, AEC and RECs together. The AfCFTA Article 19 rules should function as intermediate step for the harmonization of trade regimes to reduce cost of regulations compliance in Africa. This should be supported by the AfCFTA MFN clause, and other preferences. Article 4 (5) of the Protocol on Trade in Goods and Article 4 (4) of the Protocol on Trade in Services outline the sets of preferences that can be granted to State Parties under the MFN provision with other state parties. In addition, the fact that islets would coexist with the AfCFTA, shows that the Agreement does not fully consolidate fragmented markets but leaves a network of better connected and distinct trade regimes.

[41] The Tripartite Task Force comprises a committee of CEOs of COMESA, EAC and SADC Secretariats. It is assisted in discharging its responsibilities and mandate by two subcommittees which provided technical expertise in the key areas of customs, trade and infrastructure development making up the Tripartite agenda

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

e) continue to monitor developments concerning Third-Party Agreements involving AfCFTA States Parties and report to the AU Summit;
f) develop Reporting Guidelines and Templates for notification of Third-Party Agreements in line with relevant provisions of the Agreement;
g) include a Section on Third Party Agreements in the future Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the RECs; and
h) submit to the next Council of Ministers of AfCFTA for consideration and adoption, the Reporting Guidelines and Templates for notification of Third-Party Agreements and the Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the Regional Economic Communities.

157. It is worthy to note that, even with the implementation of this Decision, the role of AfCFTA rules to address multiple trade regimes may be limited without appropriate legal framework. According to Oppong (2015), Africa pursued economic integration without a legal framework that specifically state the rules of conduct, definition of entities to which the rules apply; rules that form part of the legal system and obligation to obey. As stated, effective economic integration is the product of well-defined legal frameworks and institutions. Therefore, effective application of Article 19 supported with appropriate legal framework should serve as foundation of further rationalization of multiple trade regimes in the context of the Abuja Treaty's objective of establishing an AEC. This would involve addressing the splintered regional spaces, overlapping institutions, duplicated efforts, dispersed resources, and disputes over legitimacy that result from the multiple Treaties. The main benefit of rationalization to RECs is institutional strengthening through the elimination of overlapping functions and efficient targeting of resources.

158. In addition, the framework for effective division of labour among the AUC, RECs, member states, and regional mechanisms can be used to develop a roadmap for each of RECs in terms of the AfCFTA implementation. The roadmap would serve as a framework for RECs in defining the activities, objectives and priorities for cooperation in the implementation of the Agreement. The organization of coordination platform as the principal forum for the harmonization of RECs work and co-ordination of the implementation of the continental integration agenda should be supported with appropriate mechanism to monitor the progress of implementation. The effective division of labour must not make the relevant institutions to be a stand-alone but partners in progress. RECs and their specialized agencies should be strategically placed to closely support Member States by unblocking political and technical challenges relating to multiple trade regimes for effective implementation of the AfCFTA provision. The organization of Annual joint AU-RECs summits would provide the opportunity to evaluate the results of building block role of RECs annually.

159. Within the context of the AfCFTA, the framework that determine the sharing of competences in the six areas of policy formulation, policy adoption, implementation, monitoring, evaluation and reporting, resource mobilization and partnerships should be implemented and periodically reviewed to address changing dynamic trading environments. The development of benchmarks defining the alignments and determining the extent to which

each REC is implementing AU policies can be used to assess the role of RECs in actualizing and implementing the AfCFTA.

4.4 Concluding Remarks

160. To resolve the challenges related to multiple trade regimes, the AfCFTA's structure, incorporation of variable geometry, differentiated approach, and focus on RECs FTAs as building blocks, appear to signal a normative shift in special and differential treatment away from a "defensive" approach towards a more "affirmative" approach that allows the use of substantive law to advance trade development. Within this structure, the AfCFTA, Article 19 should serve as the basis for the management of multiple trade regimes. Adequate legal interpretation would guarantee uniform applications of laws and bring consistency and certainty in the implementation of the AfCFTA. This requires legal integration of trade policies of Member States to allow the AfCFTA to operate at a supranational level. This is because Article 19 has its limitations. First, trade policy space will continue to be an issue. Second, RECs, as is true of WTO rules, allow for flexibility in domestic regulation within limits.

161. In the AfCFTA, the framework for effective division of labour among the AUC, RECs, member states, regional mechanisms should incorporate "best practices" from across the continent. In addition, member states would need to maintain the flexibility to tailor rules and regulations to particular circumstances at the national levels. It is important to ensure that rules are developed in a balanced, inclusive way and member states with less developed legal systems and weaker bargaining power are not neglected. A better understanding of comparative laws, diverse regulatory good practices, and practical solutions would be needed. Also Article 4(2) of the Abuja Treaty and the Protocol on Relationship between AU and the RECs need better understanding and the framework for effective division of labour should contain measurable indicators to monitor progress in the AfCFTA implementation. Also, the spirit behind the letters of Article (6) of the Treaty begs for evaluation. Article 28 needs to be revisited to assess how far the RECs have strengthened in accordance with the Treaty intent. A framework agreement is crucial to establish a functional interface between RECs and the AfCFTA to address multiple trade regimes. Therefore, there is need to review and streamline Treaty provisions in order to harmonize and maximize the potential benefits of RECs.

Chapter 5
Roles of RECs in facilitating the Implementation of the AfCFTA in the areas of NTBs, Trade Remedies and Trade Dispute Settlements

5.1 Role of RECs Policy and institutional Arrangements for the Management of Non-Tariff Barriers in the AfCFTA

162. The analysis in Chapter 2 clearly shows the limiting factors of trade facilitation and NTBs within the context of trade development. Efforts by RECs in terms of trade promotion are limited by the increasing nature of non-tariff components of total trade costs index. According to Article 1(g) of Annex 4 of the AfCFTA Agreement, trade facilitation is "the simplification and harmonisation of international trade procedures, including activities, practices, and

formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade". The objectives of the Annex are to: simplify and harmonise international trade procedures and logistics to expedite the processes of importation, exportation and transit; and expedite the movement, clearance and release of goods including goods in transit across borders within State Parties. In this chapter, the major trade facilitation issues are related to NTBs, NTMs, trade remedies and trade dispute settlements. The basic objective is to analyse the potential roles of RECs in addressing NTBs and dispute settlement mechanism for effective implementation of the AfCFTA.

163. The AfCFTA Protocol on Trade in Goods Annex 5 on NTBs, without prejudice to the rights and obligations under the World Trade Organization (WTO) Agreements, provides a mechanism for the identification, categorization and progressive elimination of NTBs in Member States. It provides for the following: (a) institutional structures for the elimination of NTBs; (b) general categorisation of NTBs; (c) reporting and monitoring tools; and (d) facilitation of resolution of identified NTBs. It contains 2 appendices, while Appendix 1 deals with general categorization of potential sources of NTBs, the Appendix 2 deals with procedure for elimination and co-operation in the elimination of NTBs.

164. In 2017, AU Member States started negotiation for an NTB Annex as part of the AfCFTA. These negotiations concluded in 2018 and resulted in a mechanism on NTBs in Annex 5 to the Protocol on Trade in Goods. In 2019, the AU with support from UNCTAD developed an online tool[42] to implement the Annex. This online tool builds on and is compatible with the Borderless Alliance and Tripartite tools. In 2014, the Tripartite NTBs reporting, monitoring and resolution mechanism was developed. The NTB tools are intrinsically concerned with cross-border NTBs and involved focal points in both the reporting and foreign/responding country. Insufficient awareness of the private sector prevents business from making the best use of the instruments. The online tool was formally negotiated and adopted by all AU Member States at the level of Ministers of Trade and Heads of State at the AU Extraordinary Summit on 7 July 2019. Following this decision, the AfCFTA NTB tool will be operational in all AU Member States.

165. It is worthy to note that many RECs have mechanisms for the management of NTBs with attendant prospects and challenges. In ECOWAS, the absence of a region-wide framework for the reporting, monitoring and elimination of NTBs and addressing NTMs has led to the existence of multiple NTB tools and classification of NTBs with no unified approach to eliminating NTBs at the regional level. There are many country and sub-regional efforts at addressing NTBs and NTMs with different procedures. For example, three tools: Borderless Alliance[43]; ITC Trade Obstacle Alert Mechanism (TOAM)[44]; and AfCFTA NTB tool are available in the region. In 2014, the International Trade Centre (ITC) launched Trade Obstacle Alert Mechanism (TOAM) as a national portal for Côte d'Ivoire, followed by five (5) other national portals in other UEMOA member states in 2018/2019. Most obstacles reported in TOAM are domestic issues and only a minority is cross-border. In all cases, however, cases are picked up and treated by a domestic focal point in the reporting country. Insufficient awareness of the private sector also prevents business from making the best use of these

[42] www.tradebarriers.org
[43] www.tradebarrierswa.org

[44] www.tradeobstacles.org/uemoa

instruments. In 2016/2017, African Union (AU) member states, including all ECOWAS member states, started negotiation for an NTB Annex as part of the AfCFTA. These negotiations were concluded in 2018 and resulted in Annex 5 to the Protocol on Trade in Goods. In 2018/2019, the AU with support from UNCTAD developed an online tool to implement the AfCFTA Annex on NTBs. This online tool builds on and is compatible with the Borderless Alliance and SADC-EAC-COMESA Tripartite tools.

166. To address this issue of multiple mechanisms and their associated confusions, NTB focal points and the private sector call for the use the same procedures in all member states. Borderless Alliance, a private sector group in ECOWAS, obtained a copy of the Trade Obstacle Alert Mechanism (TOAM), adjusted it to the ECOWAS environment, launched operations and hosted it. In 2019, ITC connected various TOAM portals at the regional level for UEMOA-wide monitoring portal. The essence of the transition of UEMOA TOAM is to enable the region to implement the same process and procedure for the AfCFTA NTB frameworks, and to streamline various systems in ECOWAS to avoid private sector confusion as well as maximize the benefits of a single portal for end-users. The tool was formally negotiated and adopted by all ECOWAS and AU member states. Following this decision, the region started the process of operationalizing the AfCFTA NTB mechanism. In addition, the region put in place national committees to deal with problems raised by NTBs and set up complaint desks at the borders.

167. In EAC, Figure 9 summarizes the process of identifying and eliminating NTBs with relevant bodies. First, mutual agreement is regarded as the first priority to resolve NTBs. This involves an affected party to report NTBs to an NMC or to a National Monitoring Focal Point (NMFP). In cases when the partner state where the NTB originated from does not agree with the elimination of the NTB, the partner state of the affected party will notify the Secretary-General and request the matter be referred to the Council.

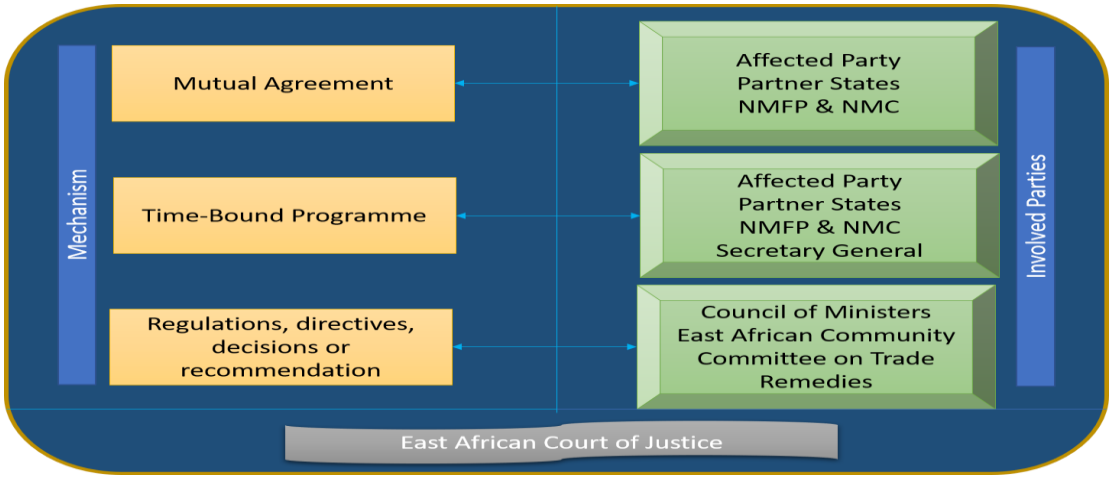

Figure 9: Mechanism to resolve NTBs in EAC

Source: Adapted from EAC (2017)

168. If the Partner State from which the affected party originates does not notify the Secretary-General within 30 days, the affected party would have the right to notify the Secretary-General directly. The major challenge with this mechanism is the unwillingness of Member States to agree to the strategy. Although, the mutual agreement is the fastest way to resolve NTBs, discussions may take a long time to be concluded, thereby allowing NTBs to persist.

169. Second, a Time-Bound Programme mechanism is used to resolve NTBs if the origin of complaints is within the same Partner State or different Partner State(s). When the complaint is within the Partner State, the NMC would investigate complaint and prepare a plan for the elimination of the barrier. The plan[45] should include;

a) the impact of the non-tariff barrier on the business in the Partner State and the institutions of the Partner State responsible for the NTB
b) the timeframe for the elimination of the NTB and the performance benchmarks and means to be used to verify the elimination of the NTB; and
c) the challenges that may be encountered in the process of elimination and recommended solutions.

170. If the NTB is not resolved even with the convened meeting, it would be referred to the EAC Council of Ministers by the Secretary-General. Here, the 3rd mechanism; regulations, directives, decisions or recommendations made by the Council would be applied. The Council would issue a directive, decision or recommendation with regard to the elimination of the NTBs in question or refer the matter to the EAC Committee on Trade Remedies. The decision of the Committee would be submitted to the council. It is worthy to note that as a way of check and balance, any person or Partner State aggrieved by the Decision of Council or Committee may refer such matter to the East African Court of Justice.

171. The Member States of Tripartite established an *ad hoc* facility for the notification of NTBs[46]. This provides a facility where private traders can lodge complaints concerning NTBs. On March 2013, 329 complaints were registered on the system, out of which about 227 (69 per cent) were resolved. It does not, however, have a dispute resolution mechanism, making it useful as a transparency tool, but falling short of providing a forum for the resolution of disputes related to NTBs. The comparison of the AfCFTA NTB tool and RECs tools can provide guidance on a decision to have a single portal for NTBs. Adopting a single portal has the added advantage of ensuring efficient and effective monitoring of NTB issues. The AfCFTA NTB Portal and TOAM are interactive web platforms designed to identify and resolve barriers to trade. The two portals assist national authorities to implement reforms to simplify, streamline trade regulations, and provide trade operators and trade support institutions with relevant information on trade rules and procedures by removing obstacles to trade or NTBs. However, for effective implementation of the AfCFTA, there is the need to streamline various REC NTB systems to avoid private sector confusion as well as maximize the benefits of a single reporting and monitoring portal for end-users.

172. In view of challenges of multiple tools and inherent incompatibility of different mechanisms of NTBs at regional level, the continental strategies on NTBs elimination should focus on harmonizing regional actions and strategies. NTBs by their nature require a harmonised approach. Ideally, it would be appropriate to address them under one regulatory regime. However, the practical circumstances may not allow that, partly because RECs' scope of regulatory coverage goes beyond the AfCFTA. Some RECs are treating regulatory issues outside the trade policy framework. Dealing specifically with NTBs requires supplementary

[45] EAC elimination of NTBs Act 2017 Section 11(2),
[46] www.tradebarriers.org)

and a stand-alone mechanism. The mechanism will contain six elements (see Figure 10) with specific actions.

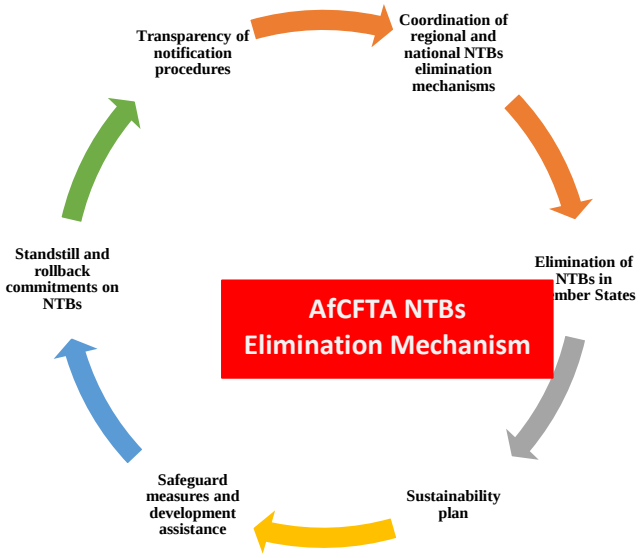

Figure 10: Proposed Mechanism for the NTBs Eliminations
Source: ECA, 2020

173. The first element involves transparency of notification procedures of NTMs. It involves the strengthening of the coordination with private sector in determining, prioritising and minimising the unnecessary regulatory burden of NTMs. Another action is the setting up of a surveillance mechanism on NTMs and legislation for NTBs elimination. For the purposes of this element, NTBs should be categorized according to the WTO standards. It must also cover the national legal provisions, which consist of the export and import rules and specifically clarify NTBs and NTMs within the context of the AfCFTA. Application of customs procedures, customs warehouses, transit system and declaration of goods for customs procedures should be presented in a qualified, consistent, logical and condensed manner. The element should streamline various NTM systems to avoid private sector confusion as well as maximize the benefits of a single reporting and monitoring portal for end-users.

174. The second element involves the coordination of various regional and national NTBs elimination mechanisms with international best practices. The AfCFTA should work with RECs to develop continental rules and regulations that are consistent with international best practices. It involves recognition of harmonized standards, technical regulations and conformity assessment procedures that would promote transparency in line with the requirements of the WTO Agreement on TBT and SPS. ECOWAS' process of connecting various national TOAM portals and the process of developing the Tripartite NTB mechanism can provide useful lessons in developing the element.

175. The third element entails elimination of NTBs in Member States. The EAC and COMESA STRs and Time-Bound Programme mechanism are good platforms for the development of strategies for this element. According to a COMESA respondent, with these resolution mechanisms and regulations, 98% of the reported NTBs were amicably resolved as at 2019. COMESA Regional Customs Transit Guarantee (RCTG) is another platform. The element should focus mainly on actions and strategies to achieve full elimination of NTBs in Member

States within the context of the AfCFTA. The RECs can be used to develop basic strategies to (a) identify NTBs of Member States for elimination; (b) verify information on NTBs;(c) prioritise NTBs for elimination; (d) enhance transparency by abiding to the protocol on notification procedure; and (e) setup an effective surveillance mechanism.

176. The fourth element relates to the sustainability plan for system of reporting, monitoring and elimination mechanism for the NTBs/NTMs to ensure system sustainability. The dimension of sustainability cuts across institutional and fiscal sustainability. As a first step, the AfCFTA should leverage on the RECs' legal mandates, classification of NTBs, institutional frameworks and detailed resolution mechanism to address NTBs in the region. The regional institution system should be sustained with technical support within an agreed continental plan.

177. The fifth element involves safeguard measures and development assistance that recognize the private sector inputs and partnerships as essential not only in designing continental strategies and initiatives, but also in identifying impediments to realizing the objective of NTBs elimination in the continent. Efforts should be made to empower the business sector and RECs to provide easier access to official information on implementation, and to obtain timely feedback on policies. The basic strategies involve the implementation of a more inclusive and consultative process involving the private sector in trade remedy measures; deepening of public and private sector engagement through regular dialogues, development of rules of procedures for private sector engagement**,** building capacity of relevant stakeholders and strengthening private sector to identify, eliminate and conduct compliance reviews of NTBs.

178. The sixth element would ensure that all AU Member States agree to standstill and rollback commitments on NTBs. RECs have principal role to play in developing Memorandum of Understanding on these commitments with their Member States and ensuring they abide by the commitments. They should commit to reducing both tariffs and NTBs by not introducing new or additional NTMs and to phase out or eliminate existing NTMs that would impede African trade. The RECs should be encouraged to introduce standstill and rollback provisions into their regional policy on NTBs.

5.2 Leveraging RECs Policy and institutional Arrangements for Trade Dispute Settlements and Trade Remedies in the AfCFTA

179. Dispute settlement on international trade matters and legal instruments for economic integration remains an issue in Africa. Evidence shows that African governments do not litigate against each other. This is unlikely to change as long as litigation is perceived as an affront to sovereignty. The immediate way forward to establish a culture conducive to rules-based dispute settlement and the benefits of legal certainty probably lies in the adoption of ad hoc fora with jurisdiction over technical matters. Largely, the AfCFTA dispute settlement mechanism (DSM) is modeled after that of the WTO. Any dispute between the State Parties arising out of or relating to the interpretation or application of any provisions are settled in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

180. With the interface of AfCFTA and RECs-FTAs and the existing multiple trade regimes, various types of overlaps of jurisdiction may occur in terms of dispute settlements. The challenge is compounded by existing relationship between the WTO-DSM and REC-DSMs. This relationship would manifest on overlaps/conflicts of jurisdiction and of hierarchy in

dispute settlement. This can be defined as situations, during the implementation of the AfCFTA, where the same dispute or related aspects of the same dispute could be brought to two distinct institutional jurisdictions or two different DSMs. Under certain circumstances, this occurrence may lead to difficulties relating to "forum-shopping[47]," whereby disputing entities would have a choice between two adjudicating bodies or two different jurisdictions for the same dispute. When the DSMs of two agreements are triggered in parallel or in sequence, there are problems on two levels: first, the two tribunals may claim final jurisdiction (supremacy) over the matter and, second, they may reach different and opposite results. Many REC-FTAs include (substantive) rights and obligations that are parallel to those of the WTO.[48] Article 23[49] mandates exclusive jurisdiction in favour of the Dispute Settlement Undertaking (DSU) for WTO violations by allowing a WTO member to trigger DSM in case of any dispute. The WTO would thus often "attract" jurisdiction over disputes with (potential) trade effects even if such disputes could also be handled in fora other than the WTO.

181. The success of any dispute settlement mechanism is in enforcement of rulings. Therefore, effective enforcement of a ruling in favour of a small country against a larger partner may be a challenge for most small economies. The issue here may be that a remedy of withdrawal of equivalent concessions against a big economy would be counterintuitive, as doing so, will be equivalent to economic self-harm. In a case in which a ruling is made in favour of an economically small country such as Lesotho against for example South Africa, given huge level of dependence of the former on the latter, enforcement of the ruling may amount to self-sabotage in economic terms. In addressing some of these issues, some lessons can be learnt from DSMs of RECs and TFTA.

182. In ECOWAS, Article 77 of the Treaty provides for such an enforcement mechanism, but it is rarely taken up. The ECOWAS Community Court of Justice is tasked with the role of arbitrating disputes, but its role with regard to economic affairs is de facto or de jure limited, and has rarely if ever arbitrated a case related to economic integration. Unlike the AfCFTA DSM, trade dispute resolution in ECOWAS is under the exclusive jurisdiction of the judicial courts and relies on Alternative Dispute Resolution (ADR). Settlement of trade disputes is also based on private ADR mechanisms including private party negotiations, consultations, mediation, conciliation, grievance mechanisms and international arbitration[50]. Despite these arrangements, many member states adopt retaliatory measures to address trade disputes. Typical examples are closure of land borders in 2018 and ban of the importation of tomato paste and increased tariffs on imports of tomato concentrate in Nigeria. Others are Ghanaian officials sealing of the trading premises of some Nigerian traders in Ghana because of their alleged inability to pay the $1 million equity required by the Ghana Investment Promotions Council.

[47] AfCFTA Article 3 (4) Protocol on Rules and Procedures on the Settlement of Disputes “A State Party which has invoked the rules and procedures of this Protocol with regards to a specific matter, shall not invoke another forum for dispute settlement on the same matter”
[48] Marrakesh Agreement Establishing the World Trade Organization.
[49] Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994, Annex 2 to the WTO Agreement.
[50] Article 76 of ECOWAS Revised Treaty

Table 11: Comparison of Disputes Settlement Mechanisms of RECs and Draft Tripartite Free Trade Area Text

Provisions	COMESA	EAC		SADC	Draft TFTA Text	AfCFTA
		Common market	**Custom union**			
Authority	COMESA Court of justice	East Africa court of justice[EACJ] Appellate division	Panel Committee on trade council of minister	Panel and tribunal of SADC[for appellate stage]	Tripartite Council and panel	Dispute Settlement Body (DSB)
Compulsory jurisdiction	Yes	yes	No rules	Yes	No rules yet	Yes
Forum choice	Forum exclusivity	exclusive	To WTO if disputes arise between a partner state and a foreign country	Exclusive for same matter in SADC	No rules yet	Exclusive
Compositions of panels	No panels technical committee and afterwards court of justice	no	Yes, roster of panelists	Yes from roster of panelists	Yes from roster of panelists	Defined by State Parties
Binding decisions	Technical committee, no court of justice, yes	Appellate division, yes	Yes, but by the committee on trade remedies and council of ministers	Yes, final	Yes, but by the tripartite council	Yes, by the Disputes Settlement Body
Implementation of final report	No rules	Shall take required measures without delay	No rules	Rapid Processing Time implementation is voluntary, not adjudicative as in WTO	No rules yet	Rules and Measures of DSB
If no implementation	Sanctions	No rules	Surveillance	Negotiations on the level of suspension. Arbitration on level of suspension	Surveillance by tripartite council	Temporary Measures like compensation and suspension of concessions
Trade cases	Only technical committees. None of the court of justice	None, only cases on human rights	None	None	Mechanism not yet finished	Experts Review Group, Panel and Arbitrators

Source: Compiled by ECA

183. As shown in Table 11, as different from the AfCFTA DSM that give rooms to the Disputes Settlement Body in disputes settlement, the mechanism to settle disputes of COMESA makes reference specifically to the Court of Justice as having compulsory jurisdiction. Its judgments are final, and no appeal is possible, therefore they are binding to the parties. Moreover, the Court may impose sanctions in a case of non-implementation of its decision by a party. The proceedings can be either written or oral. In addition, trade cases can be brought to the Technical Committees and the Council of Ministers. Some examples of these trade cases in the region are: Kenya v. Zambia (RoOs of palm oil-based cooking fat); Kenya v. Mauritius

(unwarranted technical specifications on its exports); Malawi v. Kenya (duties on cooking oils; discriminatory excise duties); Zambia v. Kenya (imposition of duties on palm oil-based cooking); and Zambia v. Kenya ban long-life milk. As reported by Ramirez (2012), there is no available evidence to show that any of these trade cases are settled amicably with this mechanism.

184. Unlike the AfCFTA DSM, EAC establishes two mechanisms for solving trade disputes. One relates to the settlement of disputes on common market issues, and the second to the disputes relating to customs union issues. Organs in the settlement of the first issue are: (a) the Summit; (b) the Sectoral Council; (c) the Co-ordination Committee; (d) Sectoral Committees; (e) the East African Court of Justice (EACJ); (f) the East African Legislative Assembly; (g) the Secretariat; and (h) such other organs as may be established by the Summit. The EACJ hears and determines trade disputes, but its judgments are subject to a right of appeal to the Appellate Division. The court also has jurisdiction over private party contracts and is excluded from the jurisdiction of the national courts of the Partner States. Appealing a judgment is also feasible, but regulated on the grounds of: a) points of law; b) lack of jurisdiction; or c) procedural irregularity. The execution of a judgment of the Court imposes a pecuniary obligation and is governed by the rules of civil procedure in force in the Partner State in which execution is to take place.

185. Organs in the settlement of disputes of the EAC Customs Union issues are: the Panel, Committee on Trade Remedies; the Council of Ministers, and the Secretariat. As implicitly shown by the AfCFTA DSM, the basic principles guiding dispute resolution of EAC are: (a) mutual trust, political will and sovereign equality; (b) peaceful coexistence and good neighbourliness; (c) peaceful settlement of disputes; (d) good governance (e) equitable distribution of benefits; and (f) co-operation for mutual benefit. The operational principles include: (a) people-centred and market-driven co-operation; (b) the provision of an adequate and appropriate enabling environment; (c) the establishment of an export-oriented economy; (d) the principle of subsidiarity; (e) the principle of variable geometry; (f) the equitable distribution of benefits; (g) the principle of complementarity; and (h) the principle of asymmetry.

186. The mechanism provides for the possibility for an amicable settlement through consultations. If consultation is not held after specific periods of time (10 days for perishables or 30 days), the issue may be referred to a Panel or the Committee on Trade Remedies. Disputing parties can comment on the Report of the Panel, as well as the Interim Report. Similar to Article 12 of Annex 9 of the AfCFTA that establishes sub-Committee on Trade Remedies, EAC also has the committee on Trade Remedies which deal with the report, and take final and binding decision. A reasonable period of time are set to implement voluntarily, mutually, or by an arbitral award. Similar to the AfCFTA DSM, alternative means of dispute settlement are also available, as well as binding arbitration for the parties to settle their dispute.

187. The dispute settlement in SADC involves the following institutions: The Summit of Heads of State or Government; the Organ on Politics, Defence and Security Co-operation; the Council of Ministers; the Integrated Committee of Ministers; the Standing Committee of Officials; the Secretariat; the Tribunal; and SADC National Committees. The Tribunal is constituted proper interpretation and to adjudicate upon disputes. The composition, powers, functions, procedures and other related matters governing the Tribunal are prescribed in a Protocol. The Tribunal

gives advisory opinions on matters as the Summit or the Council may refer to it. The decisions of the Tribunal shall be final and binding. SADC also permits that each Member State creates a SADC National Committee. Once a forum is chosen, it excludes the other and applies to all the rights and obligations of the SADC Protocol.

188. SADC DSM is similar to the AfCFTA DSM, as it has the mechanism for specific deadlines, procedures for multiple complaints; and third party participation. Moreover, it considers the role of experts and regulations that the Committee of Ministers of Trade (CMT) must adopt to facilitate the implementation. Similar to the AfCFTA arrangement, the SADC dispute settlement is a quasi-adjudicative mechanism, composed by a political stage through consultations between the disputing parties, and by two adjudicative stages with a Panel, and an appellate stage. They allow for panelists and accept third party to initiate consultations. In the AfCFTA, the Panel would adopt a time table in accordance with Article 15 (2) and 15 (3) of the Protocol, taking into account the timetable of maximum of 34 weeks and 10 days for perishable goods. In both SADC and the AfCFTA, procedures of Panel are planned and disputing Member States have the right to hearing as well as written initial and rebuttal submissions. The Panel instructs the losing party to put remedial measures in place to ensure conformity with the SADC Protocol, and could recommend possible ways for their implementation. Disputing parties can appeal issues of law relating to the final report of the Tribunal.

189. In order to implement the recommendations of the Panel, parties agree on a reasonable period of time, which must not exceed six months from the date of adoption of the report. If recommendations are not implemented within 20 days after its expiration, disputing parties can negotiate a mutually satisfactory solution. If parties fail to negotiate this solution, the complainant can request authorisation from the CMT to suspend concessions or other obligations equivalent to the level of the nullification or impairment. If the Member State objects to the level of proposed suspension, the matter is referred to arbitration for issuing of a final decision. There are alternative means of dispute settlement with good offices, conciliation and mediation. Prescribed provisions for adoption, surveillance of implementation and litigation for the implementation of a decision are absent.

190. In the Tripartite Free Trade Area (TFTA), DSM involves interpretation and application of disputes through co-operation and consultation, or the use of good offices, conciliation and mediation. The mechanism consists of a possibility for an amicable settlement through consultations. If there is no consultation between parties after specific periods of time (10 days for perishables or 30 days), the issue can be referred to the Tripartite Council that would request the establishment of a Panel. A Panel is constituted within seven days of the meeting of the Council. Disputing parties can comment on the report of the Panel, as well as the interim report. The Council is notified of the report and will have the final and binding decision on the adoption of the report. A reasonable period of time to implement reports can be set up voluntarily, mutually, or by an arbitral award. Alternative means of dispute settlement are also available, as well as binding arbitration to allow the parties to settle their dispute.

191. Basic lesson that the AfCFTA DSM can learn from the TFTA Agreement is in terms of institutions and enforcement of rulings and sanction. TFTA establishes a secretariat that deals solely with dispute resolution. The Agreement also creates institutions for the member states to exercise authority on a collective basis to handle only dispute resolution and relies on the

capability of the member states to work on a collective basis. In addition, different levels of authority are given to the secretariat and these include: Right of oversight; Right of inquiry; Right of proposal; Right to initiate action; and Right of sanction. These rights would make the secretariat to operate at a supranational level.

192. Although, all the regional mechanisms have necessary policy and institutional arrangements, their operations have produced mixed results. As reported by a respondent, the COMESA mechanism was used to resolve 98% of reported cases in 2019, but there are still many pending trade disputes. In SADC, the Annex is yet to become operational, and the panel procedure for settling trade disputes is not yet drafted. In fact, none of them has generated any jurisprudence. The escalating trade dispute between Kenya and Uganda over milk exports, is just one of many unresolved disputes. Tanzania locked out Ugandan timber, sugar and maize; while Kenya is reluctant to open its market to manufactured products from Uganda. In addition, lessons from the experiences of the African countries at the WTO show that African countries have not been able to successfully make use of the system. This, among others, is due to low level of integration in global markets hence the incidence of disputes with major trading partners are partially zero. Moreover, a huge part of African exports to third markets is traded as primary commodities and in some instances under preferential trade regimes. Fundamentally, this kind of trade has fewer penchants to incentivize disputes. The cost of engaging in a dispute can at times run into a number of months and sometimes years. Ordinarily, it is extremely expensive to engage in disputes under a framework similar to WTO.

193. In terms of trade remedies, The AfCFTA allows state parties to apply anti-dumping, countervailing and safeguard measures as provided for in Articles 17 to 19 of the Protocol on Trade in Goods, the Annex and the AfCFTA Guidelines in accordance with relevant WTO Agreements. Also, Article 4 of Annex 9 allows the application of preferential safeguard measure to the extent necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment following an investigation by the importing State Party under the procedures established in the guidelines. The national trade ministry is required to assess the likely impact of the tariff liberalization on susceptible import sectors. The assigned focal person is expected to assess customs data and analyze import patterns. This is complemented with platforms for private sector stakeholders to flag harmful import surge.

194. The basic issue relates to institutional capacity and resources of RECs to manage the process trade disputes. Analysis of ECOWAS' management of CET accompanying measures clearly shows glaring capacity limitations. In terms of institutional arrangements, there appears to be no evidence that appropriate Trade Defense Authority or similar bodies exist at both the regional and Member State levels. In addition, the capacities for investigating trade defense complaints of various types through evidence gathering and analysis are largely absent. Finally, under the WTO rules, decisions arising from such investigations must be subject to judicial review (Oyejide and Olayiwola, 2020). It seems clear that until these capacity deficits are eliminated, the trade remedies may not be able to play their critical role in the smooth and effective implementation of the AfCFTA. The AfCFTA Secretariat should be responsible for facilitating training and capacity building programmes of officials and other stakeholders involved in the implementation. This should be done with the aim of assisting State Parties with the implementation of trade remedies, adoption of the necessary national legislation, the establishment of national investigating authorities and other required institutions.

5.3 Concluding Remarks

195. The legal framework for NTBs elimination should be developed and prioritized in the AfCFTA agreement. For RECs to manage NTBs, the legal mandate given by Member States in the AfCFTA negotiations and agreement should be respected. Any deviation from this at the REC level can only be decided by the Member States. The RECs can have the leading role for vetting, monitoring and facilitating removal of all NTBs in their region. Therefore, adequate human and financial resources are required by relevant regional and national agencies to effectively monitor and support Member States in the implementation and application of regional commitments in their domestic laws. Also, current regional and institutional framework needs to be reformed and adjusted to address both technical and institutional challenges. Another area that needs attention in developing implementation mechanism is stakeholders' identification and mapping for dealing with issues of NTBs and NTMs.

196. The reality is that the efficiency and effectiveness of AfCFTA's NTB tools and mechanism and DSM would benefit from the facilitation and implementation partnerships with the RECs. It is therefore clear that all existing REC-based NTB control instruments and mechanisms and DSMs need to be integrated into the AfCFTA in a "win-win" situation. The best interest of RECs is to put in place legal and institutional framework for the implementation of NTBs and provide guidelines for the streamlining existing portal to be compatible with the AfCFTA NTB tools and mechanism. In addition, the co-existence of RECs with the AfCFTA should provide the avenue for RECs secretariat to use their institutional position to encourage member states to rollback all existing NTBs and to put a standstill to any future ones. There should be a platform for experience sharing among RECs on means and available measures for effective elimination of NTBs.

197. To eliminate NTBs, the legal framework must be clear and provide for institutional arrangements at both national and regional levels. In many RECs treaties, there is a limited provision for an online mechanism to address NTBs and absence of guideline for the identification, collection and classification of NTMs. With developments at the continental level, the legal mandate should include possible coherence between the AfCFTA and the regional efforts at addressing NTBs. The implementation of the AfCFTA versus existing regimes requires further clarifications by the AfCFTA State Parties with regard to their right and obligations under the Agreement. Moreover, given variable level of ratification of the AfCFTA, there is the need for clarification with respect to legal obligations and rights of countries.

198. For effective management of the AfCFTA DSM and trade remedies, there is the need for the harmonization of various RECs mechanisms to avoid multiplication of institutions and "forum shopping". The AU Trade Observatory should be used to integrate RECs mechanisms into the continental arrangement in terms of monitoring, reporting and elimination of trade deflection which is a major source of trade disputes in Africa. In addition, the analysis has shown that any role assignment to RECs in the areas of NTBs, trade remedies and trade dispute settlements should be based on existing capacity and available institutional architecture at the regional level. For effectiveness of the AfCFTA DSM, the AfCFTA Secretariat must operate as a supranational entity like the TFTA arrangement in terms of level of authority. In addition, since DSMs involve legal issues, there is the need to fully understand the relationship of the

AfCFTA and REC regimes in the context of Vienna Convention Law of Treaties (VCLT) to establish applicable rule on inter alia treaty interpretation.

Chapter 6
The RECs, the AfCFTA and the African Economic Community beyond the Continental Customs Union

6.1 Introduction

199. The basic issues relate to experiences of RECs economic integration and determination of the best options of economic integration at the continental level. The basic objectives are: (a) to document the content and characteristics of stages of integration in the Abuja Treaty; and (b) to draw useful lessons in terms of their complementarity to the Agreement provisions and pitfalls of implementation. The framework guiding regionalism in Africa has been the linear model of integration. It premised on the assumption that attendant trade reforms will have a positive impact on trade, economic growth and poverty reduction. In both the AEC and the AfCFTA, the integration agenda is more than a trading arrangement, rather, they consist of mechanisms to integrate national markets and herald cooperation in production.

200. Article 4(2) of the AEC gives details of how the objectives of the Treaty are to be achieved. Also, Article 28 specifies that:

1. During the first stage, Member States undertake to strengthen the existing regional economic communities and to establish new communities where they do not exist in order to ensure the gradual establishment of the Community; and
2. Member States shall take all necessary measures aimed at progressively promoting increasingly closer cooperation among communities, particularly through coordination and harmonisation of their activities in all fields or sectors in order to ensure the realisation of the objectives of the Community.

201. Article 6(2) of the Abuja Treaty stipulates six stages to be followed for the gradual establishment of the AEC within 34 years[51]. The economic integration approach adopted by the AEC essentially depends on the success of RECs. It is for this reason that the RECs have been termed as 'the building blocks of the AEC' by the AU. It was envisaged that the processes of integration would systematically follow an implementation plan and execution strategy, with activities along the six stages being done concurrently in all RECs.[52]. In line with the objectives of Abuja Treaty, many initiatives were developed to support regional integration (See Table 12). However, it was discovered that the pace of implementation of programmes towards the establishment of the AEC was slow. In response, the Minimum Integration Programme (MIP) was adopted on 9 May 2009.

202. The MIP constitutes of an action plan to accelerate coordination, convergence and collaboration among the RECs in order to achieve the ultimate objective of the AEC[53]. The action plan has trade related objectives of progressive elimination of tariff barriers and NTBs, signing of partnership agreements between RECs, and enhancing the capacities of RECs, AUC and Member States. UNECA (2013, 2019) analyses of the status of RECs with respect to some objectives set out in the MIP showed that SADC, EAC, COMESA and ECOWAS appear to be

[51] Article 6.
[52] Abuja Treaty article 6 (2).
[53] See; https://au.int/sites/default/files/pages/32825-file-minimumintegrationprogrammeeng.pdf

the most advanced RECs in the integration process. With regard to trade liberalization, these RECs witnessed several delays in achieving their planned customs union, but they eventually fulfil the continental objective.

Table 12: Major Initiatives towards Continental Regional Integration in Africa

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

Source: Compiled by ECA

203. Therefore, there is the need to analyze the status of some selected RECs at different stages of integration foreseen in the Abuja Treaty, assess the potential role of the RECs in these of arrangements and draw lessons for effective implementation of the AfCFTA.

6.2 Analysis of Status of Customs Union of ECOWAS and EAC

204. In the actual implementation of Common External Tariff (CET), an individual member country of a customs union would generally have to increase its tariffs on some products and reduce them on others. The overall impact will thus depend on the balance between these two effects. The CET is expected to enhance local production, promote intra-trade and provide stability in trade, making it easier to understand trade rules and prevent trade deflection. An effective CU needs to have a generally accepted CET and should be based on a trade policy that is common to all the member countries.

205. The choice of an appropriate CET is a critical element for ensuring the effectiveness of CU and should have two main characteristics in the context of developing countries: (1) the CET should have low rates, and (2) there should be significant complementarities between member countries, which create opportunities for specialization and trade. Theoretically, an optimal CET's welfare improvement should exceed the associated customs revenue losses incurred by the member countries. In practical terms, the choice of an appropriate CET structure is limited to cascading tariff and uniform tariff structure.

206. In a cascading tariff structure, higher tariff rates are applied to final goods than to the production inputs. This has the major advantage of promoting the creation of more competitive local processing industries. Unfortunately, this choice is also difficult to design and implement

because it is extremely impossible to satisfy all contending interests. Therefore, it is typically subject to pressures to adjust the rates in response to the lobbying interests of various industries. Uniform tariff structure specifies the same tariff rate for all goods equally. This tariff structure has several advantages, including simplicity and ease of design and implementation. In addition, it ensures that trade flows broadly reflect comparative advantage.

207. There is one overriding legal requirement which must be satisfied in the determination of CET rates of every CU. This is that the CET has to be fixed in conformity with paragraph 5 of Article XXl of the GATT which requires that tariffs against non-members shall not be higher than tariffs prior to the formation of the CU. Article XXlV of the GATT 1994 further states that, the incidence of the duties and other regulations of trade before and after the formation of a CU must be based on an overall assessment of weighted average tariff rates and customs duties.

208. In broad conformity with GATT/ WTO law, several approaches have emerged for the determination of CET rates. These are:

a) simple average of members' tariffs against non-members.
b) import-weighted average of members' import tariffs against non-members.
c) consumption-weighted average of members' tariffs against non-members.
d) minimum and maximum of members' import tariffs against non-members.

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

210. CET is a fundamental feature of the CU, and it is meant to achieve a policy objective which moves the final power for tariff policy making from the level of Member States to that of the regional authority. This is because the establishment of CET requires all member countries to adopt a uniform set of tariffs in their trade relations with third countries. The subsequent analysis involves the assessment of the status of CU and monetary integration process of ECOWAS and EAC and common market of EAC with the aim of drawing policy implications for the Continental CU.

6.2.1 Analysis of Status of Custom Union of ECOWAS

211. The establishment of an ECOWAS-CET is meant to intensify and deepen its integration process by starting as a FTA with ETLS and proceeding to a CU. The legal mandate is derived from Article 3 of ECOWAS Revised Treaty of 1993. The negotiations around the ECOWAS-CET provided a good example of ECOWAS and UEMOA collaboration and competition. In 2003, UEMOA and ECOWAS embarked on intra-regional negotiations for an ECOWAS-wide CET.

212. The fast-track initiative was unsuccessful, as the UEMOA completed its external tariff in 2000. Negotiations were delayed for several years due to Nigeria's reluctance to adopt 4-band CET of UEMOA as baseline for the ECOWAS-CET, citing the fact that it negated the developmental aspiration of the country. Nigeria therefore asked for 50% tariff to be included as the 5th band. With opposition from UEMOA, it was finally agreed that the ECOWAS CET would include a 5th band at 35% to protect sensitive industries. The implication of this arrangement is that ECOWAS integration agenda is being driven by the more integrated and liberally-oriented UEMOA countries, who had successfully managed to 'upload' their standards

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

213. Key elements of the MFN applied tariff rates of Member States during 2000-2004 show the degree of convergence of tariff policy practices among them. It is clear from this that the countries fall into four broad categories (See Table 13). The UEMOA countries which had the same simple average tariff rate of 12 percent thus constitute one category. The non-UEMOA countries, which constitute the other broad category, had simple average tariff rates ranging from 6.5 percent (Guinea) to 29.1 percent (Nigeria). In fact, this category can be further divided into three sub-groups.

Table 13: Average Tariff Rates of ECOWAS Member States before ECOWAS CET

Grouping	ECOWAS Member states	Pre-CET average tariff rate range %
Group 1	UEMOA[54] Member States	12
Group 2	Gambia, Ghana and Sierra Leone	12.8- 13.7
Group 3	Cabo Verde, Guinea and Liberia	6-7
Group 4	Nigeria	29.1

Source: CDTi, 2016.

214. The final ECOWAS CET structure therefore contains five tariff bands at rates of 0 percent (for essential social goods), 5 percent (goods of primary necessity, raw materials and specific inputs), 10 percent (inputs and intermediate goods), 20 percent (final consumption goods), and 35 percent (specific goods for economic development) (Table 14).

Table 14: Structure of ECOWAS Common External Tariff

Category	Heading	Rate (%)	Number of Tariff Lines
0	Essential social goods	0	85
1	Basic necessities, raw materials, capital goods, specific inputs	5	2146
2	Inputs and intermediate products	10	1373
3	Final consumer goods	20	2165
4	Specific goods for economic development	35	130
Total			5899

Source: ECOWAS CET 2014.

215. ECOWAS CET entered into force on 1st January, 2015. Nine member States started the implementation: Nigeria and all UEMOA countries. Nigeria approved the implementation of the CET effective from 11 April 2015, together with some temporary Supplementary Protection Measures (SPMs)[55]: Ghana postponed the implementation because of ratification issues. For Guinea, Liberia and Sierra Leone, the implementation started in 2016 because of the Ebola epidemic crisis. In Cape Verde and Guinea Bissau, the delay was due the late provision of the Portuguese version of the CET documents. While in The Gambia, technical problems due

[54] These are Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, and Togo

[55] Federal Ministry of Finance Circular No. 013/2015, 31st March 2015

largely to the integration of CET into the computerised customs system delayed the implementation process.

216. As shown in Table 15, nearly all member states are violators of ECOWAS CET in the transition period of 2015 and 2019. The violation of the UEMOA countries was the technical difficulties involved in migrating some tariff lines to the 5th band. The violation in Nigeria was due to the presence of additional three documents comprising import prohibition list (IPL), national list and Import Adjustment Tax (IAT). In 2019, the CET implementation challenges led to the extension of the transition period to 2022.

Table 15: Comparison between the ECOWAS Member States Tariff Concessions and the ECOWAS CET 2017

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

Source: ECOWAS Commission, 2016 and Oyejide and Olayiwola ,2020.

217. The major challenge to the effective implementation of ECOWAS CET is its differential impact on Member States and limited capacity for its implementation. A comparison of simple average MFN applied tariff rates between Nigeria and other Member States shows that Nigeria not only imposes additional levies on imports, but also relies heavily on the use of import prohibition to control the volume of a wide range of imported products. Thus, it is the

combination of high nominal tariff rates with the additional levies and import prohibition which demonstrates the full extent of the limitations of Nigeria's trade regime.

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

219. This adjustment costs provided justification for Nigeria's decision to implement the CET with SPMs, which allow Member States to have MFN applied rates that deviate from the CET rates during the transition period. Nigeria attached an IAT which involves additional taxes on 177 tariff lines (3 percent of the total) of the CET. In this list, total import tax (import duty plus IAT) was raised to 70 percent (the maximum allowed by the regulation) for most grains, sugar, beverages, alcoholic drinks, tobacco products, salt, and vehicles. Similarly, total tax on fabrics was increased to about 40 percent. In effect, what used to be called additional or special import levies have been converted to IATs which are permitted under the SPM regulation. The relatively high rate of IAT applied contributes to a high degree of divergence in Nigeria's tariff regime to the tune of CET allowable 3 percent.

220. In addition, Nigeria maintains an IPL containing 25 products that are produced locally which have enjoyed special protection for the last 15 years[56]. A total of 399 tariff lines were affected, out of which only 56 lines fall under the standard health/safety/environmental protection exceptions.[57] As expected, the majority of prohibitions (41. 4 percent) were from Band 5 (final products), which also had the highest number of exceptions. A cursory look at Annex 2 shows two major characteristics of products that were prohibited. The first category consists of 343 tariff lines related to the industrial and agricultural products which the country had the potential to produce. The second category had 56 tariff lines of products that contribute or has the potential to constitute health hazard and environmental damages.

6.2.2 Analysis of Status of Custom Union of EAC

221. The EAC protocol that seeks to remove internal tariffs and NTBs on intra-EAC trade, introduce an EAC-CET and agree on a list of products classified as sensitive that warrant additional protection. Under the CU agreement effective from 2005, Kenya should eliminate all tariffs on goods originating from partner states, while Uganda and Tanzania were to eliminate tariffs on goods falling under Category A and gradually phase out tariffs on goods falling within Category B[58]. The CU Protocol included one exemption to the CET – the duty-remission scheme (DRS). The scheme allows country to select companies that may import specific products duty-free as input for manufacturing, mainly for the purpose of export promotion. But these must be chosen jointly as a region. Also, Member States can apply for

[56] See Annex 13
[57] Exceptions based on WTO GATT Articles XX and XXI and Nigeria's security/safety/environmental standards
[58] Category A includes goods which are zero rated while Category B includes a few goods which are exported from Kenya to Uganda and Tanzania that attract tariffs between 2 per cent and 10 per cent respectively in 2006 and would be reduced to zero by January 2010 when the customs union is fully operationalised.

"stays of application." to smooth the implementation of the CET and stay at some pre-CET levels for a transition period. Any change of CET or a unilateral derogation of the CET has to be approved by the Council of Ministers, the main executive body of the EAC. Member states prepare their positions on the annual tariff negotiations in consultation with domestic stakeholders.

222. Under Article 12 of the EAC CU Protocol, Member States agreed to adopt a CET with a three-band structure;

a) 0 per cent for raw materials and plant and machinery;
b) 10 per cent for intermediate goods; and
c) 25 per cent for finished goods.

223. All the partners were to adhere to this schedule. In terms of implementation, Kenya aligned its tariffs to the agreed three tariff band structure in 2007 except for the sensitive products. The grouping prioritized customs revenue as a critical source of income for the Member States. The EAC drew a list of products that needed more protection from competition generated by imported goods. This is premised on the fact that the region had the needed capacity to produce these products. On the list were products such as sugar, milk, wheat flour, maize, rice, palm oil and worn clothing.

224. Analysis of Bunder (2018) shows that the CET was destabilized by Member States using unilateral exemptions on a wide range of strongly traded goods. The use of DRS and "stays of application" became accepted practice and channel to derogate from CET for other reasons. Theoretically, Member States have to prove that they cannot source enough of a product regionally to be allowed to apply a lower tariff rate or convince the other countries that their industry needs special protection for a limited time. In practice, derogations were rarely based on evidence. The DRS was problematic and open for abuse.

225. The EAC Secretariat has no supranational power in trade and serves predominantly as a facilitator for the negotiations and gives advice on what would be beneficial for the Community. Weak regional oversight makes it hard to analyze the CU. Member States kept several national support schemes that were not regulated at the regional level. They did not notify which industries received rebates, and Kenya's "Tax Remission for Exports Office (TREO)" was regarded as the main cause of distortions and derogation channels. Instabilities in the CET stemmed from both unilateral exemptions and CET changes between 2005 and 2015. As shown in Figure 11, the unilateral derogations increased from only about 15 to 20 tariff lines in the period of 2007 and 2012 to 56 in 2013 and further to107, and 73 in 2013 and 2015 respectively.

226. Similarly, changes to the regional CET are made more frequently. The strong influence of domestic interest group projects, and governments focus on securing protection for their specific local industries rather than considering what is best for the regional economy are major challenges. Countries are willing to destabilize the CET to secure national tariff preferences by using exemption schemes. Unilateral derogations from the CET become an accepted tool to reach consensus in tariff negotiations. As there is consensus-based decision-making in the EAC, each country has the power to block decisions if it does not get its will. Two other challenges continue to hinder the effective implementation of CET. First, all Member States belong to other FTAs and this led to a perforation of the CET. Second, some Member States

are not in legal compliance with the CET obligation due to its membership in other regional arrangements.

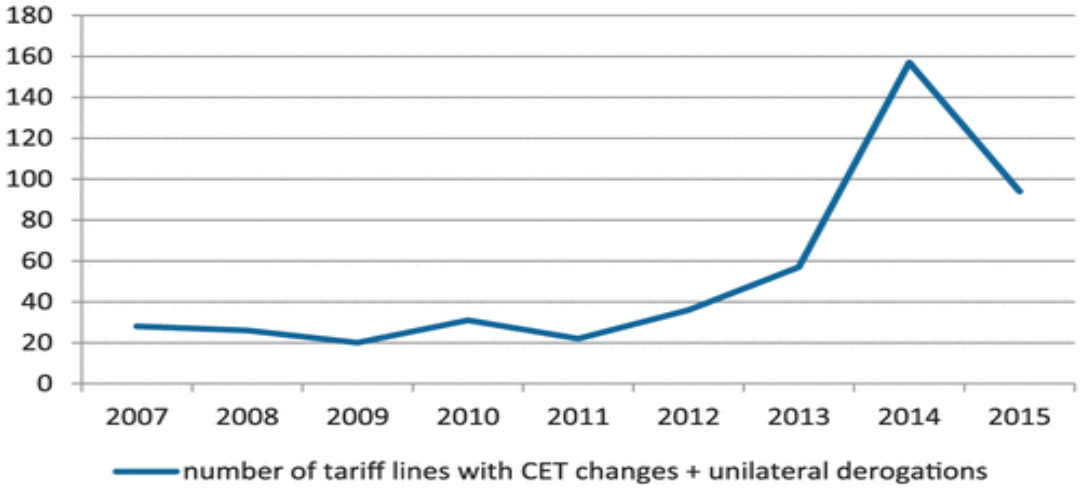

Figure 11: Number of Tariff Lines with CET changes and Unilateral Derogations in EAC

Source: Bunder 2018

227. As concluding remarks, the analysis of the status of CU of ECOWAS and EAC shows the likely challenges of implementing the AfCFTA without a common continental trade policy. The CET violations by Member States and the presence of three additional documents in Nigeria tariff book would pose implementation challenges to the AfCFTA if they are not adequately addressed with the regional Schedules of tariff concessions. Unless there is a common regional approach, the implementation of the AfCFTA would affect the commonality of tariffs and customs administration of ECOWAS as a custom union.

228. The influence of domestic interest groups leads to instability in CU management; therefore, stakeholders' ownership and participation is a key success factor for the stability of any trade arrangement. The presence of a common trade policy can also be a mutually beneficial and effective instrument of stability. Moreover, the basic lesson to future African economic integration is the inherent challenge of implementing CU without effective implementation of FTA. As a matter of fact, the AfCFTA must be effectively implemented by Member States and RECs platforms can provide additional impetus to the implementation of the AfCFTA.

6.3 Challenges of RECs Economic Integration in Achieving the African Economic Community

229. Analysis of status of economic integration of selected RECs shows six major implementation issues and their associated activities that determine effective implementation of customs union of selected RECs in Africa. They are:

6.3.1 Structure and rate of the CET

230. Many RECs CET reflects the standard escalating structure. In other words, the tariff rates appear to rise with the level of processing. This broad picture hides two problems which must be addressed for a full African customs union. The first of these is that, as several countries have pointed out, there are many cases where the input used in the production of a product

attracts a higher tariff rate than the product itself. The second problem arises from the highest band. For example, the fifth band of the ECOWAS CET with a tariff rate of 35 percent is meant to protect "specific goods for economic development". When these goods are individually identified, it is found that they range over the entire spectrum of raw materials, intermediate inputs, and final consumer goods. As a result, the composition of these goods disrupts the escalating structure of CET and generates many instances in which an input attracts a tariff rate which is higher than that of the product for the production of which it is used.

231. The third problem relates to structure and rates of CET that place tariffs on too many types of goods which do not need protection. In principle, government support for the domestic production of import-competing goods can come in the form of either production subsidy or tariff protection or a mix of both. Since the use of tariff protection results in higher domestic prices, production subsidies (which lower costs without raising prices) may be more appropriate for key traded goods. In this way, food security, health, and knowledge can be enhanced. Similarly, production subsidy serves as a better support policy instrument for the development of raw materials and critical inputs than tariff protection which raises their prices (Olayiwola and Oyejide, 2020).

6.3.2 Fully or partially functioning Customs Union

232. There are two emerging issues in a fully functioning CU: the free circulation of goods and tariff revenue sharing. With respect to the issue of free circulation of goods in the presence of a CU status with a CET, goods imported into any part of the union automatically assume the appellation of "community" goods; (a) once appropriate import duties have been paid at the point of entry and thus (b) can circulate freely across all parts of the union without further customs charges. Therefore, using the platform of the AfCFTA to move to a full African customs union requires the exploration of the practical modalities that ensure effective free circulation of goods. Particular attention should be paid to the degree of harmonization of customs valuation systems, customs rules and procedures across the union. In the case of tariff revenue sharing, a CU with a CET which permit free circulation of goods would automatically confront the issues of tariff revenue sharing among the Member States. In the course of the implementation of the AfCFTA, comprehensive study is needed which would carefully examine the rationale, form, operational modalities for collecting and sharing tariff revenue, as well as the appropriate formulae (and key indicators) to be used, subject to periodic review.

233. The second challenge would be the result of Member States that enter into bilateral trade agreements (BTA) and Economic Partnership Agreements (EPA) that negate the spirit of CU and common market. A typical example is the proposed bilateral trade agreement between Kenya and United States of America and the ECOWAS-EU EPA. While all ECOWAS Member States accepted CET and should, in principle, have a fully functioning CET, this agreement would negate the spirit of CU. For example, ECOWAS Member States under the EPA are to gradually reduce relevant CET rates to zero against imports from the EU for up to 75 percent of imports. If all ECOWAS countries sign and ratify the EPA, there is no issue. In the event that a Member State is not party to the agreement, then the ECOWAS CET would not be truly effective.

6.3.3 Trade defence measures

234. As an integral part of adoption and implementation processes of CU and common market, there is the development of WTO-compatible CET trade defence measures (TDMs). They are

in three forms and applied to deal with challenges posed by dumped imports, subsidized imports and import surges which cause or threaten to cause injury to domestic producers. The effective utilization of these measures should help to ensure that the benefits of economic integration are preserved and fully harvested by Member States. At the same time, their effective application calls for close cooperation and support from both regional and national institutions on whose shoulder would lie the effective and appropriate use of the TDMs.

235. The basic challenge is that, at both the REC and national levels, there are limited appropriate legal institutions, capabilities and operational modalities. For effective implementation of the AfCFTA, concerted effort would be needed in each area of the anti-dumping, anti-subsidy, and safeguard measures. This would be needed to establish the rationale and need, the institutional arrangement and the requirement in terms capacities and skills. The operational modalities for initiating and conducting trade defence investigations, applying appropriate tools to measures dumping and subsidy margins as well as thresholds would also be needed. In each of these areas, the integrity and transparency of investigation are crucial, and they are subject to judicial review and overall WTO oversight. The AfCFTA policy issues with respect to accompanying measures are (a) adequacy of the temporary trade defence measures; (b) capacity for using them; and (c) absence of accompanying measures to support exports.

6.3.4 Stakeholders' involvement in trade policy process

236. The participation and commitment of relevant stakeholders in each phase of economic integration implementation is key to success. The policy-making entities, cross-border agencies, implementing agencies and port authorities, the private sector, and external donors are among the potential stakeholders involved in trade. As the main beneficiaries of trade reform, providing traders and businesses with the opportunity to share views and make suggestions is critical to ensure that the initiative leads to concrete and practical benefits. However, there is rarely a single private sector voice that naturally emerges from the different industries and sectors involved in negotiation and integration. Conflicting and opposing industry interests can therefore hamper the implementation of the AfCFTA.

237. There is some inequality in participation that is a function of the size of the respective stakeholders and the decision-making process at the regional level. The AfCFTA secretariat should take note of the fact that the emergence of a full CU and prospect of common market may depend on implied political influence, of formal and informal relationships they maintain with the appropriate stakeholders and of the degree of transparency in the consultation process.

6.3.5 Issue of Heterogeneity

238. The issue of heterogeneity includes the asymmetries in size and development as well as development mindset of larger countries in RECs that set them apart from other Member States. These challenges that have been met by the regional groupings separately may be magnified in the bigger FTA like the AfCFTA if not dealt with effectively. This may relate to weak enforcement mechanisms, inadequate institutional capacity, human resources, technical capacity and the inadequate finance to implement the bigger FTA. Many of RECs were in existence for many years, and still experience the challenge of structural rigidities, low levels of product complementarities, low levels of innovation and poorly developed technological

and human resource capacities that place limitation on the effective implementation on regional policies.

6.3.6 Mixed Targets and Timelines

239. There have been different initiatives at the continental level towards the integration of African countries as a whole. These initiatives are always with a proposed timeline and targets to achieve. However, as it is observed, meeting up with the proposed timeline is always difficult. For instance, the initiative of TFTA came before the AfCFTA and it was partially incorporated into the AfCFTA initiative as some of its provisions were used during the negotiations. The Article 19 of the AfCFTA is in line with TFTA provision which states that in the event of inconsistency or a conflict between this Agreement and the Treaties and instruments of COMESA, EAC and SADC, this Agreement shall prevail to the extent of the inconsistency or conflict. The proposed timeline for the finalization of TFTA was 2014, but TFTA did not officially launch until 2015 and as at 2020, the agreement is yet to be ratified. In fact, none of the proposed timelines of economic integration initiatives of the RECs have been achieved within the stipulated time. Regrettably, out of the six stages of accomplishing the goals of Africa integration, the only one that can be said to have been achieved satisfactorily is the creation of regional blocs in regions where such do not yet exist. Other stages have passed their proposed years of enforcement for AEC.

6.4 Concluding Remarks

240. The basic lessons from this analysis are numerous. First, there is a marked difference between deeper economic integration in theory and in practice. Second, the supportive roles of different forms of deeper integration in the implementation of the AfCFTA may be unrealistic given their inherent challenges that lead to ineffective implementation of these initiatives. Third, there is a mixed picture of peculiarities of RECs in the pursuit of the provisions of the Abuja Treaty. The analyses show the likely challenges of implementing the AfCFTA without a common continental trade policy. The CET violations by Member States in a customs union and the presence of three additional documents in Nigeria tariff book would pose implementation challenges to the AfCFTA if they are not adequately addressed with the regional Schedules of tariff concessions. Allowing each member state in a customs union arrangement to submit its schedules of tariff concessions would negatively affect the commonality of tariffs and customs administration of the union.

241. The influence of domestic interest groups leads to instability in CU management; therefore, stakeholders' ownership and participation is a key success factor for the stability of any trade arrangement. The presence of a common trade policy can also be a mutually beneficial and effective instrument of stability. Moreover, the basic lesson to future African economic integration is the inherent challenge of implementing CU without effective implementation of FTA. As a matter of fact, the AfCFTA must be effectively implemented by Member States and RECs platforms can provide additional impetus to the implementation of the AfCFTA.

242. The AfCFTA should be seen as a stepping stone towards the realisation of AEC. This is feasible provided that all the stakeholders (RECs and countries) take ownership of the Agreement and make a concrete commitment to promote its implementation and success. Timely implementation of AfCFTA provisions would require prioritising the Agreement

provisions over other international, bilateral, or regional agendas. The advent of the AfCFTA should be seen as an opportunity to correct the anomalies in the implementation of Article 88 and to fast-track different stages of AEC. Moreover, the introduction of a Pan African Payments and Settlements System (PAPSS) should be seen as critical factor for the smooth implementation of the AfCFTA.

Chapter 7
The Political Economy of the Relationship between the RECs and a Continental System of Integration: a focus on RECs- FTAs and AfCFTA/AEC

7.1 Introduction

243. The main objective of this chapter is to examine key political economy challenges of building relationships between RECs-FTAs and the AfCFTA/AEC. This is addressed by analyzing the determinants of interests and positions of key stakeholders and the implications of these determinants on building the interface between RECs and AfCFTA /AEC. The analysis starts with the basic understanding and interpretation of the notion of "RECs as building blocks of the AEC" and "RECs-FTAs as building blocks for the AfCFTA". The study uses a combination of legal interpretation of the notions and economic analysis of the determinants of interests and positions of various stakeholders in integration arrangement.

244. The policy arrangement of building relationship between RECs and AEC can be found in the Protocol on relationship between the AU and RECs of 1998[59], which sets out to achieve the following objectives:

a) To strengthen the existing RECs in accordance with the provisions of the Abuja Treaty, treaties and this Protocol;
b) To promote the coordination and harmonization of the policies, measures, programmes and activities of RECs to ensure that the provisions of Article 6 of the Treaty are implemented in a harmonious manner to facilitate, at stage five set out in Article 6 of the Treaty, an efficient integration of the RECs into the African Common Market;
c) To promote closer cooperation among the RECs; and
d) To provide an institutional structure for the coordination of relations between the Community and the RECs on the implementation of stages 1 through 4 set out in Article 6 of the Treaty.

245. This can be a precursor and enabler of cooperation and coordination of policies, measures, programmes and activities (Article 3a). The Protocol gives impetus to establishment of a framework for coordination of activities and contribution to the realization of the objectives of the AU Constitutive Act and the Abuja Treaty. It is important as it was developed to drive regional integration in Africa through the harmonization of conflicting policies, integration among RECs and building relationship between RECs and the AU. A few articles worth noting are documented in Annex 14**.**

246. As analysed in Chapter 2, evidences abound that the Protocol is not effective in accelerating integration processes that would shorten the periods provided in Article 6 of the

[59] Article 88 para 1 &3 of the AEC Treaty 1991. The Article details cooperation among RECs, through the coordination of their policies, measures, programmes and activities in all fields and sectors.

Abuja Treaty. In practical terms, there may be difficulty of implementation given little coherence of various FTAs of different RECs. The limited use of various regional integration instruments drives the AU to look into the issue of division of labour among the AUC, RECs and Members States in July 2019[60]. The AU was identified as the body to coordinate the formulation and adoption of continental policy decisions. RECs have multiple responsibilities. First, they are responsible for the formulation of regional policies in line with the continental orientations. Second, they serve as a focal point for facilitating consultations for the formulation of continental policies and programmes/projects. Third, they are in charge of alignment of national development plans with regional and continental development frameworks. Fourth, they are required to support the participation of Member States in the negotiations of legal instruments aimed at building common understanding and positions.

247. In line with the protocol, Member States are charged with responsibilities of formulating and implementing regional and continental policies and programmes/projects. They support the alignment of national development plans to regional and continental arrangements. The other key areas of shared responsibility and division of labour are: (a) implementation; (b) monitoring and evaluation; (c) partnerships; and (d) joint resource mobilization. In order to understand the political economy of this relationship within the context of the AfCFTA, it is necessary to: (a) analyse stakeholders' understanding and interpretation of the notions of "RECs as the building blocks of the AEC" and "RECs-FTAs as building blocks for the AfCFTA"; (b) examine the likely effects of the AfCFTA on trade performance of member states of RECs; and (c) suggest means of building relationship between RECs-FTAs and the AfCFTA.

7.2 Understanding and Interpreting RECs as the Building Blocks of AEC and RECs-FTAs as building blocks for the AfCFTA

248. The AfCFTA institutional framework is set out in Articles 9 to 13 of the Agreement. Key respondents were asked to provide their basic understanding of the "RECs as the building blocks of the AEC" and "RECs-FTAs as building blocks for the AfCFTA". The understanding of informants from RECs was that, these notions provide the basis that the AfCFTA processes should be guided and informed by the existing mechanisms and best practices of RECs. In addition, the Agreement implementation should maintain and keep the integration level that RECs have achieved. Also, to another key respondent, "the Agreement must not legislate standards and trade regulations that are REC-minus". To key respondent from the private sector, the understanding was that the existing trade and economic policies of RECs would remain the foundational spring board to the erection of the AfCFTA. In view of this, what happens at the continental agreement platform would be the convergence of RECs activities and the Agreement implementation would be activated at the regional levels without reinventing the wheel.

249. Others were of the opinion that RECs would provide the operational framework for the smooth take-off and considered as decentralised entities of the AfCFTA to engage with their Member States. As stated, the RECs ought to be used as a premier regional platform for engaging and harmonizing policies for efficient implementation of the AfCFTA. In addition, "they were the first stop to the final destination of the Agreement". RECs' *good and bad* should

[60] MYCM/AU/4(I)Rev.2

be included in the agreement implementation and they must form the foundation on which the AfCFTA should be built on. To a key respondent from SADC, RECs are key players in the continental economic integration and summation of their programmes should constitute the AfCFTA. To another one from ECCAS, the underlining principle should make the AfCFTA to build on the achievements of the RECs in order to advance its continental integration agenda.
250. To a public sector respondent in SADC, the legal bases for the establishment of the RECs are the documents which serve as reference for the creation of the AfCFTA. To a private sector one, the harmonization of all RECs agreements and institutions should be the building blocks of the AfCFTA.

251. To some key respondents from both the private sector and government agencies, since RECs were not part of the initial negotiations, they should not be parties to the AfCFTA implementation and their role should be limited to monitoring and oversight. RECs should be regarded as third parties and the agreement can neither bind on them nor create either obligations or rights without the consent of Member States. Since the duties and rights of the AfCFTA are only enforceable among the contracting parties, there should be no imposition of implementation rights and duties on the RECs. A private sector respondent reported that establishment of AfCFTA implies a natural death for RECs and the involvement of RECs would delay the implementation of the Agreement. To him "I know it is not easy to be agreeable by all Members States, but that is the reality if Africa want to move forward". A key informant also reported that "RECs as building blocks of AEC is s*hort of legally binding instruments on which the relationship between the AfCFTA and RECs-FTAs should be based*". Any type of relationship from the arrangement will be ad-hoc as opposed to be obligatory. Therefore, for the notions to have a legal identity, there should be a legal basis on which the relationship would be built. This becomes necessary because RECs are independent, self-contained legal regimes which operate in a context whose substantive basis goes beyond trade policy.

252. These responses clearly show that the key respondents could not see the complementarity of "RECs as building blocks of AEC" and "RECs-FTAs as building blocks for the AfCFTA". These findings have implications on the applicability of Article 5 principles. As earlier discussed in Chapter 4, the basic issue relates to how Article 19 is reconcilable to the Article in the sense of whether the maintenance RECs have consequences on the implementation of Article 5. In this context, the phrase "building blocks" is not defined in the text. The ordinary meaning would be that AfCFTA will build on and achieve REC-FTA plus standards. A litmus test would be weighing each AfCFTA provision against instruments of individual REC to establish the feasibility of this principle. Clearly, if it is found that REC-FTAs harbor conflicting provisions, the basis of the principle would be a wobbly one. The establishment of RECs-FTAs provisions that would fit into Article 5(b) principle may be a contest of wills by individual REC and Member States.

253. At the same time, Article 5(f) identifies "preservation of the acquis" as one of the principles that governs the AfCFTA. The term "*acquis*" is further stated in Article 18 of the Protocol on Trade in Services'. The phrase "best practices" is outstandingly not defined as well as the phrase "negotiated agreement on sectors for regulatory cooperation". In the context of Article 5(b)'s principle, the extent to which "best practices" and "negotiated agreement on sectors for regulatory cooperation" amount to building block can be inferred only to the extent that the AfCFTA State Parties will consent on adopting measures underpinned by these two elements.

254. Article 19 of the AfCFTA set the context of Article 5(b) and other principles that are linked to its operationalization. This implies that Article 5(b) requires interpretative context of both the other AfCFTA provisions and Protocols of the Agreement. The associated principles and provisions show that the intention of the negotiators was *to create a grandfather clause by* creating exceptions to the AfCFTA albeit leaving a definition of what constitutes an exemption at the behest of a State Party seeking to apply an exemption. This clause bears a number of implications. It constitutes an exemption that allows signatories to continue implementation of existing measures relative to the implementation of new rules, regulations, or laws. It also has function to exempt signatories to a Treaty engaged in *specified activities* before new rules being put in place are triggered into force, while all other parties must abide by the new rules.

255. Juxtaposing the grandfathering principle against Article 19 and 5 provisions, notably these provisions do not offer *specific activities* thus amount to a blanket and undefined exception. Given that grandfather clauses generally create unfair competitive advantages for grandfathered parties such clauses are normally subject to some form of regulation. It therefore leaves the meaning of these provisions open to interpretation. The meaning of RECs-FTAs as building blocks for the AfCFTA cannot be stated with certainty. The interpretation of Article 5(b) as well as associated provisions that have a bearing on its meaning can only be achieved in two ways, namely by consent of the State Parties as to their interpretation and/or through litigation under AfCFTA DSMs.

256. Another major issue is that many RECs trade agenda are heavily influenced by external actors. As pointed out by Draper (2010), African regional integration relied on EU intellectual foundations, with only limited ability to address Africa's challenges. In the same vein, Enujekor (2011) also underlines that the idea of indiscriminately copying institutions found in Europe and elsewhere is not only a delusion, but an obstacle to progress in building a community. For instance, in the context of the AfCFTA, ECOWAS suggested in 2015 the extension of the existing mandate given to ECOWAS for the negotiation of the West Africa EPA to that of the AfCFTA negotiations. The proposal was not followed up by member states, potentially influenced by the EPA negotiation experience

257. This analysis clearly supports UNECA (2017) findings that RECs can play a building-block role only if there is complementarity among RECs, a commitment to ratify protocols, faster implementation, reduction in length of negotiations and political will. As earlier analysed in Chapter 2, this may be a difficult task because not all the RECs have the same integration goals and performance levels. These varying goals require that countries push ahead on particular policy areas and interests. Hence, there is a challenge in terms of accommodating the differences within the AfCFTA structure without compromising the AU's strategy of RECs as key components of African regional integration. This also questions the practicality of the AfCFTA Article 8(2)[61] given the presence of diverse trade and tariff concessions in various RECs.

7.3 Economic Analysis of Relationship between the RECs and the AfCFTA

258. The economic consideration of theoretical basis of interests and positions of different RECs' Member States and the AfCFTA start from the notion that free trade maximizes welfare, and the imposition of tariffs reduces. The creation of an FTA or CU involves the elimination

[61] The Protocols on Trade in Goods, Trade in Services, Investment, IPRs, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the single undertaking subject to entry into force.

of tariffs and is a movement towards free trade, increasing welfare in the Member States, even though it might not maximize it. According to the Kemp-Wan Theorem, if the PTA sets an external tariff to maintain trade with the rest of the world, then there must be a world welfare gain. Viner (1950) accepted that the formation of a CU would increase trade between the Member States, but he argued that whether or not this is desirable depending on the source of increased trade. Viner identified two possible cases: trade creation (TC) and trade diversion **(TD).** We therefore used a very simple model to analyse the determinants of interests and positions of key stakeholders in the implementation of the AfCFTA.

259. The effects of trade agreement are illustrated graphically in Figure 12.

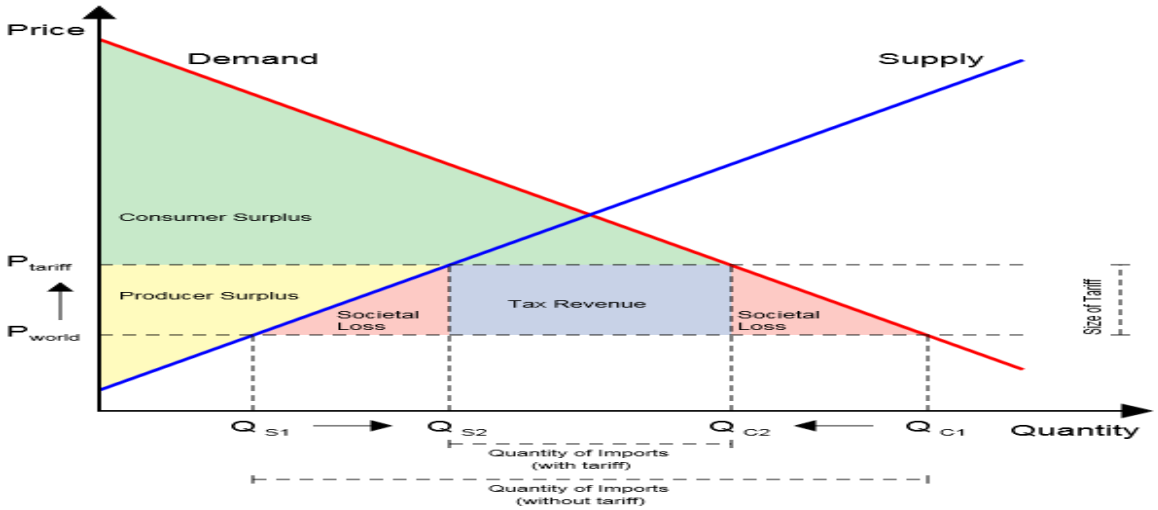

Figure 12: Impacts of RTA on Economic Agents
Source: Olayiwola and Osei Assibey (2020)

260. The welfare effect of the AfCFTA would determine interests and positions of key stakeholders rather than the expansion of world trade. This would be the right metric to assess the impact of the Agreement. The reduction in trade barriers will stimulate intra-trade which would lead to increased trade among the members (trade creation). To the extent that this expanded trade substitutes imports for higher cost domestic products, economic efficiency is increased. But part of the intra-trade expansion may be at the expense of trade from cheaper sources outside of the RTA (trade diversion). If the additional trade among the partners is a result of trade diversion, a country can suffer a welfare loss. Whether a country gains or losses from entering into an RTA will depend on the balance between the trade creating and trade diverting effects of the RTA.

261. Analysis of Figure 12 shows that imposition of tariff leads to loss of consumer surplus, unmerited gains to the government through tariff revenue and increase in domestic producers' surplus. In practical terms, the implementation of AfCFTA tariff liberalization will reverse the situation, and there is a general tendency that it will yield additional trade gains;

a) The larger continental market can lead to reductions in inefficiency and elimination of monopoly rents due to increased competition within the continent. This should, in addition, lead to increased consumer welfare;
b) member countries can use their membership of RECs as a mechanism for locking-in trade reforms; and

c) government at the national level can use commitments to AfCFTA as a defence against the domestic producers' lobby for maintaining and/or increasing domestic protection.

262. These gains would be major determinants of interests and positions of key stakeholders and have implications on building the interface between RECs-FTAs and AfCFTA.

263. Based on this analysis, the AfCFTA can be welfare-enhancing to all RECs if their trade creation effect is larger than the trade diversion effect and there is mechanism for preventing trade deflection. The basic issue is that, if the AfCFTA is welfare-enhancing in the aggregate, there is no guarantee that every REC will derive an equal beneficial effect from it. The impact of the AfCFTA on individual REC will vary depending on the level of tariff of their Member States. This theoretical framework will serve as basis of empirical analysis of positions and interests of various RECs in the implementation of AfCFTA. Therefore, to move from principles and theories to practice, there is need to conduct empirical analysis of likely effects of AfCFTA on various RECs trade performance.

264. The empirical analysis of this analytical framework is based on gravity model[62] developed to assess the trade liberalization effect of the AfCFTA and its impacts on intra-African trade of various RECs under three phases. The three trade indices of TD, TC and Net Effects (NE) are used to evaluate the potential economic effects of the AfCFTA. One of the salient features of the AfCFTA is the generation of differential trade effects toward member and non-member entities of various RECs due to differences in the rate of weighted average tariff of intermediate exports.

Table 16: Trade Creation and Trade Diversion Effects of the AfCFTA on RECs

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

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

265. The result shows that the AfCFTA generated both trade creation and trade diversion effects in all RECs (See Table 16). The analysis of Scenario 1[63] shows minimal changes, but with Scenario 2[64], the AfCFTA would generate trade creation in EAC, CEN-SAD, ECOWAS, COMESA and SADC commodities and trade diversion in ECCAS, UMA and IGAD products. In the light of the differential impacts, it is reasonable to suggest that trade creation effects are restrained due to initial high level of weighted average tariff on intermediate exports in some RECs. Although, partial scope analysis of the AfCFTA has trade creation effect in more than a half of RECs, and it causes the trade diversion effects in others. Substantial trade diversion

[62] See **Error! Reference source not found.**
[63] First five years: Standstill period when no liberalisation is required except tariff lines that are already 0% tariffs.
[64] Second five years: Liberalise intermediate tariffs gradually by 50% such that 5% tariff becomes 2.5%, 10% becomes 5% and 20% becomes 10%.

effects are attributable to high weighted average tariffs imposed by ECOWAS, UMA and ECCAS. When RECs with very high tariffs join a bigger FTA, their bilateral trade is likely to increase at the expense of their trade with non-members of other RECs.

266. Analysis of Scenario 3[65] shows that all RECs would enjoy trade creation effect and minimal trade diversion effect. This finding is an indication that the AfCFTA has the potentials to increase African trade with the rest of the world, namely trade diversion effect is relatively smaller. The basic economic implication is that the scope for trade diversion would be small when membership is limited, and it gets larger with the increased number of members. Lastly, the likely effects of the AfCFTA would be determined by RECs' level of trade development and diversification. The trade creation effect in SADC and EAC are larger compared with that of ECOWAS and COMESA in scenarios 1 and 2 compared to scenario 3. This is because weighted average tariffs of ECOWAS and COMESA were relatively higher compared to weighted average tariffs of SADC and EAC. But in scenario 3, ECOWAS, UMA and COMESA would enjoy trade creation effect of liberal trade because of drastic reduction in the intermediate tariffs.

267. This result also suggests that trade creation effect could be caused by other factors, such as potential demand of would-be-importers and productivity of exporter, rather than just tariff reduction and elimination. REC expansion with the AfCFTA would result into trade creation toward other RECs Member States, while this expansion may not lead to a trade diversion among Member States. This is because, the AfCFTA may result into relative weak trade creation among Member States of RECs with higher intermediate imports tariff before the implementation of the Agreement without entailing trade diversion toward other RECs Member States. On the other hand, RECs with lower tariffs appears to be more trade creating than trade diverting implying that, expanding its coverage toward to other RECs with higher tariff might lead to trade creation and welfare gain. Nevertheless, the potential expansion raises the question about trade similarities and weak ability for trade diversification.

268. The results of Import–export similarity index for RECs using the COS measure as shown in Table 17 indicates that the exports of SADC, ECOWAS and UMA fit well with the imports of other AU-recognized RECs. These RECs are found to have the potential to supply exports to others given their high values of import–export similarity index with other RECs.

Table 17: Imports–Exports Similarity Index for RECs using the COS measure[66]

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

[65] Final five years: Liberalise remaining tariffs save the ones under sensitive products of various RECs
[66] Interpret with caution and subject to change as the analysis is based on standstill period when no liberalisation is required except tariff lines that are already 0% tariffs.

Source: ECA computation 2010-2017 using weighted average data.

269. The trade pattern of SADC is as a result of major industrial products exports of South Africa. The oil and gas exports of Nigeria and Algeria is the major determinant of trade patterns in ECOWAS and UMA. These products are major importable commodities by almost all RECs Member States. It is worthy to note that the implementation of the AfCFTA would also affect the existence of RECs like IGAD and EAC with major export commodities like cotton, edible fruit and nuts; peel of citrus fruit or melons, coffee, tea and spices, oil seeds and copper and those that have less or no demand in other AU-recognized RECs.

270. In general, the result shows that only few RECs have the potential to supply/export commodities that match the demand of other RECs. In addition, the composition of exports from these RECs is not well diversified and, hence, limited in matching the demand of other RECs' Member States. Even SADC's exports because of dominance of South Africa's is concentrated by mineral and precious metals, followed by Iron and steel and some manufactured goods. Similarly, ECOWAS's exports is determined by mineral fuels with limited supply of industrial and agricultural products because of dominance of Nigeria exports.

Table 18: Export Similarities for Intermediate Exports, Consumer exports, and Agricultural and Raw Material Exports of RECs in 2016 and 2017

	UMA		COMESA		EAC		ECOWAS		ECCAS		SADC		CENSAD		IGAD	
	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017
UMA	-		0.77	0.82	0.76	0.90	0.52	0.55	0.92	0.87	0.84	0.82	0.73	0.77	0.99	0.95
COMESA			-		0.97	0.92	0.72	0.71	0.72	0.73	0.93	0.98	0.93	0.92	0.77	0.79
EAC					-		0.75	0.62	0.69	0.81	0.91	0.91	0.96	0.84	0.75	0.87
ECOWAS							-		0.44	0.43	0.67	0.72	0.78	0.78	0.52	0.51
ECCAS									-		0.77	0.72	0.65	0.64	0.92	0.92
SADC											-		0.88	0.93	0.84	0.79
CENSAD													-		0.73	0.72
IGAD															-	

Source: ECA computation using weighted average data

271. Table 18 shows the export similarity between regional economic communities in Africa for 2016 and 2017 and the values ranged between 0.44 and 0.99. The highest value of 0.99 was between UMA and IGAD which had very similar export structures specifically in intermediate and consumer goods in 2016. However, the similarity decreased slightly in 2017 to 0.95 showing a marginal decline in competition between these RECs. In UMA, top exporters include Algeria, Morocco and Tunisia while Kenya and Uganda are top exporters in IGAD. Algeria (in UMA) had petroleum as one of the highest exports commodities. Other commodities common to both UMA and IGAD are fish products.

272. ECOWAS tends to have the lowest export similarity with other RECs in intermediate, consumer and agricultural/raw material goods. Intermediate exports share are by far higher in ECOWAS than for the other two sectors. Hence, other RECs should face lower competitions with ECOWAS if they concentrate more on consumer and agricultural/raw material exports. After ECOWAS, CENSAD and SADC have higher shares of intermediates in their exports. As expected, ECOWAS had the highest competition with CENSAD (a value of 0.78 for 2016 and 2017) as result of multiple memberships. COMESA had the strongest export similarity with

SADC as more than half of SADC members were also members of COMESA. In relative terms, COMESA, EAC and ECCAS had more shares of agriculture and raw materials than other RECs and may derive more gains in exports in this sector relative to other RECs.

273. The implication of findings of economic analysis of relationship between RECs trade performance and the AfCFTA is that interests and positions of stakeholders in various RECs would be determined by the trade patterns and welfare gains from the implementation of the AfCFTA.

7.4 Suggestions for Building Relationships between RECs-FTAs and the AfCFTA

274. The analysis has shown that the understanding of Article 19 of the AfCFTA need not be given different interpretations of convenience among the stakeholders of RECs and Member States. To proffer suggestions for the relationship, basic understanding of the inter-linkages between the AfCFTA and RECs would be required[67]. The good starting point is the Protocol on Relations between the AEC and the RECs of 25 February 1998. The key respondents were of the opinion that the Protocol can serve as an instrument and framework for close cooperation. They suggested programme harmonization and coordination, as well as integration among the RECs-FTAs to build the relationship. To find legal basis for the RECs to work effectively within the AfCFTA framework, it is necessary to make reference to the AfCFTA's negotiation history to ascertain what the drafters and negotiators had in mind. The basic documentary evidences can be found in (a) Building the AfCFTA, 2015; (b) The CFTA: Making it Work for Africa; (c) ACFTA: Policy and Negotiation Options for Trade in Goods, 2016; (d) ACFTA: Advancing Pan-African Integration, 2016; and (e) Market Access Negotiations on Tariffs: Some Key Issues for Consideration.

275. RECs' relationships and stances on trade should be understood in its political, economic and social context. In times of economic recessions, security threats and social divisions, many RECs support countries that focus on the domestic economy. In this regard, protectionist policies are supposed to ensure higher employment rates in an already large market, in turn leading to more security. Some member states used RECs to legitimate its action towards domestic actors. In lieu of this, the common understanding and definition of RECs-FTAs as the building blocks on AfCFTA implementation should be discussed from four perspectives. First, there is the need to recognize the fact that countries joined RECs to maximize both economic and political gains. Second, the presence of the AfCFTA's provisions on continental preferences and MFN Treatment makes the trade liberalizing instrument the platform of choice, and provides Member States opportunity to select and choose preferences to share. The third relates to the implications of the AfCFTA MFN clauses that require access to be granted only on the basis of reciprocity, yet at the same time be non-discriminatory. The fourth relates to differential effects of the agreement on RECs that could make the speed of implementation not to be the same.

276. RECs have a wealth of experience and comparative advantage in engaging with their Member States that could be leveraged to implement the AfCFTA. A number of relevant policies and initiatives had been explored within RECs. As such, the AfCFTA Secretariat

[67] Conditions for success in the implementation of the AfCFTA: Work commissioned by the AUDA-NEPAD - January 2020 https://au.int/sites/default/files/documents/38076-doc-afcftaenglishfinal20200123-2.pdf

should build on these experiences to learn from existing challenges and design a better strategy to fast-track the implementation process. RECs are in a good position to share their local experience that may help to avoid implementation pitfalls. They can serve as a platform for educating and disseminating information and mobilise support for successful implementation. The informants were of the opinion that the RECs should be directly involved in implementation of the AfCFTA. The channel should be through delegation of some of the AfCFTA programmes to the RECs such as trade dispute settlement and NTBs resolution among REC Member States. The AfCFTA secretariat should also involve the RECs in various meetings to borrow the best practices and avoid re-inventing the wheel.

277. Drawing from the lessons of TFTA and comparative analysis of member states ratification of the AfCFTA, the political economy analysis of the relationship between the AfCFTA and RECs would require institutions building. However, institutions go beyond the idea of norms and procedures, they should incorporate policy connectedness and networks. Institutions should be conceptualised as actors in the development and progress of the AfCFTA, thus having a significant role to play. Focus should be on how RECs should align themselves in terms of the complementarity of its legal framework, political decision-making structure and policies to the AU.

278. To guarantee efficient and effective relationship between RECs FTAs and the AfCFTA;

1) RECs should align various trade policies to the strategic focus areas of the AfCFTA. This would require careful coordination and administration of the regional FTA provisions as well as a commitment to implement Agreement provisions;
2) there should be a connectedness between policy decisions in the AU and RECs, as intergovernmental decision-making rests within the same political centres at the continental and regional levels; and
3) if the relationship involves RECs with a dominant country, an asymmetry is introduced, and this would require a special decision-making arrangement.

279. Since the RECs do not contain countries which are “equal” in all respects, decision based on “one-country-one vote” or on “consensus” may not work well. Decisions on trade matters within the AfCFTA and RECs can be by consensus, but the AU should propose “qualified majority voting” (QVM) which weights country votes by relative size (population and/or GDP) at RECs level.

280. The implementation mechanism of the AfCFTA would require the operationalisation of the Task Force and early warning system. All these mechanisms would be labourious, requiring effective co-ordination and capacity requirements of RECs. For these functional requirements not to be a huge stumbling block to the AfCFTA implementation, all RECs must be empowered financially and there should be adequate and continuous capacity building. The AfCFTA should focus on creating accountable and transparent leadership based on the broad participation of relevant stakeholders in policy-making. The AfCFTA secretariat should consider using the existing RECs-FTAs institutions such as the COMESA Competition Commission, The Trade and Development Bank, The Leather and Leather Products Institute, The COMESA clearing House and the African Trade Insurance whose activities could be extended to cover the continent. Other programmes such as the STR, the RPPS, The RCTG, the Yellow Card Scheme and the Digital Free Trade Area could be extended to cover the entire continent during the implementation of the AfCFTA.

7.5. Concluding Remarks

281. The political analysis of relationship between the RECs-FTAs and the AfCFTA call for institutional building and the need of inclusion or creating a link for certain legal provisions of the AfCFTA into those of the RECs. Therefore, the implementation of the AfCFTA will require an efficient and effective management of regional institutions with limited capacities. There are three major challenges that RECs have to overcome if they are to effectively fulfil their building-block roles. These challenges are building institutions, harmonization and coordination of policies, and financial independence.

282. The partial economic analysis of the AfCFTA clearly shows changing pattern and direction of trade in the continent. The agreement generated the trade creation effect in RECs with initial lower import tariffs, and give rise to the trade diversion effect in RECs with higher import tariff. This may be the principal source of rivalries and competition among RECs because of welfare loss. The protectionist nature of any REC would lead to the possibility of trade diversion in the region. One important policy implication is that lowering of imports tariff as a result of implementation the AfCFTA would generate different interests and positions and may have implication on how different REC Member States would implement the Agreement.

Chapter 8
Analysis of scenarios for the interface of the AfCFTA, RECs and RECs-FTAs

8.1 Introduction

283. As a follow up to the analysis in Chapter 7, the basic research issue in this chapter deals with the appropriate policy options to build interface among RECs, RECs-FTAs and the AfCFTA. The objectives are: (a) to explore political economy options for the interface; and (b) to draw actions and intervention for a coherent, coordinated and fully responsive interface.

284. The preconditions for a smooth, rapid and successful integration process and interface can be grouped into political and economic classes. In the area of politics, the economic integration process tends to be enhanced by the existence of domestic peace and security in the participating countries. Similarly, the process benefits from strong political and civic commitment as well as mutual trust among the countries involved. These elements are obviously linked to the extent that, in the absence of peace and security, mutual trust may be difficult to build. The economic preconditions are as important as the political ones. These include a high degree of trade complementarity among member countries and a low degree of diversity in terms of economic size, resource abundance, and geography. In the context of open regionalism, both national and regional agendas are based on outward-oriented, market-driven and private sector-led development philosophy.

8.2 Scenarios Analysis of Different Options for the Interface

285. Once the AfCFTA negotiations are completed, the focus would shift to the development of mechanisms and identification of relevant stakeholders for implementation. One of the major

stakeholders is the RECs. Based on principle of subsidiarity and Decision[68], regional institutions should be responsible only for those activities that can be more efficiently and effectively handled at the regional level. There may be different options of engagement. First, RECs can play a more facilitative role, rather than a political role. Second, in the long run, as the level of continental integration deepens, the trade-related functions of the RECs can be consolidated at the continental level. Third, the RECs can perform the role of monitoring and reporting on implementation, regional data collection and dissemination. Some key respondents of Member States were of the opinion that RECs should be concerned with or focused on deepening their integration to the point where they can become an integral part of the continental framework.

286. To the respondents**,** the interface of RECs, RECs-FTAs and the AfCFTA should be built around functions and responsibilities**.** Suggested options are;

a) RECs (specifically their Trade Divisions of Departments) can become sub-secretariats of the AfCFTA secretariat;
b) RECs Trade Divisions or Departments role can be centred on the coordination of the AfCFTA activities,
c) RECs-FTAs can be integrated into the AfCFTA;
d) RECs roles in the area of trade can be transformed into that of customs union management, and
e) RECs can be absorbed into the AUC/AEC at the tail end of the integration processes and when the continent would have achieved full political and economic integrations.

287. Given these options, the appropriate use of the subsidiarity principle can help to achieve two objectives. First, it should help to avoid overloading scarce regional management capacity. Second, it should help to promote confidence in the regional agencies which will ensure that they are given adequate authority and means to implement collectively agreed continental policies and programmes. Also, the principle of programmatic gradualism suggests that successful and credible economic integration tends to be built on programmatic and gradual steps which generally work by reinforcing trust and commitment thus making the process self-perpetuating. This calls for the right choice of instrument(s) and modality to implement the options.

288. To analyze these scenarios with respect to options of interface and roles assignment, a SWOT methodology is adopted (see Table 19). The SWOT analysis is a framework for identifying and analyzing the internal and external factors that can have an impact on the viability of any options. A SWOT analysis examines four elements:

a) Strengths - internal attributes and resources that support a successful outcome;
b) Weaknesses - internal attributes and resources that work against a successful outcome;
c) Opportunities - external factors that can be capitalized on or used to its advantage; and
d) Threats - external factors that could jeopardize the option.

289. Once the SWOT factors are identified by various chapters, decision can be made with respect to better option and also to ascertain if the option is worth pursuing and what is required to make the option successful. For the analysis, research findings of Chapter 2 to Chapter 7 and KII findings are used to develop the criteria to measure both the economic and political pre-

[68] 18th Ordinary Session of the Assembly of the African Union Decision for "consolidation of the Tripartite and other regional FTAs into a Continental Free Trade Area"

conditions for an effective interface within the methodology of SWOT. These criteria are the basis for the assessment of different options for the interface of RECs, RECs-FTAs and AfCFTA and their feasibility (see Table 19).

8.2.1 RECs trade Divisions/Departments can become sub-secretariats of the AfCFTA Secretariat.

290. Various RECs trade divisions and/or departments can contribute to the institutional structure of AfCFTA through implementation and coordination at the regional level. RECs can also play advisory role through their respective seats on the AfCFTA Committee of Senior Trade Officials as indicated in the AfCFTA Article 12(5). For sustenance, the role should anchor on management of Internal Technical Committee on the AfCFTA issues at RECs secretariats. The Committee can be used to facilitate the development and implementation of National AfCFTA Consolidated Strategic Action Plan, Communication and Coordination Plan, National Monitoring and Evaluation Framework and National AfCFTA Observatory. Some key respondents were of the opinion that RECs should serve as a decentralized regional platform to formally engage the Member States on the AfCFTA implementation. This would present the advantage of using the RECs as a clearinghouse for policy harmonization and local experience sharing. A successful and speedy implementation will need to provide an important role and capacity to RECs for information dissemination and follow up.

Table 19: SWOT analysis of the interface of AfCFTA, RECs and REC-FTAs[69]

SN	Options	SWOT				Remarks
		Strengths	**Weaknesses**	**Opportunities**	**Threats**	
1	RECs Trade Dicision /Departments as sub-Secretariats	(a). Supported by the Treaties (b). perfect fit into RECs institution architecture	(a). Weak institutional capacity (b) Limited financial and human resources (c) structural bottleneck (d). Institutional bottleneck	(a).AU Supports (b). Supports of Development partners (c) Provision of the AfCFTA Article 12(5)	(a). Unpredictability of foreign supports	Immediate (a).Development of National AfCFTA Consolidated Strategic Action Plan (b).Development of Communication and Coordination Plan (c).Development of National Monitoring and Evaluation Framework (d).Development of National AfCFTA Observatory
2	RECs role can be	(a). Supported by Treaties	(a). Weak capacity	(a). AU Supports	(b). Unpredictability	Immediate

[69] Generated from the analyses of previous chapters and responses from KII

	centred on the coordination of the AfCFTA activities	(b). subsidiarity principle (c). complementarity (d) Existing work programme and activities that can be streamlined. (e) Experience in FTA implementation	(b). Limited Resources (c) Mutual mistrust and absence of sincerity of purpose (d). RECs are not at the same level	(b). Development partners support	of foreign support	coordination role must be legally crafted and accepted by member states or state parties to the AfCFTA Agreement
3	REC FTAs absorbed into the AfCFTA	(a). Supported by treaties (b). Experience of RECs in FTA implementation (c). Compatibility of REC FTA and AFCFTA provisions (d). Available Trade Facilitation programme (e). Available supporting policies	(a). Harmonization of some provisions (b). Some RECs have no FTA (c)Low Trade Complementarity (d). Competing interests of Member States (e) Conflicting views of RECs (f). Domestication issues	(a). Technical supports of UNECA (b). WTO TFA (c). Availability of the AfCFTA Platform for negotiation and harmonization	(a). Limited financial resources	Short term
4	RECs roles in the area of trade can be transformed into that of customs union management;	(a). Some RECs are already a customs union (b). Enabling institutional arrangement	(a). Weak policy and institutional arrangement for TRM (b). Ineffective implementation of FTA (c) Absence of Common Trade Policy (d). Partial implementation of customs union provision (e). Mutual Mistrust and absence of sincerity of purpose (f) Cumbersome Domestication Process	(a). Availability of WTO and WCO platforms (b).AU platform for experience sharing among RECs	Limited participation in WTO and WCO activities	Medium term This will involve a lot of legal issues. Domestication is a must

			(g) Some RECs are yet to be customs union			
5	RECs absorbed into the AUC/AEC	Available institution arrangement	(a). Absence of Legal framework (b). Loss of Sovereignty (c).Political will (d).Political Conditions versus Economic Reasoning (e). May require constitutional or Treaty changes	(a). Presence of AU (b) Platform of the AfCFTA Technical support of UNECA	(a). Weak capacity of AU (b).Limited financial resources	Long term

Source: Compiled from the Analyses and Responses from KII 2020

8.2.2 RECs trade Departments'/Divisions' role can be centred on the coordination of the AfCFTA Activities

291. RECs Trade Divisions or Departments can be given the responsibility of coordinating REC programmes with Member States activities during the implementation of the AfCFTA. RECs Trade Divisions of Departments and Member States should coordinate activities to ensure that all facets of agreements signed are taken into account from the moment of their entry into force of the AfCFTA. This coordination role should also include assistance to their members who are yet to ratify the Agreement. Monitoring and evaluation role, engagement of the private sector and keeping of a well-documented catalog of all BTAs and evaluating their compatibility with the AfCFTA should be the responsibilities of RECs (see Table 20).

292. The option becomes feasible because RECs have received from their member states the mandate to organize and implement the instruments and policies of regional integration. They are therefore guarantors of the coherent implementation of the provisions of the AfCFTA in order to avoid that they degenerate by calling into question the achievements and expectations of integration at the regional level. To do this, they need to be heavily involved in coordinating implementation actions, programmes and projects at the regional level. To a respondent, this role would allow RECs to concentrate on deepening integration. From a legal point of view, an explicit obligation in this direction would be required. At the moment, AfCFTA is a self-contained agreement, as are the RECs. Without legal obligation, it may be legally infeasible and RECs may not fit within the institutional architecture of the AfCFTA. Moreover, the RECs should enter into a cooperation agreement with the AfCFTA Secretariat with modalities for partnership framework.

Table 20: Activities of RECs to Perform role as Coordinators of AfCFTA Activities

	Issue	Action	Remarks
1	Coordinate REC programmes with Member State activities	Coordinate activities to ensure that all facets of agreements signed are taken into account	AU to take the lead and RECs to implement
2	Ratify outstanding Legal Instruments	Assist countries who are yet to ratify the AfCFTA	REC to take the lead

3	Monitor and Evaluate Progress regularly	Monitor and evaluate progress (a) Compliance Monitoring; b) output monitoring; and c) outcome monitoring	Must be consistent and compatible to AU Trade Observatory
4	Engage the private sector by making information available	Information on AfCFTA regulations for trade and transport, through public awareness campaigns and signs along corridors and borders.	RECs to development the plan
5	Keep track of existing bilateral agreements and ensure fairness	Ensure their coexistence in the least disruptive manner with regional or international conventions.	RECs to take the lead

Source: Compiled by ECA

8.2.3 The RECs-FTAs can be integrated into the AfCFTA

293. This option generated conflicting views among key stakeholders. To COMESA and ECOWAS, RECs are at different levels, with existing mechanisms and agreed policy frameworks. This fact makes the option to be impracticable. Moreover, the AfCFTA principle of the "acquis" provides way out of this option. To EAC, SADC and ECCAS, this option is needed to harmonize similar regional provisions and avoid duplications that may be costly. Key respondents from the private sector also had conflicting opinions. Some agreed that Article 6 of the Abuja Treaty provided the basis for the absorption of RECs-FTAs by the AfCFTA. Others were against the option because RECs cover a much broader agenda than the Agreement. To others, this is a medium-term option, because practically it would take some time to harmonize a lot of REC FTA provisions given the extent of overlaps. The strength of this option lies on the fact that it can be supported by various REC treaties. The compatibility of REC FTA and AfCFTA provisions and the available trade facilitation programme in all RECs are added advantage to the implementation of this option.

294. The availability of the AfCFTA platforms for negotiation and harmonization of outstanding issues is another opportunity. The main challenge is the process that guarantee effective involvement and participation of other stakeholders especially RECs. Also, the option should strengthen the RECs and make provision for an easier convergence. The integration of RECs FTAs should be a platform of continuous existence of RECs and avenue of making RECs to concentrate and focus on other trade facilitative and supportive roles in which they have the competency. For instance, ECOWAS can focus on its priorities of peace and security and free movement activities, COMESA on payment system and IGAD on political activities. There should be a framework of coordination to monitor the process of managing this option with other RECs activities. To a key respondent from SADC, this approach would be far too radical and aggressive. Especially since the use of the term "absorption" needs to be clarified and conceptualized. What does this imply for the implementation? Subsidiarity, complementarity, partnership or common progression.

8.2.4 RECs roles in the area of trade can be transformed into that of customs union management

295. This option emanates from the AfCFTA provision that allows Member States that are members of RECs that have attained among themselves higher levels of regional integration than under AfCFTA can maintain the higher level. The basic question is what is the definition of deeper and higher levels of economic integration? The analysis of Table 21 using basic

criteria of a full functioning CU and responses from KII shows that all RECs are either a partial CU or a CU in transition. In terms of implementation, there is presence of a CET and common classification of tariffs, there is no full implementation of common valuation, free circulation of community goods, revenue sharing modality and trade defense mechanism. None of REC has a common trade policy to support the implementation of a CET.

Table 21: Analysis of Criteria of a Full and Effective Customs Union[70]

SN	Criteria	ECOWAS	SACU	EAC	CEMAC	COMESA
1	CET	Yes	yes	Yes	Yes	Yes
2	Common valuation of imported goods	Partial	Full	Full	Partial	Partial
3	Common classification of tariff	Yes	Yes	Yes	Yes	Yes
4	Customs Modernization	Limited	Full	Full	Limited	Limited
5	Free circulation of Community Goods	No	Partial	Partial	No	No
6	Revenue Sharing Formula	No	Yes	No	Yes	Yes
7	Trade Defense Mechanism	No	Partial	Partial	No	Partial
8	Institutional arrangement for TDMs	No	Partial	Partial	Partial	Partial
9	Common Trade Policy	No	No	No	No	No
10	Competition policy	Yes	Yes	Yes	NO	Yes

Source: Compiled from Responses of KII and Analysis of Chapter 6

296. To some key informants, this option can be considered and feasible when all AU recognized RECs have attained the full status of a CU. In addition, this option should be regarded as a long term, given the fact that all concerned RECs are either a partial CU or a CU in transition. Also, the interface of RECs and the AfCFTA for customs management should be anchored on the pillar of continental value chain. This would provide the opportunity of enhancing the implementation of other provisions of CU. The platform should be used to create "hub-and-spoke" trade relationships among RECs, with large regions being the "hub" and small ones being the "spokes." Also, it can be used as platform for competitive (or "additive") integration that strengthen relationships. Given the interface, the AfCFTA platform should be used to determine the level and modality of involvement of each REC at the different stages of the value chain. (See Figure 13). This becomes important because an effective continental value chain would depend on effective free circulation of community goods and competition policy which only CU can guarantee.

297. There are some RECs RVC can be leveraged by the AfCFTA to expand the scope to other RECs. For instance, the SADC Regional Industrialization Roadmap 2015-2063 can be integrated into other region initiatives through GVC. Also, there is RVC initiative in RISDP, with identified areas of agro-processing, mineral beneficiation and pharmaceutical. The EAC Community Industrialization Policy 2012-32, focuses on agro-processing through backward

[70] Note: Yes=positive responses from REC, public and private sectors
No =negative responses from REC, public and private sectors
Partial = No effective implementation of the provision
Full = Effective implementation of the provision

and forward linkages. The regional SACU-EAC motor vehicle strategy and the ECOWAS Automotive Industry Policy Framework (AIPF) and West Africa Competitiveness Programme are other platforms that can be leveraged.

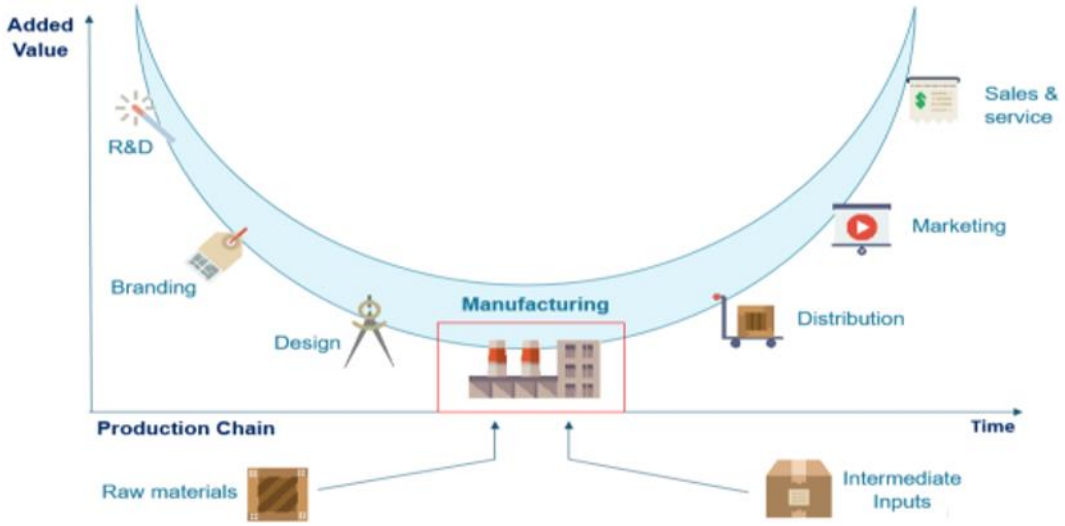

Figure 13: Stan Shih Smile Curve
Source: Compiled by ECA

298. The interface should be used as the platform of addressing the potential pitfalls of supply/value chain of exports behind the border, at the border and beyond the border as shown in Figure 14.

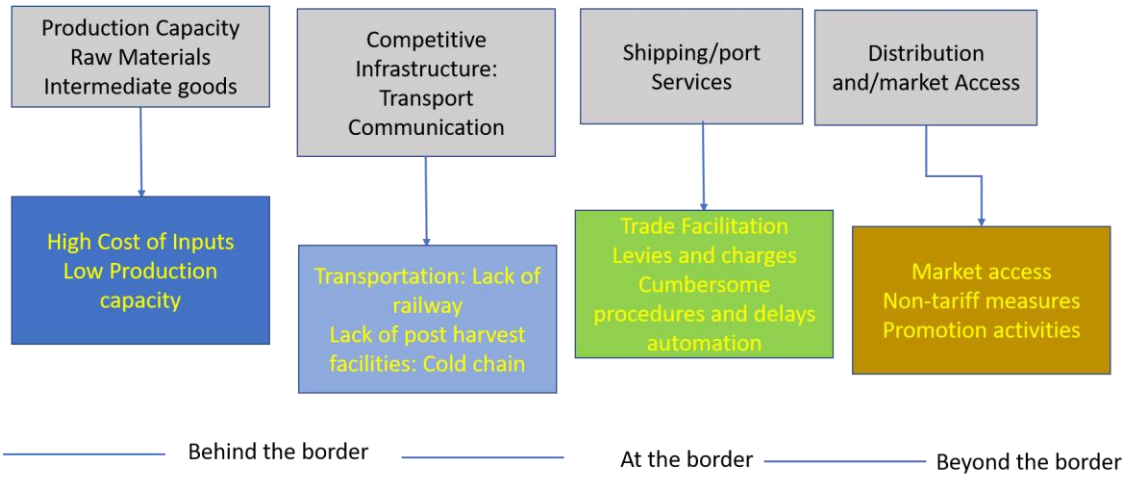

Figure 14: Supply/Value Chain of Exports (and Potential Pitfalls)
Source: Compiled by ECA

8.2.5 In the long run, RECs can be absorbed by AU Commission: after the attainment of full economic and political integration

299. To all key respondents, it is only AUC that can absorb RECs because the scope of RECs is wider than the AfCFTA. The challenging issues of fear of loss of sovereignty and visibility, and the dichotomy between political conditions and economic reasoning make this interface option to be a long-term one. The situation of uncertainty and incoherent legal frameworks as well as weak implementation and enforcement mechanisms would be at the core of building

this interface and make this option to be the most difficult to implement. To build this interface, there is a clear necessity for restructuring and management of the AEC and RECs relationship and building synergy among RECs. The situation and the process should be considered in terms of legal, economic, political and social feasibility.

8.3 Policy Recommendations for a Coherent, Coordinated and Responsive Interface.

300. To a key respondent "*RECs FTAs likened to a "building block" are neither well molded nor well dried. To make a durable house out of the AfCFTA, the blocks need to be arranged on a solid foundation and supported with strong pillars*". The basic implication of this statement is that in building and managing the interface options, gradual steps should be taken and the sequencing of the steps should be determined by the complexity of the activities involved. The interface should be developed on a gradual process anchored on particular programmes. This would provide the opportunity to monitor the progress and access the performance of different stakeholders.

301. Figure 15 provides the suggested arrangements of different options given different level of complexity and activities involved in each option. The good starting point to build relationship with RECs is to give them the responsibility of serving as sub-secretariats of the AfCFTA. This would be followed by the coordination role of the AfCFTA activities. The use of available AfCFTA platforms of Schedules of Tariff Concession, trade in services negotiation, the AfCFTA RoOs and E-commerce can be used as the preparatory stage of absorbing various REC-FTAs by the AfCFTA. The process of implementing the Agreement can be used by some RECs to achieve free circulation of community goods through effective management of CU. In line with AEC, RECs can be absorbed by the AUC after issues of treaties and legal engagements are addressed**.**

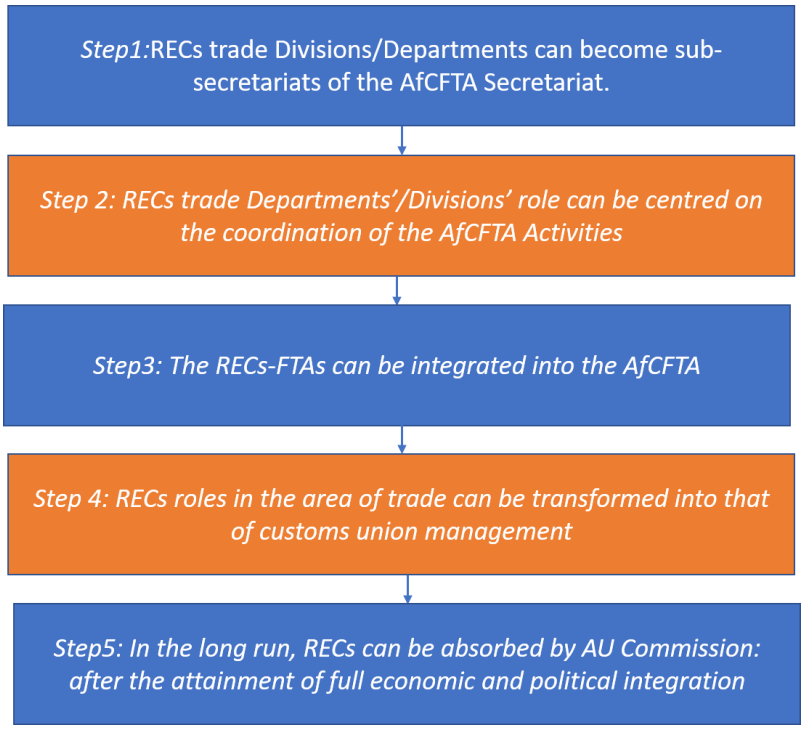

Figure 15: Proposed model for building interface among REC FTAs, RECs and the AfCFTA

Source: Compiled by ECA.

302. The available modalities and instruments useful framework for the implementation and maintenance of the interface are the BIAT-AP, Continental Value Chain, AU Trade Facilitation Strategies and Legal Integration. All these available options should be anchored on the implementation of these frameworks. Within the principles of subsidiarity and programmatic gradualism, the AfCFTA secretariat can conduct a study on mechanisms of involving and encouraging various RECs to develop programmes and projects identified in Table 22. Effective implementation of these programmes/projects will go a long way in assisting the implementation of the AfCFTA.

Table 22: Approach to Seven Priority Clusters of the Boosting Intra-African Trade Action Plan

Summary of the seven priority clusters of the Boosting intra-African Trade Action Plan			National Strategy	Regional Approach and Strategies	Continental Approach
	Cluster	**Activities**			
1	Trade policy	Mainstream intra-African trade in national strategies; enhance participation by the private sector, women and the informal sector; liberalise trade-related services.	Implementation of Consolidated Strategic Action Plan (CSAP) of Regional Common Trade Policy (RCTP)	(a). Development of RCTP	Coordination and Monitoring of CSAP

2	Trade facilitation	Reduce road blocks; harmonise and simplify customs and transit procedures and documentation; establish one-stop border posts; adopt integrated border management processes.	Domestication of WTO-TFA Implementation of WTO-TFA	(a). Development of Regional Committee on Trade Facilitation; (b) Domestication of WTO-TFA in member countries; (c). Regional Customs Modernization Programme; (d). Joint Border Post; and (e) Rollback and Standstill Commitments on NTBs by member States	Trade Facilitation Implementation Strategies by AU (see Annex 15)
3	Productive capacity	Implement the programme for the (3ADI); establish integrated trade information systems, encourage investment.	Identification of national industries for continental value chain	(a). Development of Regional Value Chain and Supply chain; (b) Development of Regional MNC	Accelerated Industrial Development of Africa,
4	Trade-related infrastructure	Implement and mobilize resources for multi-country projects.	Identification of projects that have continental effects	(a). Regional Approach to Development of Trade-related Infrastructure (b). Regional Joint Provision of Infrastructure	a. Programme for Infrastructure Development in Africa (PIDA). b. Accelerated Industrial development for Africa (AIDA)
5	Trade finance	Improve payment systems; set the enabling environment for financial services to provide report credit and guarantees; speed up the establishment and strengthening of regional and continental financial institutions	Provision of enabling environment for financial integration	(a). Regional Guaranty System (b). Regional Payments and Settlements System	a. Development of continental financial institutions b. Pan-African Payment and Settlement System (PAPSS)
6	Trade information	Create interconnected centres of trade information exchange.	National Trade and Business Information System	(a). Regional Trade Information Portal	Continental Trade Information system
7	Factor market integration	Operationalise existing protocols and policies; facilitate movement of business people	Guarantee Free Movement of business and enterprises	(b). Regional Business Development Plan and Strategy	Protocol on Free Movement of People

Source: Adapted from ECA, AU and AfDB (2017).

303. In terms of legal integration, there is the need for comparative analysis of African national and regional laws, international law, and other relevant practices and approaches to highlight how the AfCFTA may lead to changes in regional and broader international law. The harmonization of existing regional rules should be considered, as the effective implementation of the AfCFTA would depend on national laws and domestication of harmonized rules. The AfCFTA should also balance the agreement's objectives on industrial, economic, and agricultural development with a degree of regulation. The AfCFTA should reflect "best

practices" of a range of member states with more developed legal systems and smaller nations whose systems may not be as developed. Some smaller economies' rules and regulations may contain important flexibilities for smaller producers and informal actors that will be important to achieving broader development goals. Priority should be on identification and preservation of legal practices that give rights to more vulnerable groups, such as small businesses, informal economic actors, and farming communities.

8.4 Concluding Remarks

304. Building and managing the interface should address the issue of RECs and AU relationship as a variable geometric approach and RECs as variable geometric tools. This is necessary because, as earlier analysed, most RECs developed independently of and prior to various continental instruments. In addition, the idea of RECs in continental integration is to harmonise policies, programmes and projects, and not to fully departmentalise the continental programmes and policies for regional convenience. Consequently, the differing goals and tempo of regional integration imply a fundamental variable geometric component which may work in competition to the building-block role. As analysed in Chapter 2, the interface would have consequences on the operations of RoOs, PTAs and BTAs of various RECs.

305. Given all these issues, the political and economic considerations should determine chain of responsibility among RECs, the AfCFTA secretariat and the AU. As shown in the **Error! Reference source not found.**Figure 16, each of the institutions should be able to develop action plan, strategies and policy for all interface options. In addition, there should be a close correspondence among national, regional and continental strategies for the implementation of the AfCFTA provisions. The RECs can assist in developing mechanisms for their various Member States to mainstream the BIAT-AP into their development strategies focusing on different areas that would address challenges and facilitate optimal benefits from the AfCFTA.

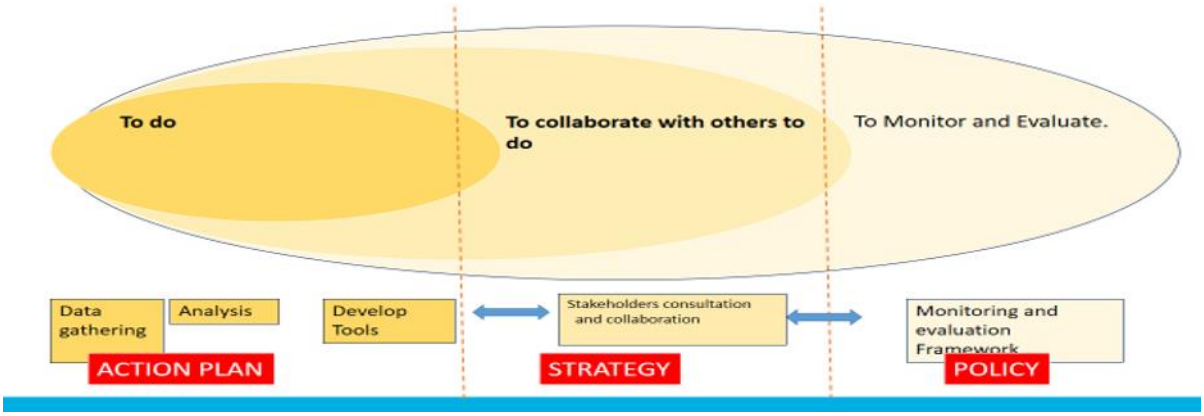

Figure 16: The chain of responsibility
Source: Compiled by ECA

306. RECs should align their policies and protocols to that of the AfCFTA to ensure harmonisation. They should also coordinate the negotiations and implementations of the AfCFTA in their respective regions. RECs should monitor the implementation activities of their member states and ensure that members receive the needed support. Again, they should help in the capacity of their Member States in understanding the technical subject matters of the AfCFTA to aid implementation of the Agreement.

307. To realise the objectives of the AfCFTA through building of the interface among RECs, RECs-FTAs and the AfCFTA, it would be essential to depart from the main understanding of international law and adopt a supranational authority. The AfCFTA protocols and international law can never be divorced from each other. This raises the issue of domestication of the AfCFTA provisions. The method and procedures of domestication are determined by the constitution of each Member States and not RECs. Moreover, the AfCFTA ratification alone is insufficient and will not give the Agreement and its provisions the force of law at all Member States level. It is the legislative approval in the form of an enabling statue that opens the door for implementation. All interface options should put RECs in the position to facilitate and expedite the process of the AfCFTA domestication in their respective Member States. This is because the implementation of the AfCFTA must operate with legal integration, which calls for the gradual penetration of its provisions into the domestic law of Member States.

308. To address conflict of Laws and Treaties, there may be the need for a study to determine how to create continental law out of a set of fragmented regional legal agreements. Though, RECs have made significant progress, their challenges with fragmentation and incomplete implementation are well documented. The AfCFTA can build on these lessons to pursue deeper integration. The AfCFTA Implementation issues should be envisaged due to the number of member states involved and diversity in legal systems. A better understanding of the comparative legal landscape and deeper understanding of regional trade agreements would adequately address these issues. This may therefore call for a separate legal entity of cooperation of RECs and the AfCFTA.

Chapter 9
Advocacy and Sensitization Strategy for the Interface of the African Continental Free Trade Area, Regional Economic Communities and the Regional Economic Communities Free Trade Areas

9.1 Introduction

309. As analysed in Chapter 8, building the interface among RECs, RECs-FTAs, and the AfCFTA would involve a lot of stakeholders, generate interests and positions as well as encompass many activities. In view of these findings, the main focus of this chapter is to propose appropriate strategies for advocacy and sensitization for the AfCFTA implementation and develop appropriate and acceptable strategies for a coordinated and responsive interface. To achieve this objective, amongst others, there is the need to analyse how the properly managed interface between the AfCFTA and RECs FTAs/CUs would enhance private sector development in the continent.

310. It is expedient to understand that the management of the interface would be complex with multiple actors and stakeholders with diverse powers, interests and incentives. This was explicitly addressed in Chapter 7. There may be the need for diverse rules of engagement which are key to creating strategy that will ensure fairness to all stakeholders. As analyzed in 154. There is the need to recognise the difficulty inherent in the definition and nature of the AU-RECs relationship as it is governed by numerous texts: The Lagos Plan of Action and the Final Act of Lagos (1980); the Abuja Treaty (1994); the Protocol Relating to the Establishment

of the Peace and Security Council (2003); the Protocol on Relations between the AEC and the RECs (signed in 1998 and updated in 2007); the Memorandum of Understanding on Cooperation in the Area of Peace and Security, the Revised protocol of relations between the AU, RECs and Regional mechanisms, as well as the framework to guide relations between AUC, RECs and the AfCFTA. Among these documents, only framework for effective division of labour between the AUC, RECs, member states, regional mechanisms pursuant to Declaration (MYCM/DECL/1(I)) presents definition for subsidiarity. The analysis shows that comparative advantage, regional and continental complementarity principles are interpreted differently by relevant stakeholders. Simply affirming standards may not generate a coherent common approach. In addition, RECs prioritise developing instruments and policies to reach their own goals without seeking to coordinate with the AU. This situation therefore calls for the development of "Interpretative Note" for all relevant texts.

155. Among these numerous texts, there are three key legal instruments that can operationalize the RECs, REC-FTAs and the AfCFTA interface and Agreement implementation even in the context of multiple trade regimes. They are; the Abuja Treaty, the Protocol on Relationship between AU and the RECs and the AfCFTA Article 19. The Abuja Treaty remains the glue that holds the AfCFTA, AEC and RECs together. The AfCFTA Article 19 rules should function as intermediate step for the harmonization of trade regimes to reduce cost of regulations compliance in Africa. This should be supported by the AfCFTA MFN clause, and other preferences. Article 4 (5) of the Protocol on Trade in Goods and Article 4 (4) of the Protocol on Trade in Services outline the sets of preferences that can be granted to State Parties under the MFN provision with other state parties. In addition, the fact that islets would coexist with the AfCFTA, shows that the Agreement does not fully consolidate fragmented markets but leaves a network of better connected and distinct trade regimes.

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

i) continue to monitor developments concerning Third-Party Agreements involving AfCFTA States Parties and report to the AU Summit;
j) develop Reporting Guidelines and Templates for notification of Third-Party Agreements in line with relevant provisions of the Agreement;
k) include a Section on Third Party Agreements in the future Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the RECs; and
l) submit to the next Council of Ministers of AfCFTA for consideration and adoption, the Reporting Guidelines and Templates for notification of Third-Party Agreements and the Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the Regional Economic Communities.

157. It is worthy to note that, even with the implementation of this Decision, the role of AfCFTA rules to address multiple trade regimes may be limited without appropriate legal framework. According to Oppong (2015), Africa pursued economic integration without a legal framework that specifically state the rules of conduct, definition of entities to which the rules apply; rules that form part of the legal system and obligation to obey. As stated, effective economic integration is the product of well-defined legal frameworks and institutions. Therefore, effective application of Article 19 supported with appropriate legal framework should serve as foundation of further rationalization of multiple trade regimes in the context of

the Abuja Treaty's objective of establishing an AEC. This would involve addressing the splintered regional spaces, overlapping institutions, duplicated efforts, dispersed resources, and disputes over legitimacy that result from the multiple Treaties. The main benefit of rationalization to RECs is institutional strengthening through the elimination of overlapping functions and efficient targeting of resources.

158. In addition, the framework for effective division of labour among the AUC, RECs, member states, and regional mechanisms can be used to develop a roadmap for each of RECs in terms of the AfCFTA implementation. The roadmap would serve as a framework for RECs in defining the activities, objectives and priorities for cooperation in the implementation of the Agreement. The organization of coordination platform as the principal forum for the harmonization of RECs work and co-ordination of the implementation of the continental integration agenda should be supported with appropriate mechanism to monitor the progress of implementation. The effective division of labour must not make the relevant institutions to be a stand-alone but partners in progress. RECs and their specialized agencies should be strategically placed to closely support Member States by unblocking political and technical challenges relating to multiple trade regimes for effective implementation of the AfCFTA provision. The organization of Annual joint AU-RECs summits would provide the opportunity to evaluate the results of building block role of RECs annually.

159. Within the context of the AfCFTA, the framework that determine the sharing of competences in the six areas of policy formulation, policy adoption, implementation, monitoring, evaluation and reporting, resource mobilization and partnerships should be implemented and periodically reviewed to address changing dynamic trading environments. The development of benchmarks defining the alignments and determining the extent to which each REC is implementing AU policies can be used to assess the role of RECs in actualizing and implementing the AfCFTA.

4.4 Concluding Remarks

160. To resolve the challenges related to multiple trade regimes, the AfCFTA's structure, incorporation of variable geometry, differentiated approach, and focus on RECs FTAs as building blocks, appear to signal a normative shift in special and differential treatment away from a "defensive" approach towards a more "affirmative" approach that allows the use of substantive law to advance trade development. Within this structure, the AfCFTA, Article 19 should serve as the basis for the management of multiple trade regimes. Adequate legal interpretation would guarantee uniform applications of laws and bring consistency and certainty in the implementation of the AfCFTA. This requires legal integration of trade policies of Member States to allow the AfCFTA to operate at a supranational level. This is because Article 19 has its limitations. First, trade policy space will continue to be an issue. Second, RECs, as is true of WTO rules, allow for flexibility in domestic regulation within limits.

161. In the AfCFTA, the framework for effective division of labour among the AUC, RECs, member states, regional mechanisms should incorporate "best practices" from across the continent. In addition, member states would need to maintain the flexibility to tailor rules and regulations to particular circumstances at the national levels. It is important to ensure that rules are developed in a balanced, inclusive way and member states with less developed legal systems and weaker bargaining power are not neglected. A better understanding of comparative laws,

diverse regulatory good practices, and practical solutions would be needed. Also Article 4(2) of the Abuja Treaty and the Protocol on Relationship between AU and the RECs need better understanding and the framework for effective division of labour should contain measurable indicators to monitor progress in the AfCFTA implementation. Also, the spirit behind the letters of Article (6) of the Treaty begs for evaluation. Article 28 needs to be revisited to assess how far the RECs have strengthened in accordance with the Treaty intent. A framework agreement is crucial to establish a functional interface between RECs and the AfCFTA to address multiple trade regimes. Therefore, there is need to review and streamline Treaty provisions in order to harmonize and maximize the potential benefits of RECs.

Chapter 5

, the AfCFTA and management of the interface would involve five key stakeholders – the RECs, Africa and foreign governments, the African private sector, consumers and foreign private sector. The fact that the Agreement and the interface will generate costs and benefits calls for a strong advocacy and sensitization strategies.

9.2 Interests and Positions of Relevant Stakeholders in the Regional Economic Communities and the African Continental Free Trade Area

311. The shape of any acceptable interface option is a balancing act between different groups and interests, which exercise various levels of pressure through national or regional channels. Also, important success factor to the implementation of the AfCFTA is the active involvement of private sector stakeholders in the processes starting from negotiation to evaluation. Providing traders and businesses with the opportunity to share views and make suggestions during implementation and evaluation is critical to the achievement of the objectives of the AfCFTA. To some key informants, the private sector at all levels was somewhat passive during the negotiations of the AfCFTA and the role of the private sector is not clearly defined in the agreement.

312. However, the sector occupies a strategic position in the implementation of the Agreement as well as linking RECs-FTAs to the AfCFTA. The basic issues are the determination of the best approach to private sector involvement and participation and design of appropriate advocacy and sensitization strategy. The relevance of private sector made the AU Extra-ordinary Summit in Kigali 2018 to be preceded by AfCFTA Business Forum. The objectives and the expected outcomes of the Forum are documented in Table 23.

313. Similarly, African leaders expressed their political will to engage the private sector in the implementation of the AfCFTA. At another front, the Afro-Champions Initiative was developed as an official platform of exchange between the private sector and African leaders. The initiative involves several advocacy and awareness campaigns and consultations. The private sector members of the Initiative donated US$1 million for the AfCFTA campaigns. To sustain this effort, it is important to ensure that the civil society, micro and small enterprises, even the informal sector participate effectively in the initiative. The Champion is expected to carry out several advocacy and awareness campaigns and consultations for the Agreement implementation.

Table 23: Objectives and Expected Outcomes of AfCFTA Business Forum

S/N	Objectives	Expected Outcomes
1	Furthering the agenda for effectively implementing AfCFTA and Boosting Intra Africa Trade (BIAT).	Develop a clear understanding of AfCFTA and the role it will play as a vehicle for increasing intra-African trade, poverty eradication and deepening integration.
2	Building synergies, linkages and complementarities between the stakeholder groups with interests in AfCFTA.	Establish a symbiotic linkage between AfCFTA and trade facilitation, with a particular emphasis on trade facilitation as a key tool for ensuring successful Implementation of AfCFTA.
3	Ensuring parliamentarians, private sector, and civil society have a better understanding of AfCFTA and its coherence with the African structural Transformation agenda.	Mobilize the power of the private sector to drive Africa's integration.
4	Strengthening the development of a Pan-African platform that facilitates capacity development and harnesses parliamentarians, private sector and civil society contributions to the AfCFTA process.	Develop an enduring partnership between African policymakers and business leaders in Africa's integration.

Source: AU (2018).

314. The creation of a single continental market for goods and services through the AfCFTA, and free movement of business persons and investments can only be possible with a vibrant private sector. By mobilizing and allocating economic resources efficiently, the private sector stimulates productivity, creates wealth, catalyzes job creation and enhances the welfare of citizens. In Africa, the private sector accounts for 80 percent of the total production, two thirds of investment, and three quarters of credit, and employs 90 percent of the working age population. In addition, 90 percent of the firms within the African private sector are small and medium enterprises (SMEs) (UNECA 2018).

315. In SADC, one of the most important principles guiding the Action Plan Framework of RISDP is the acknowledgement of the central role played by the private sector as primary implementers of the industrialization strategy. This is fundamental to promotion of investment, participation and positioning into value chains. It is equally important to note that the private sector is prominently involved in the setting-up of institutional structures or mechanisms to drive, monitor, assess and govern the industrialization strategy. In this regard, initiative such as the Southern African Business Forum (SABF) Operating Model includes accounting, legal and engineering services in professional services as an important subset of business services. In ECOWAS, the Federation of West African Chambers of Commerce (FEWAC) is one of the founding multinational proprietors of institutions like ECOWAS Bank Trans-national, Asky and telecommunication companies which span the economic space of the region. Governments and regional authorities rely partly on the economic activities of the private sector in the region in revenue planning and generation. Corporate taxes and ad valorem taxes on imports from third countries enhance national income. The implementation and financing of regional integration programmes are made possible by the ECOWAS community levy which is a tax on import trade (Nzue *et. al.*, 2012).

316. Moreover, there is a challenge of underinvestment in Africa. Despite being home to 17 per cent of the world's population, Africa accounts for just 2.8 per cent of world investment

stock[71]. To qualify for the preferences and benefits under the AfCFTA, international investors' production should involve sufficient transformation or value-addition in a Member State. When it comes to investors in services sector, their presence should be sufficiently established when they supply services to others. Foreign-based businesses can also benefit from the AfCFTA by linking up with African businesses as long as sufficient value-addition or transformation occurs.

317. The role of the private sector is to mobilize and sensitize their members on the relevance and importance of the AfCFTA regarding bigger market access at the continental level. The sector should also engage and participate by developing positions, on the practicality of the agreement, the relevance and selection of priority sectors, as well as the business implications of increased competition. The sector is in the position to provide Member States with reliable market data for decision making with respect to compliance and implementation matters. Both local and international private sectors have a big role to play in the implementation of all the phases of the AfCFTA. The private sector will be at the forefront of innovation, trade, and investment needed to boost economic growth and job creation in the continent.

318. To a key respondent from RECs, the ultimate beneficiaries of the regional and continental policies and programmes are many establishments that make up the private sector. The sector is a key stakeholder that should be engaged and consulted from formulation to evaluation of the programme. The sector can also be viewed as implementers of programmes. The sector promotes trade relations between Member States through exchanges; provide mechanisms to strengthen value chains; encourages industrial investment and the transfer of know-how through flexible rules. The AfCFTA should not be useful and interesting to only its member states but also to their respective private sector actors. Interventions need to be tailored to the political economy realities on the ground, i.e. taking into account the interests of the key drivers and blockers of trade reforms.

319. Though, issues like gender, youth and SMEs are mentioned in the AfCFTA's principles, the Agreement must chart a new path since real progress in changing the rules would require more than affirmation of support. Incorporating gender equality and recognition of vulnerable groups through the rules would be a notable innovation. As the global COVID-19 pandemic has highlighted, a more robust approach on trade and public health is now critical. In addition, the AfCFTA's "building block" approach to continental integration could leverage regional value chains in order to connect net exporting areas with net importing countries and ensure delivery of needed medicines and supplies.

9.3 Analysis of Advocacy and Sensitization Strategies

320. The development of a responsive interface will require formidable advocacy and sensitization strategies**.** Figure 17 shows the five steps of developing strategies for the management of the interface.

321. The first step is stakeholders' identification and mapping. This involves accurate and comprehensive assessment of the relevance, needs and priorities of vulnerable groups like youths, women and disables, taking into account operating environment, administrative

[71] UNSD 2019, available unstats.un.org/, and UNCTADStat, available unctadstat.unctad.org/

competencies, and resources availability. The second step is planning and development of strategies to keep relevant stakeholders informed of initiative, progress, difficulties and measures contribute to programme success, foster trust and guarantee participation and ownership. This step can involve campaigns to create awareness to relevant stakeholders and the public at large of the rights and benefits of the AfCFTA and the interface. This would involve intensification of dissemination of regular and accurate information on trading opportunities available within the continent.

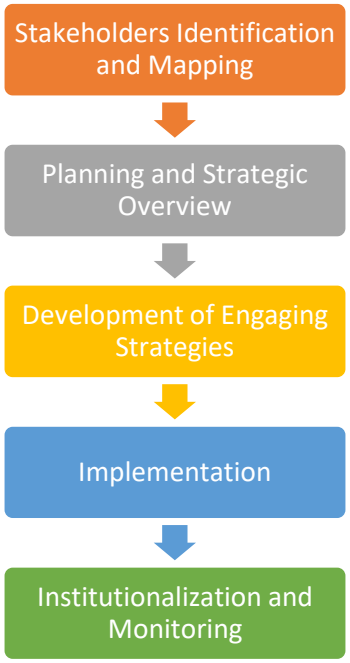

Figure 17: Proposed framework for stakeholders' engagement
Source: Adapted from World Customs Organization (2015)

322. The third step is development of strategies to build partnership through advocacy and sensitization. This is essential to ensure that concerns and views on the AfCFTA and the interface are adequately addressed, and the attendant opportunities are harnessed. To determine appropriate strategies, several lessons can be learnt from the experiences of parliaments and business councils of RECs. The fourth step is the implementation of the engagement activities for the management of the interface. Here, advocacy and sensitization strategies should aim to create or change policies, laws, regulations and measures that affect benefits that ought to be derived from the implementation of the AfCFTA. However, policy change rarely happens overnight. This indicates, effective advocacy will require both long and short terms efforts with different techniques – policy dialogue, campaigns for policy change, and capacity building.

323. The technique of policy dialogue must guarantee a process where all relevant stakeholders are: (i) deeply involved in all processes, (ii) regular consultation with the public sector using public-private dialogue (PPD), (iii) regular consultations of private sector (iv) the provision of part-funding for the implementation of the AfCFTA, (v) presentation of practical expertise for businesses (vi) regular evaluation of the implementation and report-back as a watchdog mechanism.

324. Policy campaigns are goal-oriented mechanisms in which relevant stakeholders set the policy agenda, monitor and respond to decision-making. It draws on a wide range of tools and

tactics, including; letter writing, lobbying, use of media and the internet, and legal action. It is essential, to maintain clarity in communications – goals should be clear and achievable; messages should be compelling for those to whom they are intended; calls to action should be specific and concise. The last advocacy mechanism is capacity development of stakeholders. For instance, business associations would able to advocacy for trade in service liberalization if only they understand what trade in service liberalization entails. Also, right to information will help in increasing the capacity of the relevant stakeholder groups toward effective advocacy. Lastly, leading by example is one of the ways to effective advocacy.

325. Institutionalization and monitoring is the last mechanism of advocacy and sensitization strategies for the management of the interface. This involves the creation of governance structure for the acceptance by relevant stakeholders; and creation of institutions for the management of the strategies. This may involve developing policy document and implementation action plan for relevant institutions. In terms of monitoring mechanism, the periodic publication of Assessing Regional Integration in Africa (ARIA) is one of the existing instruments that helps civil society or individuals that are interested in regional integration in Africa.

9.4 The Advocacy and Sensitization Strategic Framework

326. There are number of steps involved in developing successful advocacy and sensitization strategies. The first step is identification of the policy issues, definition of goals, building of stakeholders' relationship and establishment of Advocates and Champions. The second stage involves analysis of policy environment to identify relevant policies, laws and regulations needed for change. The third involves setting of specific and realistic objectives, identification of target audiences, allies and opponents, selection of the advocacy and sensitization approach, and identification of the key messages. The fourth stage focuses on organizational planning with activities – preparation of an action plan, budgeting, and risk assessment. The last stage is the implementation by getting the message across, using the media, building partnerships and coalitions, employing tactics and negotiation and monitoring and evaluation.

327. Figure 18 shows the advocacy and sensitization strategies framework for the management of the interface. It is structured around two main dimensions – the key stakeholders (x-axis) and the interface activities (y-axis). The key stakeholders are the main actors in managing the interface – the public sector, private sector, RECs and AU. The interface activities involve change management and actions to sustain the interface. These activities are continuum in nature starting with awareness or knowledge building to political will and willingness to take action.

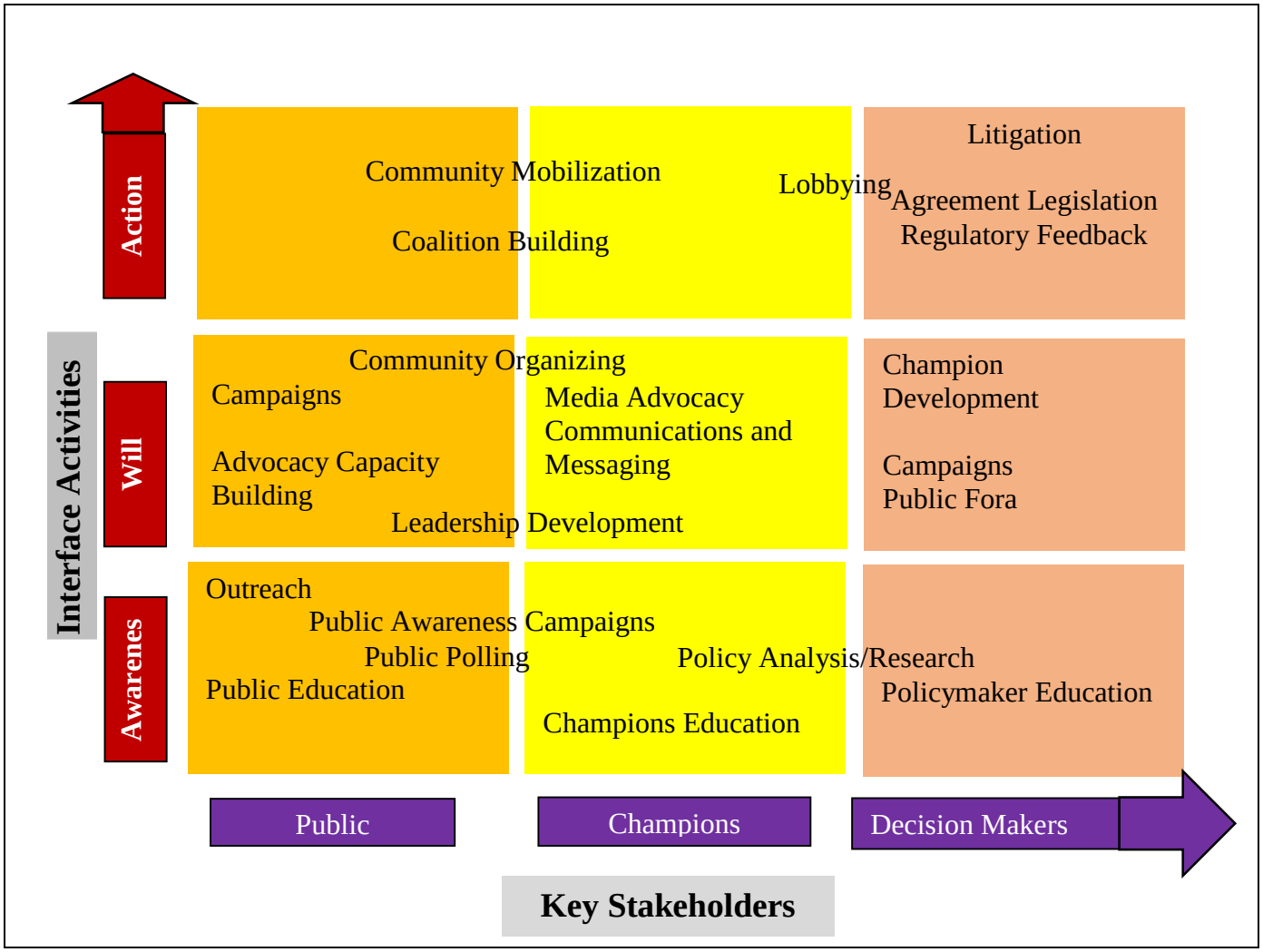

Figure 18: Advocacy and Sensitization Strategic Framework
Source: Adapted from Coffman and Beer, 2015.

328. For advocacy and sensitization, the forms of engagement include; consultation, dialogues, meetings, joint events and activities including regional conferences. Private sector organizations/councils can be invited as observers at meetings given their area of competency. The existing platforms that can be explored for advocacy and sensitization are:

- The African Business Round Table (ABRT),
- Corporative Affairs Council on Africa (CACA).
- ECA AfCFTA Forum
- Consultative Dialogue Framework[72]
- Establishment of a REC-to-REC consultative Forum
- Inter-RECs and Civil society platform
- The African Business Council and other RECs Business Councils.
- Coordination Meeting of the Bureau of the Assembly of the Union
- Private Sector and Civil Society Consultative platforms

[72] https://www.eac.int/gender/civil-society/consultative-dialogue-framework

329. All these advocacy and sensitization platforms can be strengthened with specific implementation of core programmes and projects, development and implementation of continental plan. The development of Continental Business Information System would provide an online mechanism where key stakeholders can share information on available products and market opportunities. The AfCFTA Stakeholders Forum should be sustained and used as a platform for ccommunication, consultations; exchange/dissemination of information. REC to REC forum for collective participation in knowledge sharing is equally important. In terms of advocacy, civil society organisations, media (digital and print) and social media are effective means of communication.

330. Also, the implementation of phase 2 of AfCFTA would require innovation and leveraging technology. There would be need to involve the African Alliance for Electronic Commerce (AAEC). This is the gathering of eighteen Member States to promote and share experience about single window initiatives in Africa. AAEC has guidelines for single window implementation in Africa which will be invariably useful for the implementation of the AfCFTA[73]. More so, the Pan-African Chamber of Commerce and Industry (PACCI) would be useful in the implementation of the AfCFTA as it has focal point for more than 50 chambers of commerce and industry in the continent. It is to serve Africa's business by promoting policies that foster continental economic integration, competitiveness and sustainable growth[74].

331. Sensitization can be organized along three main strategies: (a) enhance public-private dialogue around the AfCFTA and the interface; (b) research and knowledge sharing; and (c) trade and investment promotion. This can be through both print and electronic media, trade fairs and exhibitions, having Business to Business and Business to Consumers platforms and online platforms for exchange of information. Social media platforms are equally important, particularly in targeting the youth. In addition, the interface activities can be streamlined through existing communication channels at the RECs and at the Member States level (Secretariats and Ministries responsible for Trade Matters). Mode of communication can be the AfCFTA implementation tracker/barometer that is publicly accessible with relevant and timely information on the status of implementation of the AfCFTA. It can involve periodic publications such as policy briefs, newsletters and infographics.

9.5 Concluding Remarks

332. The advocacy and sensitization strategies should take into account the interests of all key stakeholders. Best practice principle dictates that the process must be inclusive, transparent and enduring, with concrete inputs accessed from key stakeholders. Another criterion is the effective participation and commitment of key stakeholders in each phase of the AfCFTA implementation and the interface. For advocacy and sensitization strategies, there must be rules of procedure on key stakeholders. The binding criteria are: (1) mutual respect, (2) mutual tolerance, and mutual understanding of roles, strength and constraints; (3) constructive dialogue, positive thinking, and goodwill in cooperation; (d) focusing on common issues of interest and (e) working collaboratively towards the common interest of Africans.

[73] https://www.african-alliance.org/index.php/en/projets-3
[74] https://www.pacci.org/

Chapter 10
Conclusion and Policy Recommendations

10.1 Summary of Findings

333. The main objective of the study is to offer actionable policy recommendations for consideration by AU Member States and RECs with the aim of ensuring coherent and responsive interface among the AfCFTA, RECs and RECs-FTAs. It also provides strategies to leverage trade achievements of RECs for the benefit of the implementation of the AfCFTA. It also draws lessons from successes and failures of RECs-FTAs towards enhancing effective implementation of the Agreement. The key findings and policy recommendations are categorized into four major areas: (a) Understanding and interpretation of RECs as building blocks of AEC and implications on the interface; (b) Relationship among RECs-FTAs, the AfCFTA and the AEC; (c) Building the interface; and (d) Management of the interface.

10.1.1 Understanding and interpretation of RECs as building blocks of AEC and implications on the AfCFTA-RECs FTAs interface.

1) The Abuja Treaty is the bedrock upon which the RECs derive their livewire to build relationship with the AU. It is also the pillar that holds the AfCFTA and the RECs together. Mandates of various RECs are in line with the aspiration of AEC in different dimensions and speed as well as supporting the implementation modalities of some provisions of the AfCFTA. The RECs objectives cover more issues than the AfCFTA, and their priorities differ. The treaties leave big gaps in the operational legal framework. There is no common understanding of key provisions of the Treaty and AEC and this provides room for different interpretations of convenience by key stakeholders. Many RECs have not mainstreamed the Treaty Provisions in their work programmes as they were reluctant to regard the Treaty as part of their legal obligations.
2) There is no common understanding of "RECs as a building blocks of AEC" and Article 5(b) of the AfCFTA. This may serve as a challenge in building the interface as key stakeholders may have diverse expectation of the needs and objectives of the interface. The framework of the Protocol on relationship between AU and the RECs is crucial to the functionality of the interface in the presence of multiple trade regimes.
3) There is the need to recognise the difficulty inherent in the definition and nature of the AU-RECs relationship as it is governed by numerous texts and none of them clearly present definitions of subsidiarity, comparative advantage, regional and continental complementarity. This fact provides room for different interpretation of these principles by various stakeholders.
4) The analysis clearly supports UNECA (2017) findings that RECs can play a building-block role only if there is complementarity among RECs, a commitment to ratify protocols, faster implementation, reduction in length of negotiations and political will. This may be a difficult task because not all the RECs have the same integration goals and performance levels.

334. **Policy Recommendations**

(a) All AU recognised RECs should identify the Abuja Treaty as part of their legal obligations and mainstream the Treaty Provisions into their work programmes;
(b) the AU should encourage RECs secretariat to develop the operational legal framework and implementation modalities of the AfCFTA provisions;
(c) the AfCFTA secretariat should formulate supportive measures to address particular needs of RECs during the implementation of the AfCFTA. These measures should consider socioeconomic realities, and structural deficits of Member States;
(d) the AU should develop "Interpretative Note" for all relevant and numerous texts: The Lagos Plan of Action and the Final Act of Lagos (1980); the Abuja Treaty (1994); the Protocol Relating to the Establishment of the Peace and Security Council (2003); and the Protocol on Relations between the AEC and the RECs.
(e) AU should assess and evaluate the Abuja Treaty to analyse its compatibility with the operations of RECs and the AfCFTA provisions.
(f) AU should provide technical assistance to RECs in the area of understanding and interpretation of the Abuja Treaty, AEC and the Protocol on relationship between AU and the RECs as well as modalities of integrating them into developmental agenda of Member States.
(g) The AfCFTA secretariat should draw up a roadmap for each of the RECs in terms of the Agreement implementation in line with the commonalities of relevant texts. The roadmap would serve as a framework for RECs in defining the activities, objectives and priorities for cooperation in the implementation of the Agreement.
(h) There is the need for an Annual joint AU-RECs summit that would provide the opportunity to evaluate the results of RECs building block role every year.

10.1.2 Relationship among RECs-FTAs, the AfCFTA and the AEC

1) RECs-FTAs are not homogenous entities. They have different provisions and implementation modalities. They were designed and implemented according to the peculiarities of each region. The RECs contribution to the objective of AfCFTA starts with their shared and aligned mandates of increasing intra-trade, and provision of enabling environments for enterprises development and RVA. The performance of RECs in terms of their contribution to intra-African trade differs. The major challenges are; inability to propel domestic production and economic diversification as well as complexity of RECs RoO implementation.
2) Regional trade costs are lowered through reduction in weighted average tariffs, management of NTBs and NTMs and other supportive initiatives. Despite the fact that tariffs declined non-tariff barriers relating to trade costs tend to be more binding than tariffs. Therefore, the concerted efforts of RECs in elimination imports tariffs need to be adequately supported by total elimination of NTBs for a meaningful trade promotion and development. This can provide foundation for the achievement of the AfCFTA objectives.
3) In addition, some RECs engaged in trade in services reform, but it is only EAC that managed to achieve tangible result. The performance is affected by inconsistent commitments of Member States, and non-implementation of regional protocols and decisions.

4) The AfCFTA can be a stepping stone towards the formation and realisation of AEC. This is feasible provided that all key stakeholders take ownership and make concrete commitment to promote its success. Timely implementation of the Agreement requires prioritising the provisions over other international, bilateral, or regional agendas.

335. **Policy Recommendations**

(a) The AfCFTA should operate within the framework of shared sovereignties of member states and coordination and monitoring mechanisms of RECs in the economic and political realms. These entail building synergy of all RECs-FTAs. In addition, the Agreement should have mechanisms to boost production in all Member States through the development of RVC projects, and FTA-induced investment.

(b) The AfCFTA Secretariat should develop monitoring and evaluation system for the Agreement implementation, comprising measures of compliance and outcomes monitoring, as well as impact evaluation at both national and regional levels.

(c) The AfCFTA Secretariat should provide assistance to Member States and RECs in terms of technical, financial, or normative capacities to understand the Agreement provisions and develop implementation mechanisms.

(d) The AfCFTA Secretariat should coordinate the efforts of RECs and Member States in trade in services liberalization by engaging in the harmonization of their schedules of specific commitments for trade in services, and development of appropriate regulatory frameworks.

(e) The AfCFTA secretariat should collaborate with Afreximbank to develop measures that would make RECs and member states to take advantage of the Afreximbank's innovation ecosystem to promote and develop trade in services in Africa.

(f) The RECs and the AfCFTA should form a formidable partnership with the Afreximbank in developing the creative industry space in Africa and the Diaspora by providing financing products, trade facilitation services, to boost export of African movies, music, fashion and other creative works.

(g) In addition, the co-existence of RECs with the AfCFTA should provide the avenue for RECs to use their institutional position to encourage member states to rollback all existing NTBs and to put a standstill to any future ones. There should be a platform for experience sharing among RECs on means and available measures for effective elimination of NTBs.

(h) The AfCFTA and REC Secretariats should engage in the documentation and review of all Trade Remedies procedures and NTBs in order to make them compatible to the Agreement provisions.

(i) The AfCFTA NTBs elimination mechanism should contain six elements comprising; (i) transparency of notification procedures of NTMs; (b) coordination of regional and national NTBs elimination mechanisms with international best practices; (c) elimination of NTBs in Member States; (d) sustainability plan; (e) safeguard measures and development assistance; and (f) standstill and rollback commitments on NTBs by Member States.

(j) The AfCFTA Secretariat should collaborate with RECs and private sector to develop Continental Standard Operating Procedure on Border Agency Cooperation for the implementation of the AfCFTA

(k) The AfCFTA Secretariat with the support of RECs should design instruments to strengthen the achievements of various RECs in preventing members from making commitments or implementing the AfCFTA individually and/or outside of their regional obligations.

(l) AU should engage in gradual rationalization of RECs by addressing the splintered regional spaces, overlapping institutions, duplicated efforts, dispersed resources, and disputes over legitimacy.

10.1.3 Building the interface of RECs FTAs and the AfCFTA

1) In process of building the interface, the AfCFTA Article 19 should serve as the basis rule for the management of multiple trade regimes caused by RECs-FTAs. Adequate legal interpretation of the Article should be the mechanism to foster cooperation and orderliness in the relationship and a way of guaranteeing uniform application of laws. The issue of heterogeneity in terms of asymmetries in size and development mindset of larger countries in RECs may pose a challenge in building the interface. Other challenges like weak enforcement mechanisms, weak institutional capacities, human resources, and the inadequate finance would limit the capacities of RECs to implement the Agreement.
2) In some RECs, there are two dominant legal cultures comprising civil law and common law as well as French and British legal systems. These lead to the existence of monist and dualist legal systems in some regions. The multiple legal systems are impediments to the operationalization of supra-nationalism in RECs as the regional institutions are expected to operate in accordance with the whim and caprice of Member States.
3) The implementation of the AfCFTA will lead to changing patterns and directions of trade in the continent by generating trade creation effect in RECs with lower import tariffs, and give rise to the trade diversion effect in RECs with higher import tariffs. This may be the principal source of rivalries and competition among RECs because of welfare loss. The more protective the REC, the more the possibility of trade diversion. This will generate different interests and positions on how RECs and Member States would participate in the implementation of the Agreement.
4) The relationship between the AfCFTA and RECs would require institutions building that goes beyond the idea of norms and procedures, but should incorporate policy connectedness and networks. Focus should be on how RECs should align themselves in terms of the complementarity of its legal framework, and political decision-making structure

336. **Policy Recommendations**

(a) The AfCFTA should operate at a supranational level for effective implementation. AU Member States should accept to cede sovereignty on trade related matter and allow the AfCFTA provisions to reign supreme over their national laws.
(b) The AfCFTA secretariat should ensure the harmonization and alignment of the regional regulatory framework. To achieve this, AU should collaborate with RECs to include the legal provisions of the Agreement into their Treaties and FTA provisions. RECs should also be charged with responsibility of encouraging their Member States to domesticate the Agreement provisions.
(c) The AfCFTA secretariat with AU should assist RECs to perform their building-block roles in terms of institutions building, policies harmonization and coordination, and financial independence.
(d) The AfCFTA RoOs should be designed in such a way that they would work for REC's Member States at different levels of development. The entire procedure must be automated

and a minimum of 1-year validity of CoO would make it to more business-friendly to enterprises.

(e) The AfCFTA Secretariat should ensure that role assignment to RECs in the areas of NTBs, trade remedies and trade dispute settlements is based on existing capacity and available institutional architecture at the regional level.

(f) AU in collaboration with the AfCFTA Secretariat should develop capacities and skills of all key stakeholders in areas of initiating and conducting trade defence investigations, applying appropriate tools for measurement and institutional arrangement.

(g) RECs should be encouraged by the AfCFTA Secretariat to develop regional implementation strategy through the consolidation of their members' implementation strategies. The regional strategy should reflect the peculiarities as well as status of trade integration in the region.

(h) RECs should align various trade policies to the strategic focus areas of the AfCFTA. This would require careful coordination and administration of the regional FTA provisions as well as a commitment to implement Agreement provisions;

(i) The AfCFTA secretariat should ensure connectedness between policy decisions in AU and at the RECs, as intergovernmental decision-making rests within the same political centres at the continental and regional levels;

10.1.4 Management of the interface of RECs-FTAs and the AfCFTA

1) Effective management of interface would require the exploration of consequences of implementation of the AfCFTA and economic integration of RECs on free circulation of goods, tariff revenue sharing and crafting of RoOs. Key stakeholders' participation and commitments is a vital requirement in managing the interface. The quality of acceptance is a function of the relative size of stakeholders consulted, and the decision-making process at the regional level. The interface should be built around functions and responsibilities**.** Suggested options are (a) RECs can become sub-secretariat of the AfCFTA secretariat; (b) RECs role can be limited to coordination of the AfCFTA activities, (c) REC FTAs can be absorbed into the AfCFTA; (d) RECs role can be limited to customs union management, (e) RECs can be absorbed into the AU Commission.
2) It is established that RECs integration arrangement includes a dominant country, and an asymmetry is introduced which inevitably requires a special decision-making arrangement. Since the RECs do not contain countries which are "equal" in all respects, decision based on "one-country-one vote" or on "consensus" may not work well. Decisions within the AfCFTA and RECs can be by consensus, the AU should consider the appropriateness of "qualified majority voting" (QVM) which weights country votes by relative size (population and/or GDP) at member states level.
3) The forms of advocacy engagement for the interface should include; consultation, dialogues, meetings, joint events and activities including regional conferences. The existing platforms like ABRT, Consultative Dialogue Framework, REC-to-REC Consultative Forum, African Business Council and other RECs Business Councils should be adequately explored.
4) For sensitization, information on the AfCFTA can be streamlined through the respective existing communication channels at the RECs and Member States levels. Mode of

communication can be the AfCFTA implementation tracker/barometer and periodic publications such as policy briefs, newsletters and infographics.

337. **Policy Recommendations**

(a) There should be a close correspondence among national, regional and continental strategies for the implementation of the AfCFTA provisions. The AfCFTA Secretariat should conduct a study on appropriate modalities and mechanism of using BIAT-AP, continental value chain, AU trade facilitation strategies, Pan African Payments and Settlement System and legal integration as instrument to manage the interface. The secretariat should also encourage RECs to develop programmes and projects identified by BIAT-AP. In addition, the RECs should develop mechanisms of mainstreaming the BIAT-AP into development strategies of their Member States.

(b) The AfCFTA secretariat should ensure that the implementation mechanism of the Agreement involves the operationalisation of the Task Force, and early warning system. All these would be laborious at member states and RECs level and would require effective co-ordination and capacity requirements. As a functional requirement, all RECs must be empowered financially and there should be adequate and continuous capacity building.

(c) The AfCFTA Secretariat in collaboration with RECs should develop a monitoring and evaluation system for the AfCFTA implementation, comprising measures of compliance and outcomes monitoring, as well as impact evaluation. The compliance monitoring should involve at least one annual Joint Surveillance Missions to Member States to assess the status of implementation of the AfCFTA provisions;

(d) The AU in collaboration with the AfCFTA secretariat should conduct comparative analysis of African national and regional laws, international law, and other relevant practices and approaches to highlight how the AfCFTA may prompt change in regional and broader international laws. In addition, to address conflict of Laws and Treaties, there may be the need for a study to determine how to create continental law out of a set of fragmented regional legal agreements

(e) The AfCFTA secretariat should recognise all key stakeholders and ensure high degree of transparency in the consultation and negotiation processes. The secretariat should create mechanism useful to private sector to coordinate and harmonize their positions; engage in trade promotion activities; facilitate infrastructure development and ensure compliance with the provisions in the Agreement.

(f) AU in collaboration with the AfCFTA secretariat should develop framework to establish functions of RECs under the Agreement. RECs should sign a cooperation agreement with the AfCFTA Secretary General to consolidate on the roles expected of the RECs as a Third Party in accordance with Article 92 of the Abuja treaty.

(g) Sensitization campaigns should be organized along three main strategies: (a) enhanced public-private dialogue around the AfCFTA and the interface; (b) research and knowledge sharing; and (c) trade and investment promotion. This can be through print and electronic media, Social media, trade fairs and exhibitions, Business to Business and Business to Consumers platforms.

(h) For advocacy and sensitization strategies, the AfCFTA secretariat in collaboration with the private sector should develop rules of procedure on key stakeholders. The binding criteria should be (1) mutual respect, (2) mutual tolerance, and understanding (3) constructive

dialogue and positive thinking, (4) focusing on common issues of the AfCFTA and (5) working towards the common interest of Africa.

10.2 Conclusion

338. There is no doubt that the AfCFTA provides mechanism that would make Africa and African countries to be competitive in international markets. Without effective implementation, Africa markets are likely to remain small and fragmented in global market. The advent of COVID-19 should be regarded as an opportunity of using the Agreement provisions as instruments of economic recovery through trade diversification, and promotion of continental supply chain. Building the interface of RECs-FTAs, RECs, and AfCFTA is an important mechanism for the effective implementation of the Agreement. The interface should be governed by adequate knowledge of key stakeholders' rights and obligations under the Agreement. The REC-FTAs have the potentials to increase intra-African trade and the implementation of the AfCFTA can complement the effort with additional reduction in trade costs and enhanced trade facilitation. Also, all interface options should strengthen the RECs and make provision for an easier convergence. The absorption of RECs FTAs should be a platform of continuous existence of RECs and avenue of making RECs to concentrate and focus on other trade facilitative and supportive roles in which they have the competency.

339. Importantly, there is need to develop framework and modalities for the harmonisation of all operational trade measures in the continent. The AfCFTA secretariat with support of RECs and private sector should address unsupportive trade-related policies and formation of continental value chains. The existing platform of BIAT-AP, Continental Value Chain, AU Trade Facilitation Strategies and various RECs' initiatives should be adequately explored. Finally, there should be mutual understanding of the interface in the context of VCLT to ensure beneficial coexistence.

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Annexes

Annex 1

Method of Analysis

The analysis starts with matching of RECs intra-African trade using import-export similarity measures is undertaken using two alternative measures for degree of commodity correspondence between exports of one region and imports of another region as proposed by Van Beers and Linneman (1988) and applied by Geda and Seid,(2015). The index is an indicator that helps to verify whether the structures of two region economies or continents' products traded are similar or dispersed. The two forms of this index are the Cosign (COS) and Export-import similarity index (EIS). If i and j represents the exporting and importing countries respectively, these indices are given as:

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

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

Where E_{ik} = export of country I in commodity class k
M_{jk} is the imports of country j in commodity class k
k is commodity class 1…, n.

Both measures range between zero and one. An index of zero indicates no correspondence between exports of country i and imports of another country j while an index of 1 indicates perfect similarity. The COS measure is the cosine of the angle between the vector of country i's exports and vector of country j's imports in an n-dimensional commodity space (Allen, 1957). The EIS measure is obtained by summing over all commodity classes of the share of commodity class K in country i's export or in country j's import – whichever of the two is lower. Increasing the number of commodity classes will tend to lower their numerical values. This problem is avoided by considering only the top five import and export commodities of all African countries for which data is available.

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

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

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

Similarly, the share of region i's import in total intra-African imports is obtained as;

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

Similarly, the share of product i in total intra-African exports is obtained as;

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

Similarly, the share of product i in total intra-African imports is obtained as;

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

Where

XS_i = Export share of region I; MS_i = import share of region I; X_i = Export of region I; M_i = Import of region I; P_i = Product I; XSP_i = Export share of product I; MSP_i = Import share of product I; k = number of region, where k ranges from 1 to n; and m = number of products ranging from 1 to n

The share of a country or product obtained ranges from 0 to 1. A share of zero indicate that the respective product is not traded or its share is highly infinitesimal while the closer to one the share is, the higher the dominance of the particular country or product in intra-African trade. Since international trade is dynamic, the economic analysis adopts sequencing of AfCFTA liberalisation programme in three phases: (a) First five years: Standstill period for firms during which no liberalisation is required except tariff lines that are already 0% tariffs; (b) Second five years: Liberalise tariffs gradually by 50% such that 5% tariff becomes 2.5%, 10% becomes 5% and 20% becomes 10%; and (c) Final five years: Liberalise remaining tariffs save the ones under sensitive products of various RECs.

Annex 2

The impact of the AfCFTA on the intra-regional trade is analyzed using the augmented gravity model. The model is based on its solid theoretical foundation and its applicability as a standard empirical framework for bilateral trade Bankole *et al*., 2012, Olayiwola *et al* 2016 , drawing from its consistency with different theories of international trade such as the comparative advantage theories (Richardian, Hescksher-Ohlin), and intra-industry trade (Krugman type differentiated product model) and firm level heterogeneity model (ie. firms differing in productivity by Melitz 2003).

The gravity model for intra-REC trade (imports) is stated as;

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

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

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

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

GDP_{it} is importer i's gross domestic product (GDP) at time t and GDP_{jt} is exporter j's GDP at time t. It is a mass variable used to capture the macroeconomic conditions. It is also to test, in line with the gravity trade theory, how close to unity GDP is.

β_0 is the intercept term.

β_t is the time dummies that account for other time-varying factors that may affect the dependent variable e.g. the GDP per capita, factor endowments, etc.

β_{ij} are the pair dummies that account for time-invariant factors common to the pair, e.g. colony, distance, contiguity and other time-invariant trade costs, etc.

The time range I used is 2000 to 2017. The choice of the start year (2000) is to ensure that all the RECs have been established at that time. The choice of the end year is that it is the most recent year for which most variables, especially tariffs and trade, are available for a reasonable number of countries.

The gravity model for intra-Africa trade is;

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

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

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

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

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

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

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

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

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

$NUMRTA_{ijt}$ is the number of RTAs (within Africa) that country i and j belong to (i.e. the sum of RTA membership of i and j at time t). This is to account for multiple membership of RTAs in Africa.

Other variables retain their definitions.

SCOPE: 2000 to 2017. 55 African countries.

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

Dep.Var: Logged imports	IV-2SLS	IV-GMM(2-STEP)	PPML
LTARIFF	-0.441***	-0.441***	-0.290***

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

Notes: *, ** and *** means significance at 10, 5 and 1% respectively. – means not available. The standard errors are robust to autocorrelation and heteroscedasticity

Number of instruments are consistently kept lower than number of cross sections by dropping 2-year dummies while also testing the consistency of the estimates when different sets of year dummies are used. This strategy also helps to obtain an over-identified model in the IV-GMM equation thus obtaining the Sargan/Hansen statistics. Xtabond2 command in Stata is used. Although xtabond2 is designed mainly for dynamic models, it can also be used for static models with the advantage that Arellano and Bond autocorrelation test are provided (See Roodman, 2009). For the IV-2SLS regressions (using ivreg2 command in stata), each variable was introduced sequentially into the model to test for endogeneity. That is, the dependent variable

was regressed on each potential endogenous variable. In all, the variables were individually and jointly endogenous. Hence IV regressions were prioritized. The instruments – internal instruments used (i.e. lagged values of the variables – see Roodman, 2009) satisfied the necessary conditions. The instrumental variables were strongly correlated with the potentially endogenous variable as indicated by a significant t-statistic and significant F statistic in the first stage regression, an F statistic which always exceeded 10 (in consonance with the rule of thumb). The instruments were also not weak as confirmed by the Cragg-Donald Wald F statistic (2243.713) and the Kleibergen-Paap rk Wald F statistic (1637.496) both in excess of the Stock-Yogo critical values at 10,15,20 and 25% (with values respectively standing at 16.38, 8.96, 6.66 and 5.53).

Annex 3: Coverage of the study instruments

Categories	Actors	Focus
Private sector	Manufacturers' associations Chambers of commerce and industry, economic operators and consumers Civil society organisations	Operators of regional and continental trade.
Public sector	Customs authorities Ministries of trade, agriculture, and industry	Border agencies
Regional Organisations	8 RECs	Departments of trade and customs Umbrella bodies of the private sector
Continental Organisations	AU UNECA AfCFTA Secretariat	Regional Integration Section of the Regional Integration and Trade Division (RITD) Selected negotiators

Source: ECA, 2020

Annex 4: Intra-Africa average NTM protection on selected products

Countries	Cereals	Vegetables and Fruits	Household items and Furniture	Electric and Electronic devices

	MIN	AVE NTM	MAX	MIN	AVE NTM	MAX	MIN	AVE NTM	MAX	MIN	AVE NTM	MAX
Benin	7%	40%	80 %	2%	48%	112%	0%	18%	48 %	0%	46 %	117%
Burkina Faso	0%	33%	85 %	6%	22%	38%	0%	25%	55 %	0%	39%	108%
Cote d'voire	0%	36%	64 %	0%	33%	75%	0%	16%	37%	5%	73%	125%
Ghana	0%	44%	63 %	2%	37%	19%	0%	23%	43%	0 %	59%	115%
Guinea	0%	35%	75 %	0%	25%	107%	0%	18%	47%	8%	69%	94%
Maghreb & Egypt	16%	41%	56%	4%	28%	64%	0%	21%	47%	25%	81%	125%
Nigeria	0%	42%	88 %	21%	38%	61%	0%	15%	47%	17%	65%	99%
Rest of Africa	5%	36%	59%	18%	45%	79%	1%	25%	56%	16%	66%	95%
Senegal	0%	26%	69 %	4%	23%	33%	1%	22%	53%	18%	58%	82%
South Africa	8%	40%	86%	25%	64%	123%	1%	28%	60%	25%	69%	95%
Tanzania	1%	43%	71%	28%	44%	62%	0%	24%	62%	4%	45%	73%

Source: Compiled from Chauvin *et al*., 2015.

Annex 5: Treaties and Protocols Supporting Regional Integration of Regional Economic Communities of Africa

RECs	FTA	CU	Single/ Common Market	Currency Union	Trade in Goods	Trade in Services	Investment	Labour Mobility & Migration
UMA [75]	47	48	49					
CENSAD[76]								50
COMESA[77]	1993, 1975	14,18	13,18,26	16	15, 17	15, 16, 17, 20, 21, 22,23	16, 17, 19,24	15, 17, 25
EAC[78]	1999	2005 (4)	2010 (5)	6	1,5,6	1,5,6,8,9,10	1,5,6,7	1,5,9

[75] 1989 UMA Treaty (47) Article 2; (48) customs union 1995 and (49) common market in 2000

[76] 1998 CENSAD Revised treaty (50) Article 1

[77] 1993 COMESA Treaty: (12) Art.1.2 – Establishment and membership; (13) Ch.3 Art. 3 Aims and Objectives of the Common Market; (14) Ch.3, Art.4.1 In the field of trade liberalisation and customs co-operation; (15) Ch.3, Art.4.2 In the field of transport and communications; (16) Ch.3 Art.4.4a+c In the field of monetary affairs and finance; (17) Ch.3 Art.4.6e In the field of economic and social development; (18) Ch.6, Art.45-46, 62; (19) Art 81 Capital Movement; (20) Ch.11 Co-operation in the development of transport and communications, Art.84-98; (21) Ch.13, Art.106-109; (22) Ch.19, Art.138 'Promotion of Tourism'; (23) Ch.22, Art.148 'Development of Services'; (24) Ch.26. 'Investment Promotion...', Art.158-159; (25) Ch.28 'Free movement of persons, labour, services...' Art.164; (26) Ch. 34 economic community for ESA, Art.177;

[78] 1999 EAC Treaty: (1) Ch.2, Art 7.1.c: Operational principles of the Community; (2) Ch.2, Art.3.1 Membership of the Community; (3) Ch.29, Art.153 Depository and registration; (4) Ch.11, Art.75 Establishment of a Customs Union & Art.77 Measures to address imbalances arising from the application of the provisions for the establishment of a Customs Union and a Common Market; (5) Ch.11 Art.76-7; (6) Ch.14 Monetary and Financial

ECCAS[79]	31,32	30,31,32	31			30,34,35		30, 33
ECOWAS[80]	1993 (37) 1983	39,44,45 2015	37,40	37, 40	37	37, 38,41,42	37,46, 47	37, 41
IGAD[81]								
SADC[82]	1992				27,29	27,29	27,29	27
TFTA[83]	51	52						

Source: ECA, based on review of treaties and protocols

Annex 6: Analysis of Rules of Origin of ECOWAS and the AfCFTA

SN	Indicators	Reference Articles	Complementarity	Differences	Remarks
1	Origin conferring criteria	Article 5 of the AfCFTA Article 16 of ECOWAS Customs Code, and Articles 4-9 of ETLS	1. Both recognise the following criteria: a) Value addition; b) Non-originating material content; c) Change in tariff heading; or d) Specific processes 2.The quantity of local materials is common to both AfCFTA and ETLS	1.Article 15 of ECOWAS Customs Code establishes non-preferential and preferential RoO 2. AfCFTA change of tariff does not indicate level at which the change of position is acquired 3. No exception list in AfCFTA.	In addition to the two main criteria of ECOWAS, the criterion on the specific process was explicitly included
2	Cumulation of Origin	Article 10 of AfCFTA Articles 1-2 of ETLS	They recognize provisions of a) tolerance of values; b) the principle of absorption; and c)the calculation of the values	1.The provision on the cumulation rule not explicit shown in ECOWAS but well detailed in AfCFTA Article 10 2. In the AfCFTA, it is necessary to prove the origin of a State Party and also to demonstrate that the transformation is substantial	This is an issue of utmost importance as ECOWAS is now a custom union Need for an agreed formula for calculating cumulation

Co-operation, Art.82.1.a+c Scope of co-operation; (7) Ch.14, Article 86: Movement of capital; (8) Ch.15 - Co-operation in Infrastructure and Services, Art.89-101; (9) Ch. 17 Free Movement of Persons, Labour, Services, Right of Establishment and Residence Art. 104; (10) Ch. 20 on Co-operation in Tourism and Wildlife Management Art. 115 Tourism; (11) Ch.21 Health, Social and Cultural Activities Art. 117-119.

[79] 1983 ECCAS Treaty: (30) Ch. 2, Art. 4.1-2 objectives of community; (31) Ch.2, Art.6 – Implementation Modalities; (32) Ch.4. Free Trade, Art.27-39 – Customs Union; (33) Ch.5 free movement, residents and right of establishment, Art.40; (34) Ch.9 Infrastructure & Transport Cooperation, Art.47-; (35) Ch. 11 on "Cooperation in Energy...' Art. 54 – 58; (36) Ch.14 'Tourism cooperation' Art.64-66;

[80] 1993 Revised ECOWAS Treaty: (37) Ch.2, Art. 3 - Aims and Objectives; (38) Ch.7, Art.32-34; (39) Ch.8, Art.35 'Liberalization of Trade'; (40) Ch.9, Art.54-55 Establishment of EMU; (41) Ch.10, Art.59 'Migration'; (42) Ch.11, Art.62 'Cultural Affairs.' (43) ECOWAS Vision 2020, (44) ECOWAS Custom Code 2019, (45) ECOWAS-CET 2015, (46) ECOWAS Common Investment Market, (47) ECOWAS Investment code

[81] Article 7 of the Agreement establishing the IGAD

[82] 1992 SADC Treaty: (27) Ch.3, Art.5.2.d – Objectives; (28) Ch.4, Art.7 Membership; (29) Ch.7, art.21 areas of cooperation;

[83] Draft Tripartite Agreement,(51) Article 4(6) and (52) Article 40(1)

3	Special Economic Arrangements / Zones	Article 11 of the AfCFTA Articles 271, 273 and 276 of ECOWAS Customs Code	1.Same special economic arrangements 2.same administrative controls	AfCFTA refers to Special Economic Arrangements / Zones, while ECOWAS refers to Free Zones	
4	The terms "their vessels" and "their factory ships	AfCFTA paragraph 1(h) and 1(i) ECOWAS Customs Code	1.Provision of explicit definition 2.Set criteria for qualification	1.Different criteria and standards 2. AfCFTA recognises African State Party, But ECOWAS recognises only its Member States	There is the need for the harmonisation of definition, criteria and scope.
5	Method for calculating the percentage of added value	Article 1 of the Regulation C/Reg.5/4/02 ETLS			The method for calculating the percentage of added value as well as the threshold is yet to be determined by the AfCFTA
6	preservation of proof of origin and supporting documents	Article 20 of RoOs of ETLS Article 34 of Annex 2 of AfCFTA	Both recognise preservation for at least five (5) years after the completion of the application.	Preservation of records of AfCFTA makes provision for an importer to keep documentation for 5 years, but not explicitly stated in ECOWAS	Needs harmonisation with respect to importers
7	Admnistrative Cooperation And Mutual Assistance Verification Of Proofs Of Origin Penalties	Article 23 of RoOs of ETLS Article 37 of Annex 2 of AfCFTA Article 24 of RoOs of ETLS Article 38 of Annex 2 of AfCFTA Article 26 of RoOs of ETLS Article 39 of Annex 2 of AfCFTA	The same wordings	Difference in scope	
9	Transitional Provision for Goods in Transit or Storage	Articles 179,180 and 181 of ECOWAS customs code ECOWAS ISRT Convention Article 26 of Annex 2 of AfCFTA	Transit is covered by conventional bilateral, community, or international provisions which are of two regimes: Community transit and International transit		Well harmonised

10	Exemption from Proof of Origin	Article 21 of RoOs of ETLS Article 30 of Annex 2 of AfCFTA	Both set the criteria involving small packages and personal use.	1.ECOWAS include criterion of Agricultural and livestock products as well as objects made by hand, but not in AfCFTA 2. While ECOWAS wants National regulation set minimum amount, the AfCFTA set limit of 500USD and 1200USD	Needs harmonisation
11	Dispute Settlement	Article 25 of RoOs of ETLS Article 43 of Annex 2 of AfCFTA	Both recognises the Protocol on Rules and Procedures Governing Dispute Settlement	ECOWAS Community Court of Justice for final settlement while mediation by the Commission. In AfCFTA, the provision of the legislation of the importing country will prevail.	The Modus operandi for dispute settlement needs to be harmonised and explicitly stated with different time bound.
12	Amendment And Review	Article 27 of RoOs of ETLS Article 41 of Annex 2 of AfCFTA	Both make provision for review and possible amendment	1.Different review process 2. Time bound of 3 years for AfCTFA, but none for ECOWAS	The provisions and procedures for amendment and review need to be harmonised
13	Fairs and Exhibitions	Article 31 of Annex 2 of AfCFTA		No provision in ECOWAS	Needs harmonisation

Source: Compiled by ECA

Annex 7: List of other Charges on Imported and Exported Cargos in Nigeria

S/N	Imports	Unit Price (Naira)	Exports	Unit Price (Naira)
1	Documentation Fee	5000	Export processing fee	5000
2	Stamp fee	50	Bill of lading fee	5000
3	CBN Stamp duty	50	Delivery change expenses (Terminal)	4000
4	Shipping agency fee	22000	Line Agency fee (SLAC)	13500-19500
5	CTOC charge	Lump sum	Terminal exp storage laden	lump sum
5	VAT	5% of import duty	Stamp duty charge	50
6	Quarantine fee	N5000	VAT	5%
7	SON fee	N3,675	Renomination charges	lump sum
8	Port expansion fee	7% of import duty		
9	Valuation alert settlement fee	Vary depending on negotiation		

10	Compromise	Vary depending on negotiation		
11	CIU alert	Vary depending on negotiation		

Source: CDTi, 2016

Annex 8: Summary of Trade in Service Liberalization in the EAC

REC Treaty (revised)	Treaty Services Chapters	Protocols	Recent Progress / Implementation	Challenges / Bottlenecks
1999	Ch.11 Art.74 'East African Trade Regime'	Common Market 'free movement...'	• 20 Nov 2009 entered into CM • Ratified by all members. • 1 July 2010 EAC CM launched. • 7 freedoms and rights • sensitize the stakeholders • identify opportunities as well barriers to invest in trade in services. • Abolished fees for work permits. • free movement. • Development of MRAs • Significant cross-border services intensify.	• Relevant legislation and institutional framework not yet in place • Limited follow-up • Absence of coordination of the schedules. • Inadequate resources. • Inadequate consultations with stakeholders. • broad 7 sector with no commitments. • Many Issues to address: (i) domestic law and regulations and Institutional reform. • Implementation of the commitments; • Harmonize domestic regulation
	Ch.15 'Co-operation in Infrastructure and Services'		• signing of a MoU • The MoU identifies 12 areas of cooperation. • The development of harmonised Regulations	• Air transport is yet to be fully liberalised • deeper liberalisation of air transport operations. • Assist the Five MSs in re-certification.
	Ch.17 'Free Movement of Persons, Labour, Services...'		• Free movement of labour • MRAs • East African passport travel documents are accepted.	• modalities for freedom enabling. • Introduction of third generation identity cards. • schedules on free movement of services and workers linkages. • Delinking of the schedule • Harmonize immigration laws
	Ch.20 'Co-operation in Tourism...'			
		Harmonization and Mutual Recognition.	• Annex on Mutual Recognition of Academic (MRA) and Professional Qualifications	• Tuition fees are yet to be harmonised. • Delayed conclusion of the Annex on MRA and

				professional qualification. • Expedite process of developing MRAs.

Source: ECA, based on review of treaties and protocols

Annex 9: Summary of Trade in Service Liberalization in SADC

REC Treaty (revised)		Treaty Services Chapters	Protocols	Tangible Progress / Implementation	Challenges / Bottlenecks
1992		Ch.7 Art.21.b 'Infrastructure and services'	Transport, communications...(TCM) (1996)		• Wide scope of Protocol
		Ch.7 Art.21.c 'Trade, industry, finance, investment...'	Trade, finance and investment (1998)		
		Ch.7. Art.21.d 'Social and human development and special programmes...'	Education and training (1998).		• Difficult process of equivalence, harmonisation and standardization of the education and training system.[84]
			Energy (1996)		• Difficult provision of sustainable energy services
			Development of Tourism (1998)	• Entered into force on 26 November 2002. • "Regional Tourism Organization of Southern Africa" (RETOSA) was established in 1998.	
			Culture, Information & Sports		• Harmonise their policies, strategies and programmes in these fields. 85
		Art.5(2)(dd)	Facilitation of the Movement of Persons		• Difficulty of Free movement of person and business

[84] Source : http://www.sadc.int/index/browse/page/146
[85] Source : http://www.unctadxi.org/sections/DITC/SADC/docs/SADC%20Regional/SADCProtocolonCulture.pdf

			Finance and Investment (FIP)	• Approved by the SADC Summit in August 2006.	• legal basis for regional cooperation and promotion of region as an attractive investment destination.86
			Trade 'Other trade related issues' Art.23 'trade in services' (1996)	• Came into force on January 2000 • Protocol on Trade in Services modelled on the GATS. • 6 specific services sectors identified for priority negotiation. • "Support to SADC Regional Integration and Multilateral Trading System ended in 2007.	• Diverging position on specific schedule of commitment. • Funding challenges • Weak coordination with regulators and private sector. • Limited political will • Risk SADC FTA overtaken by EPA. • consistency between liberalisation of trade in services and the various protocols

Source: ECA, based on review of treaties and protocols

Annex 10: Summary of Trade in Service Liberalization in COMESA

REC Treaty (revised)	Treaty Services Chapters	Protocols	Recent Progress / Implementation	Challenges / Bottlenecks
1994	Ch.11 'Transport and commu-nications'		• Air transport liberalisation; • COMESA Carriers license; • Harmonised Road Transit Charges; • Establishment of a Regional Telecommunications Network[87] • Infrastructure programme tied to the COMESA-EAC-SADC Tripartite agenda.	

[86] Source : http://www.sadc.int/cms/uploads/SADC%20Finance%20and%20Investment%20Protocol%20Brochure%20-%20English.pdf

[87] Source : http://programmes.comesa.int/index.php?option=com_content&view=article&id=42&Itemid=52&lang=en

	Ch.28 'Free movement of persons, labour and services...'	Free Movement of Persons, Labour, Services, Right of Establishment...'	• Adopted and entered into force. • Gradual removal of visa requirements; • Movement of skilled labour and services; • freedom to provide services • 2006-2010: Right of establishment; • COMESA Yellow Card Scheme; • Relaxation of Visa Requirement; • 2014: Right of residence. [88]	• implemented in several stages. • As at the end of March 2010, only four Member States had signed the Protocol:
	Ch.19 'Co-operate in tourism'			
	Ch.13 'Co-operate in the dev.of energy'		The COMESA ENERGY Programme;[89]	
	Ch.20 'Development of Services'		• Bond Guarantee Scheme; • PTA-Reinsurance Company; • Trade and project financing by PTA Bank; • African Trade Insurance Agency; • COMESA Framework for Trade in Services; • Framework for liberalizing trade in services • meetings of the Committee on Trade in Services. • Services negotiating guidelines • 4 priority sectors agreed on. • 3 additional sectors identified. • 7 Member States revised and validated schedules in 4 priority sectors. • complimentary process with specificities of each sector/sub-sector.[90]	• intra-COMESA concentrated among few members. • Strict and cumbersome RoO. • political tensions. • Inadequate capacity • Inadequate policy coherence and coordination • Low prioritisation of integration programs. • Inadequate political will from. • Overlapping membership in the COMESA/SADC/EAC/IGAD region.

Source: ECA, based on review of treaties and protocols

[88] Source: http://programmes.comesa.int/index.php?option=com_content&view=article&id=199&Itemid=125&lang=en
[89] Source : http://programmes.comesa.int/index.php?option=com_content&view=article&id=43&Itemid=53&lang=en
[90] Insurance services are considered to be part of the broader financial services sector, which is one of the priority sectors identified by Member States. Payments, insurance and other financial requirements which affect cross border movement of goods and natural persons in international trade are considered to be a major constraint to intra-African trade (Mburu, 2011).

United Nations
Economic Commission for Africa

Annex 11: Summary of Trade in Service Liberalization in ECCAS

Treaty (revised)	Treaty Services Chapters	Protocols	Recent Progress / Implementation	Challenges / Bottlenecks
1983	Ch.5 'Freedom of Movement...'	Freedom of movement.		• Difficult economic geography and low population density
	Ch.9 'Cooperation in Infrastructure and Transport...'	Cooperation in Transport and Communications.	• the Consensual Transport Master Plan for Central Africa (PDCT-AC • Transport-Transit Facilitation Project • binational railways concessions. • liberalisation of air transport. • regional fibre-optic Central Africa Backbone project • undersea fiber-optic cable resulting	• Surface transportation is slow and expensive due to cartelization and restrictive regulations • Limited road connectivity between CEMAC and ECCAS • Long dwell times • Low levels of passengers and freight traffic. • Poor operational performance of railways. • Air transport market dwindled. • Levels of air connectivity low. • ICT backbone in its early stages. • ICT access rates are low and prices the highest in Africa. • Use of new ICT is still modest. • Roaming far less developed •
	Ch.11 'Cooperation in Energy...'	Energy Cooperation	•	• Least developed power sector • Inefficient utilities in terms of distribution losses and revenue.
	Ch.14 'Cooperation in Tourism'	Cooperation in Tourism	• Development of national parks for tourism.	

Source: ECA, based on review of treaties and protocols

Annex 12: Summary of Trade in Service Liberalization in ECOWAS

REC Treaty (revised)	Treaty Services Chapters	Protocols	Recent Progress / Implementation	Challenges / Bottlenecks
ECOWAS 1975 (1993)	Ch.5 'Energy' ECOWAS Trade in Services Agreement (ETISA) ECOWAS Supplementary Competition Act Ch.7 'Transport, Communication and Tourism	Trade. Trade-related	• Institutional arrangement promotes divergence in policy implementation. • The free movement of	• A variable-speed approach. • Multiplicity of regional groupings • Weak political support and poor coordination • Heterogenous community • Poor funding • The non-ratification and non-implementation.

	Ch.10 'Coop. In immigration'		persons without visa. • Adoption of ECOWAS passport. • Harmonization of trade policy • Implementation far from complete • Not effective in all services areas. • Introducing new regulatory framework.	• Lapses that result in challenges • Compliance with the provisions. • poor regulatory framework. • Involvement of professional associations in regulatory audit.
	Coordinating Committee on Trade in Services ECOWAS Qualifications Reference Framework (EQRF) ECOWAS Mutual Recognition Arrangements in Services			

Source: ECA, based on review of treaties and protocols

Annex 13: Number of Nigeria's Tariff Lines Affected by the Import Prohibition List

Description	Product Description	Total Tariff Lines	Exceptions*	Total Violations
Band 1: Essential social goods (CET 0%)	Medicaments	16	2	14
	Waste Pharmaceuticals	1	1	0
	Sub-total Band 1			*14*
Band 2: Basic raw materials and capital goods (CET 5%)	Poultry	5	-	5
	Bird Eggs	2		2
	Used Compressors	10	10	0
	Used Motor Vehicles*	7	7	0
	Ball Point Pen	1	-	1
	Sub-total Band 2			8
Band 3: Intermediate products (CET 10%)	Refined Vegetable Oil	20	-	20
	Poultry*	7	-	7
	Cocoa Butter	6	-	6
	Fruit Juice	20	-	20
	Soap & Detergents	11	-	11

	Corrugated Paper	1	-	1
	Used Compressor	2	2	0
	Used Furniture	3	-	3
	Glass Bottles	2	-	2
	Foot Wear	20	-	20
	Ball Point Pen	1	-	1
	Sub-total Band 3			91
Band 4: Final consumer goods (CET 20%)	Refined Vegetable Oil	13	-	13
	Poultry*	1	-	1
	Pork & Beef	3	-	3
	Waters	5	-	5
	Soap & Detergents	5	-	5
	Used Compressor	11	11	0
	Ball Point Pen	7	-	7
	Sanitary Wares	6	-	6
	Rethreaded Tyres	6	6	0
	Fruit Juice	20	-	20
	Foot Wear	42	-	42
	Corrugated Paper	6	-	6
	Used motor vehicle	16	16	0
	Used Furniture	26	-	26
	Sugar	4	-	4
	Spaghetti & Noodles	4	-	4
	Bagged Cement	1	-	1
	Mosquito Coils	1	1	0
	Phone Recharge Cards	1	-	1
	Carpets	21	-	21
	Sub-total Band 4			165
Band 5: Specific goods for economic development (CET 35%)	Poultry*	7		7
	Bird Eggs	3		3
	Pork & Beef	28		28
	Refined Vegetable Oil	6		6
	Cocoa Butter	7		7
	Waters	3		3
	Soap & Detergents	11		11
	Sub-total Band 5			65
Total		**399**	**56**	**343**

Source: Olayiwola and Okodua, 2020.
* Exceptions based on WTO and National standards.

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Annex 14: Some of the articles on the protocol on relationship between the AU and RECs

The aim of this Article is to establish a coordination mechanism of regional and continental efforts for the development of common positions by its members in negotiations at multilateral level. *Article 3 (h)* *This article encourages the sharing of regional integration experiences in all fields among RECs* *Article 4 (d) calls for parties to support each other in their respective integration endeavours and agree to attend and participate effectively in all meetings of each other and the activities required to be implemented under the Protocol.* *Article 5 (d)* *Under this article, the AU undertakes to discharge fully its responsibility of strengthening the RECs as well as coordinate and harmonise their activities.* *The institutional framework for the implementation of the Protocol is laid out in chapter 2 of the Protocol.* *Article 6* *Additionally, Article 6 establishes the Institutional organs to facilitate this implementation.* *Article 7 to 10* *This section lists the role players and functions in the relationship of the AU and the RECs.* *Article 15* *This article deals with joint programmes and closer cooperation between the two entities.* *Article 18* *This article establishes status of RECs at AU meetings* *Article 20* *This article deals with the status of the Commission at meetings of the RECs* *Article 22* *This Article empowers the Union to make decisions that bind the RECs.*

Source: ECA, based on review of treaties and protocols

Annex 15: Trade Facilitation Implementation Strategies by AU

AU	Adoption of AU Trade facilitation strategy
	Simplification and harmonize custom and transit procedures amongst member countries
	Formation of one stop border posts
	Regional approach to compliance for security of supply chain
	Customs administration need to modernize ICT systems to streamline border trade
	AU in collaboration with World Customs Organization (WCO), UNCTAD and development partners should engage in capacity building especially in Risk analysis
	Member states to terminate pre-shipment inspection to reduce time to export as per Niamey declaration
	Facilitate SMEs to participate in global value chains and improve compliance to rules and regulations
	Identification, Categorization, resolution and elimination of non-tariff barriers
	Political will as a major concern
	Combatting corruption reviewing success stories- Botswana, Seychelles, Cape Verde

Source: Forum for National Trade Facilitation Committees, 2018.

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