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ARIA IX Key Messages and Policy Recommendations

Chapter I: Status of Regional Integration in Africa

Key messages

- **The historic signing of the AfCFTA Agreement on 21 March 2018 marks a momentous milestone for regional integration in Africa:** The signing provides a strong indication of commitment by policymakers and African leaders to regional integration.
- **Regional integration continues to face a number of challenges:** including limited energy and infrastructure development; security and conflicts; multiple and overlapping membership of RECs; poor sequencing of the regional integration arrangements; and limited financial resources.
- **Monetary integration continues to be actively pursued by five of the eight RECs:** Despite the adoption of convergence criteria in these RECs, all member countries have not sufficiently converged towards similar indicators.
- **Integration in services remains important given its contribution to African GDP growth:** in 2017, over 53 per cent of the continent's GDP came from services.
- **Gradual progress is being made towards the free movement of people:** including the launching of the Common Electronic Biometric African Passport in July 2016 and the adoption of the AU Protocol on Free

Movement of Persons, Right of Residence and Right of Establishment in January 2018; however the latter has struggled to gather country ratifications.

- **A mismatch between available skills and the needs of Africa's labour markets slows down the continent's economic integration and overall development:** deepening of regional cooperation in education, including through the implementation of Africa's Higher Education Harmonization Strategy, can help.
- **Africa's large infrastructure deficit remains a major hindrance to intra-regional trade:** infrastructure financing can be supported through maximising the use of PPPs, tapping into national resources, using regional and global infrastructure development funds, and innovative financing tools.
- **Regional energy integration through power pools can help attract considerable investment in energy.**
- **Africa's governance, peace and security challenges are inextricably linked and are prerequisites to establishing a continental-wide economic space.**

Policy recommendations

- **Much is being achieved in the economic and physical integration of the continent including through important infrastructure projects:** more, however, needs to be done and

will require significant resources, including leveraging PPPs and innovative financing tools

- **Cross-border collaboration in energy trade should be strengthened:** mechanisms for this include regional energy policy frameworks, gas and power pools, and the integration of regional energy markets.
- **Monitoring the implementation of regional integration is critical:** the development of the African Regional Integration Index by ECA in collaboration with the African Union Commission and the African Development Bank is a powerful tool for integration monitoring.
- **African countries must address the ‘crisis of implementation’ on the continent and translate promises made at both the continental and regional levels into actions:** including ratifying and implementing the AfCFTA, the Single African Air Transport Market, peace and security instruments, monetary integration commitments, and the AU Protocol on the movement of persons.

Chapter 2: State of Play on the AfCFTA

Key messages

- **Remarkable progress has been made in implementing the AfCFTA:** 52 of 55 AU Member States have now signed the Agreement. As of March 2019, 19 have ratified. Negotiators have concluded all four Protocols to the Agreement and 10 of the 12 annexes (Trade in Goods Annex 1 on Schedules of Commitments and Annex 2 on Rules of Origin are to be concluded by a July 2019 deadline), marking commendable progress since the launch of negotiations in June 2015.
- **A number of critical technical components need to be finalized before the AfCFTA can be operationalized:** these include a) schedules of concessions for trade in goods, b) rules of origin, and c) schedules of specific commitments for trade in services.

- **The AfCFTA is forecast to have positive welfare benefits for all African countries, without exception:** it is expected to boost total GDP and exports of Africa, and prove a ‘game changer’ in stimulating intra-African trade.

Policy Recommendations

- **The remaining African countries should promptly ratify the AfCFTA without delay** and ensure the continent moves together by greatly exceeding the minimum number of 22 ratifications required for entry into force.
- **Ratification of the AfCFTA must be followed through with effective implementation.**
- **Countries must commit to rapidly concluding the remaining technical work on the AfCFTA** by the July 2019 (for goods schedules and rules of origin) and December (for specific commitments for trade in services) deadlines.

Chapter 3: Taking full advantage of the AfCFTA

Key messages

- To take full advantage of the AfCFTA, countries must buttress its implementation with complementary measures in the areas of investment, production, trade facilitation, trade-related infrastructure, and importation defence.

Policy recommendations

- **Investment in the AfCFTA can be supported through:** a) national investment plans that channel investment flows into sectors that benefit from AfCFTA market liberalization; b) establishing or strengthening Investment Promotion Agencies to attract and facilitate investment, including through “matchmaking” between international and domestic firms, “one-stop-shop” centres for investors, and through measures detailed in the UNCTAD ‘Global Action Menu for Investment Facilitation’; and c) partnering

with other African countries to learn from their experiences and with UNCTAD and ECA for support with UNCTAD Investment Policy Reviews and UNCTAD/ECA Online Investor Guides.

- **A Productive Capacity Development Agenda can support countries to produce the products demanded by the AfCFTA market through:** a) using industrial policy to create a supportive and facilitative overarching enabling environment; b) sector-specific strategies that take a regional approach to value chains development; and c) the AUC Service Sector Development Programme, which seeks to provide a blueprint for the development of competitive services sectors in Africa.
- **Trade facilitation measures can support AfCFTA trade opportunities through:** a) ensuring an effectively designed AfCFTA Non-Tariff Barrier mechanism; b) investing in standards infrastructure and strategically harmonizing standards in sectors with high AfCFTA potential; c) addressing non-tariff barriers through customs cooperation; d) establishing single window systems and one-stop border posts to enhance the seamless movement of goods (and people) across borders; and e) introducing a Continental Simplified Trade Regime, to help small and informal traders gain from the AfCFTA.
- **Trade-related infrastructure can support the opportunities of the AfCFTA through:** a) ensuring effective implementation of the Programme for Infrastructure Development in Africa, and b) using strategic logistics management to align trade facilitation with infrastructure development.
- **Import defence measures can help to manage import competition from the AfCFTA through:** a) pooling resources to establish regional trade remedy institutions at the REC level; b) establishing or reinforcing competition institutions at the regional or continental levels; and c) ensuring that ministries of trade have focal persons to proactively assess likely import implications of the AfCFTA and

monitor customs data for changing import patterns, and host private sector stakeholder platforms to flag import stress.

- **National AfCFTA Strategies** can provide a coherent and strategic approach to towards the use of complementary measures to the AfCFTA.

Chapter 4: The AfCFTA – external and internal challenges

Key messages

- **The AfCFTA aspires towards deeper integration of the African continent:** in particular, with objectives to “create a liberalized market [...] through successive rounds of negotiations”, “lay the ground for the establishment of a Continental Customs Union”, and “contribute to the movement of capital and natural persons”.
- **Care must be taken so that the AfCFTA does not add an additional strand in the African spaghetti bowl of preferential trade regimes,** but instead provides coherence to the trade policy landscape in Africa.
- **The AfCFTA provides a common approach to African trade relations with third partners.**

Policy Recommendations

- **Strengthen the ambition of the AfCFTA over the longer term so that it can consolidate the RECs and realize a Continental Customs Union.**
- **The AfCFTA should be leveraged as a platform for negotiations with the rest of the world** to reinforce a coherent African trade policy, and protect against risks to the vision of a continental customs union.

Chapter 5: Protocol on Investment

Key messages

- **The African investment policy landscape is fragmented:** marked by 854 bilateral

investment treaties (512 in force), of which 169 are intra-African (44 in force). These regimes are overlapping and comprise many “old generation” investment treaties. These treaties, usually enforceable through the Investor-State dispute settlement (ISDS), often contain vaguely defined standards of treatment, are vulnerable to treaty shopping, and lead to uncertainty and serious concerns over their impact on policy space as investors may challenge legitimate State action in international arbitration.

Policy recommendations

- **The AfCFTA Protocol on Investment should be informed by the Pan-African Investment Code and cohere the African investment landscape:** involving predictable, forward-looking and transparent rules to pave the way for further economic integration within the AfCFTA framework. Substantive obligations and dispute settlement provisions need to be revisited and aligned with the developmental needs of African countries as well as other AfCFTA Agreements and Protocols. Emphasis ought to be placed on investment promotion and facilitation, and dispute prevention.
- **Policymakers can seize the opportunity to use the AfCFTA Protocol on Investment as a reference point for future negotiations, and renegotiations, of treaties with external partners:** adopting a common Africa approach in future negotiations can ensure coherence and provide greater negotiating leverage.

Chapter 6: Protocol on Intellectual Property Rights

Key messages

- **Membership by 44 African Union Member States of the WTO has a significance influence on how an AfCFTA Protocol on Intellectual Property Rights can be designed:** the WTO TRIPS Agreement does not provide exceptions for regional preferential agreements, which means that unlike other AfCFTA Protocols,

the benefits of an IP Rights Protocol must be extended to all WTO member states. African countries also differ significantly in their use of TRIPS flexibilities.

- **African countries have different levels of obligations in IP treaties beyond the WTO:** including participation in multilateral IP treaties and commitments arising from bilateral trade agreements.
- **African countries have undergone extensive reforms in IP laws and regulations:** nevertheless, the use of IP rights, as demonstrated by patents and trademarks, is very limited in Africa compared to other regions.
- **Three options are available for regional economic integration in IP rights:** a) arrangements for regional cooperation and sharing of experience on IP rights in general; b) regional filing systems, usually for patents, but also for trademark and industrial designs; c) development of one substantial law or unification of laws for members of a regional organization. Different parts of Africa have experience with all three of these models.
- **Developing one substantive IP regime for 55 African Union Member States would be challenging:** a) it may likely prove overly ambitious to negotiate; b) may undermine existing flexibilities that African countries enjoy in their multilateral and bilateral IP commitments; and c) may conflict with obligations that African countries have committed to in international and bilateral agreements.
- **A Protocol involving only a cooperative framework for IP Rights would miss many opportunities:** including to develop tools for promoting regional integration, non-discrimination between countries with different international treaty membership, and to advance the objectives of industrial diversification and value chain integration.

Policy recommendations

- **A viable AfCFTA Protocol on Intellectual Property Rights could:** a) provide guiding principles for national IP law and policy, as well as engagement of African countries in international IP treaties; b) develop norms to safeguard African interest, including non-discrimination among African countries on matters of IP rights and establishing a regional IP exhaustion system to prevent fragmentation of the AfCFTA market and encourage regional value chain development; c) provide minimum but flexible requirements for the protection of traditional knowledge, genetic resources, and cultural expressions; d) oblige the protection of geographic indicators through either a *sui generis* system or certification and collection marks; e) develop minimum standards on plant variety protection, including on availability, scope of protection, and exceptions to plant breeders' rights and the protection of traditional and new farmers' varieties; and e) develop guidelines on procedures for the enforcement of IP rights.
- **African regional organizations specializing on IP already exist (ARIPO and OAPI):** The Protocol on IP Rights, in its institutional arrangements, should accord observer status to these organizations.

Chapter 7: Protocol on Competition Policy

Key messages

- **Africa's competition regime remains patchy and incomplete:** only 23 countries have both competition laws in force and competition authorities established to enforce those laws; a further 10 have laws but no authority; 4 have competition legislation in an advanced stage of preparation; and 17 have no competition law.
- **Competition policy is a key driver to growth of competitive markets in Africa:** cross-border anticompetitive practices, such as cartels and abuse of dominance, are prevalent

in Africa; competition law enforcement at national, regional and continental level will leverage the fight against such practices, which are detrimental to the growth of competitive markets and to consumers.

- **The proliferation of competition regimes in Africa calls for a continental approach:** in order to consolidate the efforts being undertaken at RECs level such as in EAC, ECOWAS, COMESA, CEMAC and WAEMU, a continental competition regime is timely and a necessary next step; countries which do not belong to these RECs will be included under the AfCFTA framework.
- **The African Competition Forum is a springboard for cooperation on competition matters at continental level:** an informal network established in 2011, comprised of 31 members and five regional competition agencies; it aims to promote the adoption of competition principles in African countries; alleviate poverty and enhance inclusive economic growth, development and consumer welfare, by fostering competition in markets.
- **Consumer Protection can be addressed in the Protocol on Competition:** consumer protection is related to competition and ensures that the benefits that accrue from an integrated African market lead to consumer welfare.

Policy recommendations

- **The AfCFTA Protocol on Competition must provide substantive coverage of the main competition issues:** including anti-competitive agreements, abuse of dominance and merger control.
- **The Protocol can embrace consumer protection through two channels:** a) by addressing unfair trade practices that have consumer protection implications; or b) through a dedicated consumer protection annex, which would allow for a more comprehensive treatment of consumer protection issues.

- **Three enforcement modalities are feasible for the AfCFTA Protocol on Competition:** a) supranational AfCFTA Competition Authority; b) Competition Cooperation Framework; and c) Supranational Competition Authority with a Competition Network
- **Competition protocol dispute resolution mechanisms need specialized adjudication channels:** due to the technical nature of competition cases, a specialized bench within the AU judicial structures is recommended.

Chapter 8: E-commerce in a digitalizing Africa

Key messages

- **E-commerce is likely to be a significant driver and outcome of intra-African trade.** In the public and private sectors, there is increasing adoption of e-commerce platforms; governments deliver services through e-commerce platforms, e-commerce marketplaces aggregate consumer and producer demand as well as trade-related services. Traditional businesses have incorporated e-commerce into their business models and operations.
 - **Opportunities and challenges of e-commerce in Africa interplay with other policy issues:** including the BIAT Action Plan and other AfCFTA Phase II issues (investment, intellectual property and competition policy), data, gender, inclusion, the digital divide, consumer protection, taxation, e-transaction laws, cybercrime, informal trade and digital identity amongst others.
 - **The e-commerce policy landscape is evolving with policies and strategies at regional and national levels.** Cooperation between African countries can prevent the erection of barriers in the digital space through variance
- in regulatory approaches, and inhibit the fracturing of African countries by technology giants.
- **Consistency of rules across the African continent** creates an environment where firms (whether digital or not) can compete fairly, and simplify the rules applicable to cross-border and national e-commerce.
 - **Digital divide gaps in infrastructure and literacy, and disparities in access to and cost of using technologies,** remains a key determinant of the extent to which e-commerce will be adopted, and by extension, function as an enabler of intra-African trade.
 - **An important first step for e-commerce development in Africa is the African Digital Economy Strategy mandated by the AU Executive Council in January 2019.** This Strategy should seek to i) enable AU Member States fully benefit from the fourth industrial revolution, and ii) facilitate the implementation of the African Continental Free Trade Area (AfCFTA), and is intended to be presented to the AU Assembly for adoption in February 2020.

Policy recommendations

- To foster regulatory cooperation on e-commerce, three policy options are identified:
 - i) A holistic African Digital Economy Strategy covering the governance of cross-border e-commerce and related issues;
 - ii) Integrating e-commerce perspectives into existing AU instruments;
 - iii) An E-commerce Protocol as an instrument within the AfCFTA Agreement