

CONCEPT NOTE

Governing the interface between the African Continental Free Trade Area (AfCFTA) and RECs' Free Trade Areas (RFTAs): Issues, Opportunities and Challenges

I) Introduction & Background

Africa's regional integration is often characterized as a mimicry of the European integration experience, particularly the main processes that culminated in the establishment of the European Union (EU). This partly derives from the striking similarities between the structures and processes of the African Union (AU) and EU, including the adoption by the majority of African Regional Economic Communities (RECs), of the linear pattern of integration popularized by the EU.¹ However, in drawing parallels between African integration initiatives and the EU, a very important distinctive feature of Africa's integration is sometimes ignored. This relates to the uniqueness of Africa's economic integration experience brought about by a key provision in the historic 1991 Abuja Treaty that established the African Economic Community (AEC), namely that RECs would serve as the building blocks for the envisioned AEC, whose actualization was to happen in six successive phases, spanning the period, 1994 to 2028. This six-phased approach was intended to ensure that the integration vision should first crystalize at the regional level, through the creation and strengthening of RECs, which would then eventually merge into the AEC².

Alongside the Abuja Treaty, a number of other key frameworks and legal texts contain clear provisions on the relationship between RECs and the AEC, including the historic Lagos Plan of Action (1980); the Constitutive Act of the Africa Union (2000) and the Protocol on Relations between RECs and the AEC (1998). Paragraph I of Article 88 of the Abuja Treaty specifically, states that the African Economic Community would be established mainly through the coordination and harmonization of the activities of RECs and their progressive (or/and) eventual integration into the African Common Market. Since the coming into force of the Abuja Treaty in 1994, various efforts have been deployed both at the continental and regional levels to engender coordination and harmonization of RECs activities with those of the AEC, underpinned by the understanding that the establishment of the AEC is the final objective towards which all RECs aspire (RSA, DECA, 2003). Similarly, the Protocol on Relations between the AEC and RECs, in its Article 5 specifically requires Regional Economic Communities to take steps to review their treaties to provide an umbilical link to the community and in particular, provide: a) in the treaties as their final objective, the establishment of the Community; b) legal links to the Protocol on relations between the AEC and RECs, the Abuja Treaty and the Treaties of the Regional Economic Communities; and c) for eventual absorption, at stage 5 set out in paragraph 2 (f) of Article 6 of

¹ The linear pattern of integration prescribes a progression from Preferential Trade Arrangements (PTAs) and Free Trade Areas (FTAs), through Customs Unions (CUs) and Common markets; to Economic and Monetary Unions and Complete Economic Integration).

² ECA, Key Pillars of Africa's Regional Integration

the Treaty, of the Regional Economic Communities into the African Common Market as a prelude to the Community (Abuja Treaty, 1991)

The consensus around the status of RECs as building blocks of the AEC has presented a range of opportunities for advancing Africa's integration and broader development agenda, including achieving the objectives of both Africa's Agenda 2063 and the 2030 Agenda for Sustainable Development. It has however, also posed a number of challenges, not least the challenge arising from the fact that many of the RECs were in existence, under separate treaties, prior to the signing of the Abuja Treaty (Karangozi, 2012)³ and therefore had developed institutional structures, evolved a dense body of norms, practices and activities that are not necessarily aligned to the prescriptions of the Abuja Treaty. Moreover, the popularity of regional integration on the continent, particularly from the 1990s onwards resulted in the emergence of a blotted number of RECs with the attendant challenges of, amongst others, multiple membership in RECs by countries; overlapping mandates; duplication of efforts, wastage of resources; and various forms of inefficiencies.⁴ As a result, RECs have registered rather mixed results, both in terms of meeting their individual treaty provisions as well as in effectively moving towards the levels of harmonization envisioned in the Abuja Treaty to enable the emergence of the African Economic Community. As a matter of fact, many of the deadlines laid out in the Abuja Treaty's six-phase evolution towards the EAC were either missed or only partially met.

The mixed record of African regional initiatives and the overall slow pace of progress towards the establishment of the AEC, has been the main impulse behind the adoption of a number of measures and steps by African leaders and policy makers geared towards accelerating the continent's integration. Among others, in May 2009, African Ministers of Integration adopted the Minimum Integration Programme (MIP), accompanied by an action plan to accelerate coordination, convergence and collaboration among the Regional Economic Communities towards the ultimate objective of bringing about the African Economic Community. Some of the overarching objectives of developing a MIP for each REC include: intensifying current economic cooperation initiatives and measures to accelerate integration in selected priority sectors or areas; removing, to the extent feasible and agreeable to all Member States, barriers to free flow of goods, services, skilled labour, and free flow of capital; and developing and implementing other measures that would contribute in heralding the essential elements or conditions of an integrated continent that would function as a single market and production base initially for the priority sectors by a certain target date. The programme identified a number of challenges to regional integration such as limited financial resources in the implementation of programmes of the Abuja Treaty. In this respect, three broad sources of funding the implementation of the MIP were proposed, namely, (i) direct contributions

³ In West Africa, is ECOWAS, which was established in 1975; in Southern Africa, there was the Southern African Development Coordination Conference established in the 1980s, which later evolved to the Southern African Development Community in 1992; In Southern and Eastern Africa, there was the Preferential Free Trade Area, created in 1981, which eventually became the Common Market for Eastern and Southern Africa (COMESA) in 1993; in Central Africa, the pre-existing the Customs and Economic Union of Central Africa, was transformed to the Economic Community of Central African States (ECCAS in 1983. IGAD was formed in 1986; AMU in 1989; CEN-SAD in 1998 and the EAC, which was in some sense a rebirth of for former East African Community, was launched in 1999.

⁴ Many RECs have not been able to effectively implement important resolutions and decisions adopted by their policy and decision making organs, partly because of lack of political will, as well as inadequate financial and human resources.

from all or some Member States constituting each REC; (ii) African continent's pooled resources from existing financial institutions; and (iii) funds from external partners. It also articulated a roadmap on how to overcome these challenges.

A year earlier, on 22 October 2008, three of the RECs recognized by the AU – COMESA, EAC and SADC - agreed to commence negotiations for the establishment of a Tripartite Free Trade Area Agreement (TFTA), intended to serve as a building block of the Continental Free Trade Area. Meanwhile on January 2012, the Eighteenth Ordinary Session of the Assembly of the African Union adopted the Action Plan for Boosting Intra-African Trade and the fast-tracking of the Continental Free Trade Area (UNECA/AU, 2012). This Action Plan/Declaration envisioned the finalization of the establishment of the COMESA/EAC/SADC Tripartite Free Trade Area by 2014. It also urged RECs that were not party to the Tripartite Free Trade Area to engage in parallel arrangements similar to those of the Tripartite and to conclude the establishment of Free Trade Areas during the period 2012 – 2014. It envisaged the consolidation of the Tripartite and other Regional FTAs into a continental free trade area to take place between 2015 and 2016; and the establishment of the Continental Free Trade Area was earmarked for 2017 (Luke & Mabuza, 2018:2).

Although the leadership of COMESA, EAC and SADC could not keep to the AU Assembly deadline, partly due to complex and lengthy negotiations, they were nevertheless able to launch the TFTA on 10 June 2015 in Sham-el-Sheik, Egypt. The TFTA comprise almost half of the African countries (27 members), creating a huge single market of about 700 million people with an estimated Gross Domestic Product (GDP) of over USD1.4 trillion. Less than a week later, on 15 June 2015, African Heads of State and Government of the African Union launched negotiations for the establishment of the Continental Free Trade Area. Negotiators accomplished an unprecedented feat in the history of African integration processes by concluding the negotiations in less than three years, and paving the way for the historic signing and launch of the African Continental Free Trade Area Agreement on 21 March 2018.

While the launch of the AfCFTA has been justifiably hailed as constituting a major breakthrough in the long and winding path towards the decades' old dream of an African common economic space, its coming to being has not by any means resolved the litany of challenges and/or contradictions that have characterized African integration. Undeniably, the AfCFTA is a tool for driving African industrialization, economic diversification and development. It has the potential to greatly contribute to the promotion of the type of trade that produces sustainable growth, creates jobs for Africa's youth, and fosters opportunities for nurturing Africa's businesses and entrepreneurs (ECA/AU/AfDB, ARIA VIII, 2017; ECA, Concept Note, ARIA IX, 2018). However, the AfCFTA has been thrust into an already congested African integration institutional and normative ecosystem, and as a result, it appears to have added to, rather than eased its operational complexities.

II) Major Issues and Challenges

A welter of issues and challenges, which go beyond questions of trade liberalization, continue to linger. These issues need to be properly analyzed and addressed in order to smoothen the interface between the AfCFTA and RECs FTAs including the COMES/EAC/SADC Tripartite FTA. Among others:

- Though the Abuja Treaty states that customs unions will be established in each of the RECs, leading to a continental customs union, beyond this declaration on intent, there is no sufficiently clear and shared understanding among various stakeholders about the exact meaning and full implication of the status/role of RECs as the building blocks of the AEC. In particular, the way in which the continental customs union should reflect the arrangements in REC customs unions remains unclear. Furthermore, the role of RECs in the other stages of integration (a common currency and common market) are not sufficiently clarified in the Abuja Treaty or in other regional and continental instruments;
- There is also continued lack of direct umbilical cords between the Treaties/Charters of some RECs and the Abuja Treaty (despite the emphasis placed on this by the Protocol on relations between the AEC and RECs as a way of formalizing the status of RECs as building blocks of the AEC). Moreover, the Protocol on Relations between the AEC and RECs is being revised, partly to cater for the new realities introduced by the AfCFTA, but also to correct some of its perceived weaknesses.
- Although the original mandates of majority of the RECs were on economic integration, these mandates significantly evolved over the years to embrace broader issues of development, as well as governance, peace and security. Therefore, the integration of RECs FTAs and AfCFTA trade agendas may not necessarily translate to the absorption of RECs. In other words, the imperative of consolidating the RECs FTAs and AfCFTA agendas must be pursued in tandem with the necessity to decouple trade from other dimensions of RECs integration agendas and mandates, so that the non-trade aspects of existing REC integration agendas can be preserved;
- Despite the numerous challenges that RECs have continued to face, they have made significant inroads in many areas of integration, including in the area of trade liberalization in which, many have advanced beyond what is provided for in the AfCFTA. Not only are these achievements to serve as lessons to be leveraged, the challenges RECs have faced in implementing their FTA commitments need to serve as lessons for the AfCFTA. A classic case relates to the challenges of implementation that have faced the Tripartite FTA since it was signed.
- Some provisions of the AfCFTA seem to implicitly leave room for its co-existence with RECs, as opposed to outright or/and automatic absorption of RECs FTA's into the AfCFTA. For example, Article 19 of the AfCFTA explicitly states that, where RECs have achieved a greater level of integration than in the AfCFTA, this level of

- integration should be preserved within those RECs and that until integration under the AfCFTA is deepened to surpass this, the REC arrangements will remain.⁵
- The entry into force of the AfCFTA has been accompanied by a flurry of efforts to assist African countries with the development and deployment of national AfCFTA implementation Strategies. It is, however, not evident that these national AfCFTA strategies are synchronized with existing REC level regional trade liberalization strategies. In other words, there is need to work towards the harmonization of national, regional and continental strategies for the implementation of the AfCFTA and other existing REC level trade regimes.
 - While majority of Africa's RECs still operate in the realm of inter-governmentalism, some have progressed significantly towards meaningful levels of supra-nationalism – and in so doing, they have developed levels of agency with a potential to push back against envisaged absorption into broader continental agendas such as the AfCFTA.

III) Rationale

Given the pivotal role given to RECs in the establishment of the AEC by the Abuja Treaty and other continental and regional instruments, it is trite to posit that the successful implementation of the AfCFTA would depend, in no small measure, on how smoothly or otherwise, it is interfaced with pre-existing RECs FTA's. One of the main objectives of the AfCFTA is to accelerate regional and continental integration through the amalgamation or/and consolidation of Africa's multiple and overlapping trading regimes, embodied in pre-existing RECs FTAs, such as the COMESA/EAC/SADC Tripartite FTA. However, some wordings in the AfCFTA Agreement suggest that this relationship is likely to be more complex than originally imagined at the beginning of the AfCFTA negotiations.

In particular, Article 19 of the AfCFTA Agreement, which is intended to help navigate the complexity of the relationship between the AfCFTA and pre-existing intra-African trade instruments, including RECs FTAs stipulates that in cases of inconsistency or incompatibility, the AfCFTA is to prevail over the other trade instruments. However, the same Article 19 makes an important qualifier, when it states further that, RECs which have achieved among themselves higher levels of regional integration, are to retain their levels of deeper integration. Some RECs, individually or collectively, have made great strides in different dimensions of integration, way ahead of what is currently envisioned within the AfCFTA. The ECA's *Assessing Regional Integration in Africa (ARIA IX, Chapter II)* of 2019 notes that the four African Union-recognized RECs that have FTAs have achieved higher levels of integration than the AfCFTA at the time of its entry into force. The report further notes that EAC and ECOWAS have customs unions with fully liberalized trade within the communities, COMESA and the FTA established by the Agadir

⁵ Classic examples here are COMESA and SADC, which have FTAs covering a higher percentage of tariff lines than those included in the AfCFTA. Arguably, unless negotiators decide to have an exclusion list of zero, or the modalities are revised to drop the exclusion list, the COMESA FTA will always have greater integration than the AfCFTA.

Agreement have achieved a fully liberalized FTA, and SADC has achieved an FTA with some exclusions from liberalization.⁶

By safeguarding the achievements (*acquis*) of RECs, the AfCFTA, at least in the short run, inadvertently falls short of fulfilling one of its primary objectives, which is to fully consolidate Africa's fragmented markets into a single regime. As ECA's ARIA IX (2019) puts it, the Agreement allows for the co-existence of a web of connected, yet distinct, trade regimes – which would be consolidated at some later stage. The persistence of multiple trade regimes on the continent even after the coming to being of the AfCFTA and the imperative to subsequently have them consolidated requires some careful and thoughtful management – hence the importance of governing the interface between the AfCFTA and RECs FTA's.

IV) Objectives

It is against this background that the Regional Integration Section of the Regional Integration and Trade Division (RITD) of the United Nations Economic Commission for Africa (UNECA) seeks to carry out in-depth research and write an analytically rich and policy-relevant report on the *governance of the interface between the AfCFTA and RECs FTAs*, including the COMESA/EAC/SADC Tripartite FTA. The overall goal (objective) of this piece of work is to provide member states of the African Union and RECS with concrete policy actions that need to be adopted and implemented to ensure a coherent, coordinated and fully responsive interface between the AfCFTA and RECs FTA's, including strategies on how to leverage the trade integration achievements of RECs for the benefit of the AfCFTA; as well as lessons that could be drawn from areas of failure of RECs FTAs towards enhancing the successful implementation of the AfCFTA. More specifically, the study will among others attempt to:

- Identify and map out potential areas of convergence and tension between RECs trade/services liberalization agenda and AfCFTA; as well as articulate concrete policy actions to member states and other stakeholders to facilitate harmonization of RECs and AfCFTA trade/services agendas.
- Identify key achievements of RECs in the areas of trade and services liberalisation; as well as propose and dissemination of strategies on how African countries should leverage RECs trade integration achievement towards enhancing the implementation of the AfCFTA
- Identify areas of failure or/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.
- Articulate the role of RECs in the African Economic Community beyond the AfCFTA and a Continental Customs Union
- Propose an advocacy and sensitisation campaign strategy to encourage African states, RECs, the African Union and other stakeholders to adopt policies/strategies to ensure coherent, coordinated and fully responsive interface between AfCFTA and RECs FTAs.

⁶ For more insights on this, see ECA, ARIA IX, 2019, Chapter 2

V) Methodology

Political economy is an important consideration in designing any governance architecture. This will necessitate an understanding of the different actors and how they are likely to interact. In this case, many of the main actors are the RECs and their Secretariats.

A questionnaire will be developed to collect data from key players directly involved in the implementation of AfCFTA, such as the Regional Economic Communities; Member States; and various Pan-African institutions.

In addition to the questionnaire, a select number of staff, alongside a consultant will visit the headquarters of the eight AU-recognized RECs for interviews with officials, as well as exploration of relevant official documentation to supplement the responses collected through questionnaires. This would seem to suggest the use of key informant interviews to gather up-to-date information from these participants, which would need to be undertaken via data collection missions due to poor telephone connections. Such data collection missions would also present an opportunity to interview officials from ministries in charge of regional integration (notably ministries of integration and foreign affairs) from the RECs' host countries, who may be an important influence on political negotiations about the role of the RECs in Africa's regional integration.

In addition, given its role in coordinating the AfCFTA negotiations, the African Union would be well-placed to give insights into the political dynamics behind the AfCFTA and its relationship to the RECs. Therefore, interviews with officials from the African Union would also add value to the study. Being placed in Addis Ababa would also give the opportunity to interview Ethiopian Government officials with no additional implications for the project's budget.

Key informant interviews can be supplemented by analysis of key documents (to be collected from RECs and the AU and the through data collection missions) and existing tariff regimes (necessitating quantitative data analysis to determine points of similarity) to examine the compatibility of existing legal frameworks for the RECs and the AfCFTA. It can also be supplemented through findings from previous relevant research (to be uncovered through literature review). Finally, in examining the desirability of various approaches to the REC/AfCFTA interface, quantitative analysis of past and potential economic performance of various REC approaches to trade governance that have not yet been resolved by the AfCFTA (such as rules of origin, for example).

Thus the study will use a combination of qualitative and quantitative research methods, including directly leveraging existing in-house literature on the subject matter; as well as material produced by partner institutions such as the African Union Commission, the African Development Bank (AfDB) and United Nations Conference on Trade and Development (UNCTAD).

VI) Proposed Report Outline with Methodological Annotations

The preparation of the report will be in line with the specifications outlined in this Concept Note, with a focus on a number of issues that would help in providing answers to the questions raised under IV above. Particular attention would be paid to trade-related REC programmes and agreements; trade facilitation; and customs co-operation measures; as well as non-tariff elements of REC FTAs and the prospects or/and challenges of their harmonization with AfCFTA provisions. An annotated outline showing the methodology to be applied for each of the report's sections.

Chapter 1: Introduction

This chapter will provide background to the study, indicating the challenges that the study seeks to address and outlining their importance. The chapter will also provide a brief overview of the material in the rest of the report. In terms of methodology, this Chapter will be drafted based on the content of the concept note for the study and a summary of material included in other chapters of the report.

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

This chapter will provide an overview of the African Continental Free Trade Area and the Regional Economic Communities' Free Trade Areas, highlighting potential areas of overlap, key questions and challenges that will be addressed in subsequent chapters. It will also analyze how various stakeholders have understood and interpreted the notion of RECs as building blocks of the AEC and the implications of this divergent interpretations on the AfCFTA - RECs FTAs interface. This chapter will also discuss the mandates of RECs outside the area of international trade and analyse how these interact with the role of the RECs in intra-African trade. The chapter will also analyze the implications of any proposed absorption of RECs FTAs by the AfCFTA on RECs broader agendas/mandates.

The data for this section will be gathered through data collection missions to the various REC Secretariats to collect information on the provisions of the various REC FTAs and Customs Unions. This will focus on the common external tariffs (CETs) of REC Customs Unions, rules of origin of REC Customs Unions and FTAs and any other elements of REC Customs Unions and FTAs that have not been harmonized by the Agreement Establishing the AfCFTA. The study will then conduct analysis to identify common elements in existing RECs' rules of origin and CETs, in particular by:

In order to find **common elements in existing REC CETs**, it would start with data collection missions to the RECs that would collect data on existing CETs, which would then be analysed to find how similar existing REC CETs are for different tariff lines, to ease the process of finding

relatively ‘quick wins’ where agreement can be reached in transferring elements of REC CETs to the Continental Customs Union’s CET.⁷

In addition, **to find common elements in existing RECs rules of origin (and other non-harmonized aspects)**, data collection missions to request data on rules of origin applied in the different RECs are necessary. While such information may already be available for certain RECs, additional documentation may be required for those RECs applying more complex rules and/or where it is not clear which specific products fall in which categories of rules of origin. The information would then be analysed to highlight for which products the rules of origin are most harmonized across RECs. The aim of this would be to support the process of finding ‘quick wins’ in terms of products for which rules of origin for the continental customs union could be easily agreed on the basis that all RECs already apply the same or highly similar rules of origin for that product. Such analysis could be repeated for other aspects of REC FTAs and Customs Unions that have not been harmonized by the AfCFTA.

This Chapter will also analyze how various stakeholders have understood and interpreted the notion of RECs as building blocks of the AEC and the implications of this divergent interpretations on the AfCFTA - RECs FTAs interface. Data for this section will be collected through key informant interviews conducted through data collection missions on the understanding of RECs as building blocks of the AfCFTA and implications of this for the RECs-AfCFTA interface. This will be supplemented by a literature review. The authors will then analyse this information to understand the implications for this for the AfCFTA- RECs interface

In addition to this, the Chapter will also discuss the mandates of RECs outside the area of international trade and analyse how these interact with the role of the RECs in intra-African trade. The Chapter will use data collection missions to collect data on all trade-related REC programmes and agreements, aside from the application and implementation of their FTAs. The report will then analyse to what extent these programmes will still be valuable to maintain at REC level in spite of the abolition of their FTAs.

The Chapter will also analyze the implications of any proposed absorption of RECs FTAs by the AfCFTA on RECs broader agendas/mandates. This section will be based on an analysis of information collected for the other sections of this chapter and insights from key informants regarding this question.

CHAPTER 3: The political economy of the relationship between the RECs and a continental system of integration

⁷ Depending on the amount of time and resources the study has, this exercise could be limited to looking only at tariff lines at a level of aggregation that is comparable across CETs (e.g. 6, 8 or 10-digit HS codes); or if there is sufficient time, the study could conduct the exercise at the individual tariff line level and attempt, where possible, to match up tariff lines from the different tariff systems.

This chapter will analyse the key political economy challenges faced with regard to absorbing RECs and their FTAs into a Pan-African trade regime defined by the AfCFTA. In particular, it will examine:

- a) Where have RECs' treaties included a link to the African Economic Community, where they have not, why they have not done so, and how this can be addressed?
 - Here the study will use data collection missions and online research to collect the texts of the RECs' treaties and will then analyse them. This will be supplemented by key informant interviews during the data collection missions, supplemented by literature review, to understand why REC treaties have not included links to the African Economic Community where they have not done so, and how this can be addressed.
- b) What are the interests and positions of key actors within member states with regard to the absorption of the RECs' FTAs into the AfCFTA, and how can these be addressed?
- c) What are the interests of the REC Secretariats, to what extent will they be able to resist efforts towards absorption into the AfCFTA, and how might this be addressed?
- d) To the extent that this is necessary, how can the role of the RECs in the AfCFTA best be negotiated among concerned stakeholders?
 - Information for the sections *b*, *c* and *d*, will be gathered through key informant interviews conducted during data collection missions and in Addis Ababa and supplemented by literature review. This information will be then analysed by the authors to provide the basis for proposed recommendations.
- e) Finally, what could constitute a consensus understanding or/and definition of the notion of RECs as building blocks of the African Economic Community?
 - This section will be based on analysis of information included in other sections of the Report, notably Chapter 2

CHAPTER 4: Resolving the challenges of multiple trade regimes: Whose rules should apply in the context of the AfCFTA?

This Chapter will look at the challenges posed by the fact that the AfCFTA allows for REC FTAs to continue to exist where these offer a deeper level of integration than those of the AfCFTA. In particular, it will address the questions of:

- a. **How should a 'deeper level of integration' referred to in Article 19 of the AfCFTA be understood?**

- This section will first attempt a legal analysis of how the ‘deeper level of integration’ referred to in Article 19 can legally be interpreted, seeking guidance from the Office of the Legal Counsel of the African Union, interviews with officials present in the negotiations when the issue was discussed and review of any explanatory notes that were adopted by the negotiating forum in conjunction with the text. To the extent that there is ambiguity in the meaning following the legal analysis, the section will argue that the interpretation of ‘deeper integration’ in Article 19 should be based on which interpretation would best support Africa’s development goals.
- This interpretation would appear to be consistent with what AfCFTA negotiators intended in adopting the text as adopting this understanding of ‘deeper integration’ provides a clear rationale as to why negotiators would have wanted to include this provision in the AfCFTA. In particular, by allowing REC-level arrangements that promote deeper integration as ‘better integration’, the AfCFTA avoids inadvertently undermining development within these RECs (and by extension, Africa overall, since they are part of Africa) by outlawing such REC-level arrangements.⁸ So under this

⁸ This argument is based on the idea that allowing each REC to apply the trade rules (REC rules/AfCFTA) that will best support the development of that REC (without taking into account spillovers on other RECs) is the best way to interpret Article 19 to support Africa’s development. It is important to discuss two potential concerns that could be raised about this idea at this stage, namely: a) interpreting Article 19 to allow each REC to pursue greater integration when it is better for its development may not be best approach for Africa overall because of potential negative spillovers; and b) the type of integration that is best for development may not be in any sense ‘deeper’ than the AfCFTA (if the AfCFTA has gone too far/been too ambitious) in which case ‘deeper integration’ and ‘better integration’ would be inconsistent. These issues are addressed below:

- Point a) takes issue with the idea that allowing RECs to continue to pursue REC-level agreements if and only if they further development of their member countries better than would application of AfCFTA rules to intra-REC trade, is the best approach for overall African development. It does so by arguing that there may be negative spillovers on the rest of Africa from each individual REC applying deeper integration if and only if that is best for it; alternatively, it can be argued that the proposed approach could discourage RECs from pursuing greater integration with the rest of Africa. However, it would be difficult to quantify such negative spillovers and find a way to measure deeper integration that balances such negative spillovers with positive effects for the overall REC; though techniques such as computable general equilibrium modelling could be used, these could be contested by member states, especially since results are often sensitive to modelling assumptions. Therefore, to the extent that it is a reasonable assumption/approximation of reality that allowing individual RECs to maintain REC-level integration when it is better for their development is best for Africa overall, it may be necessary to stick this assumption to the extent that it is not technically or politically possible to go beyond this assumption with a more nuanced analysis of the effects of different approaches on overall African development. Moreover, ex-ante, there are both forces in favour of negative spillovers (trade diversion, greater competition undermining industry in the rest of Africa) and positive spillovers (income effects leading to greater demand for exports from the rest of Africa, greater development meaning that the rest of Africa can benefit from better imports from the region in question). Moreover, the concern that allowing deeper integration in individual RECs would undermine integration at the pan-African level would appear to now be less relevant as the terms of integration and level of ambition in the modalities under the AfCFTA are already fixed, so it is too late for this to have much of an effect, at least on the AfCFTA. Finally, it would seem that any interpretation of Article 19 would carry risks of negative spillovers on the rest of Africa; this interpretation would seem more likely to support development in the RECs to which it is applied, and there would seem to be no reason to expect it to have a higher risk of worse negative spillovers than any other interpretation of Article 19, and therefore would seem to be more likely to best support overall African development.
- Regarding point b) above, it would seem that deeper integration is beneficial for African development and that there would be no conflict; arguments to this effect are summarized in ARIA VIII, ECA (2018) and elsewhere in the literature.

approach, REC-level arrangements will be preserved if and only if they further Africa's development goals better than would the rules of the AfCFTA at intra-REC level.

- But how exactly are we to understand and assess whether REC arrangements achieve 'deeper integration as better integration' for the purposes of interpreting Article 19? The section will discuss some of the different concepts, measures and proxies that could be used to assess whether a REC FTA has achieved 'deeper integration as better integration' for the purposes of implementing Article 19.
- This analysis can be supplemented by data collected through key informant interviews conducted during data collection missions and in Addis Ababa on which of the approaches may prove politically feasible.⁹

b. How can trade regimes be harmonized to bring down the costs of regulatory compliance while preserving deeper integration achieved in REC FTAs in the context of the AfCFTA?

⁹ Some initial considerations that could be presented in this section are as follows:

- The type of integration that best furthers Africa's development goals is complex, but a good proxy would be the type of integration that best promotes intra-African trade in value-added, which should be the same as the type of integration that best contributes to African GDP. Though it ignores important aspects, other considerations (such as the level of manufacturing exports) may depart too far from the term 'deeper integration' to be consistent with the original text of Article 19. Data on this is available for 118 countries via the World Bank's World Integrated Trade Solution, for years up to 2011.
- Yet it is not currently possible to know whether the REC-level arrangements achieve 'deeper as better' integration than applying the AfCFTA's rules for intra-REC trade, since the AfCFTA is yet to be implemented.
- As a result, it may be necessary to wait until the AfCFTA has been implemented to see whether it promotes better integration than rules of existing RECs.
- Though other approaches could be used to immediately address the dilemma as to whether REC FTAs should remain (e.g. assessment of whether integration is better based on tariff-based measures of REC FTAs), they would appear to be inadequate for assessing which of the REC-level FTA or AfCFTA rules would be best to apply to intra-REC trade for a particular REC. As such, it would appear risky to apply such criteria in assessing whether a particular REC-level FTA should be preserved, because they might recommend its removal (on the basis of it having shallower integration) when in fact it contributes more to development than would applying AfCFTA rules to intra-REC trade. For example, one might consider analyzing what proportion of trade, or what proportion of tariff lines, is liberalized under the REC FTA versus what proportion would be liberalized under the AfCFTA, or what the average applied tariffs on intra-REC trade would be compared to under AfCFTA rules. But if the tariff offers under the AfCFTA liberalize some goods that are not liberalized under a REC-level agreement but do not liberalize others that are liberalized under the same REC-level agreement, it would not be clear which out of the REC-level agreement or the AfCFTA rules would be more beneficial for development, as the impact of tariffs on trade varies from good to good and the impact of trade in a particular good on production and development also varies from good to good. Another potential option would be to weight tariffs by the value added embodied in traded goods; but this may also be inadequate, again because different goods are more or less inelastic in response to tariffs and a trade regime with lower average applied tariffs weighted in this way may still be less good at promoting value-added trade if the highest tariffs are placed on the most elastic goods, and vice-versa. Attempting to assess the effects of different regimes on integration ex-ante would involve CGE modelling that, while a good and accepted methodology, could be highly contested by member states, especially since the results are often sensitive to the assumptions chosen. Even if either the AfCFTA rules or REC agreement is 'at least as liberal' on all tariff lines and more liberal on some, it would not be possible to say that it represents better integration as substitution effects between different traded goods could mean that a more liberal trade regime could in fact result in lower trade in value-added.

- This section will first examine non-tariff elements of REC FTAs, since non-tariff elements could (in theory) be harmonized in the context of the AfCFTA without undermining the deeper integration of more integrated FTAs. In particular, it will first briefly recap the insights from Chapter 2 regarding where RECs are already applying similar rules in their FTAs and customs unions (aside from tariffs) which should make it easier to agree harmonized rules for all AfCFTA members. In addition, for rules of origin, the section will attempt to analyse what approach to rules of origin would be most beneficial across Africa. In particular, it will look at the rules of origin applied in different preferential trading regimes from which Africa benefits (using data collected for Chapter 2 on REC rules of origin and supplementing with preferential trading arrangements offered by non-African partners, to be obtained online). This will be compared with how much Africa has been able to export under such regimes (using trade data from ITC's TradeMap database, Eurostat or USITC, which all provide data disaggregated at the 8 or 10-digit level, or UN Comtrade). Cases where Africa has been unable to export certain products under preferential trade regimes may indicate that rules of origin were 'too ambitious', at least under current trade and industrial policies.
 - This section also checks these suggestions against the provisions of existing REC FTAs and customs unions, to highlight how far African countries may agree with such measures on the basis that they are already applying them at REC level.
- c. To the extent that there are cases where trading under the AfCFTA would be more advantageous for traders in individual sectors (despite a 'deeper level of integration' having been achieved at REC level) should traders be given a choice between trading under AfCFTA or REC FTA rules?**
- This section will be based on key informant interviews conducted during data collection missions and in Addis Ababa. This will be supplemented of a review of the relevant literature on multiple trade regimes where traders have the choice between multiple such regimes, to weigh the benefits of this. Conclusions from Section a, of this Chapter that are relevant to this section will also be recapped.

CHAPTER 5: The role of the RECs in addressing non-tariff barriers and dispute settlement in the AfCFTA

REC FTAs and the AfCFTA include a number of measures towards addressing non-tariff barriers. These include mechanisms for reporting and addressing such barriers, as well as measures for customs co-operation. This Chapter will analyse the questions of who should be responsible for monitoring and removing NTBs between members of the same REC FTA that are also AfCFTA parties, through formal NTB mechanisms, customs co-operation and transit trade facilitation, inter alia. In addition, in the case of trade disputes between two countries that are members of the same REC and parties to the AfCFTA, there will be a question as to which dispute settlement regime will be applied. In this regard, the Chapter will analyse the strengths and weaknesses of the various REC dispute settlement regimes and make recommendations on this basis.

Methodologically, this section will be based on key informant interviews conducted during data collection missions and in Addis Ababa, as well as data to be collected during those missions on the extent of non-tariff barriers and trade disputes and mechanisms to resolve them at REC level and in the AfCFTA. This will be supplemented of a review of the relevant literature on non-tariff barrier and dispute settlement mechanisms in Africa. It will also include a review of comparative empirical literature on the governance of mechanisms for resolving non-tariff barriers and trade disputes. The details of current practice in Africa (within the RECs and as foreseen in the AfCFTA) will be compared with recommendations from the literature.

CHAPTER 6: The RECs, the AfCFTA and the Continental Customs Union.

This Chapter will analyse the question of whether it is still practical to follow the course charted by the Abuja Treaty in establishing customs unions in each of the RECs before building to a continental customs union. In particular, it will argue that, rather than seeking to establish customs unions in each of the RECs, and using these as building blocks of the continental customs union, it will be more effective to negotiate directly on establishing a continental customs union. In particular: in some regions (such as North Africa) regional negotiations are stalled, making the prospects for a regional customs union remote; further, the success of the AfCFTA shows that trade negotiations at the pan-African level are possible, even when negotiations at sub-regional level are blocked.

With respect to methodology, this section will be based on key informant interviews conducted on data collection missions and in Addis Ababa which will interview key informants on the practicability, costs and benefits of establishing REC-level customs unions before moving to the Continental Customs Union. The authors will analyse information collected from these missions to build to recommendations.

In addition, the Chapter will conduct quantitative analysis designed to determine an optimal ‘common external tariff’ for the Continental Customs Union as well as comparing the advantages and disadvantages of quickly moving towards a continental customs union.

To make this determination, data collection missions will be used to collect data that would be needed to analyse the best approach to the common external tariff optimal tariffs for individual African countries vis-à-vis the rest of the world. This could be used to update the analysis in ECA (2017) but treating Africa as a single unit rather than analyzing tariff structures for individual African countries (as was the case in ECA, 2017) to identify key inputs of the continent’s industrial sector that are not exported by the continent’s countries (and for which tariffs would need to be lowered). In addition, the chapter would identify industrial products that are exported by African countries but also imported from outside the continent, as candidates for ‘regional import substitution. Highly-disaggregated trade data, for example from International Trade Centre, Eurostat, USITC and Japan and China’s trade statistics could be analysed to identify these products. The report would emphasise that this quantitative analysis would need to be

supplemented by national consultations that would be beyond the scope of this study.¹⁰ Finally, the Chapter will review theoretical and empirical literature on trade liberalization and customs unions, especially in developing countries and include computable general equilibrium analysis comparing the impacts of moving to a Continental Customs Union as compared to governing Africa's trade with the AfCFTA and current arrangements vis-à-vis the rest of the world.

CHAPTER 7: The role of the RECs in the African Economic Community beyond the Continental Customs Union

This Chapter will consider the other stages of integration foreseen in the Abuja Treaty, namely monetary union, common market and economic community. Building on insights from the previous chapters, it will assess the potential role of the RECs in these kinds of arrangements. In particular, it will draw on lessons from regional groupings that have pursued deeper integration than a customs union in Africa, such as CEMAC, UEMOA, WAEMU in terms of monetary union and the EAC in terms of the elements of a common market that it has adopted.

Data for this chapter will be collected through key informant interviews held during the data collection mission to EAC and in meetings with the African Union, key stakeholders in Addis Ababa and telephone interviews with staff from the ECA sub-regional offices. These will seek to understand the approaches taken by CEMAC, UEMOA, WAEMU and EAC that go beyond the customs union stage of integration where elements of a common market have been adopted, and assess how well they have performed. In addition, interviews will be conducted with the African Organization for Standardization to understand the role of standards and regulations in promoting intra-African trade and the costs and benefits of a pan-African versus regional approach. This will be supplemented with a review of the empirical literature on these more advanced stages of regional integration, both within Africa and beyond, to examine whether different approaches to those already used in the RECs may be more successful.

CHAPTER 8: Conclusion and policy recommendations

This chapter will bring together conclusions and recommendations from the previous chapters. It will seek to outline a blueprint for the role of the RECs in African integration, both in the context of the AfCFTA and as the continent moves towards an African Economic Community.

This chapter will summarise and synthesise insights from the previous chapters and draw overall conclusions.

¹⁰ The reason for such consultations would be to check whether recommendations from the aforementioned quantitative analysis to force 'regional import substitution' in a particular product category would have a negative effect on African economies if non-African goods in a particular category carry important advantages.

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