

CONSOLIDATING THE AFRICAN CONTINENTAL FREE TRADE AREA

Portrait of a Common Market

Francis Mangeni and Seth Omondi Gor

(Editors)



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Acronyms

AAAM	African Association of Automotive Manufacturers
AAEC	African Alliance for Electronic Commerce
AB InBev	Anheuser-Busch InBev
ACAP	African Conformity Assessment Programme
ACI	Airports Council International
ACPMO	African Common Position on Migration and Development
ACSD	AFRIMETS Capabilities and Services Database
ACTReF	African Continental Technical Regulatory Framework
ADB	Asian Development Bank
ADF	African Development Fund
AEC	African Economic Community
AEC	ASEAN Economic Community
AERC	Africa Economic Research Council
AfBC	African Business Council
AFCAC	African Civil Aviation Commission
AfCFTA	African Continental Free Trade Area
AfCHPR	African Court on Human and People's Rights
AfDB	African Development Bank
AFRAA	African Airlines Association
AFRAC	African Accreditation Cooperation
AFRIMETS	Intra-Africa Metrology System
AFSEC	African Electrotechnical Standardization Commission
AfSEM	African Single Electricity Market

AGLI	African Great Lakes Initiative
AGOA	Africa Growth and Opportunity Act
AIDA	Accelerated Industrial Development of Africa
AIIB	Asian Infrastructure Investment Bank
AIM	ASEAN ICT Masterplan
ALLPI	Africa Leather and Leather Products Institute
AMRII	African Multidimensional Regional Integration Index
AMU	Arab Maghreb Union
AMV	Africa Mining Vision
APLAC	Asia-Pacific Laboratory Accreditation Cooperation
APM	Arnold Peter Møller
APRM	African Peer Review Mechanism
AQAC	African Quality Assurance Centres
AQP	Africa Quality Policy
ARII	African Regional Integration Index
ARSO	African Organisation for Standardisation
ASCM	Agreement on Subsidies and Countervailing Measure
ASEAN	Association of Southeast Asian Nations
ASQ	Air Service Quality
ASYCUDA	Automated System for Customs Data
AUC	African Union Commission
AUDA	African Union Development Agency
AVOI	African Visa Openness Index
AWPEC	ASEAN Work Programme on Electronic Commerce
BASA	Bilateral Air Service Agreement

BBC	British Broadcasting Corporation
BIAT	Boosting Intra-African Trade
BIPM	Bureau International des Poids et Mesures [International Bureau of Weights and Measures]
BIT	Bilateral Investment Treaty
BLA	Bilateral Labour Agreement
BMW	Bayerische Motoren Werke [Bavarian Engine Works]
CAADP Programme	Comprehensive African Agricultural Development
CAB	Conformity Assessment Bodies
CAF	Corporación Andino de Fomento [Development Bank of Latin America and the Caribbean]
CAFTA	Central America Free Trade Agreement
CAGR	Compounded Annual Growth Rate
CAM	Common African Market
CAN	Comunidad Andina [Andean Community]
CAP	Common African Position
CCIA	COMESA Common Investment Area
CECPA	Comprehensive Economic Cooperation and Partnership Agreement
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale [Economic and Monetary Community of Central Africa]

CEMACMET	Economic and Monetary Community of Central Africa
Metrology Cooperation	
CEN-SAD	Community of Sahel–Saharan States
CEO	Chief Executive Officer
CET	Common External Tariff
CGE	Computable General Equilibrium
CGPM	Conférence Générale des Poids et Mesures [General Conference on Weights and Measures]
CIPM	Comité International des Poids et Mesures [International Committee for Weights and Measures]
CJEU	Court of Justice of the European Union
CMC	Calibration and Measurement Capabilities
CMP	Common Market Protocol
CMS	Common Market Scorecard
CO ₂	Carbon Dioxide
CO _{2e}	Carbon Dioxide-equivalent
COMESA	Common Market for Eastern and Southern Africa
COVID-19	Coronavirus Disease 2019
CPP	Container Port Performance
CSR	Corporate Social Responsibility
CTG	Committee on Trade in Goods
CUEA	Catholic University of Eastern Africa
CUZ	Catholic University of Zimbabwe
DACBA	Drink African Coffee Build Africa
DC	District of Columbia
DDS	Digitally Deliverable Services

DFC	United States International Development Finance Corporation
DFID	Department for International Development
DIFAP	Digital Integration Framework Action Plan
DP	Dubai Ports
DPA	Data Protection Authority
DR	Dominican Republic
DRC	Democratic Republic of the Congo
DSB	Dispute Settlement Body
DSM	Digital Single Market
DSM	Dispute Settlement Mechanism
DTA	Domestic Trade Area
DTS	Digital Transformation Strategy
EA	European Accreditation
EABC	East African Business Council
EAC	East African Community
EACJ	East African Court of Justice
EAMET	East African Metrology Programme
EAPCC	East African Portland Cement Company
EC	European Commission
ECA	United Nations Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECIPE	European Centre for International Political Economy
ECLAC	Economic Commission for Latin America and the Caribbean
ECOSOC	Economic and Social Council
ECOQUAL	ECOWAS Quality Policy

ECOWAS	Economic Community of West African States
ECOWIC	ECOWAS Common Investment Code
ECS	Extended Continental Shelf
ECX	Ethiopian Commodity Exchange
EEA	European Economic Area
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EGDI	E-Government Development Index
EPA	Economic Partnership Agreement
EPC	European Policy Centre
EPZ	Export Processing Zone
ETLS	Economic Trade Liberalization Scheme
ETTIM	Economic Development, Tourism, Trade, Industry, Mining
EU	European Union
EV	Electric Vehicle
FAL	Convention on Facilitation of International Maritime Traffic
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FMP	Free Movement of Persons
FTA	Free Trade Agreement
G2G	Government to Government
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product

GGDP	Green Gross Domestic Product
GHG	Greenhouse Gas
GI	Geographical Indication
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit [German Corporation for International Cooperation]

GMV	Gross Merchandise Value
GNP	Gross National Product
GSMA	Global System for Mobile Communications Association
GT	Gross Tonnage
GTI	Guided Trade Initiative
GTMI	GovTech Maturity Index
GVC	Global Value Chain
HA	Harmonized System
HCI	Human Capital Index
HE	His/Her Excellency
IAAC	Inter-American Accreditation Cooperation
IACO	InterAfrican Coffee Organisation
IAF	International Accreditation Forum
IATA	International Air Transport Association
IATF	Intra Africa Trade Fair
ICAI	Independent Commission for Aid Impact
ICBT	Informal Cross-Border Trade
ICC	International Chamber of Commerce
ICE	Internal Combustion Engine
ICO	International Coffee Organization

ICT	Information and Communication Technology
IDDA III	Third Industrial Development Decade for Africa
IEC	International Electrotechnical Commission
IFC	International Finance Corporation
IFGR	Initiatives for the Future of Great Rivers
IFPRI	International Food Policy Research Institute
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Drought and Development
IIA	International Investment Agreement
IIT	International Investment Treaty
ILAC	International Laboratory Accreditation Cooperation
ILO	International Labour Organization
IMF	International Monetary Fund
INetQI	International Network on Quality Infrastructure
IP	Industrial Park
IP	Intellectual Property
IPRs	Intellectual Property Rights
ISDS	Investor-State Dispute Settlement
ISO	International Standards Organization
ISP	Internet Service Provider
IT	Information Technology
ITC	International Trade Centre
ITU	International Telecommunication Union
IUU	Illegal, Unregulated and Unreported
IWOSS	Industries Without Smokestacks

IXP	Internet Exchange Point
JIS	Just-In-Sequence
JIT	Just-In-Time
JMA	Joint Management Area
JSI	Joint Statement Initiative
KAZA TFCA	Kavango Zambezi Transfrontier Conservation Area
KCDB	Key Comparison Database
kg	kilogram
KILM	Key Indicators of the Labour Market
KIP	Kenya Investment Policy
KPI	Key Performance Indicator
KQ	Kenya Airways
LAC	Latin America and the Caribbean
LDC	Least-Developed Country
MAGMET	Maghreb Metrology Network
Mercosur	Mercado Común del Sur [Southern Common Market]
MFN	Most-Favoured-Nation
MHT	Medium and High Technology
MLA	Multi-Lateral Arrangement
MoU	Memorandum of Understanding
MPFA	Migration Policy Framework for Africa
MRA	Mutual Recognition Agreement [or Mutual Recognition Arrangement]
MS	Member State
MSME	Micro, Small and Medium Enterprise

MT	Metric Tonne
MVA	Manufacturing Value-Added
NAB	National Accreditation Body
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NaTReF	National Technical Regulatory Framework
NCM	Non-Conforming Measure
ND	No Date
NEPAD	New Partnership for Africa's Development
NEWMET	North-East and Western Africa Metrology Programme
NMI	National Metrology Institute
NPA	National Planning Authority
NQP	National Quality Policy
NRI	Network Readiness Index
NSB	National Standards Body
NTB	Non-Tariff Barrier
NTFC	National Trade Facilitation Committee
NTM	Non-Tariff Measure
NTT	Nippon Telegraph and Telephone
NYBOT	New York Board of Trade
OAU	Organisation of African Unity
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OEM	Original Equipment Manufacturer
OMVS	Organisation pour la Mise en Valeur du fleuve Sénégal [Senegal River Basin Development Authority]

O-RET	Ocean-Renewable Energy Technologies
OSI	Online Service Index
PACCI	Pan-Africa Chambers of Commerce and Industry
PAIC	Pan African Investment Code
PAP	Pan-African Parliament
PAPSS	Pan-African Payment and Settlement System
PAQI	Pan-African Quality Infrastructure
PAU	Pan African University
PAVM	Partnerships for African Vaccine Manufacturing
PDC	Ports Development Company
PIDA	Programme for Infrastructure Development in Africa
PIN	Personal Identification Number
PIQAC	Programme d'Infrastructure de Qualité pour l'Afrique Centrale [Quality Infrastructure Programme for Central Africa]
PPP	Public-Private Partnership
PSRO	Product Specific Rules of Origin
PTB	Physical and Technical Barrier
PVC	Polyvinyl Chloride
Q&RI	Quality and Regulatory Infrastructure
QI	Quality Infrastructure
QIS	Quality Information System
QMV	Qualified Majority Voting
R&D	Research and Development
RDTII	Regional Digital Trade Regulatory Integration Index
REC	Regional Economic Community
RIA	Regional Integration Agreement

RKC	Revised Kyoto Convention
ROI	Return On Investment
ROO	Rules Of Origin
RORO	Roll-On/Roll-Off
RTA	Regional Trade Agreement
RVC	Regional Value Content
SAARC	South Asian Association for Regional Cooperation
SAATM	Single African Air Transport Market
SABMiller	South African Brewing-Miller
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCMET/MEL	SADC Cooperation in Legal Metrology
SC	Subcommittee
SCA	Specialty Coffee Association
SCTIFI	Sectoral Council on Trade, Industry, Finance, and Investment
SDG	Sustainable Development Goal
SDIA	Sustainable Digital Infrastructure Alliance
SEA	Single European Act
SEZ	Special Economic Zone
SG	Secretary General
SIDS	Small Island Developing States
SME	Small and Medium Enterprise
SMS	Short Message Service
SMS	Single Market Scoreboard
SOAMET	Secretariat for Metrology of the Economic Community of West African States

SOLVIT	Effective Problem Solving in the Internal Market
SPS	Sanitary and Phytosanitary
SPV	Special Purpose Vehicle
SQAAM Metrology	Standardization, Quality Assurance, Accreditation and Metrology
SQAMT	Standardization, Quality Assurance, Metrology and Testing
SRMO	Sub-Regional Metrology Organization
SSA	Sub-Saharan Africa
SSS	Short-Sea Shipping
STC/TTIM and Minerals	Specialized Technical Committee for Trade, Tourism, Industry and Minerals
STISA	Science, Technology and Innovation Strategy for Africa
STR	Simplified Trade Regime
TBT	Technical Barriers to Trade
TC	Technical Committee
TEU	Twenty-foot Equivalent Unit
TFA	Trade Facilitation Agreement
TFEU	Treaty on the Functioning of the European Union
TFWA	Trade Facilitation West Africa
TIA	Trade and Investment Agreement
TII	Telecommunications Infrastructure Index
TMA	TradeMark Africa
TMPA	Tanger Med Port Authority
TOAM	Trade Obstacle Alert Mechanism

TR	Technical Requirement
TRALAC	Trade Law Centre
TRAPCA	Trade Policy Centre in Africa
TRIM	Trade-Related Investment Measure
TSA	Tourism Satellite Account
UCDA	Uganda Coffee Development Authority
UDAO	Union Douaniere de l'Afrique Occidentale [West African Customs Union]
UEMOA	Union Economique et Monétaire Ouest Africaine [West African Economic and Monetary Union]
UMA	Union du Maghreb Arabe [Arab Maghreb Union]
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UNU	United Nations University
US	United States
USA	United States of America
USTR	Office of the United States Trade Representative

VAT	Value-Added Tax
VICMED	Establishment of a Navigational Line between Lake Victoria and the Mediterranean Sea
VNOM	Value of Non-Originating Material
VW	Volkswagen
WB	World Bank
WCO	World Customs Organization
WDI	World Development Indicators
WEF	World Economic Forum
WFP	World Food Programme
WIPO	World Intellectual Property Organization
WSC	World Shipping Council
WTO	World Trade Organization
WTTC	World Travel and Tourism Council

Introduction

Francis Mangeni

The African Continental Free Trade Area (AfCFTA) aims to create a single continental market out of the 55 disparate African countries, to address the binding constraint of small sized economies and tap into economies of scale, and to enhance the global agency of Africa. It represents deep integration, covering goods, services, competition, investment, intellectual property, digitalisation, women and youth, and dispute settlement. Its negotiation started in June 2015, and its constitutive Agreement was concluded and opened for signature in March 2018, under three years. Trading under the AfCFTA commenced on 1 January 2021, two years later, despite the interruptions occasioned by the COVID 19 pandemic. In October 2022, through the Guided Trade Initiative, the AfCFTA regimes were demonstrated and proved to actually work, as consignments were exported and imported using the AfCFTA documents and processes.

The AfCFTA has been making progress by leaps and bounds. Remarkably, from two individuals in April 2020, that is the pioneer Secretary General (Wamkele Mene) and his Special Assistant (Paul Okech), the Secretariat has grown to a hive of activity, bustling with energetic young people at an average age of 45 years. It should not be lost to observers that the AfCFTA started off in the midst of the COVID 19 pandemic, when Africa and the world largely dragged to a halt, through drastic restrictions on social activity and border closures. But through sheer grit particularly on the part of Government officials and Secretariat staff, the preparatory work was completed for the AfCFTA to take off and commence operations. The Council of Ministers, the Committees and Subcommittees were activated through inaugural meetings and work programs and got down to the substance of the AfCFTA, completing the outstanding negotiations, commencing trade, and demonstrating the workings of the AfCFTA through the Guided Trade Initiative. Capacity building, awareness creation and analytical work on the AfCFTA, for smart evidence-based policy, continued unabated. Ratifications continued to grow, standing at 47 State Parties as of June 2024 out of the 55 African Union

Member States. Strong partnerships were built on the continent and across the world. Through visibility, a clear and sustained narrative, tireless agency, and affection at the highest political levels, the international stature of the AfCFTA grew exponentially over a relatively short period of time. Its preeminent relevance to Africa's priorities is unquestionable. Mention of Africa on what matters is now rapidly and regularly complemented by mention of the AfCFTA. All this progress against all odds demonstrates ownership of the AfCFTA by stakeholders in the public, private, academic and civil society sectors. A fair assessment, then, is that prospects for the implementation and consolidation of the AfCFTA are good.

Implementation entails signature, ratification, domestication, compliance, utilisation, continuous learning and improvement as well as settlement of emerging disputes. Universal signature, that is, signature by all the 55 Member States of the African Union, is an end in sight; with only one Member State, Eritrea yet to sign the Agreement. Universal ratification as well, is an end in sight, with only eight Member States to go, as of June 2024. Outreach to these countries continues. Domestication, compliance and utilisation have been demonstrated through the Guided Trade Initiative and other trade that is happening on the continent under the AfCFTA; and through adoption of the AfCFTA national strategies and establishment of national implementation committees. The Initiative brought to light the utter importance of pre-emptive mechanisms for solving hitches in trade, through close working relations between the Secretariat and the countries, and close working relations among the regulatory authorities particularly the customs and standards authorities as well as the chambers of commerce. Such learning will continuously be factored into the AfCFTA for improvement.

Consolidation of the AfCFTA, as a strategic step forward, means that all this progress be harvested and made eternal or at least to permanently and irreversibly shape the economic geography of Africa. The AfCFTA should appropriately be a foundation for taking the key next steps along the continental integration trajectory, which has been codified in the Abuja Treaty. The next milestones are the continental customs union, which was to be established in 2019, and the Common African Market, to be established in 2023 and consolidated over the five years to 2028. The AfCFTA already has the core elements of a Common Market, namely, free movement of goods, services, persons and capital or investment through its Protocols on Goods, Services and Investment. It additionally has Protocols on Competition,

Intellectual Property, Digital Trade and Women and Youth in Trade. As such, it is a foundation for the Common African Market, a landmark in continental integration to be formed as envisaged in the Abuja Treaty. Consolidation of the AfCFTA therefore means that it be projected as evolving into the Common African Market, going forward. Its programs and activities should be conceptualised and implemented progressively as common market programs towards eventual free movement of goods, services, persons and investment, and rights of establishment and residence.

Structure Of The Book

The book is organised in three parts. Part I demonstrates how the AfCFTA has the basic elements of a common market, namely, free movement of goods, services, persons, investment and capital, as well as the rights of establishment and residency through its Protocols on goods, services which includes movement of persons, and investment. Part II then delves into the essentials of a Common African Market in contemporary times, for promoting resilient economies and societies, taking into account the other AfCFTA Protocols particularly on intellectual property, digitalisation, competition, women and youth in trade, and dispute settlement. Part III sets out pathways forward, being both strategies and critical success factors.

Part I – The AfCFTA as a Foundation For The Common African Market

The chapters in **Part I** address the basic elements of a common market, as contained in the AfCFTA architecture, namely, the four freedoms of movement of goods, services, persons and capital.

Chapter 1 introduces the critical issues of the customs union and common market. A matter of immense strategic importance at this point in time in the history of Africa's continental integration is whether to start work on a continental common market, that is the Common Africa Market, using the African Continental Free Trade Area (AfCFTA) as a foundation, or whether to transition to a customs union. According to the timelines for continental integration set out in the Abuja Treaty (Article 6), the period 2023 to 2028 is for the establishment and consolidation of the Common African Market. The features of a Common Market include: free movement of goods, services,

labour and capital, as well as the rights of establishment and residence. These features already have a boost in the AfCFTA Protocols, which provide the key starting elements for a continental common market on which to build through implementation and consolidation in the areas of free movement of goods, services, persons and investment, as well as establishment and residence. The Protocols' coverage of other important areas like competition policy, intellectual property rights, digital trade and women and youth in trade offer a framework for coordination and harmonization needed in a common market setting.

Chapter 2 addresses the aspect of the movement of goods. It examines the structure of trade in goods under the African Continental Free Trade Area (AfCFTA), arguing for a more ambitious tariff reduction scheme for the AfCFTA. It introduces the Guided Trade Initiative (GTI) as a means to increase trade and calls for creating trading and aggregating companies that give the AfCFTA a 'visible hand.' The chapter also proposes the AfCFTA Connect (Aggregators Network) framework, highlighting its key functions, elements, and mechanisms, as well as its legal framework. Overall, the chapter emphasizes the need for practical initiatives to fully unleash the potential of the AfCFTA.

Chapter 3 addresses movement of services under the AfCFTA. The World Bank projects that most gains under the AfCFTA will be derived from trade in services. However, restrictiveness in the upper levels of trade in services would contribute to a lag in the growth of the overall services trade. The EAC and EU common markets experiences indicate that policy initiatives such as mutual recognition of professional/education qualifications, standards and training, harmonization of policies, and establishing a monitoring and evaluation mechanism have all enhanced in the trade in services. These can be considered as critical interventions to enhance intra-African trade in services under the Common African Market.

Chapter 4 addresses movement of investment and capital. Leveraging the full benefits of Foreign Direct Investment (FDI) can contribute to the social, economic and industrial development of countries. Evolving and streamlining commonalities in African investment laws and policies at the continental level can enable African States achieve higher economic growth and sustainable development through enhancing economic integration, transfer of technology, access to capital and boosting productivity and industrialization. These efforts

will strengthen linkages for the common market, increasing cooperation and deepening value chains across Africa.

To reach the aspirations of the African Union Agenda 2063, a better alignment of incoming foreign investment with the needs and priorities in the national development plans of African countries is required. Increasing the focus on boosting foreign and intra-Africa investment that is responsible, sustainable and respects human rights would increase the appeal of Africa as a favoured investment destination, as well as encourage investments to cater to local needs. Adopting responsible investment practices offers an immense opportunity to catalyse and accelerate socio-economic development in Africa, while making the continental economy more competitive on the global market.

The promotion of responsible investment in Africa will depend on how effectively national and continental investment laws, treaties and policies are able to integrate sustainable development components, including inter alia, human rights and environmental standards, and harmonize them for all actors in the build up to the Common African Market. Many developing countries, including in Africa, have recently engaged in the revision and modernization of their national investment laws and international investment agreements. These efforts have contributed to the development of a more equitable international investment framework. Though the trajectory is positive, much remains to be done to deepen and expand the adoption of such reforms. The AfCFTA provides the foundation for a shift to encouraging quality intra-African investments, thus manifesting the common market freedom of free movement of investment and capital, to be achieved via increased intra-Africa investment flows and regulatory harmonization.

This chapter considers the efforts taken in developing the AfCFTA and its Protocol on Investment, and how it will support continental economic integration as well as the alignment of national and continental investment regimes towards sustainable development and realizing the Common African Market.

Chapter 5 is on movement of labour and persons. Common markets entail the free movement of labour, and in some cases the free movement of persons. As Africa and its regions head towards free trade agreements - and later common markets and perhaps a single one - the question of how to move forward on the movement of persons arises. This paper contextualizes Africa in global history and argues that pathways to reform differ widely in time and space.

Africa and its regions cannot treat the history of migration reform as a textbook; rather, it is a compendium of ideas. Some of these ideas - derived from African experiences and from the rest of the globe - may help policymakers make their way towards an Africa without barriers for its people. African policymakers should engage each other, and experts across the continent, to achieve greater understanding of African achievements and setbacks, and to agree on viable pathways forward for the freedom of movement of Africans in Africa.

Chapter 6 is on financial integration as an important pillar of a common market, which facilitates a single market for capital for businesses to access vital needed financial resources from investments and savings in the market regardless of where they are located. An integrated financial market therefore provides businesses with a greater choice of funding at lower costs as well as offers new opportunities for savers and investors. A simple model derived shows that the growth rate of per capita income rises with total factor productivity (Solow residuals), the effective-saving rate, and declines with the depreciation of capital-labour ratio. Given that the Solow residuals, include factors such as financial development (technology) the model also conclude that expansion in financial development leads to a rise in per capita income. The paper recommends that financial integration of the markets and institutions in Africa requires clearly defined long-term development; recognition that minimum harmonization and reform of regulatory frameworks, cross-border financial activities require reform of public administration, particularly regarding tax treatment, banking and insurance legislation, and joint supervision of securities markets; and commitment to fiscal harmonization and economic coordination.

Part II – Pillars Of A Modern Common African Market

Having considered the elements of a Common Market as reflected in the AfCFTA, **Part II** turns to complementary pillars that would promote structural transformation, and resilient economies and societies within the common market. This part underscores the importance of regional value chains, trade facilitation, special economic zones, industrialisation, digitalisation, quality infrastructure, transport, green and blue economies, inclusive trade and social corporate governance.

Chapter 7 takes the coffee regional value chain as a case study. Coffee plays a major role in the economy of African countries, contributing significantly to foreign exchange earnings and to the monetization of the rural economy. However, Africa is yet to realize the full potential of this crop, especially as the African coffee sector is underperforming by many statistical indicators. The coffee sub-sector in Africa is still encumbered by a number of interrelated structural constraints along the value chain, especially those pertaining to low farm-level production and productivity, lack of value-addition infrastructure, and access to affordable finance. Worse still, these challenges have been further aggravated by pandemics and regional conflicts, together with the changing weather conditions caused by climate change. Meanwhile, it is important to note that the coffee sector still holds a key that could unlock Africa's inclusive growth and prosperity because of the abundant opportunities that exist. For instance, the creation of the AfCFTA offers a great opportunity to accelerate the expansion of the coffee trade at the regional level, promote domestic consumption, and strengthen economic integration and structural transformation. Therefore, as the continent with the youngest population in the world, the restructuring of the coffee value chain in Africa should be a priority with the involvement of youth and women, combined with adequate investment in value-addition infrastructure.

Chapter 8 considers rules of origin and trade facilitation as enablers of manufacturing and industrialisation. Generally, AU Member States see economic growth as being achieved through manufacture and the associated trade in goods and services. Manufacturing is dependent on efficient supply chains that allow just-in-time (JIT) and just-in-sequence (JIS) deliveries directly onto the production lines, allowing the use of modern manufacturing techniques and reduced inventory levels. The AfCFTA introduces two components that should allow investors and existing manufacturers to introduce efficiencies in manufacturing processes that could make manufacturing in Africa more efficient and allow the production of more globally competitive manufactured products. The first of these components is the comprehensive package of trade, transport and transit instruments that are described in the Annexes to the AfCFTA Protocol on Trade in Goods. The second component is the introduction of the process of cumulation in the rules of origin between AfCFTA members, which allows a manufacturer in one country to source component parts originating in one or more AfCFTA countries free of duties and use them in the manufacturing process to manufacture a final product that can then be sold free of duties in all other

AfCFTA members. Not only does the AfCFTA expand the market for goods made in Africa, but it also provides an incentive for both local and foreign direct investment.

If the use of goods and components made in Africa could be leveraged through the cumulation provisions of the AfCFTA, manufacturing would become more efficient and significantly contribute to African economic growth, thereby improving the quality of life for Africans.

Chapter 9 deals with special economic zones as dedicated frameworks that support industrialisation. While the Africa Continental Free Trade Area (AfCFTA) already establishes that goods manufactured within Special Economic Zones in Africa (SEZs) will be subject to Rules of Origin (ROO), Member States are still negotiating on the conditionalities under the ROO that will help a fair integration of SEZs. Positions communicated by Member States have been polarizing. Against a background of the continental disarray on treatment of zones, this paper refers to different country experiences and analyses the various dimensions that need to be harmonized to integrate SEZs under the AfCFTA. It furthermore investigates the one common denominator of differentiation amongst zone and non-zone enterprises: export-related incentives. It recommends three ways through which Africa should treat SEZs under ROO in order to minimize the conflict and competition between SEZ-based enterprises and enterprises of domestic trade areas: (i) duties levied on imports originating from each other's economic zones (ii) differing treatment of export-oriented enterprises and non-export-oriented enterprises to accessing ROO, and (iii) compulsory technology variable input for goods produced by zone enterprises.

Chapter 10 deals with the political economy of a continental industrial policy. A key objective of the AfCFTA is to promote industrialization through the creation of regional value chains (RVCs). While there is broad agreement on the need for African economies to industrialize, capture greater added value domestically, and diversify from exporting raw materials, there is less clarity on how to do so. Though the AfCFTA may offer new opportunities, it may also face the same political economy challenges that have undermined previous endeavours. After briefly reviewing recent industrial performance in Africa and the logic of the AfCFTA, a second section discusses past regional industrialization strategies in that light, including those of the regional economic communities, and the AU Accelerated Industrial Development for

Africa (AIDA) Action Plan. It examines their objectives and how they have been implemented. Based on this discussion, a third section draws lessons and possible inputs to a new continental African industrialization framework that avoids the pitfalls of past industrialization strategies, while offering a way for countries to use the AfCFTA as a tool for promoting industrialization.

Chapter 11 is on the prospects of a digital single market under the AfCFTA. In parallel with economic integration, digitalization has become a key pillar in African policy and strategic development toolkits and continental regional integration objectives. As a step towards accelerating digitalization, the Digital Transformation Strategy (DTS) for Africa 2020-2030 identified establishing a Digital Single Market (DSM) as part of the integration priorities of the African Union. The forthcoming AfCFTA Digital Trade Protocol and the African Union Continental Harmonization Strategy towards a Single Digital Market by 2030 will shape countries' alignment, build predictability and transparency, improve online market access, and strengthen the regulatory landscapes for cross-border flows in Africa. Efforts at building regional DSMs (or the like) have been explored at different levels by different regional groupings in Europe, Latin America, and Asia-Pacific. In the context of Africa, establishing a DSM requires careful scrutiny of the existing specific political, social, and economic conditions. Contributing to existing work promoting deeper integration under the AfCFTA, this chapter examines the concept of a DSM for Africa and how it fits into the African vision for integration and development, evidence of progress and gaps in the pre-conditions for success, and considerations for the possible pathways to leapfrog in this transformation.

Chapter 12 addresses the matter of residency. To accelerate making the transition from a free trade area to a common market, Africa must take advantage of digitization to break new ground especially where low-hanging fruits exist. One promising digital initiative is the creation of a digital common market through an e-Residency program to complement traditional operations. E-Residency allows non-resident nationals to access government and professional services from anywhere in the world, such as registering and operating a company and accessing financial and legal services remotely. Although the idea and practice of e-Residency have not been implemented in any regional economic community worldwide, Estonia's national experience serves as a model for Africa. This paper explores the possibilities for digitizing two Rights of the Common African Market (CAM) — the Right to Residence

and the Right to Establishment — via e-Residency for African citizens. This objective is guided by the following key questions: (i) How might an e-Residency program work in the context of the CAM? (ii) What could be the possible guiding elements and regulatory frameworks?

Chapter 13 is on intellectual property, creativity and innovation as drivers of the knowledge economy. The creative and cultural industries in Africa generated approximately US \$ 4.2 billion in 2021. The level of innovation within the continent is relatively low, however, there are several countries that have performed above expectation, relative to their level of development in Africa. This may be attributed to among other things, the intellectual property legal and institutional framework. There is a huge opportunity for regional trade in Intellectual Property goods and services within the AfCFTA. Protection and enforcement of intellectual property rights are important components of creativity and innovation especially in the context of the AfCFTA. Most countries, in Africa have national laws and are party to international treaties on intellectual property. However, due lack of a continental regional instrument, the existing fragmented legal framework may create barriers in the context of the AfCFTA. The Protocol on Intellectual Property provides the basis for cooperation among State Parties. This chapter focuses on the role of intellectual property rights in promoting creativity and innovation for purposes of trade within the context of the AfCFTA.

Chapter 14 focuses on quality infrastructure. The Common African Market requires an effective Quality Infrastructure (QI) system that meets international standards and aligns with the Africa Quality Policy. As the AfCFTA deepens into the Common African Market, quality infrastructure must support the markets and their operations to achieve the desired development outcomes. A disconnect between QI elements in Africa—namely standardization, accreditation, metrology, conformity assessment, and market surveillance—negatively impacts intra-African trade, as goods cannot move from one point to another without being subjected to multiple quality tests. Lack of functional QI compromises companies’ competitiveness in domestic, regional, and global markets. Poor QI leads to multiple technical barriers to trade, failures to ensure safety in industrial production, lack of protection for consumers from unsafe products, and an inability to facilitate digitalization and innovation.

Through a systematic review, this chapter finds that although the AfCFTA aims to reduce tariffs, Non-Tariff Barriers, including Sanitary and Phytosanitary measures, can continue to be a major hindrance to effective trade. This is demonstrated by the alarming situation where 48.3% of State Parties would not fully comply with the requirements of Annex 6 as described by the Pan-African Quality Infrastructure (PAQI) TBT Stocktaking document 2020. Standards harmonization, equivalence of Technical Regulations, and mutual acceptance of laboratory test results as pioneered by PAQI Institutions are spurring industrialization and intra-Africa trade. The level of adoption of harmonized African Standards and Conformity Assessment Regimes by RECs and AU Member States is increasing, hence a number of initiatives of Mutual Recognition Arrangements (MRA) exist among African Member States.

Chapter 15 is on multi-modal transport. Policies that govern maritime, inland waterways, aviation, road and rail transport usage vary across the continent. Aware that efforts are being made at the subnational and local levels to address transport and logistical challenges, this chapter focuses in part on the national, and largely on the continental level, in its analysis. Furthermore, the needs across different transport corridors vary, and implementation of policies often alters dynamics, sometimes with unexpected results. Therefore, blanket reforms without adequate consideration of local and sub-regional contexts is a nonstarter. It is therefore imperative that the recommendations made in this chapter are adapted to the contexts of countries and sub-regions, lubricated by private sector involvement. Countries ought to set up robust monitoring mechanisms that can respond to evolving needs. This is discussed in the final section.

The chapter is divided into four parts; the first two discuss the state of Africa's transport and logistics infrastructure - what is available and how it is utilized - as an overview. The final two discuss pathways toward transport and logistics reforms within the AfCFTA, derived from a practitioner's lens, with practical ways to enhance the sector.

Chapter 16 is on the blue and green economy. With the advent of the AfCFTA aimed at fostering regional trade and an eventual Common African Market emphasizing freedom of movement in resources, together with the imperative for African countries to build resilience against climate change, the continent has to build comparative and competitive advantages in new or emerging sectors that have a potential for economic growth - but not just any type of economic growth: a growth that promotes sustainable development to allow

progress on economic, social and environmental fronts and a growth that takes into account externalities on other African countries and rests on regional and continental collaboration. Increasingly, Africa's trade and regional integration agenda has to address environmental sustainability while leveraging the continent's vast natural capital, including its blue-economy resources to achieve structural transformation and sustainable development. The paper, using a qualitative narrative approach, focuses on four areas of the blue and green economy whose development should gain increased traction on the continent, and provides recommendations on areas where cross-border, regional and joint collaboration should be prioritized in this context. The four areas relate to green manufacturing, sustainable tourism, sustainable and smart ports to support trade competitiveness, and the harnessing of Geographical Indications of origin (GIs) in Africa's blue and green-based trade and economic development. The paper calls for linkages to be strengthened between AfCFTA and CAM protocols and the environment and climate, and recommends the inception of continental and regional maritime companies to improve continental and regional maritime connectivity, as well as the creation of an African institution to verify African GIs.

Chapter 17 is on the simplified trade regimes for facilitating inclusiveness in the Common African Market. Among its many objectives, the AfCFTA seeks to promote inclusive trade, particularly for women and youth. This paper discusses the role of Simplified Trade Regimes (STR) in promoting inclusive trade among women and youth in existing regional schemes, and some of the lessons these experiences offer for the AfCFTA. The paper begins with a brief overview of the characteristics and scale of small-scale (informal) cross-border trade (ICBT) in Africa. The following section discusses some existing approaches to support such traders, before focusing on the concept of STRs: where they currently exist (principally between COMESA countries), their stated objectives, and main characteristics. The third section then discusses the challenges of STR schemes, the interests and incentives of different public and private actors, the heterogeneity of ICBT, and how they are implemented and their impacts in practice. The final section draws conclusions and policy implications for a potential future continental STR under the AfCFTA.

Chapter 18 is on corporate social responsibility. Although corporations contribute to the economic growth of the countries in which they do business, concerns have emerged due to cases of ethical transgressions involving some

corporations, including scandals relating to child labour, corruption, human rights violations, and environmental destruction.

The chapter examines the extent to which the current approach to institutionalizing corporate social responsibility (CSR) provisions in African trade and investment agreements (TIAs) can effectively contribute to ensuring that, as Africa deepens trade and economic integration, corporations also comply with a minimum set of sustainable, ethical and responsible business principles and standards, with a view to contributing to the sustainable development of the communities and countries where they do business.

To that end, this chapter undertakes a critical legal review of CSR provisions in African TIAs using the framework of legalization, which looks at the characteristics that rules established by institutions may possess along three dimensions: obligation, precision, and delegation. The limitations and policy implications of the current regulatory approach, notably the inconsistency and heterogeneity in institutionalizing CSR provisions and their weak legal obligations, precision, and delegation dimensions, suggest that a new regulatory approach is necessary to enhance sustainable, ethical, and responsible business practices in the future Common African Market. The recommendations formulated in this chapter revolve around an integrated and enhanced approach anchored on the principles and values of ‘Ubuntu’, the concept that underpins CSR in the African context.

Part III – Pathways To The Common African Market

Part III of the book shifts focus to pathways and explores their connections with the Sustainable Development Goal on economic growth and decent jobs. It examines how institutional and legal frameworks can serve as enablers, regional economic communities as building blocks for continental integration, and identifies critical success factors for a robust AfCFTA as it evolves into the Common African Market.

Chapter 19 is on the interface between the AfCFTA and Agenda 2030, with a focus on sustainable development goal 8. This paper assesses the potential state of readiness of the labour market in supporting the transition to a Common African Market. As a first step, we undertook a mapping of

provisions and instruments of the Agreement establishing the African Continental Free Trade Area (AfCFTA) to Sustainable Development Goal (SDG)-8 targets, to assess their level of alignment. From the provisions and the instruments, we distilled potential labour market outcomes arising from implementation of the Agreement. We then employed an analytical framework and methodology based on the International Labour Organization's Key Labour Market Indicators to assess the status of key labour market indicators and by extension, the state of the labour market. Finally, we used this as a basis for identifying potential pathways to better labour market outcomes. Our findings confirm that in one way or another, all the provisions and instruments of the Agreement correspond to the various targets of SDG-8, even though the mapping may not be perfect. In addition, we find that there is a strong case for additional labour market supportive measures that go beyond implementation, since the various labour market outcomes identified are not automatic and would vary widely across State Parties based on their individual capacities and willingness to institute relevant complementary policies to address adjustment and distributional problems. We recommend that State Parties give due consideration to investment in education, effective labour market interventions, and appropriate macroeconomic policies. To allay fears and security concerns around free movement of people, civil registration should be enhanced in all State Parties and integrated border management systems - supported by a strong and robust mechanism for the enforcement of laws at the respective national levels – and be established across the continent. To unleash the full potential of 'Industries Without Smokestacks' (IWOSS), we recommend adequate skilled manpower for each sector, good infrastructure to reduce the cost of trade, sufficient quantities of good quality raw materials, and for some sectors such as tourism, political stability and aggressive marketing.

Chapter 20 deals with how institutional and legal frameworks are critical for establishing a Common African Market. To accelerate continental integration into a common market that effectively sustains its objectives, it is essential to have a strong legal and institutional framework. Therefore, this chapter will analyse specific African RECs' legal and institutional frameworks to find leverageable processes or methods. This will include considering notifications, monitoring mechanisms, and measures to address non-compliance.

Chapter 21 is on regional economic communities as building blocs for continental integration towards the Common African Market. By some accounts, Africa is said to have over 176 regional organizations, of which at least 19 deal with economic cooperation (Soderbaum 1996). Some countries belong to many – DRC belongs to 14 regional organizations and Rwanda to 11 (Byiers 2017). How did this come to be? And are the many regional economic communities that now exist still building blocs for continental integration? Is there a role for regional economic communities once continental structures have been built, say as governance blocs?

This chapter attempts to answer these quite complex questions. It argues that regional economic communities remain true building blocs for the AfCFTA for the following reasons. Firstly, on the basis of the progress a number of them have achieved so far. Secondly, the architecture for continental integration as set out in key instruments, and thirdly their recognition in the AfCFTA Agreement itself. In terms of pathways forward, it argues that the AfCFTA now provides continental frameworks that the RECs should implement. It is important also to consider RECs as governance blocs, beyond building blocs. The sheer size of the African continent, the complexity of development challenges and specificities of the regions – all require a system of local governance and subsidiarity that can be provided by the RECs.

This chapter first explores five fundamental options regarding the place of RECs, then explains the approach of RECs as building blocs and sets out the current approved ones. This is followed with an assessment of the strengths and failings of regional integration in Africa, setting out some successes and good practices while highlighting setbacks. The chapter then provides the example of how the issue of addressing non-tariff barriers has been approached in the African Continental Free Trade Area Agreement to concretely demonstrate how regional economic communities could serve as building and governance blocs for continental integration. Some of the information in this chapter is first-hand testimony by the authors and will therefore not have citations.

And finally, chapter 22 provides an outlook, setting out forces towards a sublime African Continental Free Trade Area. The AfCFTA has been institutionalized into the economic geography of Africa, permanently if the momentous recent past is anything to go by. The AfCFTA moved from design, negotiation, signature, ratification and entry into force to commencement of trading in only about five and a half years (June 2015 to December 2020). Its

longevity is nevertheless not to be taken for granted. A lot of hard work must consistently be done to maintain the momentum that now drives it, and to continuously improve its capabilities, its relevance to great questions of the day, and proactive evidence-based policy making. Implementation, compliance, utilization and enforcement will be key priorities. This requires systemic forces to drive it, such as can be provided by agile political leadership amidst existential crises, adequate financial and technical resources, inclusiveness, and ownership involving the private sector and civil society organizations in particular, knowledge networks that provide hands-on support to stakeholders in the public and private sectors, and a role for local and municipal governments. This chapter explores how these systemic forces could be harnessed and deployed.

Conclusion

All these chapters should be helpful material for policy makers and practitioners of African economic integration, along the road towards the Common African Market by 2028 and achieving the continental vision of the Africa We Want by 2063. The vision and ideal of the continent have been agreed and elaborated in Agenda 2063. The vision is to be integrated, peaceful, prosperous and efficacious in international relations. The AfCFTA represents solid progress towards this vision. It fosters deeper and closer integration, through its programs, which constitute progress towards the Common African Market. By addressing structural causes of conflict and disaffection, through inclusive and sustainable economic growth, wealth creation, and decent jobs, the AfCFTA contributes to a peaceful and stable continent. And as a large market that taps into economies of scale, the AfCFTA supports a prosperous Africa through addressing the binding constraints of small sized economies, fostering higher levels of cross-border investment and trade, diversification, regional value chains, industrialisation, and infrastructure development. The AfCFTA promotes the competitiveness at enterprise, economy and regional levels through policy reforms resulting from its implementation; and through predictability, by being a rule-based system underpinned by oversight institutions, digital tools and a dispute settlement system. The AfCFTA provides a platform for and strengthens common African positions and diplomatic agency in international relations, because it is a broad framework directly covering goods, services, persons, investment, competition, intellectual property, digitalisation and inclusiveness; and has implications for

existential priorities such as climate change through greening of trade and industrialisation, and public health through vaccines and pharmaceuticals sectors and value chains. It also promotes political and economic unity, conferring the power of numbers in international forums such as the United Nations. The AfCFTA also represents an emergent and confident Africa that is driven by its citizens through home-grown positions. The case for continental integration is impeccable.

Appropriate institutions will be required for the Common African Market. To begin with, the AfCFTA Secretariat will require a dynamic directorate on the common market, operating at a strategic level. And the intergovernmental Council of Trade Ministers, as an organ of the African Union, is well positioned to provide the required oversight, just as it does over the AfCFTA, reporting to the Assembly of Heads of State and Government through a Heads of State and Government Committee on the AfCFTA and the Executive Council made up of Ministers of Foreign Affairs. Partners across Africa and the world at large in support of this initiative will be critical. But when all is said and done, clear and decisive political leadership on the continent, and ownership by stakeholders, will be foremost critical success factors. Completion of the Common African Market will not be an event but a process, which should begin now, for conditions are propitious.

PART ONE

THE AFRICAN CONTINENTAL FREE TRADE AREAS AS A FOUNDATION FOR THE COMMON AFRICAN MARKET

Chapter 1

THE COMMON MARKET ISSUE IN AFRICA

Francis Mangeni

Abstract

A matter of immense strategic importance at this point in time in the history of Africa's continental integration is whether to start work on a continental common market that is the Common Africa Market, using the African Continental Free Trade Area (AfCFTA) as a foundation or whether to transition to a customs union. This chapter sets out to provide analytical evidence in favour of the Common Market. A customs union deals with trade in goods and requires a common external tariff and common commercial policy on trade in goods with third countries, in addition to a customs law to govern and facilitate customs operations, and a common tariff nomenclature. The chapter concludes that there is a good case for the African continental customs union, but it would have to be qualified a great deal in light of the practice on the ground. The chapter argues, rather, that the AfCFTA Protocols already provide the key starting elements for a continental common market on which to build through implementation and consolidation, namely, free movement of goods, services, persons and investment as well as establishment and residence. The Protocols also cover other important areas of competition policy, intellectual property rights, digital trade and women and youth in trade, which are vital for coordination and harmonisation in a common market setting. In addition, the conditions set in the Abuja Treaty for forming a Continental Common Market have been substantially met. The chapter concludes that there is a strong case for the Common African Market.

Key Words: Abuja Treaty, African Common Market, RECs, AfCFTA

Introduction

The Economic Commission for Africa (2023), estimates that Africa accounts for 80 percent of global poverty. This is reason enough for the imperative that Africa should unite, be ambitious and be in a hurry. That Africa must unite (Nkrumah 2007) in order to effectively address its developmental challenges is hardly disputed now, the continent having adopted Agenda 2063 with the vision of being “*an integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena*” (AUC 2013). Achieving this vision will require a lot of hard work led by Africa, with a positive and optimistic outlook.

Kenny and Gehan of the Centre for Global Development (2023) project that extreme poverty in the world will fall below 2 percent by 2050 down from 8 percent in 2022, and below 7 percent in Africa down from 29 percent in 2022 – reported in the media as the end of extreme poverty in the world. This projection, though, *will be as good as the work that goes into poverty eradication*, given that existential threats continue to hit with disruptive consequences. Humanity appears to be on a path toward extinction due to climate change, with pandemics and other diseases constantly looming as threats, as evidenced by the death toll from COVID-19. Geopolitical tensions are relentless, leading to severe consequences such as food, nutrition, and energy insecurity, as highlighted by the ongoing war in Ukraine (2022). Additionally, artificial intelligence must be governed to advance human welfare and prevent dystopian futures often depicted in science fiction (Mangeni and Atta-Mensah, 2022). Africa will need political and economic unity, policy coherence, and resilient economies to effectively engage as a global partner in addressing these crises. This is where the Common African Market plays a crucial role.

According to the timelines for continental integration set out in the Abuja Treaty (Article 6), the period 2023 to 2028 is for establishment and consolidation of the Common African Market. It is well known that a common market should be characterised by free movement of goods, services, labour

and capital, as well as the rights of establishment and residence (Balassa, 1961).

The fact that the timeline of 2019 set in the Abuja Treaty for establishing a continental common external tariff has been missed, need not present insurmountable conceptual or practical problems to proceeding to a common market. A customs union deals with trade in goods and requires a common external tariff and common commercial policy on trade in goods with third countries – or in the language of the General Agreement on Tariffs and Trade (GATT) Article 24 “substantially the same duties and other restrictive regulations of commerce”. In addition, it requires a customs law to govern and facilitate customs operations, and a common tariff nomenclature (Lyons 2018, Sykes 2016). The ongoing programs for elimination of tariffs and non-tariff barriers, trade facilitation and industrial policy as well as Common African Positions in international economic relations could continue to serve as elements of a continental customs union for the time being, notwithstanding the lack of a continental common external tariff.

That the African Union Protocol on Movement of Persons (AUC 2018) has not entered into force (as of July 2024), does not in any way, prevent movement of persons in accordance with the AfCFTA Protocol on Trade in Services (AfCFTA 2018), which aims for an integrated African services market, beginning with the five priority sectors of transport, financial, communication, tourism and business services. It is worth noting that the EU internal market started off with only transport, financial and new technologies services (EC 1985). Under the AfCFTA Protocol on Trade in Services, consumption abroad, establishment of commercial presence and movement of natural persons, as well as liberalisation of professional services, do facilitate movement of persons – Article 1(p).

The consolidation of the AfCFTA into the Common African Market is about visioning, packaging and messaging. The AfCFTA is not static. It should be dynamic. It is a long-term project of indefinite duration, according to the Agreement by which it is established. Attributed to Fred Bergsten (1975) in the 1970s, the bicycle theory suggests that without continuously moving forward, the AfCFTA would fall and fail – but this by no means is to say that the AfCFTA is a neoliberal project, it is a developmental tool, aiming for structural transformation through a large market for investment rooted in inclusiveness, industrialisation and infrastructure development (Mangeni and

Juma 2018, Mangeni and Mold 2024). As Prigogine (2004) puts it, what we do today is informed by our vision of the future.

Positioning the AfCFTA as a tool for progressively transitioning into the Common African Market sets a clear vision towards one African trade and investment regime, packages the AfCFTA as its foundation, and sends out a powerful message about Africa's commitment to continuously deepen economic integration as set out in the Abuja Treaty. It is about long-term thinking in a short-sighted world (Brumm 2012).

This chapter argues that the AfCFTA Protocols already provide the key starting elements for a continental common market on which to build through implementation and consolidation, namely, free movement of goods, services, persons and investment as well as establishment and residence. The Protocols also cover other important areas of competition policy, intellectual property rights, digital trade and women and youth in trade, which are vital for coordination and harmonisation in a common market setting.

The argument for the Common African Market is as follows –

- As a matter of political commitment, legal obligations, credibility, governance, and the expected benefits, the Abuja Treaty timeline of 2023 for establishing the Common African Market, to be consolidated up to 2028, should be given some serious consideration at the highest political and technical levels; that is, implementation of and compliance with the Abuja Treaty requires the African Common Market at this point in time;
- The AfCFTA has the essential common market elements of free movement of goods, services, persons and investment and the rights of residence and establishment and as a matter of strategy and optimal use of resources, institutions and time, it should provide a basis and a toolkit for starting work in earnest on the Common African Market;
- The conditions set by the Abuja Treaty for the fifth and sixth stages of continental integration, that is, the formation of the common market, are substantially in place, through the various continental institutions and programs that have been established, which should now focus on deepening continental integration;
- The Common African Market provides a far better framework for stronger market integration through its broader coverage, policy coherence across a wide range of strategic areas, beyond trade in goods

which is what the customs union deals with. The Common Market also provides an appropriate platform for Common African Positions and diplomatic agency in international relations in accordance with the vision and aspirations under Agenda 2063. In this regard, the AfCFTA Council of Ministers, the African Union Executive Council and the Assembly provide an appropriate institutional framework.

- The Continental Customs Union, which was to be established in 2019, can be work in progress, under a working group, starting with the continental common external tariff, carefully sorting out the political economy challenges particularly those associated with harmonisation of current common external tariffs of existing sub-regional customs unions or designing a new one, fiscal sovereignty in relations with the rest of the world, current patterns of trade and economic Agreements and foreign policy with key partners, avoidance of policy reversal and breach of WTO tariff bindings, and relations between State Parties that would be in the continental customs union and those that would not.

The chapter is structured along these arguments and concludes with a call for a pronouncement at the highest political level that sustains the current high momentum around the AfCFTA and seamlessly carries it forward into the African Continental Common Market.

Timelines and Stages of the Continental Integration Program

Implementation of and compliance with the Abuja Treaty requires the Common African Market to be established in 2023 and consolidated up to 2028. Table 1 shows the timelines and stages of the continental integration program, as mapped out and codified by the Treaty Establishing the African Economic Community of 1991, commonly called the Abuja Treaty. Signed on 3 June 1991, the Treaty entered into force on 12 May 1994, from when the timelines are counted. The Table sets out also the roles at the levels of the regional economic communities (RECs) as building blocks and of the continental structures, as well as progress made so far.

Table 1: Stages of Economic Integration in Africa under the Abuja Treaty

Stage	No. of years	Period	Key activities	REC level	Continental role	Remarks
1	5	1994-1999	- Strengthen existing RECs - Establish RECs in regions without	Yes	Yes	Done, 8 RECs recognised, not the 5 envisaged, one for each region under Article 1(d)
2	8	1999-2007	- Stabilise Tariffs and NTBs - Adopt <i>a continental timetable for removal of tariffs and NTBs to REC and intra-community trade and establishment of a continental common external tariff</i> - Sectoral integration at REC and community levels - Coordination and	Yes	Yes	Not done

Stage	No. of years	Period	Key activities	REC level	Continental role	Remarks
			harmonisation of RECs			
3	10	2007-2017	- Form REC FTAs and Customs Unions on the basis of the Continental Timetable for removal of Tariff barriers and NTBs to intra-community trade and establishment of a continental customs union	Yes	Yes	Partly – EAC is a customs union and a common market, ECOWAS is a customs union, COMESA and SADC are FTAs
4	2	2017-2019	- Coordinate and harmonise REC tariff and non-tariff systems - Form the continental customs union through adopting a continental common external tariff	Yes	Yes	Missed/ could be skipped or pushed forward

Stage	No. of years	Period	Key activities	REC level	Continental role	Remarks
5	4	2019-2023	- Form the African Common Market through common policies, free movement of persons and rights of establishment and residence, and constituting resources for the community	Yes	Yes	Pending/ a key priority for the period 2022 to 2023
6	5	2023-2028	- Consolidation of the African Common Market - Integration of all sectors - Setting up the financial institutions - Set up the Pan-African Parliament - Coordinate and harmonise the RECs - Establish African	Yes	Yes	Pending/ a key priority for the period 2022 to 2028

Stage	No. of years	Period	Key activities	REC level	Continental role	Remarks
			multi-national enterprises in all sectors - Setting up executive organs			
The African Economic Community is to be an Economic and Monetary Union and is to be established by 2028 but in any case, not later than 2034. This goal has been advanced by the Constitutive Act of the African Union, under which the African Union was established in 2002, and by Agenda 2063 adopted in 2015, which has 15 flagship projects including the establishment of the AfCFTA, the Single African Air Transport Market, and Free Movement of People as well as infrastructure and digital projects. Source: Mangeni and Mold (2024)						

A number of policy implications can be derived from Table 1 in light of the content of the AfCFTA. Firstly, AfCFTA has leapfrogged forward the continental integration process, by filling gaps in previous stages, such as lack of a continental timetable for removal of tariffs and non-tariff barriers which was supposed to be developed during the second stage over an eight-year period. In addition to the Tariff Schedules in Annex 1 to the Protocol on Trade in Goods, the AfCFTA provides key trade-related frameworks in its Annexes on Rules of Origin, Non-Tariff Barriers, Customs Cooperation, Trade Facilitation, Transit, Trade Remedies and technical and health Standards. The AfCFTA has accelerated the pace and process, and caught up with the fifth and sixth stages for forming the continental common market by 2023. This leapfrogging should continue as a way of accelerating continental integration.

Secondly, the trajectory of forming the continental customs union through a combination of customs unions formed by the RECs has not materialised, as a fact of history, and it will not. It will not because not all the 8 recognised RECs have formed customs unions, which could merge to form the continental customs union. It will not also because the AfCFTA now requires elimination

of tariffs and non-tariff barriers on 97 percent of tariff lines in intra-Africa trade among the State Parties, that is, only 3 percent of total tariff lines have been excluded from tariff liberalisation under the AfCFTA modalities. This means that positive-rates under any REC common external tariffs will not be imposed on covered products by State Parties against other State Parties – zero-rated tariffs can be maintained.

Thirdly, from the language and the activities for the sixth stage, the RECs continue to have a role throughout the six stages, and thereafter. This would imply that RECs should be considered to be both building blocs and governance blocs for continental integration. They can be building blocs for the continental common market on the basis of their trade liberalisation, visa relaxation and production integration programs.

The AfCFTA and the Essential Elements of an African Common Market

A pertinent question to answer now is whether the AfCFTA has the basic elements of a common market – and the answer is in the affirmative, as presented in Table 2, which provides the core elements of both the EAC Common Market and the Timetable for completing the European single market, as good examples of common markets. The AfCFTA also has those elements.

Table 2: AfCFTA and the Essential Elements of the Common Market

Elements Free movement of –	EAC Common Market Protocol	EC Internal Market Program (310 Regulations)	AfCFTA Protocols on –
Goods	Goods (Part C)	Physical and Technical Barriers (PTB)	Goods (9 Annexes)
Persons	Persons (Part D)	PTB	Services
Labour	Workers (Part D)	PTB	Services
Services	Services (Part F)	Financial, transport, new technologies	Services (transport, financial, communications, tourism, business)
Capital	Capital (Part G)	PTB	Investment
	Monetary and fiscal convergence	Fiscal barriers	Real economy
Rights of –			
Establishment	Establishment (Part E)	PTB	Services
Residence	Residence (Part E)	PTB	Services
	Other areas		Other areas

Source: compiled by author

The AfCFTA was never meant to be an end in itself, nor the final stage of Africa's continental integration. It was always a means to deeper and broader levels of economic integration in accordance with Agenda 2063 and the Abuja Treaty, which envision a process to be accomplished over time rather than an

instant event. The provisions of the AfCFTA Agreement must therefore be understood in a forward-looking manner, as entry points to deeper levels of economic integration. It is in this sense that the AfCFTA Protocol on Trade in Goods is a harbinger of free movement of goods on the continent, through progressive liberalisation to zero duties on 97 percent of total product lines. It is also in this sense that the Protocol on Trade in Services aims for an integrated continental services market, with provision for cross border supply and consumption, commercial presence, movement of natural persons, and for supply of professional services. The protocol on Investment will facilitate cross-border investment on the continent. And all this regime will be underpinned by Protocols on Competition, Intellectual Property, Women and Youth in Trade, Digital Trade, and Settlement of Disputes.

The Conditions under the Abuja Treaty for a Continental Common Market

Another pertinent question to answer is whether the conditions in the Abuja Treaty for forming a continental common market have been met or at least substantially met for the process to commence in earnest – and the answer is again in the affirmative, on the understanding that this will all be a process rather than an event; a point worth emphasis. Table 3 sets out the conditions in the Abuja Treaty and what is in place both at the AfCFTA and AU levels.

It will be noted that the fifth stage, on establishment of the continental common market, was to be accomplished in the period of 2019 to 2023. That was the period when the AfCFTA was ratified and entered into force, and its essential institutions activated especially the Council of Ministers, the Committees on Goods and Services, their subcommittees, as well as the dispute settlement system. It was time well spent and appropriately prioritised.

The sixth and final stage, during the period 2023 to 2028, is for consolidation of the common market and the finalisation of arrangements for the African Economic Community, which will be an economic and monetary union. The conditions for the sixth stage therefore go beyond the elements of a common market, and include those of an economic and monetary union. It is well to note also that the Abuja Treaty makes provision for extension beyond 2028 to the year 2034 – the Treaty allows a maximum of 40 years for establishing the African Economic Community. This means that work on consolidating the economic and monetary union could continue as appropriate up to 2034.

Table 3: The conditions under the Abuja Treaty for a Continental Common Market

Establish the Common African Market – the Fifth Stage 2019-2023 (This timeline runs up to 2023)				
Conditions	Program	Institution responsible	AfCFTA Interface	Timeline
(i) The adoption of a common policy in several areas such as agriculture, transport and communications, industry, energy and scientific research;	The AfCFTA aims for structural transformation through developmental integration, and Implementation of Agenda 2063 is ongoing	AfCFTA Secretariat, The AfCFTA Champion, AUC	AfCFTA Agreement	In force
Agriculture	CAADP	AUC	RVC and Private Sector Strategy	Operational
Transport	PIDA, Single African Air Transport Market	AUC, AUDA/NEPAD	Priority Service Sector	Operational
Communications	PIDA	AUC, AUDA/NEPAD	Priority Service Sector	Operational
Industry	AIDA, BIAT, AMV	AUC	RVC and Private Sector Strategy	Operational
Energy	PIDA, African Single Electricity Market	AUC, AUDA/NEPAD	Services	Operational

Scientific Research	STISA, PAVM, PAU, AMV, Digital Transformation Strategy	AUC	RVC and Private Sector Strategy	Operational
(ii) The harmonisation of monetary, financial and fiscal policies;	On going programs for macroeconomic convergence and stability	AfCFTA, Conference of Finance Ministers/ ECA	PAPSS, Financial Services, The real economy complements the policies	Ongoing (This is an economic union program)
(iii) The application of the principle of free movement of persons as well as the provisions herein regarding the rights of residence and establishment; and	Protocol on Trade in Services, Protocol on Investment,	AfCFTA Secretariat, The AfCFTA Champion, AUC	Protocol on Trade in Services, and Protocol on Investment	In force
	Protocol on Free Movement of Persons	AUC		(FMP Protocol to enter force)
(iv) Constituting the proper resources of the Community as provided for in paragraph 2 of Article 82 of this Treaty	AU 0.2 Percent levy, AU Budget, Extra-budgetary resources	AUC	AfCFTA has mobilised various financial facilities and partners under its resource mobilisation drive	
Consolidate the Common African Market – the Sixth Stage				

(2023-2028 (This timeline runs up to 2028))				
Conditions	Program	Institution responsible	AfCFTA Interface	Timeline
(i) Consolidation and strengthening of the structure of the African Common Market, through including the free movement of people, goods, capital and services, as well as, the provisions herein regarding the rights of residence and establishment;	Protocol on Trade in Goods, Protocol on Trade in Services, Protocol on Investment Protocol on Free Movement of Persons	AfCFTA Secretariat, The AfCFTA Champion AUC	Protocol on Trade in Goods, Protocol on Trade in Services, Protocol on Investment	In force (FMP Protocol to enter force)
(ii) Integration of all the sectors namely economic, political, social and cultural; establishment of a single domestic market and a Pan-African Economic and Monetary Union;	Ongoing through implementation of Agenda 2063 and the AfCFTA	AUC, AfCFTA Secretariat, The AfCFTA Champion	AfCFTA Agreement	(These are economic union and federation programs)
(iii) Implementation of the final stage for the setting up of an African Monetary Union, the establishment of a single African Central Bank and	Ongoing	AUC, The Champion for Financial Institutions		(These are economic union programs)

the creation of a single African Currency;				
(iv) Implementation of the final stage for the setting up of the structure of the Pan-African Parliament and election of its members by continental universal suffrage;	Pan African Parliament	Pan African Parliament	The AfCFTA collaborates with the Parliament	Operational (Reforms have been proposed, such as law-making powers)
(v) Implementation of the final stage for the harmonisation and co-ordination process of the activities of regional economic communities;	Protocol on Relations between the African Union and the RECs, AfCFTA Coordination Framework for RECs	AUC, AfCFTA Secretariat, AfCFTA Champion	AfCFTA Coordination Framework	Operational
(vi) Implementation of the final stage for the setting up of the structures of African multi-national enterprises in all sectors; and	Various RVCs – agro processing, automobiles, pharmaceuticals, transport and logistics	AfCFTA Secretariat, The AfCFTA Champion, AUC	Priority RVCs and Private Sector Strategy	Operational
(vii) Implementation of the final stage for the setting up of the structures of the executive organs of the Community.	Shared/ pooled sovereignty through intergovernmental processes, AUC Reforms, Establishment of supra-national institutions	AUC, AfCFTA Secretariat, The AfCFTA Champion	AfCFTA Secretariat, Supra-national institutions under various AfCFTA Protocols	There are ongoing initiatives for continuous strengthening and improvement of the AU

The Foundation for The Common African Market

This progress is good enough for work on the Common African Market to start, using the toolkit that the AfCFTA is, rather than procrastinating or starting a new process from scratch. As the poet Edward Young (2006) said, procrastination is the thief of time.

Quite a number of studies have been done on the potential of the AfCFTA to lift Africa out of poverty and achieve social economic transformation of the continent. By covering the parameters of movement of goods, services, labour and investment, as well as competition, digitalisation and intellectual property, these studies provide evidence for the potential of the continental common market, beyond a customs union which would only deal with trade in goods. According to the World Bank (2022) for instance, the AfCFTA can raise incomes by 9 percent and lift at least 50 million people out of extreme poverty by 2035 and increase intra-Africa investment flows by 111 percent to 159 percent, and wages can rise by 11.2 percent for women and 9.8 percent for men. Exports to the rest of the world can increase by 32 percent, and intra-Africa exports by 109 percent. These numbers will be much higher with deeper integration under the freedoms of the common market, which will result in better economic efficiency and competitiveness, and more coherence in economic policy across the continent and therefore better prospects for common African positions in international economic relations.

As already indicated, conceptually, a customs union deals with and is limited to trade in goods – WTO General Agreement on Tariffs and Trade (GATT), Article 24. It does not cover trade in services – WTO General Agreement on Trade in Services (GATS) Article 5, nor labour markets – GATS Article 5 *bis*, nor investment, nor movement of persons – areas that the AfCFTA already covers with full Protocols. This would suggest that the African continental integration process has already moved on beyond the customs union, into areas ordinarily covered by common markets in which further progress and consolidation should be made.

Anecdotal evidence suggests that the strongest reason being advanced by proponents of the African Customs Union is that it would enable Africa to act as a bloc on the international scene through common positions based on a common external trade policy, drawing on the power of numbers in international economic relations. Such common positions if based on a

customs union, would of course be limited to trade in goods issues. This is an unnecessary constraint that Africa need not impose on itself.

Already, Africa has a good track record of adopting and advancing common positions as a bloc, on a whole range of issues beyond trade in goods. Africa has successfully adopted common positions at the World Trade Organisation in negotiations on intellectual property and access to medicine and vaccines, dispute settlement, special and differential treatment, biological resources and a host of other issues that have come up for negotiation or which Africa has initiated (Apecu 2013, Mosoti 2004, Mangeni 2002). Africa has undertaken such agency also in other organisations including the World Intellectual Property Organisation and the United Nations at large. Besides, Africa already has continental programs for sectoral cooperation in line with the areas set out in the Abuja Treaty and REC instruments, covering industry, infrastructure, science and technology, natural resources, statistics and gender, among others. It means then that a continental common market provides a more comprehensive platform for Common African Positions, by covering the wide range of matters that arise in international economic, political and other relations, beyond goods.

As the case for the Continental Customs Union also justifies and finds full expression in the Continental Common Market, the former would be an inferior choice to the latter. Rationality and utilitarianism (Mill and Bentham, 2003), from which various theories have emerged, such as decision theory, utility theory and regret theory (Parmigiani 2009) would point one towards the Continental Common Market instead.

A few pertinent observations may be in order, on the interests behind this debate.

- Through bilateral FTAs and economic partnerships that require reciprocal trade liberalisation between some African and non-African countries, holes have already been poked into a possible continental common external tariff and there is every likelihood that such third countries would insist on maintaining the access to African markets under existing bilateral trade arrangements.
- Any gold standard that the EU may represent is not for the customs union, but for an internal market and an economic union, which is what the EU is; and this points to the Common African Market beyond a customs union.

- The Commission-to-Commission arrangements between the European Commission and the African Union Commission may exclude the AfCFTA elements; rather this framework should be expanded to cover the AfCFTA Secretariat and programs in a forward-looking manner.
- It can be noted as well that the AUC leadership has expressed concern about the over-reach of the Economic Commission for Africa, which has progressively encroached on the space and role of the AUC and the AfCFTA Secretariat in overseeing continental integration.
- The apparent sibling rivalry between the AfCFTA Secretariat and the AUC Department of Economic Affairs Tourism Trade Industry and Mining (ETTİM) can be addressed in ways that do not require a common external tariff, which seems to be a means towards exclusive competence for ETTİM in relations with all non-African countries, confining the AfCFTA Secretariat to intra-Africa trade. This could be through creating areas of shared competence while respecting the AfCFTA Agreement. Any neat division between intra-Africa trade and external trade relations would at best be artificial and short-lived, because the two form one whole as indeed is the case, demonstrated through the extensive diplomatic agency undertaken by the AfCFTA across the world, mobilising investors, stakeholders, partnerships and resources for the AfCFTA, and building its visibility. Stakeholders and partners across the world themselves often avidly seek out the AfCFTA Secretariat, recognising it as a credible interlocutor on matters of the AfCFTA, indeed a mandate in accordance with the AfCFTA Agreement.

Is There a Solid Case Against the African Common Market

A common objection to any mention of the Common African Market at this point in time in 2023 is that it is far too soon; hardly has the ink dried on the AfCFTA, which was concluded only five years ago in 2018. The message here is to move slowly and cautiously. However, this timidity is not warranted. Just like the AfCFTA and indeed other regional trade arrangements elsewhere, including the European Union, the Common African Market is not to be established in one day; it will be established and consolidated over a period of time, but the point is to make a start rather than not. What is not started does not happen. To cite Publius Terentius (161 BC), *fortis fortuna adiuvat* – fortune favours the brave.

Another objection is that it is far too ambitious, complicated and deep a project to be taken lightly and Africa is just not ready for such deep stages of integration. The message here is that Africa can only manage shallow integration, and even on that, it fares badly. This is sweeping generalisation. Africa has achieved some deep integration at the level of the RECs. Building on a number of successes at the level of the RECs and going further in some cases, the AfCFTA itself is a deep and broad integration, the negotiation of which was accomplished in the record time of about five years, and prospects for which remain good. The levels of economic integration achieved in Africa are comparable to or better than levels achieved by other regional trade arrangements in other parts of the world at similar levels of economic development (Mangeni and Mold, 2023).

Economic Integration Is Not Compartmentalised Into Stages

It's argued at large that moving on to a continental common market, without a continental customs union, would be conceptually flawed. The sequential and incremental stages of economic integration set out by Balassa envisage the customs union as the stage after the free trade area and before the common market, namely, free trade area, then customs union, then common market, then economic union, monetary union, and confederation or federation (Balassa 1961). The free trade area and customs union stages deal only with trade in goods. The FTA deals with removal of barriers to trade in goods among the members, while under the customs union the members take the next incremental step of adopting a common external tariff and external commercial policy relating to trade in goods. The point here would be that the customs union stage should not be skipped. Having established the AfCFTA, a free trade area, the next stage should be the continental customs union. A continental common external tariff should be adopted first, before moving on to a continental common market. But all this is contestable.

Balassa's stages provided an initial conceptual and analytical framework and greatly assisted the theoretical epistemology on economic integration. While this is basic theory and elementary grounding in the teaching, the actual practice of regional economic integration worldwide has not considered the various stages as standalone projects, where one stage has to be accomplished before proceeding to the next (El-Agraa 1989). Hardly have they been understood in any economic integration project as a strict

compartmentalisation of the stages. The understanding of Balassa's theory of economic integration therefore has needed updating; as one would expect (Bayes 1763).

Balassa's mere linearity in itself is no reason at all against a mix of policies and programs that addresses present developmental challenges in a pragmatic manner. Elements of higher stages of integration have been implemented in lower stages, such as the existence of services and movement of persons programs in FTAs, both of which would belong to a common market. This is common in RECs across the continent and can be attributed to the developmental approach to economic integration, which simultaneously combines programs on markets, industrialisation, infrastructure, innovation, inclusiveness, among others. Also, when it started off with Kenya, Tanzania and Uganda in 2000, the EAC skipped the stage of the FTA and started off with the customs union, building on earlier levels of trade liberalisation achieved under COMESA programmes. This anecdote shows that some stages can be skipped as appropriate.

Is there a case for the African Continental Customs Union?

A good case can be made for the African continental customs union, though it would have to be qualified a great deal in light of the practice on the ground.

Efficiency gains from free circulation of goods in customs unions provide a strong argument. However, free circulation may not be common in existing customs unions on the continent. Rules of origin continue to apply, except in cases where integrated customs management programmes have been implemented. For example, under the Single Customs Territory Programme, the revenue authorities of the EAC are stationed and work jointly at the Kenyan entry port of Mombasa and process and clear imports into Uganda and Rwanda along the Northern corridor, which greatly contributes to reduction of time-related costs and complexity.

Customs unions can attract tariff-hopping investment. This would apply to foreign direct investment that would re-locate into Africa in order to avoid the continental common external tariff. It is noticeable though, that the African Continental Free Trade Area seems to be having the same effect, by attracting foreign direct investment onto the continent, that seeks to get preferential

access through producing originating products – products considered to be made in Africa. This is an element of industrial policy.

Customs unions are expected to require the adoption of common external trade policy and positions against the rest of the world. This can strengthen the negotiating positions of the bloc, arising from its collective power. In practice though, African customs unions have not done so. Rather, in the EAC, for instance, Kenya has on its own entered bilateral trade arrangements with the EU and negotiations with the US. This has also happened in ECOWAS and SACU.

The African customs union would be a step closer to the African Economic Community (AEC), the ultimate goal of continental economic integration, which will require harmonisation or at least coordination of industrial and other policies, as well as closer monetary and fiscal cooperation and convergence. The Common African Market would be far closer progress towards the AEC. The customs union would also, using the common external tariff, protect African industries that require tariff protection, if such tariffs were adequately high to offset advantages of competing products. This should, however, be balanced with the benefits of consumer surplus and efficiency gains from competition. Besides, competitiveness at enterprise, economy and continental levels is an utter priority that requires appropriate interventions to bring down the cost of doing business and improve the environment. It should be instructive that high national tariffs at the moment have not prevented imports from across the world vastly outcompeting locally produced products on price, quality and timeliness – all of which require a broad range of clear interventions.

All these arguments for the customs union, though, could equally apply to the African Continental Free Trade Area and on this basis may not point to a Continental Customs Union as the exclusive pathway forward. It should be open to forge ahead towards the Common African Market, building on the African Continental Free Trade Area, which already has programmes for the free movement of goods, services, persons and capital as well as for rights of residence and establishment. It must be underscored, however, that the customs union must remain one of the goals of continental integration as required by the Abuja Treaty and for some of the reasons we have set out.

The case against the African Continental Customs Union

Here are some general observations to start off with.

- There are more FTAs than customs unions in the world, with only 15 being customs unions out of a total of 355 notifications to the World Trade Organisation (WTO 2023).
- Modern FTAs also called deep FTAs, tend to be comprehensive and to cover a number of common market aspects, projecting them as de facto common markets.
- Customs duties on the whole have dropped over the last 70 years and may not be effective means of protecting domestic industries against competition from imported products, except in a few sensitive and strategic sectors that may altogether be excluded from trade liberalisation programs. General, security and other exceptions may also apply.
- Open regionalism - under GATT Article 24 - discourages regional trade arrangements that become economic fortresses, in keeping out the rest of the world through higher tariffs and more restrictive measures than currently obtain.
- Open regionalism also reflects the diminishing role of customs duties as sources of public revenues. CETs would not therefore feature as attractive priorities in the public revenue calculus. GATT Article 24 requires that CETs should not on the whole be higher or more restrictive than prior existing customs duties of the constituent Members, which erodes their efficacy as new sources of revenue and for protection of domestic industries.
- Government may collect up to 80 percent of its revenues from as low as 20 percent of tax payers, and largely as internal taxes particularly VAT and corporate tax from a few big companies.
- The African Union has hardly followed a linear approach to economic integration but adopted appropriate measures as required to address complex political, economic, social, environmental and technological challenges. Such interventions include the African Peace and Security Architecture, the Pan African parliament, and various sectoral common policy frameworks well ahead of becoming an economic union scheduled for 2028.

- Neither have the regional economic communities. The EAC linearity has co-existed with measures from higher levels of economic integration, such as sectoral policy frameworks, common services and supra-national institutions associated with economic unions or federations. As already noted, the EAC famously started off as a Customs Union, rather than a free trade area.
- The utter case for the AfCFTA means the critical strategic policy choice should be to advance it.

With these overarching observations in mind, we now proceed to examine the prospects for a continental customs union. An important issue broached by Mangeni and Juma (2018) is about the feasibility of forming the continental customs union. There are presently five customs unions in Africa – CEMAC, ECOWAS, EAC, SACU, and UEMOA, with significant differences among them. These are by and large coherent RECs or small RECs, whose members are in close proximity. But drawing on the experience of a far-flung REC like COMESA, as a prototype for Africa, they point out that developing a continental common external tariff, though desirable, would likely be fraught with vast challenges, particularly those to be posed by those countries that would see imposition of tariffs on zero-rated products as policy reversal and those that have free trade areas with important trading parties outside the continent – it would be difficult, if not a breach of such existing trade arrangements, to introduce positive duty rates on zero-rated products. While work on the continental customs union may continue, and may result in other countries joining, the formation of the continental common market should not be predicated on the prior formation of the customs union. Rather, work on the continental common market should continue as a priority, building on the programmes for free movement of goods, services, persons and investment, as well as those for competition policy and intellectual property rights.

While all the existing customs unions have inbuilt free trade areas, not all the free trade areas have managed to proceed to the stage of customs union. COMESA and SADC stand out as large free trade areas that have not moved on to become customs unions – and not for want of trying. Having established its free trade area in 2008, SADC was supposed to be a customs union by 2010. That programme has since been shelved, as a quiet way of stopping the process altogether. Opposition from a number of member states proved formidable – we shall set out the reasons. Also, AMU, CENSAD, ECCAS and IGAD have not managed to establish their FTAs, but their Member States are parties to the

AfCFTA; demonstrating their readiness to proceed with the AfCFTA programs, which provide a foundation for the continental common market.

COMESA formed its free trade area in 2000, among its 22 member states, only nine reduced customs duties on all products to zero, on schedule according to the programme for tariff elimination. The COMESA FTA has now grown to 16 of the 21 current member states. It was supposed to move on to a customs union in 2004 – an obligation written in its Treaty. The customs union was declared formed at a summit some five years later in April 2009, with a three-year transition period for adopting the common external tariff. That did not happen.

Opposition to the customs union proceeded along the following arguments (Mangeni and Juma 2018: 97-100). The common external tariff would unravel key elements of both national and foreign policy and constitute policy reversals. Some countries, such as Mauritius and Seychelles, have reduced their MFN customs duties to 0% on more than 85 of total tariff lines. A number of Northern Africa countries are in free trade areas with the European Union as well as the Gulf States with which Arab solidarity is an important element of foreign policy. Another key argument was that the customs union would erode sovereignty of the Governments, particularly in setting fiscal policy as deemed fit. Countries facing economic turmoil considered this matter to be of paramount importance. Zimbabwe's economy, for instance, was in tatters since the imposition of sanctions by Western countries. Sudan had lost most of its oil reserves to South Sudan when the two separated.

Moreover, analytical work had projected significant revenue losses from implementation of the customs union. Also, some countries were afraid that they would be in breach of their WTO obligations if the common external tariff would result in an increase in their applied customs duties against other WTO members, and would be required to re-negotiate their WTO commitments, a prospect they greatly dreaded. Four, member states that belonged to the EAC, also felt they had a conceptual and political challenge – they could not belong to two customs unions, that is, to their EAC and now the COMESA customs union, because a customs union is required to apply its common external tariff against the rest of the world. It was argued also that the COMESA customs union would prevent the formation of the COMESA-EAC-SADC Tripartite Free Trade Area, work on which was gaining momentum at that time – because COMESA would have to impose a common external tariff against the rest of

the tripartite countries. Other challenges related to shortage of financial and technical resources for implementation of the customs union.

In response to the criticisms, creative solutions were found and adopted as ministerial decisions. For example, the principle of variable geometry would apply and the COMESA FTA *acquis* would be maintained regardless of the customs union. This would mean that countries that were not ready to join the customs union would be allowed to stay out until they were ready, but they would continue to trade with all the other countries on the terms of the free trade area – the common external tariff would not be applied against them. Countries would be allowed to exclude 5% of tariff lines from the common external tariff and maintain up to 20% of tariff lines as sensitive products with longer transition periods. This would address fears of revenue loss.

Besides, the COMESA Adjustment Fund had already been providing significant amounts of financial resources, under the free trade area, to countries that faced short term adjustment challenges. Regarding the EAC countries, analysis had shown that the common external tariffs of the EAC and COMESA had similar rates on 74% of the tariff lines, and that differences on the remaining 26% resulted mainly from misclassifications that could be corrected.

Therefore, countries could belong to both the EAC and COMESA customs unions, given also that the FTA *acquis* would be maintained. When the EAC customs union was formed in 2005, section 112 of the EAC Customs Management Act had already had to address the situation of Tanzania that belonged to the SADC FTA which was already in place having been formed in 2008, by providing that the EAC common external tariff would not apply to countries that were in free trade areas with EAC countries. Similarly, the COMESA-EAC-SADC Tripartite FTA would apply the same approach. It is only this approach that would enable the Southern African Customs Union (SACU) countries to participate in any FTA, such as the SADC FTA or the Tripartite FTA, or even the African Continental Free Trade Area. It is to be noted though, that customs unions with autonomy in the conduct of their external commercial relations are considered customs territories that can enter into FTAs with other customs territories and countries – some levity, however, has been exercised on what amounts to such autonomy.

The opposition continued unabated despite these solutions. The real reasons for the opposition were more entrenched. The countries that were better

prepared and more vocal, carried the day, even for the wrong reasons. The preference for what were considered more lucrative foreign markets proved stronger than the ideals of Pan-Africanism and the sound economic case for increasing intra-African trade and investment – being one reason why bilateral FTAs between African and third countries seem irresistible even for those in active customs unions like EAC, ECOWAS and SACU. The inertia of incumbent companies to maintain their traditional trade patterns also proved strong, despite resources under the Adjustment Facility for industrial upgrading and new business models. These very complexities could also haunt efforts to establish the African continental customs union. Such efforts will have the additional challenge of addressing the systemic differences in the common external tariffs of the existing regional customs unions. Common external tariffs have different bands and rates, which would have to be substantially aligned or abandoned altogether – Table 4.

Table 4: Differences in the CETs of the Customs Unions

	Is Custo ms Union in place?	CET in force	Num ber of band s	Custo ms Law	Tariff Nomencl ature	Com mon Exter nal Trade Policy	Autono my/ Exclusi ve Compet ence
AfCF TA	NO	-	-	-	-	-	-
CENS AD	NO	-	-	-	-	-	-

COM ESA	Transit ion	Transi tion	3 bands – 0-0- 10-25	Yes	Yes	NO	NO
EAC	Yes/ and a Comm on Market	Yes	4 bands – 0-10- 25-35 Band s for sensit ive produ ct exist	Yes	Yes	NO	NO
ECCA S	NO	-	-	-	-	-	-
ECO WAS	Yes	Yes	5 bands – 0-5- 10- 20-35	Yes	Yes	NO	NO
IGAD	NO	-	-	-	-	-	-
SADC	NO/ shelve d	-	-	-	-	-	-
UMA	NO	-	-	-	-	-	-
CEM AC	Yes/ and single curren cy	Yes	5 bands – 0-5- 10- 20-30	Yes	Yes	NO	NO

SACU	Yes/ and a common monetary area (except Botswana)	Yes	Varying MFN rates	Yes	Yes	NO	NO
UEMOA	Yes/ and a single currency	Yes	4 bands – 0-5- 10-20	Yes	Yes	NO	NO

Source: Author

Eventually, it was decided that member states should periodically report on progress and should prioritise implementation of the customs and trade facilitation instruments of the customs union and factor the common external tariff into their industrialisation programmes. They would do so by promoting competitiveness through zero-rated customs duties on raw materials and capital goods, a 10% customs duty on inter-mediate goods, and a 25% customs duty on finished goods as protection for domestic industries producing like-products. COMESA has subsequently made good progress on implementing the customs management regulations and the common tariff nomenclature, as well as other trade facilitation programmes such as one-stop-border-posts, coordinated customs management through single windows, customs automation, simplification and harmonisation of trade documents, elimination of non-tariff barriers, and reduction of time-related costs along key corridors.

Adoption of customs laws has been relatively easier, and indeed the AfCFTA Annexes on Trade in Goods provide a basis for a continental customs law in a customs union and common market – both would need a customs law. And so has the common tariff nomenclature, which the AfCFTA also has and would apply in a continental customs union and common market. Customs laws and tariff nomenclature are part of the suite of trade facilitation interventions and

have been appropriately prioritised in the AfCFTA. The subcommittees on customs, trade facilitation and transit are seized with this, and corridor programs across the continent aim to ease movement of goods and persons.

It's notable though that none of the regional customs unions has autonomy in the conduct of its external commercial relations. That would require a supra-national institution with that mandate, like the European Commission has exclusive jurisdiction to conduct the external trade relations of the Union with regard to all trade matters, on the basis of mandates given to it by the European Council. Or, as in the cases of Hong Kong and Taiwan that are recognised as autonomous customs territories, it would require a government for the customs territory.

Conclusion

Going forward, the AfCFTA has laid a strong foundation for establishing and consolidating the Common African Market, through its Protocols and Annexes that provide for progressive programs in areas for the common market. The high political momentum and traction around these programs should be maintained. Challenges of establishing a continental customs union should not be under-estimated and could well prove to be formidable, arising from differing national economic and foreign policies of Member States across the continent, and differing common external tariffs of the existing regional customs unions. However, the continental customs union should be work in progress but without being a pre-condition for faster progress on the Common African Market, building on the programs of the African Continent Free Trade Area and the regional economic communities on goods, services, labour, capital, investment, competition policy, intellectual property, digital trade, women and youth in trade, and dispute settlement. To this end, it is recommended that the highest political structures should undertake a number of measures.

Firstly, they should agree to explicitly work towards free movement of goods, services, persons, and investment and towards the rights of establishment and residence, that is, the Continental Common Market and eventually the Continental Economic Union as under Agenda 2063 and the Abuja Treaty. Secondly, they should note that, through their provisions and institutional frameworks, the AfCFTA Agreement and its Protocols on Goods, Services, Investment, Intellectual Property, Competition, Digital Trade, Women and

Youth in Trade, and Dispute Settlement are tools, pathways and starting points towards those freedoms and rights.

Thirdly, they should designate the champion for the AfCFTA as also champion for the continental common market and adopt an action plan with concrete timelines and regular built-in reviews on progress, for achieving these freedoms and rights as appropriate across the continent. This action plan should include the domestication, implementation of and continuous compliance with the Protocols on Goods and Services together with the Tariff and Services Schedules, the Protocols on Investment, Competition, Intellectual Property, Digital Trade, Women and Youth in Trade, and Dispute Settlement.

Fourthly, they should include in the action plan the due implementation of long-standing programs like the Free Movement of Persons Protocol, Program for Infrastructure Development in Africa (PIDA), Science Technology and Innovation Strategy for Africa (STISA), Strategy for Accelerated Industrial Development for Africa (AIDA), Action Plan for Boosting Intra-Africa Trade (BIAT), Single African Air Transport Market (SAATM), African Single Electricity Market (AfSEM), and the Pan African University (PAU).

Fifthly, they should mobilise all relevant stakeholders including government departments, private sector, civil society, and academia; and appropriately prioritise enforcement, utilisation, regular reporting and transparency as core components for efficacy of the process towards the continental common market. Additionally, they should mobilise law associations, judiciaries, economic operators to utilise and assist the compliance and enforcement systems; and implement an effective communication strategy through a blitz of awareness creation programs, networks of universities and structured training as the backbone for utilisation and continental integration.

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Chapter 2

THE AfCFTA REQUIRES A VISIBLE HAND

Mohamad Ali

Abstract

This chapter examines the structure of trade in goods under the African Continental Free Trade Area (AfCFTA), arguing for a more ambitious tariff reduction scheme for the AfCFTA. It introduces the Guided Trade Initiative (GTI) as a means to increase trade and calls for creating trading and aggregating companies that give the AfCFTA a ‘visible hand.’ The chapter also proposes the AfCFTA Connect (Aggregators Network) framework, highlighting its key functions, elements, and mechanisms, as well as its legal framework. Overall, the chapter emphasizes the need for practical initiatives to fully unleash the potential of the AfCFTA.

Key words: AfCFTA, Guided Trade Initiative, aggregators network, trade in goods, visible hand

Introduction

Article 3 and Article 4 of the AfCFTA Agreement is clear on the elimination of tariffs on the majority of goods traded between Member States as a key objective. In addition to reducing tariffs, the AfCFTA aims to improve the overall business environment in Africa by addressing non-tariff barriers to trade. These barriers include customs procedures and regulations that can make it difficult for companies - and almost impossible for small and medium-sized enterprises (SMEs) - to trade across borders.

Overall, the AfCFTA is a significant step towards increasing trade and driving economic growth and development in Africa. However, it requires sincere cooperation and support from all Member States, along with creative initiatives to be successful.

The Structure of Trade in Goods under the AfCFTA

The structure of trade in goods under the AfCFTA is a complex and nuanced topic that is critical to understanding the potential benefits and challenges of the agreement. One key aspect of this structure is the use of tariff modalities. These modalities are used to determine the levels of tariffs that will apply to goods traded between the countries of the AfCFTA. Additionally, they are designed to provide a balance between the need to protect certain sensitive sectors and the goal of encouraging trade between the countries of the AfCFTA.

The Protocol on trade in goods includes provisions to ensure transparent and predictable criteria for determining eligibility for preferential treatment within the AfCFTA. For success, it requires cooperation on customs administration, trade facilitation, sanitary and phytosanitary measures, and technical barriers to trade.

Tariff reduction modalities under the AfCFTA are divided into three categories:

- Category A: Refers to 90% of the tariff lines that should benefit from full liberalization over 5 years for developing countries, and 10 years for least-developed countries.
- Category B: Sensitive products that represent 7% of tariff lines, which would be fully liberalized over 13-15 years.

- Category C: Exclusion lists which represent 3% of tariff lines - excluded from the tariff liberalization ambitions of the AfCFTA.

Each country or customs union needs to come up with its own version of the three lists, which could mean that an apple producer from South Africa would not be able to benefit from the AfCFTA if the producer decided to export to ECOWAS countries if ECOWAS lists apples under category C; but, the same producer could benefit from the AfCFTA if they decided to export to Morocco, for example, if the goods in question were not listed under Category C.

Of the 47 AU Member States who have ratified the AfCFTA Agreement, 46 countries have submitted their provisional schedules of tariff concessions. This makes it a very complex exercise for traders to plan their business activities based on the AfCFTA market access schemes. The complexity in the structure played a major role in delays in executing the first trade under the AfCFTA, which was postponed from 30th May 2019 (its entry into force) to October 2022.

The AfCFTA Guided Trade Initiative (GTI)

On 10th October 2021, the AfCFTA Council of Ministers Responsible for Trade adopted the Ministerial Directive on the Application of Provisional Schedules of Tariffs Concessions, providing a legal basis for countries that had submitted their tariff schedules in accordance with agreed modalities to trade preferentially amongst themselves. However, as commercially meaningful trade had not commenced under the AfCFTA preferences, the AfCFTA Secretariat embarked on a solutions-based approach, guiding State Parties to effectively begin trading under the AfCFTA Guided Trade Initiative (GTI).

The GTI brings together relevant stakeholders in participating countries, from both the public and private sectors, to mobilize and execute trade under AfCFTA preferences. The Initiative sensitizes stakeholders on requirements for State Parties to effectively benefit from the preferences, provides a platform for connecting focal points in participating countries, and mobilizes the private sector through business-to-business engagements within the larger AfCFTA framework. The specific objectives of the GTI are to allow for commercially meaningful trading under the AfCFTA; to test operational, institutional, legal and trade policy environments under the AfCFTA; and to

send an important positive message to African economic operators that Africa is ready to trade.

The relatively low number of utilizations of the tariff preferences so far highlights the need for a proactive and practical approach to activate the agreement when it comes to trade in goods. The AfCFTA Secretariat managed to execute the first AfCFTA Guided Trade Initiative in October 2022 between six State Parties: Cameroon, Egypt, Ghana, Kenya, Mauritius, and Rwanda, representing the five geographic regions of Africa. From these countries, a total of over 100 potential trades were realized. These include:

- **14 companies with 40 potential consignments from Ghana**, including floor and wall ceramic tiles, crude palm oil, palm kernel oil, etc.
- **27 companies with 50 potential consignments from Kenya**, including tea leaves, batteries, ball point pens, sodium silicate, exercise books, paper, hygiene and packaging products, beeswax-based skin and hair care products, powdered chili, powdered natural fruit flavours (strawberry and orange), avocado oil, powdered vegetable soups, PVC tarpaulin, luxury vinyl tiles, assorted juices, food flavourings and ingredients, filters, coolant, motor cycle parts, railway parts, steel wool, scourers, mops, welding electrodes, aluminium kitchenware products, leather bags and accessories, belts, wallets, bracelets, hard candy and lollipops, drinking chocolate, etc.
- **7 Companies with 20 potential consignments from Egypt**, including glucose syrup, corn starch, sugar, pasta, processed chicken, processed beef, frozen bread, etc.
- **25 potential consignments from Mauritius**, including soap, fertilizer, medicaments, surface-active solutions, carboy bottles, sanitary article, cartons and boxes, printed materials, tubes, pipes and hollow profiles, wheat flour, pasta and uncooked pasta (instant noodles), fish meal, etc.
- **8 potential consignments from Rwanda**, including Arabica coffee, instant coffee, etc.
- **4 potential consignments from Cameroon**, including tea and mixed spices.

In 2023, the Initiative was expanded to include twenty more countries: Algeria, Morocco and Tunisia in the North Africa Region; Cote d'Ivoire, Nigeria, Senegal and Togo in the West Africa Region; Cameroon, Democratic Republic of Congo (DRC), Gabon, Tanzania and Uganda in the Central Africa Region; Angola, Botswana, Namibia, South Africa and Zimbabwe in the Southern Africa Region; and Cape Verde, Comoros, Madagascar and Seychelles in the Island States.

Case Study: Igire Coffee Company

Igire Coffee Company, true to their tagline, 'self-reliance through Coffee'

is a Rwandan woman-led SME established by Bridgette Harrington, with the goal of building self-sufficiency through coffee by farming, processing and packaging coffee in Rwanda. The company, under the pilot phase of the initiative, shipped roasted coffee beans to Ghana through one of the first AfCFTA Certificates of Origin to be issued in the country. One of the benefits that accrued to Igire from participation in the GTI was through the facilitation of a correction to the initial certificate of origin issued.

Igire, through the GTI, also participated in wider AfCFTA business-matching engagements, such as the 2023 AfCFTA Business Forum. The company highlighted that in order for SMEs - especially women- and youth-led businesses - to benefit from the AfCFTA, there is a need to ensure sustainability through the aggregation of exports and/or consolidation of shipments, as smaller companies may not have adequate funding for cross-regional trade.

Lessons Learned

The pilot phase of the GTI highlighted that the legal framework of the AfCFTA is ready to be utilized by African traders. Although GTI facilitated trade and created connections between key stakeholders in the participating countries, it could not substitute the role of the private sector in implementing the AfCFTA Agreement. Further, for SMEs (which form the bulk of traders on the continent), to benefit from the tariff reductions available under the AfCFTA regime, there is a need for the formation of Trade Aggregators or Trading Companies to enable them to leverage economies of scale.

Giving the AfCFTA a Visible Hand

Trading and aggregating companies in each AfCFTA State Party could significantly increase intra-African trade and drive economic growth and development. These companies would serve as the main interface for their respective countries while trading under the AfCFTA. However, these companies would not have exclusive rights to trade under the agreement. Instead, they would act as facilitators to increase the reach of SMEs and small traders, as well as African women and youth, to the AfCFTA market.

One example of a successful trading company that has played a crucial role in driving economic growth and development is the East African Portland Cement Company (EAPCC) in Kenya. The company, which was established in 1933, was the first cement company in East Africa and played a key role in the development of the region's infrastructure. In its early years, the company was responsible for the construction of several major projects, including the Kenyatta International Conference Centre in Nairobi, the Thika Dam, and the Kenya-Uganda Railway.

Another example of a successful trading company is the South African company SABMiller, now known as AB InBev. SABMiller was established in 1895, and has since grown to become one of the largest brewing companies in the world. The company has played a significant role in the South African economy by creating thousands of jobs and contributing to the country's GDP. In addition, SABMiller invested in local communities through various social and economic development initiatives, including the establishment of the SAB Foundation, which focuses on providing support to SMEs and small traders in the country.

A third example of a successful trading company in Africa is the Dangote Group, a Nigerian company. Founded in 1977 by Aliko Dangote, the company began as a small trading business but has since grown to become one of the largest conglomerates in Africa, with interests in cement, sugar, flour, and salt production. The company's success can be attributed to its ability to identify and capitalize on opportunities in the Nigerian market and its ability to adapt to changing market conditions.

Last but not least, the El Nasr Company from Egypt started in the late 1800s as a small trading company, but has since grown to become one of the largest industrial and trading companies in Egypt and the Middle East. The company's diversified portfolio includes the manufacturing of heavy

equipment, construction materials, and consumer goods. El Nasr's success can be attributed to its ability to adapt to the changing economic conditions in Egypt and its ability to identify new business opportunities.

These examples show that trading companies can serve as a catalyst for economic growth and development. In addition to African models, worldwide we can see that companies such as GE, Hyundai, Samsung and Siemens all started as small trading companies that have grown to become multibillion-dollar companies with a global presence. The key to their success can be attributed to the ability to adapt to changing market conditions and identifying new opportunities for growth.

Trading Companies and SMEs

SMEs and small traders in Africa face significant barriers to trade, such as a lack of access to finance and limited knowledge of foreign markets (Fatoki 2014). Therefore, trading and aggregating companies can act as intermediaries between buyers and sellers, thereby connecting SMEs with larger traders and buyers within the AfCFTA market. As a result, SMEs can benefit from increased trade opportunities within the AfCFTA and overcome these barriers, leading to increased economic growth and development.

In addition to providing increased access to markets for SMEs, trading and aggregating companies can also improve the efficiency and effectiveness of trade within the AfCFTA. Furthermore, trading and aggregating companies can streamline the trading process and reduce the costs and risks associated with trade. Therefore, this will make such trade more accessible and attractive to SMEs and small traders. Moreover, these companies can also provide valuable services such as logistics, financing, and market intelligence, which can help SMEs to better navigate the AfCFTA market.

Spillover

Furthermore, the creation of trading and aggregating companies can have a positive spillover on other sectors, such as transport. According to a study by Echandi, Maliszewska and Steenbergen (2022), the lack of transport infrastructure is one of the major barriers to trade in Africa. As trade increases within the AfCFTA, there will be more investment in trade-related transport

infrastructure, which will improve the efficiency and effectiveness of trade. Consequently, this will further lead to increased economic growth and development.

The creation of trading and aggregating companies in each State Party of the AfCFTA would have a positive developmental spillover effect on the transport and logistics sector. These companies would serve as the main interface in their respective countries while trading under the AfCFTA, and would act as facilitators to increase the access of SMEs and small traders, as well as African women and youth, to the AfCFTA market.

The creation of trading and aggregating companies comes with a myriad of benefits that include increased demand for transit hubs and warehouses. These facilities would be needed to store and distribute goods, as well as provide customs clearance services. Moreover, the creation of these companies would also lead to increased demand for all means of transport, including road, rail, air, and sea transport. Thus, the increase in trade would lead to more investment in transport infrastructure, including the development of new transportation routes and the upgrading of existing ones. This would lead to the creation of jobs and improvement of the business environment by making it easier for goods and services to be transported across the continent.

Additionally, the increase in trade and investment in transport infrastructure would lead to more Foreign Direct Investment (FDI) in the transport and logistics sector. This would bring in new technologies and best practices, which would improve the efficiency and competitiveness of the sector.

However, for trading and aggregating companies to bring these benefits to the AfCFTA, they must be implemented effectively. This requires a conducive environment, capacity-building, and a fair regulatory framework. It is imperative that the AfCFTA Secretariat and all African stakeholders work together to create an environment that is conducive to the development of trading and aggregating companies, such as providing access to finance and technical assistance, reducing bureaucracy, and ensuring fair competition.

AFCFTA AGGREGATORS NETWORK

Why the Continental Framework is Needed

The creation of a network of AfCFTA trading and aggregating companies is important to secure potential synergies between the activities of trading companies and the development agenda of the AfCFTA. One key benefit of this network would be the increase in intra-African trade through direct exchange among the participating countries. However, the strategic goal should be the creation of new value chains and the expansion of existing ones, driving economic growth and development, and creating jobs across the continent.

For instance, the trading of agricultural commodities like cocoa, coffee, and cotton could see a significant increase as a result of an Aggregators Network. These commodities are important for many African countries.

Furthermore, the increased trade resulting from an Aggregators Network would lead to an increase in demand for goods and services, leading to increased investment in the continent and consequently the creation of job opportunities. This would have a positive impact on the socio-economic prosperity of Africans, as individuals and households would see an improvement in their standard of living.

In order for the Aggregators Network to be successful and sustainable, a number of factors must be taken into account, such as creating a continental framework to facilitate the day-to-day engagement of trading and aggregating companies in different countries. This framework would need to be flexible and adaptable to the different needs of the countries participating in an Aggregators Network, including an African-tailored approach to trade for development that is effective and efficient.

Network Benefits

Given the significant role of agriculture in the continent's economy, with smallholder farmers responsible for 80% of food production, the agricultural sector is expected to be a primary beneficiary from the AfCFTA - meeting local demand, accelerating GDP growth, creating new jobs, and enhancing inclusivity through its connections with other sectors (Signé and Munyati 2023).

An Aggregators Network will also create new continental/cross-region value chains in the agricultural sector. By connecting SMEs and small traders in different countries, the Aggregators Network will enhance jobs and trade deals – for example by connecting Nigerian trader/manufacturers to those in Kenya and other countries. In connecting with more advanced countries in the continent and learning from their experiences and best practices, more capacities could be enhanced, e.g. an Ethiopian agricultural SME can connect with a Moroccan one and learn from their experience in the field of export and packaging, which can improve both companies' competitiveness in the global market.

Such a network will also expand existing value chains by connecting countries with complementary agricultural resources.

In addition, by facilitating the trade of agricultural goods between African countries, an Aggregators Network can help to reduce the continent's dependence on imports of food and agricultural products. This will not only help improve food security in many African countries, it would also increase the resilience of the agricultural sector to external shocks, such as changes in global food prices.

On manufacturing, in the case of the automotive industry, the government of Egypt has been working to establish the country as a hub for the production of automobiles in Africa. This has led to the establishment of several automotive manufacturing facilities in the country, including a factory for the production of vehicles for the German automaker, Volkswagen (BBC News 2018). This is also true of other countries like Kenya, Nigeria, Rwanda and Uganda. Sharing experiences across an Aggregators Network can also create new opportunities for sourcing production inputs within Africa.

The textiles and clothing industry (AfDB n.d.) provides Kenya with a significant source of employment, and the sector has the potential to be a key driver of economic growth in the country (AfDB 2018). In West Africa, several countries are key producers of cotton – like Benin, Burkina Faso, Chad and Mali. Mauritius also has an important textiles industry. An Aggregators Network could lead to the creation of new value chains in the manufacturing sector and the expansion of existing ones. For instance, Ethiopia and Rwanda (The East African 2019) have started to focus on developing manufacturing to establish themselves as hubs for the production of goods such as textiles and clothing, footwear, and electronics (Oxford Business Group 2021).

With the importance of trade and aggregating companies demonstrated, it is crucial to realize how such an arrangement can fit within the umbrella of the AfCFTA. For that purpose, we would assume that AfCFTA policymakers will establish a regulatory framework/body called to facilitate and regulate the interactions between trading companies. The establishment of an Aggregators Network as a body would play a critical role in connecting State Parties' trading companies, leading to increased intra-African trade and more market visibility. This increased trade would in turn drive economic growth and development across the continent, creating jobs and improving the standard of living for many Africans. Additionally, the network would also play a key role in the expansion of existing value chains and the creation of new ones, leading to increased investment in the continent.

Furthermore, an Aggregators Network would also facilitate the creation of a continental legal framework that would support the day-to-day engagement of trading and aggregating companies in different countries. This framework would need to be flexible and adaptable to the different needs of the countries participating in the network. This would ensure a sustainable and effective increase in trade among African countries and improve the continent's socio-economic prosperity.

Key Functions of an Aggregators Network

The key functions of an Aggregators Network - a continental facilitator and networking body - are to connect State Parties' trading companies and promote intra-Africa trade, as well as to provide a platform for exchanges of information and knowledge among trading companies in areas such as market trends, regulations, and best practices. Additionally, it would facilitate the sharing of information on trade opportunities, both within and without the continent. An Aggregators Network would provide technical assistance and capacity-building for State Parties' trading companies, including support for development of business plans, market research, and trade negotiations; and training on topics like international trade agreements, customs regulations, and logistics. In addition, an Aggregators Network would promote trade facilitation and reduction of non-tariff barriers to trade, working with State Parties to simplify customs procedures, promote electronic trade, and reduce the time and cost of transporting goods across borders. Additionally, an Aggregators Network would work with State Parties to reduce the

administrative burden on trading companies and improve the overall business environment for trade.

Elements and Mechanisms of an Aggregators Network

- 1) **Database:** A central hub for all member trading companies to access and share information. This database would include information such as contact details, product and service offerings, and trade history. The establishment of a continental trade data repository serving as a centralized platform for the collection, storage, and sharing of trade data among State Parties and trading companies would facilitate the monitoring and analysis of trade trends within the AfCFTA market, while also offering trading companies information to connect and identify potential business partners.
- 2) **Network Portal:** A digital platform that allows easy communication and collaboration among member trading companies. The portal would include features such as video conferencing, document sharing, and a messaging system.
- 3) **Matchmaking Service:** A service that matches trading companies based on their product and service offerings, trade history, and location. This service would allow for efficient matchmaking and reduce the time and resources needed for companies to find potential business partners.
- 4) **Training and Capacity-Building Programme:** A programme that provides training and capacity-building for member trading companies on topics such as trade regulations, logistics, and marketing.
- 5) **Continental Legal Framework:** A continental legal framework that supports the functioning of an Aggregators Network. This framework would include regulations on data protection, intellectual property, and additional provisions for dispute resolution.

Legal Framework for Aggregators Network

The establishment of a legal framework is crucial for the success and sustainability of an Aggregators Network. This framework would provide the necessary regulations and guidelines for the day-to-day engagement of trading and aggregating companies within the AfCFTA market. It would also ensure

that the interests of all stakeholders - including State Parties, trading companies, and individual traders - are protected. The key elements of the legal framework for an Aggregators Network would include:

- 1) The integration of an Aggregators Network into the continental trade dispute resolution mechanism under the AfCFTA. This would contribute to the broader objective of enforcing the rules and regulations of an Aggregators Network.
- 2) The legal framework for an Aggregators Network would also include provisions for the protection of intellectual property rights, the regulation of e-commerce, and the promotion of good governance. These provisions would be designed to ensure that the interests of all stakeholders are protected, and that the AfCFTA market operates in a fair and transparent manner.

To ensure the effectiveness and efficiency of the legal framework for an Aggregators Network, it will be necessary to involve all stakeholders in the development process. This would include State Parties, trading companies, individual traders, and experts in trade laws. It will also be essential to ensure that the framework is flexible and adaptable to the different needs of the countries participating in an Aggregators Network.

Conclusion

To move from the ambitious rhetoric of the agreement to tangible reality, bold and unorthodox steps are needed, such as the introduction of trading and aggregating companies. These companies serve as intermediaries, facilitating cross-border trade and providing governance for intra-Africa trade. By enhancing the competitiveness of SMEs through economies of scale, these companies will contribute to the success of the agreement. Implementing a transparent continental framework will ensure the alignment of stakeholder interests, and foster a thriving trade ecosystem within Africa.

An Aggregators Network's potential benefits are significant for the agriculture and manufacturing sectors. In agriculture, it enhances supply chains, increases trade, improves food security, and strengthens resilience. In manufacturing, hubs and sectors could grow across the continent, increasing Africa's share of global trade, fostering economic development and increasing job creation.

Furthermore, a continental framework for the governance of aggregators within the AfCFTA can provide a mechanism for addressing issues such as intellectual property rights, dispute resolution, and compliance with international trade standards. This can help create a level playing field for all businesses operating within the continent, and ensure that trade is conducted in a fair and transparent manner.

The AfCFTA is a critical step towards economic development and prosperity for Africa. Despite its ambitious goals, it is essential to remember that the absolute level of trade itself is not the ultimate goal, but rather an increase in economic development and prosperity for all African citizens.

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Chapter 3

ACCELERATING SERVICES TRADE IN AFRICA FOR AN EFFECTIVE COMMON AFRICAN MARKET: LESSONS FROM THE EAC AND THE EU COMMON MARKETS

Magdaline Sereya Morijoi

Abstract

The World Bank projects that most gains under the AfCFTA will be derived from trade in services. However, restrictiveness in the upper levels of trade in services would contribute to a lag in the growth of the overall services trade. The EAC and EU common markets experiences indicate that policy initiatives such as mutual recognition of professional/education qualifications, standards and training, harmonization of policies, and establishing a monitoring and evaluation mechanism have all enhanced in the trade in services. These can be considered as critical interventions to enhance intra-African trade in services under the Common African Market.

Keywords: Services, Common African Market, East African Community, European Union

Introduction

Over the past three decades, trade in services has grown faster than trade in goods, driving economic expansion, especially in developing African countries. The services sector now represents over 50% of global employment and 67% of GDP, with rising percentages in developing nations (World Bank and WTO, 2023). The East African Community (EAC) and European Union (EU) saw services exports grow over time, except in 2020 when the pandemic caused declines of 40% and 13% respectively, followed by a rebound in 2021 (UNCTAD 2023). Services, which span various sectors, are traded through four modes of supply, with modes 2, 3, and 4 requiring proximity between buyers and sellers (ECA 2021).

Figure 1: The Four Modes of Services Supply

Modes of service supply	Description
Mode 1: Cross Border Supply of Services	Services supplied from the territory of one member into the territory of any other member, such as through the internet.
Mode 2: Consumption Abroad	Services provided in the territory of one member to a consumer of any other member, such as tourism.
Mode 3: Commercial Presence	Services supplied by a supplier of one member through commercial presence in the territory of any other member, such as establishing a controlled affiliate.
Mode 4: Presence of Natural Persons	Supplier of one member provides services through the presence of natural persons in the territory of another member, such as consultants.

Examples of services traded are financial, telecommunications, transport, tourism, or professional services. In general, services are more highly regulated than goods, with key reasons including the need to protect consumers and enhance market competitiveness. However, such regulations may impede the free movement of services across borders (World Bank and WTO 2023).

Barriers to trade in services may often arise because of the differences between national regulations, such as standards and licencing requirements regulating certain professions (Kainer 2019), restrictions on the movement of people, the establishment of commercial presence for foreign entities or their ownership, and the use of national policies to discriminate between local and foreign service suppliers (or consumers), as well as restrictions on competition (Briggs and Sheehan 2018).

To ensure unrestricted exports of services, it is necessary to implement a regulation that guarantees the freedom to set up businesses within the territory of the Member State where the services are consumed. This regulation should encompass the mutual recognition of professional qualifications held by service providers, as well as the establishment of rules that enable and enhance the consumption and provision of services in another Member State. For instance, if a company is unable to establish its presence in the country where it intends to offer its services, it becomes effectively prohibited from providing those services (if they cannot be supplied by other means than through establishment). Similarly, if the qualifications of a professional service provider from one Member State are not recognized in another, that individual will be unable to provide professional services in another Member State (Jolevski 2021).

The high level of service restrictiveness contributes to increased trade costs. WTO (2019) estimated that the cost of trading services is twice as high as that of goods. Therefore, the aim of establishing a common market is to facilitate the reduction and elimination of service restrictions within the framework of the free movement of services - one of the fundamental freedoms of a common market.

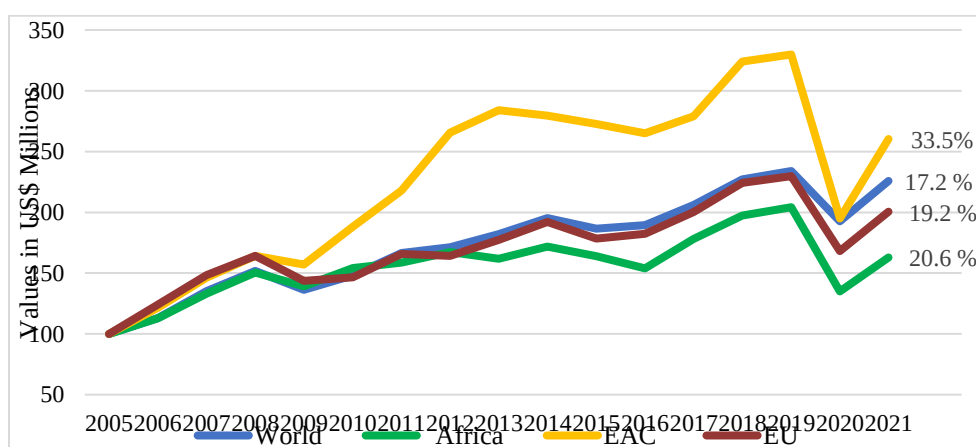
This chapter examines the challenges faced in the EAC and EU common markets, and highlights lessons learned. The structure of the chapter is as follows: Section 2 provides an overview of the performance of the trade in

services; Section 3 highlights the gains from services trade liberalization; Section 4 describes the EAC Common Market experience; Section 5 explores the EU Single Market experience; Section 6 concludes, and Section 7 summarizes the lessons learned from the EU and EAC experiences and provides recommendations on the way forward.

Services Trade Performance

The importance of the trade in services is demonstrated by its performance over time. Figure 2 illustrates services export trends from 2005 to 2021 for the World, Africa, EAC and EU based on statistics from UNCTAD. The inclusion of the EAC and EU regional economic blocs is informed by the objective of this chapter, which is to draw lessons from their experiences.

Figure 2: Services Export Trends, 2005 – 2021 (Index Values in US\$ Millions, 2005=100)



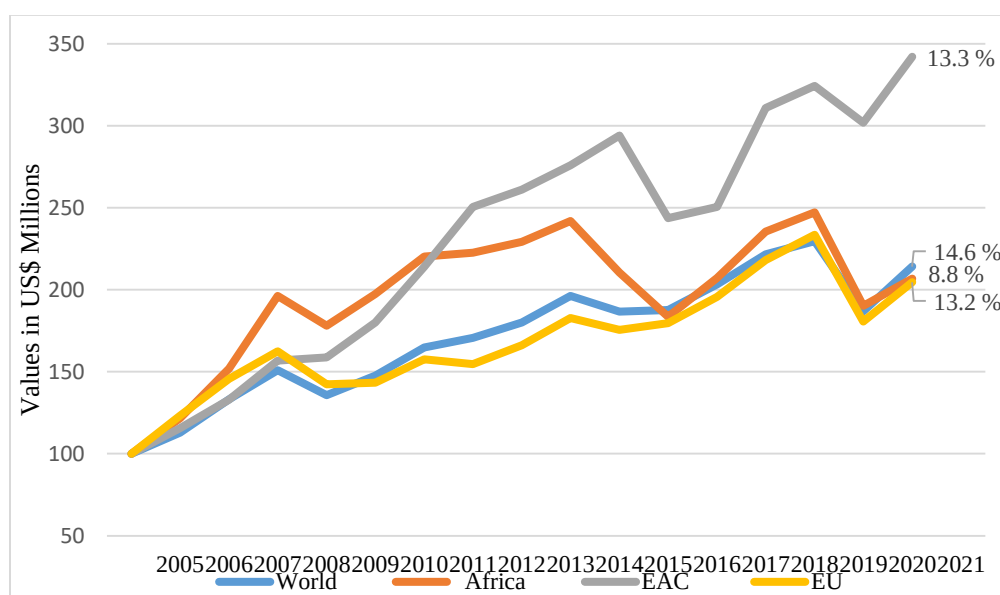
Source: UNCTADstat

The figure above indicates a steady growth of services exports for Africa, the EAC, the EU and the world from the year 2005 to 2021. African countries' service exports have been growing faster than the world average. However, in 2020, the export performance of the services in the EAC fell sharply by 40.9% from US\$13 billion to US\$7.8 billion, the largest drop compared to Africa, which fell by 34%, the EU by 26.9%, and the world by 17.7% - all attributed

to the devastating effects of the COVID-19 pandemic which disrupted the travel and tourism sectors by restricting the movement of people (UNCTAD, 2023).

In 2021, Africa's services exports grew by 20.6%, compared to a 17.2% growth in global services trade. In contrast, EU services exports increased by 19.2%, while those of the East African Community (EAC) surged by 33.5%. The EAC experienced a larger increase in services exports compared to the EU, Africa, and the global average. This strong rebound in services exports in 2021 highlights the resilience and potential of the services trade in accelerating economic growth (UNCTAD, 2023).

Figure 3: Services Imports Trends, 2005 – 2021 (Index Values in US\$ Millions, 2005=100)

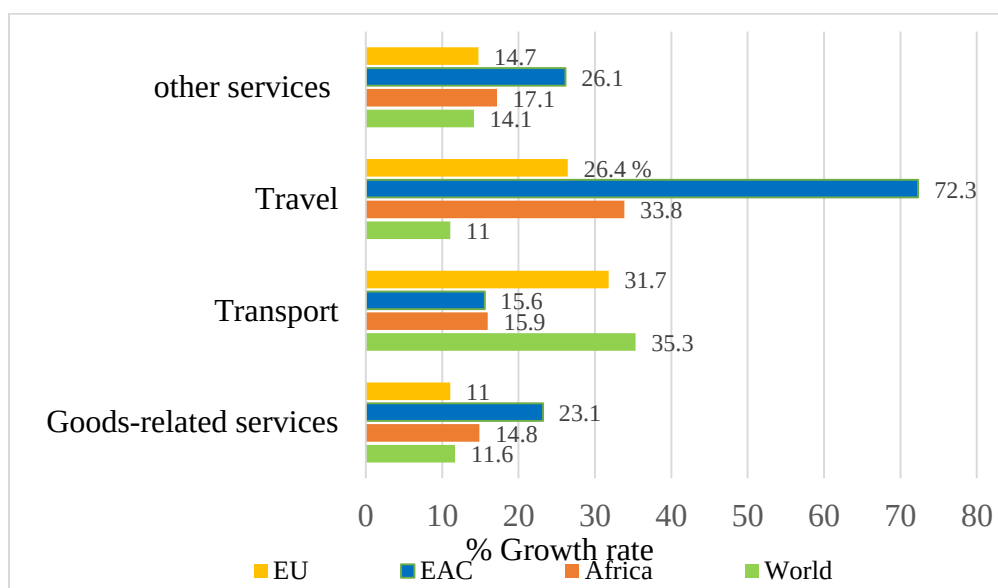


Source: UNCTADstat

In 2021, Africa's services exports grew by 20.6%, compared to a 17.2% growth in global services trade. In contrast, EU services exports increased by 19.2%, while those of the East African Community (EAC) surged by 33.5%. The EAC experienced a larger increase in services exports compared to the EU, Africa, and the global average. This strong rebound in services exports in 2021 highlights the resilience and potential of the services trade in accelerating economic growth (UNCTAD, 2023).

Figure 3 above shows the performance of services trade imports for Africa, the EAC, the EU and the world from the year 2005 to 2021. From the chart, services imports grew steadily since 2005, and a similar trend in services exports performance is observed in the year 2020, when imports declined sharply for all regions; the biggest impact was felt within the African region, which declined by 23.1%. In 2021, imports increased significantly, with the world increasing by the highest percentage (14.6%), while Africa imports increased by only 8.8%.

Figure 4: Services Exports Growth Rate by Category in 2021



Source: UNCTADstat

Figure 4 illustrates the services exports percentage growth rate in 2021 in terms of categories of services sectors. UNCTAD (2023) statistics on the ‘other services’ sector covers construction, insurance and pension services, financial services, charges for the use of intellectual property, telecommunications, computer and information services, other business services, personal/cultural/recreational services, government goods and services, and services not allocated. The chart illustrates that in 2021, the transport sector had the highest growth rate of 35.2% globally, with a 31.7% increase for the EU. Within Africa, the travel sector was the most traded, with an increase of 33.8%; within the EAC, the same situation obtained, albeit with

a more significant increase (72.3%). The export of other services and goods-related services did not grow at a faster rate, unlike that of transport and travel. The increase in the growth rate of all the sectors in 2021 indicates the importance of services in growing the economy and contributing to GDP.

Free Movement of Services within the EAC Common Market

The EAC is a regional economic community (REC) comprising seven Partner States including Burundi, Kenya, Rwanda, South Sudan, Tanzania, Uganda, and the Democratic Republic of the Congo - the DRC being the most recent Partner State to accede to the Treaty establishing the EAC on 8 April 2022, and becoming a full member by depositing the instrument of ratification on 11 July 2022. The estimated population of the EAC is 283.7 million people, with a combined GDP of US\$305.3 billion (EAC, 2022).

According to the Africa Regional Integration Report of 2019, the EAC is the most advanced REC in Africa, having already established a customs union and a common market, and intending to establish a monetary union as well as, eventually, a political federation (AUC, 2019). Recent data available show that the establishment of the customs union and common market in the EAC has contributed to boosting total intra-EAC trade by 11.2% from US\$9,810.4 million in 2021 to US\$10,910.4 million in 2022. There has been progress made on infrastructure development to enhance connectivity within the region by roads, railway lines, and air and water transport (EAC, 2023).

How did the EAC common market come to be? Ugirashebuja *et al.* (2017) noted four stages of common market integration in the historical development of the EAC region. The first phase happened in the early 1900s between Kenya and Uganda under British rule, when the Kenya-Uganda Railway was being constructed. The second phase took place in 1922, when Tanganyika joined the East Africa Cooperation initiative. The third phase of the common market was provided for in the Treaty for East African Cooperation adopted by Kenya, Tanzania, and Uganda in 1967 before its collapse in 1977. The existing common market was the fourth phase, built on the foundation of the East Africa Cooperation initiative, which had collapsed.

The EAC common market is anchored under Article 5(2) of the EAC Treaty for the Establishment of the East African Community. EAC Partner States are

obliged to establish among themselves a Customs Union, a Common Market, a Monetary Union and ultimately a Political Federation.

Article 76 of the EAC Treaty specifically provided for the establishment of a common market covering the four freedoms - free movement of goods, free movement of labour, free movement of services, and free movement of capital - and two rights of establishment and residency. The EAC Common Market Protocol (CMP) came into force in November 2009 (Ugirashebuja *et al.* 2017).

Free movement of services is covered under Part F (Articles 16-23) of the EAC CMP, which guarantees free movement of services and services suppliers under the four modes of supply. EAC Partner States undertook services trade liberalization inscribed in their Schedule of Commitments on the Progressive Liberalization of Services contained in Annex V. EAC Partner States undertook commitments to liberalize seven sectors: business services, communication services, distribution services, education services, financial services, tourism and related services, and transport services (EAC 2009).

To ensure monitoring of implementation, Article 50 of the EAC Treaty provides a mechanism; in 2013, EAC Partner States adopted the EAC Common Market Scorecard (CMS), which is a monitoring tool used to measure and assess compliance with commitments under the CMP and track progress towards regional integration. It identifies areas where the EAC is lagging, reasons for such lags, and provides recommendations based on international standards (EAC 2020).

Two scorecards were published in 2014 and 2016 tracking the progress of the free movement of professional services (architecture, engineering, accounting, auditing, bookkeeping and legal); distribution (retail and wholesale); transport (road and air); and telecommunication services. The results of the scorecards found several obstacles impairing implementation of the EAC CMP. On laws and regulations of EAC Partner States, the 2016 CMS found at least 59 non-conforming measures (NCMs) slowing down services trade in the four sectors monitored, explaining the challenges faced in implementing the CMP, which point to continued operation as a separate and distinct market instead of one common market with coherent policies facilitating the free movement of services (EAC 2020).

To enhance elimination of NCMs, EAC Partner States during the Sectoral Council on Trade, Industry, Finance, and Investment (SCTIFI) meeting held in February 2017 directed the EAC Secretariat to develop a mechanism for the removal of restrictions, which was adopted in 2018 with a two-fold objective: to provide policymakers a tool to assess the efficiency and effectiveness of policy actions to improve implementation of commitments; and to ensure greater regulatory transparency and predictability, especially for businesses and entrepreneurs by ensuring removal of restrictions in trade in services (EAC 2022). At the time of writing, there is limited empirical literature available to indicate the status of the removal of these restrictions.

The EAC CMP (2009) recognized the need for mutual recognition of professional qualifications in facilitating trade in professional services in line with Article 11, where Partner States undertake to harmonize and mutually recognize academic and professional qualifications granted, experience obtained, requirements met, and licences or certifications granted in other Partner States. The EAC Annual Report for the financial year 2018/2019 indicated that four Mutual Recognition Agreements (MRAs) had been signed and were under implementation for professional services: accounting, auditing, engineering, and architectural services. Additionally, EAC Partner States were directed by the Council to support the establishment of competent regulatory bodies or associations for professional services to facilitate the movement of professional services within the EAC region (EAC 2020).

Schmidt (2007) pointed out that MRAs can act as an alternative to harmonization and allow integration of distinct markets. Omondi (2017) studies the free movement of services with a focus on challenges faced in the implementation of cross-border legal practice within the EAC, highlighting the absence of MRAs for legal practitioners, which is key for cross border legal practice. Even the MRAs that have been signed are not effectively implemented.

The Africa Regional Integration Report (2019) identified several obstacles to the successful implementation of the EAC CMP, including *inter alia*, a lack of awareness among EAC citizens about the integration process; EAC institutions having limited authority to enforce and execute agreements; delays in aligning national policies, laws, and regulations with the protocol; and insufficient political mobilization to fully implement the EAC CMP.

Omondi's findings (2017) are consistent with those of the Africa Regional Integration Report. He found that EAC Partner States had not amended their national laws relating to legal practice to reflect CMP requirements. Lack of political goodwill, limited resources, and language barriers also affect implementation. Courts are playing a role in developing jurisprudence that seeks to strengthen implementation of the EAC CMP. In *Samuel Mukira Mohochi v. The Attorney General of The Republic of Uganda*, filed at the East African Court of Justice in 2011, the applicant was denied entry into Uganda. The court found that the actions of denial of entry, detention, removal and return of the applicant, a citizen of a Partner State to the Republic of Kenya, were unlawful and in violation of his rights under Article 104 of the Treaty and Article 7 of the Common Market Protocol (EACJ 2023).

The EAC Partner States also developed a Trade in Services Strategy in 2021 aimed at boosting intra-EAC services trade. A detailed implementation plan with defined timelines, targets, and outputs was drafted by the EAC Secretariat to help EAC Partner States fast track the implementation of the CMP services trade (EAC 2023). It is anticipated that this will advance the EAC CMP.

Is the European Union Single Market a Success?

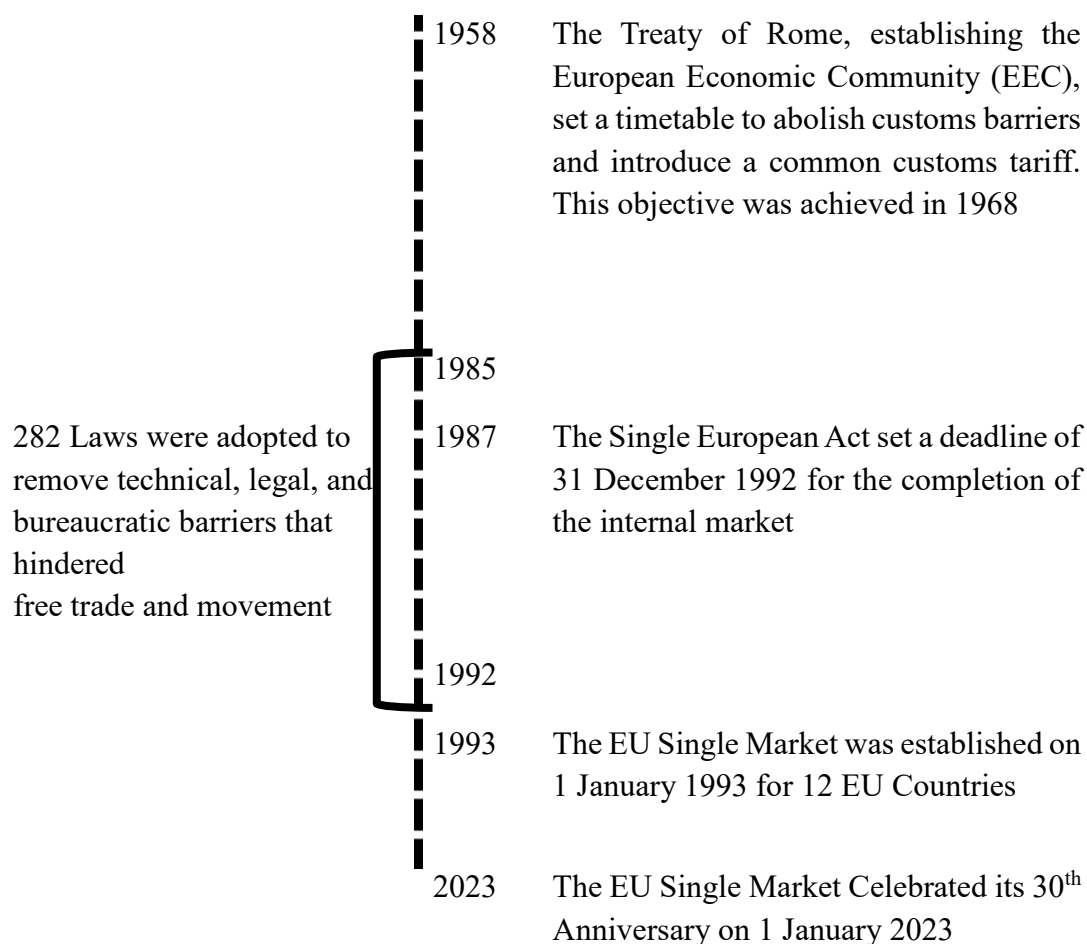
Throughout this chapter, the terms 'single market' and 'common market' are used interchangeably. Both allow for the free movement of goods, services, capital, and people. Several scholars argue the EU Single Market remains a notable achievement in regional integration as the largest and most integrated single market; Erixon and Georgieva (2016), however, questioned the existence of the single market itself.

On 1 January 1993, the EU Single Market was established for 12 EU countries¹, with a goal to ensure free movement of goods, services, money, and people. In 2006, the EU adopted the Services Directive (Directive 2006/123/EC) to eliminate any remaining barriers to the freedom of movement of services within the EU. This Directive established a framework for services liberalization and aimed to simplify the rules and administrative procedures

¹ Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom (although the United Kingdom left the EU on 31 January 2020 following the 'Brexit' referendum).

for the establishment of service providers in their home country and abroad for ease of cross-border service provision and strengthening the right of consumers to access such services (EU 2022).

Figure 5: History of the EU Single Market



Source: Council of the EU and European Council, 2023

The Current European Union was established by the Treaty on the Functioning of the European Union (TFEU) adopted in 2007, after amending the 1957

Treaty of Rome. Article 56 of the TFEU requires EU Member States to remove obstacles to enhance service provision for consumers wanting to use services supplied by providers set up in another EU Member State. This required that EU Member States remove obligations to obtain authorization, abolish discriminatory requirements based on a user's nationality or residency, enhance transparency of general information, and provide legal requirements assistance (Ugirashebuja *et al.* 2017). Moreover, Article 53 of the TFEU provides for adoption of directives by the European Parliament and the Council of the European Union concerning the mutual recognition of diplomas and other qualifications required in each Member State for access to regulated professions.

Today, the EU Single Market comprises 27 member countries with over 450 million consumers (Jolevski 2021). Services continue to dominate the EU economy, accounting for 70% of its GDP and a proportional share of total employment. According to a recent report by the European Commission, services restrictions declined between 2006 and 2017 as efforts to integrate the EU's service markets continued. However, it pointed out that the Single Market for services was still fragmented, and that overall progress in reducing constraints was limited (WTO 2023).

Erixon and Georgieva (2016) highlighted challenges including a lack of standardization, fragmentation of services along national lines, a multiplicity of restrictions, and a piecemeal approach in undertaking reforms via new initiatives (some of which opened markets while others did not), structural and political problems, diverse cultures and languages, and protective policies by some EU members who do not support the successful implementation of the EU Services Market.

Additionally, the 2006 Services Directive had a minimal effect on some of the sectors liberalized, as many services remain outside the scope of the Single Market, and those that have been partially liberalized did not undertake major reforms intended to remove barriers (Erixon and Georgieva 2016). Some of the proposed initiatives, like the services e-card introduced in 2017 to enhance intra-EU trade services trade, failed to take off and were withdrawn in 2021. The EU services trade is also hampered by a serious lack of reliable data and comprehensive statistics (Bauer 2023). The EU Single Market suffered a blow after the withdrawal of the United Kingdom from the EU in 2020. Egan (2019) noted that because of Brexit, new restrictions on the ability to offer cross-

border services (such as insurance, business, and pension services) were likely to be introduced, generating pressure for the relocation of establishments with a commercial presence within the EU Single Market.

Like the EAC, the EU has in place a Single Market Scoreboard to monitor the countries' performance. The 2020 report on the performance of the EU Single Market indicated that the number of Single Market-related infringements decreased for the first time in four years. However, it was observed that the environment, transport, and professional services sectors still faced the most Single Market-related infringement cases (EU 2023).

Recently, EU Member States came up with the 2022 Single Market Action Plan for Europe, which contained a list of reforms, new regulations, legislative reviews, and guidelines necessary to revive the EU Single Market. The action plan sets out the following priorities: define services as a priority for the next Commission, enforce the Services Directive more actively, move beyond the Services Directive, improve Member States' implementation, invest in points of single contact, create a one-stop shop in Member States, and update the Single Market Scoreboard (Bjerkem and Harbour 2019).

Lessons Learned and Policy Implications

This chapter summarizes four key lessons learned from the EAC and EU common markets experience in facilitating the movement of services. First, the establishment of a Common African Market as the next stage of integration is timely in accelerating the trade in services in Africa. At the continental level, the AfCFTA is on the right track towards deepening the level of integration, bearing in mind that RECs are the building blocks of the AfCFTA.

Second, to enhance the free movement of services, the implementation of a future Common African Market could borrow from EAC and EU best practices of establishing a monitoring and evaluation mechanism to track progress on the removal and elimination of service restrictions. For instance, the EAC developed a mechanism for the removal of restrictions, as well as an EAC CMS, whereas the EU put in place a single market scorecard.

Third, having a strategy or an action plan to speed up the implementation of commitments made by members of an REC is critical. The EAC has a trade in

services strategy, while the EU came up with an action plan. Both initiatives are future-facing, and outline the priorities of the REC with defined activities and timelines for implementation, something that could be emulated in the establishment of a Common African Market to facilitate services trade in Africa.

Fourth, mutual recognition could be used in certain circumstances as an alternative to harmonization of regulations to facilitate the free movement of services. It was observed that fragmentation of the services sector along national lines was common both in the EU and the EAC, posing a threat to the harmonization of regulations. However, in the case of the EU, harmonization was found to be a slow and cumbersome process, and mutual recognition was instead pursued to achieve the intended objective. AfCFTA Members may consider utilizing a mutual recognition approach where harmonization may not be possible to address existing barriers to the free movement of services.

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Chapter 4

STRENGTHENING THE LINKAGES BETWEEN INVESTMENT POLICIES AND SUSTAINABLE DEVELOPMENT: A PERSPECTIVE FROM AFRICA

Roslyn Ngéno, Daniel Uribe and Danish

Abstract

Leveraging the full benefits of Foreign Direct Investment (FDI) can contribute to the social, economic and industrial development of countries. Evolving and streamlining commonalities in African investment laws and policies at the continental level can enable African States achieve higher economic growth and sustainable development through enhancing economic integration, transfer of technology, access to capital and boosting productivity and industrialization. These efforts will strengthen linkages for the common market, increasing cooperation and deepening value chains across Africa.

To reach the aspirations of the African Union Agenda 2063, a better alignment of incoming foreign investment with the needs and priorities in the national development plans of African countries is required. Increasing the focus on boosting foreign and intra-Africa investment that is responsible, sustainable and respects human rights would increase the appeal of Africa as a favoured investment destination, as well as encourage investments to cater to local needs. Adopting responsible investment practices offers an immense opportunity to catalyse and accelerate socio-economic development in Africa, while making the continental economy more competitive on the global market.

The promotion of responsible investment in Africa will depend on how effectively national and continental investment laws, treaties and policies are able to integrate sustainable development components, including inter alia, human rights and environmental standards, and harmonize them for all actors in the build up to the Common African Market. Many developing countries, including in Africa, have recently engaged in the revision and modernization

of their national investment laws and international investment agreements. These efforts have contributed to the development of a more equitable international investment framework. Though the trajectory is positive, much remains to be done to deepen and expand the adoption of such reforms. The AfCFTA provides the foundation for a shift to encouraging quality intra-African investments, thus manifesting the common market freedom of free movement of investment and capital, to be achieved via increased intra-Africa investment flows and regulatory harmonization.

This chapter considers the efforts taken in developing the AfCFTA and its Protocol on Investment, and how it will support continental economic integration as well as the alignment of national and continental investment regimes towards sustainable development and realizing the Common African Market.

Key words: AfCFTA Investment Protocol; Foreign Direct Investment; Sustainable development; right to regulate; investor rights and duties

Introduction

Recent years have unleashed an evolution of the governance of international investment in Africa. Significant efforts to reform existing investment laws and policies have been taken at the national, regional and continental levels, via innovations that have sought a balanced approach to promote investment towards sustainable development.

Increasing intra-African investment is vital for economic integration on the continent, as it enhances trade and financial flows among African countries and utilizes the advantages from having access to larger markets and more consumers. However, for countries to fully benefit from investment (both foreign and domestic), these need to be aligned to sustainable development priorities. Appropriate policies and regulatory instruments need to be put in place for attaining these objectives. This especially includes the need to modernize international economic agreements (UNCTAD 2020), such as the international investment treaties (IITs) signed by African states, to align them with the Sustainable Development Goals (SDGs) and preserve the regulatory space of countries.

In this chapter, we explore the international investment regime in Africa, its recent innovations for incorporating a balanced approach to investors and States' rights and obligations, and how the integration of sustainable development - related issues in investment agreements can support inclusive economic growth. After reviewing theoretical aspects of economic integration and foreign investment and how they can be mutually supportive and complementary to States' initiatives for sustainable development, it looks at the investment governance architecture in Africa, focusing first on reforms undertaken by RECs while also giving examples from national experiences of select African countries. It then looks at the AfCFTA Protocol on Investment and its new innovations and concludes by underscoring the importance of including sustainable development issues for the promotion of a fair and balanced investment regime that will contribute towards the achievement of the SDGs and the African Union Agenda 2063.

The Legal and Regulatory Framework for Investment in Africa

The reform of the investment regime to encompass the promotion of sustainable development is visible in the modernized and better-balanced provisions of recently concluded Bilateral Investment Treaties (BITs) and regional investment instruments (Pasipanodya and Olmedo 2021), such as those adopted by RECs. Africa is one of the most (if not the most) active regions in the world in finding new approaches to shaping international investment agreements (Mbengue 2020). The World Investment Report 2023 avers that “notable developments continued the trend towards reforming the international investment regime and highlighted the growing need for its adaptation to meet emerging global objectives and challenges. These include greater attention to investment facilitation and climate change... [T]he Investment Protocol contains reformed provisions aimed at promoting, facilitating and protecting intra-African investment that fosters sustainable development while safeguarding the State Parties’ right to regulate” (UNCTAD 2023, p.75). Countries like Burkina Faso, Ghana, Kenya, Mauritius, South Africa and Uganda have adopted legal instruments for green business development targeting agriculture, integrated waste management, manufacturing and tourism (UNEP 2017), and provide examples of policy action in implementing sustainable development provisions, especially in the area of climate action. These countries have already developed their national Sustainable Consumption and Production programmes and national green economy strategies (*Ibid.*). Nigeria has been able to tap the green, social and sustainable bond market to raise finance, while Burkina Faso has implemented a new investment code that lowers the performance obligations for investors in green and renewable energy sectors (Commonwealth Secretariat 2022).

The reforms, triggered by a realization of non-contribution to national development plans and restructuring of the policy space, have focused on treaty objectives, treaty beneficiaries (i.e. who is protected), the scope of investors’ rights and corresponding States’ obligations, protection standards, and dispute settlement; sustainable development is the common thread running through most provisions. Informing these trends have been the objectives of attracting investment for the purposes of increasing employment, transfer of technology, and increasing the country’s competitiveness, while balancing investment protection with preserving policy space (*Ibid.*).

Available data shows that “by the end of August 2019, African States had been hit by a total of 106 known investment treaty arbitration claims” (Transnational Institute 2019). Many of these cases can incur large costs and damages being awarded against host countries. For example, both Egypt² and Nigeria³ have faced adverse arbitral awards running into the billions of US dollars. Countries are vulnerable to large financial penalties imposed by international tribunals set up to adjudicate investor-State disputes, impeding their ability to implement policies in support of the SDGs (Ng’eno 2023).

New African investment-related instruments recognize that the achievement of the SDGs requires governments to mobilize private sector investment to achieve policy objectives, including by incentivizing private investment in certain areas and steering it away from others⁴. Therefore, this section focuses on the reforms undertaken by RECs and select countries that aim to protect their regulatory space and flexibility, while meaningfully advancing sustainable development objectives.

Select Experiences of African Countries and Regional Economic Communities

The African experience shows that the preamble and objectives of modern investment agreements in the region have focused on “fostering the economic prosperity of both States,” including the need for promoting long-term, holistic and inclusive sustainable development (Ng’eno 2023). For example, the Pan African Investment Code (PAIC) contains references to ‘sustainable development’ and the SDGs in its preamble. Its objective is “to promote, facilitate and protect investments that foster the sustainable development of

² See: Unión Fenosa Gas, S.A. v. Arab Republic of Egypt (ICSID Case No. ARB/14/4), where the investor was awarded over \$2 billion.

<https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/567/uni-n-fenosa-v-egypt>

³ See: Charlotin D. (2018). Nigeria faces \$9+ billion debt after award from Lord Hoffmann-chaired arbitration surfaces; dissenter laments “windfall” recovery on \$40 mil of sunk costs; interest increasing by \$1.25 mil per day, IAREporter,

<https://www.iareporter.com/articles/nigeria-faces-9-billion-debt-after-award-from-lord-hoffmann-chaired-arbitration-surfaces-dissenter-laments-windfall-recovery-on-40-mil-of-sunk-costs-interest-increasing-by-1-25-mil-per-day/>

⁴ See for instance, Angola’s Law 10/21 of 22 April 2021, amending the Private Investment Law (Law 10/18 of 26 June 2018); and Law N° 2013/004 of 18 April 2013 of the Republic of Cameroon on private investment incentives.

each Member State, and in particular, the Member State where the investment is located” (PAIC Article 1). It also provides that “investors shall contribute to the economic, social and environmental progress with a view to achieving sustainable development of the host State” (PAIC Article 22(3)).

Further, the PAIC also “recognises the increasing importance of development and strengthening of financial and capital markets, and the role played by investment and the private sector in productive capacity and increased economic growth and sustainable development.” Likewise, Article 2 of the Agreement establishing the Common Market for Eastern and Southern Africa (COMESA) Common Investment Area (CCIA) - developed in 2007 and later reviewed in 2017 - seeks to promote investments that support sustainable development in COMESA Member States.

The East African Community (EAC) Model Investment Treaty, adopted in 2016 to guide negotiations between EAC countries and third countries, seeks to “promote, facilitate, protect and increase investments between investors of one State Party into the territory of the other State Party that supports employment generation, increased production and productivity, technology and skills transfer for local value-addition, synergies with local firms and ultimately contribute to poverty reduction in the host State in a sustainable way.” Its preamble recognizes “the important contribution investment can make to the sustainable development of the State Parties”, and seeks to “promote, facilitate, encourage, protect and increase investment opportunities that enhance sustainable development within the territories of the State Parties” (EAC 2016). Similar language is also found in the Southern African Development Community Model Bilateral Investment Treaty (SADC 2012).

The Preamble of the EAC Model Treaty further addresses States’ rights to regulate and to pursue development goals, thus explicitly balancing investors’ rights with States’ rights commonly recognized by international law. This generates the possibility to have performance requirements as well as local content provisions in the foreign investment. This approach follows the PAIC, which has a strong emphasis on safeguarding the right of host country governments to regulate foreign investments and to adopt measures concerning preservation of the environment, peace and security, and promotion of national development. In addition, the EAC Model Treaty also highlights the importance of cooperation between States and their desire to encourage investment. It does so by including provisions to preserve the States’ policy space, and to open or close sectors to investment in accordance

with their national development strategies. This approach guides arbitral tribunals to apply and interpret the agreement in light of its potential contribution to sustainable development.

The EAC Model Investment Treaty also includes carefully drafted National Treatment and Most Favoured Nation provisions. It omits fair and equitable treatment provisions, replacing them with a provision focusing on non-discrimination in the administrative, legislative, and judicial processes. Similar to the SADC model, the EAC model includes provisions on the obligations of investors and the right of host countries to regulate investment for developmental objectives, as well as a circumscribed ISDS provision.

Innovative Provisions for Sustainable Development

Provisions excluding certain measures from the scope of the agreement in order to promote development within host states have been included in regional practice. These measures seek to ensure the possibility of imposing performance requirements to promote the social and economic benefits of foreign investment. The EAC, SADC, and COMESA Treaties have various such provisions that result in obligations for investors to, e.g., prevent corruption, protect environmental and human rights, and safeguard public health.

Chapter four of the PAIC includes obligations on the part of investors to comply with corporate governance standards, to adhere to socio-political obligations, refrain from bribery, adhere to corporate social responsibility requirements, use natural resources in a responsible manner, and comply with business ethics and human rights. The SADC Model includes unique provisions requiring that investors do not operate “in a manner inconsistent with international environmental, labour, and human rights obligations binding on the Host State or the Home State, whichever obligations are higher” (SADC 2012).

The Economic Community of West African States (ECOWAS) Common Investment Code (ECOWIC) contains a set of horizontal obligations – i.e., obligations that are incumbent upon both host States and foreign investors – on broader policy issues, such as environmental protection, labour standards and economic development, including anti-corruption measures that apply to

both investors and Member States. The provisions dealing with sustainable development issues are generally quite comprehensive (Mbengue 2020).

Experiences from Select African Countries

Experiences in African countries have generally highlighted interesting opportunities for increasing the potential of FDI towards sustainable development. While most African countries have sought to modernize their investment regimes in line with their domestic and regional priorities, these efforts have progressed at various speeds.

In Egypt, the Investment Law of 2017 includes highly innovative features requiring that investment under its scope has to contribute to the comprehensive and sustainable development of the State, and that investors have to dedicate a percentage of their annual profits to the creation of social development systems outside of their investment, e.g. in environmental protection, healthcare, social care, cultural care, technical education, research and development.

Namibia adopted its national investment law in 2016, with objectives to mobilize and attract foreign and domestic investment to enhance economic development, reduce unemployment, accelerate growth and diversify the economy. According to Section 14 of the law, an investor may enter into a performance agreement with the State in order to identify the contributions of the investment to the development objectives of Namibia, prior to the approval of the investment. Likewise, the law includes criteria for the approval of investments that consider the contribution of the investment to the national development of Namibia.

Kenya adopted the ‘Kenya Investment Policy’ (KIP) in 2019, with the objective of providing “faster investment growth for sustainable development”, thereby engendering a conducive environment for investment growth through a harmonized approach to investment promotion, facilitation and retention. Policy actions related to the KIP aim to stimulate private sector development by attracting high value-added and inclusive investment. Its focus on openness and transparency, inclusivity, sustainable development, economic diversification, domestic empowerment, global integration and investor-centeredness frame its approach. The policy further recognizes the devolved nature of government, the importance of domestic investors, and the

role of small and medium enterprises in the overall investment landscape. The common denominator between these instruments is the reference to sustainable development (Mbengue and Schacherer 2021) in objectives, aim and goal; the attempt to guide government behaviour and investor expectations (e.g., clauses on not lowering standards, responsible investments, corporate social responsibility, environmental impact assessments, and supporting local small and medium-sized enterprises in supply chains), as well as protecting national security and supporting and protecting critical local industries, and public health protection, is widely observable.

The AfCFTA Protocol on Investment

Harmonizing or consolidating the aforementioned investment reforms is key to avoid undesirable fragmentation and overlaps of investment regimes (Chidede n.d.).

The AfCFTA Protocol on Investment aims to bring coherence and consistency to the constellation of highly innovative regional approaches and instruments, and to build a sound and predictable investment regulatory framework across Africa. Its Preamble provides for “establishing a balanced, coherent, clear, transparent, predictable and mutually-advantageous continental framework of principles and rules for investment promotion, facilitation and protection.” Article 2 identifies the objectives of encouraging intra-African investment flows that foster sustainable development of State Parties, as well as enhancing coordinated positions and cooperation on matters related to investment promotion, facilitation and protection within the continent.

The Preamble designates its overarching objective as sustainable development, which in turn subsumes the promotion of accountability, responsible business conduct and a transparent investment environment. The Preamble “recognizes the significant contribution investment can make to sustainable development of the State Parties, including the reduction of poverty, and the furtherance of investment-related human rights and human development while understanding that sustainable development requires the fulfilment of its economic, social and environmental pillars...”

Centred on meeting development objectives of the State Parties, the right of States to regulate in the public interest is addressed via a reaffirmation in the Preamble of the “inherent right of State Parties to regulate in their territories

and to introduce measures in order to achieve their national public policy objectives, promote sustainable development objectives and protect legitimate public welfare objectives, such as public health, national security, the environment, the conservation of living and non-living exhaustible natural resources, labour standards, the integrity and stability of the financial system and public morals”.

In addition, the Protocol contains several provisions relating to standards of treatment and protection of investors that have been drafted with certain safeguards to provide comfort to the investor and ensure that the States’ right to regulate is preserved.

There is a novel chapter dedicated to ‘Sustainable development-related issues’ that encompasses the right to regulate, coupled with investor obligations that call for responsible investment and investment governance, as well as provisions for the establishment of sufficient policy space for host States (via a sectoral approach that specifically addresses areas such as climate change, water, agriculture, biodiversity, human rights, indigenous peoples and public health) to pursue development goals. Specifically, Articles 24-30 of the Protocol cover a wide range of issues, including the right to regulate; minimum standards on the environment, labour and consumer protection; climate change; public health and pandemics; pursuit of development goals; human resources development; and transfer of technology.

The Protocol further reiterates the rights and responsibilities of State Parties to take necessary and reasonable measures to promote sustainable development in their territories. These measures are a heritage of the PAIC, which originated the idea of sustainable development in a treaty. States have the sovereign right to determine appropriate standards to protect the environment, labour and consumers, and should not seek to relax or waive compliance with these standards in order to attract foreign investment.

The Protocol considers current and future challenges facing Africa and the international community. For example, Articles 26-27 on investment and climate change, and pandemics (respectively) are novel provisions, included for the first time in an investment agreement. They seek to promote and facilitate investments that support climate change mitigation and adaptation, and encourage State Parties to cooperate in identifying relevant investment policies and measures to address epidemics, pandemics and other public health emergencies.

Chapter 4 on ‘Investor Obligations’ embodies elements of sustainable development as applicable to investors. Articles 31-40 recognize the relation of investor obligations to State Party obligations, and require compliance from investors and their investments with: national and international law; business ethics, human rights and labour standards; environmental protection; indigenous peoples and local communities; socio-political obligations; anti-corruption; corporate social responsibility; corporate governance; taxation and transfer pricing regulations. The chapter provides a balance between investors’ protection and their obligations. Traditionally, investor obligations were not included in investment treaties, but the Protocol has sought to ensure that sustainable investment practices and responsible business conduct are made part of the objectives of the foreign investment, providing for both due diligence and legal certainty. The various investor obligations thus require, for example, compliance with relevant domestic laws and applicable international law; compliance with high standards of business ethics, investment-related human rights and labour standards, and protection of the environment; recognition and protection of indigenous peoples and local communities; and contribution towards corporate social responsibility, which is a voluntary duty to develop the local community where investment is situated.

Thus, the Protocol has been designed and negotiated to carefully balance the rights of investors and States, and equally to ensure balanced obligations on both. The States’ effort to better integrate the highly innovative regional and continental approaches has seen Africa innovate once more in the area of international investment law, with novel provisions on both procedural and substantive issues (Ng’eno 2022).

African States are actively reclaiming the narrative of reform and development in international investment rules, according to their own national policy and development priorities. Building on the experiences of African countries and driven by the agenda set forth by African leaders, the Protocol on Investment has offered a new impetus for the Africanization (Mbengue and Schacherer 2017) of the international investment regime.

Conclusion

The adoption of the AfCFTA Protocol on Investment signals an important landmark and provides momentum for new international investment agreements fostering sustainable development and protecting legitimate

public interest objectives. Implementation of the Protocol could promote an attractive investment climate in African countries and bring important benefits to Africa's people by increasing their economic resilience, promoting diversification, and encouraging a more vibrant and dynamic private sector.

Given the importance of trade and investment for inclusive growth, the adoption of the AfCFTA Protocol on Investment will benefit the private sector - expanding productive capacity, creating jobs and facilitating technology transfer. Nonetheless, responsible investment requires the alignment of investment rules with sustainable development and protecting States' rights to regulate in the public interest. Such alignment would also be beneficial for investors by providing them more legal certainty, increasing business confidence and enabling more effective use of comparative advantages and resources. Notably, the innovations contained in the Protocol exert a gravitational pull towards the modernization of investment agreements and could promote a new wave of investment treaty reform around the world.

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Chapter 5

THE MOVEMENT OF PEOPLE IN A COMMON AFRICAN MARKET

Alan Hirsch

Abstract

Common markets entail the free movement of labour, and in some cases the free movement of persons. As Africa and its regions head towards free trade agreements - and later common markets and perhaps a single one - the question of how to move forward on the movement of persons arises. This paper contextualizes Africa in global history and argues that pathways to reform differ widely in time and space. Africa and its regions cannot treat the history of migration reform as a textbook; rather, it is a compendium of ideas. Some of these ideas - derived from African experiences and from the rest of the globe - may help policymakers make their way towards an Africa without barriers for its people. African policymakers should engage each other, and experts across the continent, to achieve greater understanding of African achievements and setbacks, and to agree on viable pathways forward for the freedom of movement of Africans in Africa.

Key words: Free Movement Protocol; movement of labour; movement of persons; common market

Common markets are a way of increasing market opportunities and efficiencies for relatively small economies. Africa, with 55 countries - many of them quite small, especially in economic terms - could clearly benefit economically from a common market. A Common African Market would considerably deepen the integration of African societies with each other and facilitate social and cultural exchange. By deepening interdependence and mutual understanding, this would strengthen the countries of Africa and help stabilize the continent. Africa's people would benefit through concomitant

higher rates of investment and development. A key to success would be the freer movement of persons, especially Africans, across African borders. This chapter explores the opportunities and challenges for linking the freer movement of persons to the process of deeper economic integration in Africa.

A PERIODIZATION OF MIGRATION GOVERNANCE IN AFRICA

Phase 1: Precolonial

In the period before colonialism, despite many natural and human obstacles to the movement of people, Africans moved far and wide across the continent. They moved to trade, but also to work, sometimes in coerced forms of labour.

“Africans circulated across the continent on the backs of camels in the deserts of the Sahara, horses or mules in coastal Africa, on foot through forests or by canoe on the rivers and seas along the shores of the continent... Trans-Saharan trade routes that connected North and West Africa, which peaked in the 14th and 16th centuries and remained intact until the 20th century stood as an example of mobility across geographic, sociocultural, religious, climatic and political boundaries” (IOM 2020, p.78).

Some were involuntary migrants: the trans-Saharan slave trade brought slaves from West Africa to North Africa and regions beyond, from long before the onset of the trans-Atlantic slave trade (Saleh and Wahlby, in de Haas and Frankema, p.56).

The abolition of the export of slaves was followed by the export of agricultural products and other raw materials. In the case of West Africa, the emergence of export-oriented agriculture in coastal regions drew migrants from the West African interior (Austen, 2022). In East Africa, various forms of indentured and enslaved labour were widely used in coastal and island plantations in the Indian Ocean (Pallaver 2022). In Southern Africa, disruptions led to voluntary and forced migration, which was caused at least in part by encroaching colonialism (Keeton and Schirmer 2022).

Phase 2: Colonial

During the colonial era, the people of colonial territories became imperial subjects and were generally free to move within their respective empires (Belgian, British, French, German, Italian or Portuguese), but not beyond.

There were many who were forced into mobility. When the moral climate opposed slavery, indenture and other forms of labour coercion that were not actually slavery expanded. Responding to shifts in morality, colonial administrations found innovative forms of coercive persuasion. Well into the 20th century, colonial administrations found ways to disguise forced labour to service imperial interests (Okia 2022). Similar patterns of migration continued to evolve, and remained important through most of the 20th century.

Phase 3: Post-Colonial Nation State Formation

There is a tension between the nation state and liberalism, especially in the impact of nation states on the movement of people. While the philosophy of Pan-Africanism inspired the liberationist ideology of independence leaders in Africa, the movements were generally nationalist in form, and the outcome was new African nations, formed along the contours of colonial administrative systems. These new nations defined a new form of citizenship.

As aspirational expectations of African independence were disappointed, and other hopes for improvement were dashed by the nature and timing of decolonization, the rights of new citizens began to be contrasted with the rights of others. The manipulation by politicians of ‘the nation state’ and ‘citizenship’ gave rise to hostility towards non-nationals in the context of disappointing economic performance, and this sometimes expanded to include hostility to nationals of minority ethnicities. Borders took on greater significance with passports and visas required and enforced, and “the terms ‘irregular’, illegal’ and ‘undocumented’ became entrenched in the policy debate and the public discourse” (IOM 2020, pp.77-78). Even skilled Africans were less free to move between states, and could not work in or establish homes in other African states except with explicit permission.

Phase 4: Towards integration

While the 1963 Charter of the Organisation of African Unity embodied a general spirit of Pan-Africanism (especially in the title of the organization),

and promoted cooperation in various forms, there was no programmatic commitment to integration (AU/OAU 1963). It was only in 1991, after the liberation of most of Southern Africa, that the Abuja Treaty made a firm commitment to integration.

The African Economic Community Treaty, commonly known as the Abuja Treaty, officially came into force in 1994. The free movement of persons, rights of residence and rights of establishment by Africans across the borders of AU Member States are included in Article 4(2)(i) of that treaty (AU/OAU 1991). The Constitutive Act of the African Union in 2001 carried over the mandate from the OAU, and in 2006 in Bangui, a Migration Policy Framework for Africa was endorsed by AU members; this framework also included the right to gainful employment across African borders (AU 2006).

CONTEMPORARY MIGRATION REFORM INITIATIVES IN AFRICA

Regional

In 1979, the Economic Community of West African States (ECOWAS) adopted a Protocol on the Free Movement of People and the Right of Residence and Establishment. Cross-border migration, especially within former imperial boundaries, had continued in the post-colonial period despite new rules about citizenship and crossing borders. The process of integration followed a progressive path, though not all commitments are fully realized in practice (Amadi 2019, p.76).

Article 76 of the 1999 East Africa Community Treaty provides for a common market “to provide for free movement of labour, goods, services, capital and the right of establishment”. This is elaborated in Article 104 of the Treaty, which includes the commitment to “harmonising and maintaining common employment/labour policies, programmes and legislation” (EAC 1999). The Protocol for Establishment of the East African Community Common Market, which came into force in 2010, further advanced the EAC’s commitment to free movement, though rights of employment and establishment are still subject to domestic law.

Other African regional economic communities followed along the path of reducing barriers to cross-border mobility, but are still behind African continental leaders EAC and ECOWAS. One unusual example is IGAD. The

Horn of Africa and adjacent East Africa have had greatly elevated levels of migration in recent decades due to disruptive security, political, economic, and environmental factors.

In 2012, IGAD heads of state adopted the Minimum Integration Plan and a Regional Migration Policy Framework, which promoted capacity development for migration management and migration policy development in its Member States. This was followed by the IGAD Migration Action Plan adopted in 2015 (Castellejo 2019, p.10), but progress on implementation remains opaque.

The SADC has improved the circumstances under which people move across borders. Most citizens of southern African countries can travel to other countries within the region without visas, despite two unsuccessful regional pacts on the movement of people, which saw the region divided between middle income and poorer countries (Oucho and Crush 2011, p.149).

In all regional communities, even the most advanced, the rights to residence, work and to establishment (of a business) are subject to domestic legislation that varies between members of regional economic communities. There are no supranational institutions in Africa that effectively enforce rules for the mobility of people (see Amadi 2019, and Hirsch 2021).

National Initiatives

In recent years, there has been considerable improvement in the facilitation of cross-border movement by individual countries in Africa. Unilateral migration governance reform continued in 2022, in the wake of COVID restrictions on the movement of people, mostly focused on visa liberalization or right of entry, rather than residence, employment or establishment rights. Between 2016 and 2022, 50 countries - almost all the continent - improved or maintained their African Visa Openness Index (AVOI) score. A total of 48 countries offered visa-free travel to the nationals of at least one other African country (AU/AfDB 2022, p.12).

In 2022, 27% of all intra-African travel routes required no visa at all for citizens of African countries. This is up from 25% in 2021 and 20% in 2016. Currently 24 African countries (over 40%) offer eVisas to Africans and other travellers, up from nine African countries (17% of the continent) in 2016 (AU/AfDB 2022, pp.8 & 12).

The top 20 countries in Africa as measured by the AVOI were largely concentrated in West Africa. Almost all of the top 20 are lower-income or lower-middle-income countries or island states. Over half (13 of 24) lower-income countries scored in the upper half of the index. Most island states are relatively open, while only three of 16 landlocked African states were in the top 20 performers in the openness index. The two lowest ranked were upper-middle-income countries, and five of seven upper-middle-income countries in Africa had a low visa openness score (AU/AfDB, 2022, p.15). Despite some exceptions, most of the richer continental African countries remain cautious regarding liberalizing their barriers to the movement of people, as do a considerable proportion of landlocked states.

Continental Initiatives

In January 2018, the African Union agreed to support a protocol to the treaty for the ‘free movement of persons’ for citizens of African states. Phase one entails the implementation of the right of entry. Phase two, which would come into force when supported by an AU decision, entails the extension of the right of residence to Africans from other African countries (AU 2018, pp.8 & 14). Phase three allows the right of establishment: setting up a business, trade or profession, or to engaging in economic activity as a self-employed person. Phase three will be implemented after a review by the AU Commission of the implementation of phases one and two, subject to the decision of the AU Council (AU 2018, p.16).

Enthusiasm for the implementation of the Free Movement of Persons protocol remains low; only four countries have ratified the protocol, and there has been no progress on this tally since 2019.

While initiatives towards free movement of persons at the national, regional and continental level seek to soften the impact of national borders and citizenship on free movement, their impact is limited and does not necessarily include low-skilled, work-seeking migrants. Permission to work is the prerogative of the nation state, even under the African Union’s Free Movement of Persons protocol. While migrant labour is still hugely important and relatively well-integrated into domestic labour markets in Africa, the movement of low skilled migrants is frequently managed under specific, constrained bilateral agreements (IOM 2020, p.155).

Bilateral, Interregional, and Sub-regional Migration Reform

Several arrangements for the movement of people between African states do not fall simply into any of the three categories above, i.e. regional, national or continental initiatives. These arrangements do not necessarily conflict with the provisions of regional or continental treaties, but some may be seen to be contrary to the spirit of these multilateral agreements. Some in-between arrangements may offer promising paths towards freer movement reforms.

Firstly, there are various quite different forms of bilateral arrangement. One significant form has been the ‘bilateral labour agreement’. The ILO has noted that:

“In Southern Africa, while labour migration goes back to the nineteenth century, BLAs were formalized in the 1960s and 1970s in order to meet the formidable labour needs of the South African and Zimbabwean (Rhodesian at the time) mining and farming sectors’ (IOM 2016, p.1).

South Africa also has special permit arrangements for certain citizens of Lesotho and Zimbabwe, but these are essentially unilateral arrangements and can be withdrawn at the whim of the South African government. (IOM 2021, p.14).

A second, more progressive example of a bilateral arrangement is the recent agreement between Botswana and Namibia to allow for visa-free travel of the citizens of each in the other country using only official identity documents; passports are not required for visits (allafrica.com, 2022). A similar arrangement has existed between Angola and Namibia since 1996, but is limited to residents living near to their mutual border (IOM 2021, p.9). These are examples of countries within a region moving ahead of their regional partners on a bilateral basis, but in a way that is allowed within the various protocols.

Another example of such an arrangement was the agreement between Kenya, Rwanda and Uganda to allow citizens of all three countries to visit each other’s country using national identity documents, and not requiring passports (Mugisha 2013). This arrangement does not contradict the East Africa Community Treaty, and, like the Botswana/Namibia arrangement, serves to lead the region forward rather than deflect from the integration project. Both agreements could be labelled ‘sub-regional agreements’ as they are

agreements by countries within a regional economic community to take the integration process further for a subset of member countries.

In an example of an interregional bilateral arrangement, Kenya and South Africa recently agreed to allow for visa-free access between them (Al Jazeera 2022, News24 2023). While not advancing the agenda of the EAC or SADC, this arrangement might be seen to be progressive in the broader African context.

Paths Towards Continental Free Movement

What these and similar accords raise is the possibility of a wide range of arrangements between regional economic communities regarding the movement of people across borders. Some of these arrangements are negative for integration; some bilateral labour migration agreements (such as similar ones in ASEAN and the Gulf states) are often designed to impede integration rather than promote it. They frequently withhold rights, forbid a transition to settled status, and exclude access to social benefits and some social services. Others are designed to reduce frictions and encourage engagement, such as the border arrangements between Namibia and some of its neighbours, and the arrangement between Kenya, Rwanda and Uganda where passports are not needed to cross borders. The bilateral arrangement between Kenya and South Africa to allow visa-free visiting rights (which was preceded by Kenya's unilateral visa liberalization towards South Africa) may be outside of formal multilateral processes, and might seem exceptional, but on balance it might be favourable for the long-term objective of generalized freer movement of Africans in Africa.

The principles and objectives of the African Free Movement of Persons protocol in its complete form is widely supported. Those whose commitment levels are low have not objected to the principle or the objective of free movement. Their objections, where articulated, have been generally based on the notion that Africa is not ready for the full implementation of the FMP protocol.

If we take the implementation of the AU FMP protocol as the culmination of a series of efforts by countries and regions, and if we accept that the implementation of the FMP protocol is likely to be slower than desired, we need to review carefully the various incremental steps taken towards freer

movement of people across the continent. This poses the question of these incremental measures: which are supportive of the intention of the FMP, and which of them seem to impede it?

If regional economic communities were to reach the point where all members conformed to high standards of intraregional mobility, would the next step possibly be to make a suitable relationship between it and another REC that has reached a similar level of intraregional mobility? Is that perhaps a path towards a continental system?

Alternatively, or in parallel, as the international examples show, freeing up and facilitating the movement of skilled categories of persons is a step that can be taken by a relatively large number of cooperating countries at different levels of development at the same time.

Amanda Bisong (2022) has argued that a point of intersection between the initiative towards an African Continental Free Trade Agreement and the AU initiative towards the freer movement of persons on the continent could be in a broad commitment to facilitating the movement of skilled persons across African borders so that they can deliver the cross-border services entailed in the AfCFTA agreement.

However, this would be one sided without also considering the movement of low-skilled workers across African borders. In the case of temporary migrants of this kind, perhaps the focus should be on improving the rights and conditions for temporary migrants, conforming to a greater extent than currently with global standards (see e.g., IOM 2016).

Conclusion

Globally there are many paths towards freer movement of labour and people in general. In a continent as huge, complex, and varied as Africa, there is a multiplicity of paths forward. These include unilateral decisions to lower barriers, bilateral agreements with other African states within or outside regions, sub-regional agreements (coalitions of the willing), and variations thereof.

While formal processes led and enforced by regional groupings are ideal, all movements forward should be recognized and welcomed, be they as limited as rewriting bilateral labour agreements to recognize rights of workers and

obligations of host states, or as ambitious as a continental protocol for free movement of persons. In Africa, unlike some other parts of the world, the movement is largely forward, and this should be recognized and celebrated.

While Member States have failed to show much enthusiasm for the AU FMP protocol so far, the project should continue after recalibration and restatement of the roadmap for implementation, considering issues of concern. Progress is likely to be made through encouraging intermediate steps towards freer movement rather than through the implementation of the AU FMP protocol in the manner envisaged in the roadmap that accompanied it in 2018 (see Hirsch 2021).

One possible option at a continental level could be to first move forward on freedom of movement of skilled people and service providers. This would help to enable the success of the AfCFTA and could, as it was in other parts of the world, be an early step towards broader liberalization of the movement of people at a multilateral level. Complementing that could be regional or Africa-wide initiatives to improve the rights and conditions attached in bilateral labour agreements for low skilled workers.

At the same time, regional economic communities could focus on completing the implementation of free movement mechanisms within regions, leading perhaps to arrangements between RECs.

Bringing African experts and senior officials around tables from across the entire continent to discuss issues of concern and the technicalities that seem to impede progress is a key mechanism for building understanding and mapping out pathways for progress.

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Chapter 6

CREATING FINANCIAL DEVELOPMENT AND FINANCIAL INTEGRATION FOR THE COMMON AFRICAN MARKET

Joseph Atta-Mensah

Abstract

The freedom of capital – financial integration is an important pillar of a common market because it facilitates a single market for capital for businesses to access vital needed financial resources from investments and savings in the market regardless of where they are located. An integrated financial market therefore provides businesses with a greater choice of funding at lower costs as well as offers new opportunities for savers and investors. A simple model derived shows that the growth rate of per capita income rises with total factor productivity (Solow residuals), the effective-saving rate, and declines with the depreciation of capital-labour ratio. Given that the Solow residuals, include factors such as financial development (technology) the model also conclude that expansion in financial development leads to a rise in per capita income. The paper recommends that financial integration of the markets and institutions in Africa requires clearly defined long-term development; recognition that minimum harmonization and reform of regulatory frameworks, cross-border financial activities require reform of public administration, particularly regarding tax treatment, banking and insurance legislation, and joint supervision of securities markets; and commitment to fiscal harmonization and economic coordination.

Keywords: Financial Integration, Financial Intermediation, Solow Growth Model and Economic Theory.

Introduction

Economic literature posits that a well-functioning economy needs a financial system that moves funds from people who save to people who have productive investment opportunities. In other words, sound financial system acts as conduits for sustainable economic growth. The link between financial development and growth was first demonstrated in the literature by Walter Bagehot (1873) and John Hicks (1969) who pointed out the industrialization of England was possible because of the use of the financial system to mobilize productive financial capital. The argument made by Bagehot, Hicks and also by Schumpeter (1912) was that well-functioning financial institutions, such as banks, enhances technological innovation by supporting entrepreneurs with the best chances of successfully implementing innovative products and production processes. Levine (1997) provides a review of the literature that clearly shows that the development of financial markets and institutions plays an important role in the growth process of a country as well as predicting the future rates of economic growth, capital accumulation, and technological change and economic development.

Financial Integration

Financial integration is the process through which a country's financial markets become more closely integrated with those in other countries or with those in the rest of the world. This would require the elimination of some or all barriers for foreign financial institutions from some (or all) countries to operate or offer cross-border financial services in others. Furthermore, links between banking, equity and other types of financial markets would have to be established.

There are several ways to integrate financial markets. One way integration could emerge is through formal partnerships countries that share membership in a regional integration agreement (RIA). Integration in this sense may involve eliminating restrictions to cross border financial operations by firms from countries in the same RIA, as well as harmonizing rules, taxes, and regulations between the member countries.

Developing countries bound by an RIA may stand to benefit from deeper integration (or links) with world financial markets. Foreign banks that have established subsidiaries or branches in developing countries have contributed to strengthening financial ties between the countries involved as well as facilitating financial services linked to trade and investment flows using the same financial institution at both ends of the deal.

There are several advantages of integrating financial systems. By integrating a country exploit economy of scale, traditionally important in financial markets. This is particularly vital for small and medium-sized firms that will be able to access deeper financial markets. In addition integration could remove certain forms of credit constraints faced by investors. Financial markets and institutions would have a better handle on credit risk. The law of large numbers guarantees less exposure to credit risk as the number of clients increases. Hence, the integration into larger markets or even the formation of larger markets is beneficial to both firms and financial markets and institutions.

Additional advantages linked more specifically to formal financial integration agreements are associated with gaining regulatory independence and avoiding regulatory arbitrage. However, this may be difficult to achieve in less developed countries. This is because when the financial system is small and there are direct links between regulators and banks, supervision is usually not guided by independent policies. Integrating formally can reduce this risk, as it increases the number of participants and interests governing the financial system. Furthermore, in an integrated system, regulatory principles are driven by supranational principles that are likely to be less influenced by domestic interests.

For the integration process to be successful, it is very important that policies, rules and standards governing regulations, accounting and auditing would have to be harmonized in all participating countries. This is crucial to guarantee transparency and comparability across financial sectors. Equally important is the harmonization of the criteria for the valuation of the risk of bank assets. Differences in risk valuations can lead totally to different accounting of required capital to buffer shocks as well as to regulatory arbitrage. Ideally, financial markets and institutions in all countries participating in an integration arrangement should adhere to similar financial

regulations. Such harmonization leads not only to cross-border integration between countries within a treaty, but also can attract foreign players, which can improve the stability of the financial system.

Lessons of financial integration can be drawn from the European Union, a successful integration area in the world. Financial integration in the European Union was undertaken in a gradual manner and was implemented through a coordinated process of legislation among the member countries. The goal was to create a legislative framework that would allow greater integration of financial markets without giving up public policy interests of each member state in terms of prudential rules, market stability and consumer protection. The creation of a, *Single Market Program*, or an European economic system, was based on the principle of home country control, regulatory competition and minimum standards harmonization. Under the home country control principle, primary supervision was left under direct control of national authorities. Mutual recognition and regulatory competition between the state members were respected by each member state. However, national laws are not fully harmonized, and home country rules were accepted as the ones governing cross-border provision of services and the activities of branches in host countries. Integration of financial markets in Europe has brought several benefits to the regional market in the form of greater exposure to international competition, improved efficiency in financial intermediation, more efficient capital utilization, the development of the financial industry itself, and better fiscal discipline.

The liberalization of financial services in Europe was achieved through the creation of what is known as the “Single Passport,” which allowed the provision of financial services, either by trading or by investing, in host countries without further authorization beyond that of the home country. However, this programme created heterogeneous integration across sectors and countries. While the wholesale banking sector deepened its integration process, retail banking remained fragmented and strongly localized. Securities markets experienced deeper integration, whereas the insurance sub-sectors were limited because of legal barriers.

How can developing countries benefit from the European experience? Most developing countries face several development challenges. To begin the level of economic development is significantly lower in some developing countries

than that of Europe. Also, some developing countries have divergent economic policies, and the financial systems in the countries are much shallower.

The Functional Roles of the Financial System

Financial markets and institutions arise to minimize the costs of acquisition of information and transactions. In the classical perfect world of Arrow-Debreu state-contingent claim framework there is no need for financial markets and institutions because there is full information and transactions cost are absent. Hence resources do not have to be spent to assess risks embedded in projects, behaviours of managers, or put in place a mechanism to reduce transactions costs. It is only when the assumptions of the Arrow-Debreu framework are relaxed, and fictions introduced that the role of financial systems becomes very important. In a bid to minimize transaction and information costs, Merton and Bodie (1995) demonstrate that financial markets and institution emerge to facilitate the allocation of resources, across space and time, in an uncertain environment. Levine (1997) surveyed the literature and observed that there are theoretical reasoning and empirical evidence that find positive relationship between financial development and economic growth.

Among others, the functional roles of financial markets and institutions include management of liquidity risk; information acquisition and resource allocation; monitoring of investment projects; mobilization of savings; and the facilitation of the exchange of goods and services. These functions do affect economic growth, through capital accumulation and technological innovation. The impact of capital accumulation either alters the savings rate or by reallocates savings among different capital producing technologies. With regards to technological innovation, the financial system affects steady-state growth by altering the rate of technological innovation. In the following sections we look at how market frictions motivate the emergence of financial contracts, markets, and intermediaries and their contributions to economic growth.

The complexity of economic structures introduces information and transaction. Financial markets and institutions emerge to minimize the associated risks associated to these costs through the trading, hedging, and pooling of risk.

Financial markets and institutions emerge to support savers to provide the liquidity for long-term investments. It has been argued by Hicks (1969) that it was the capacity of capital markets to manage liquidity risk that spurred the industrial revolution in England. Hicks point out that most the products produced during the first decade of the industrial revolution was invented much earlier, through technological innovations. However, the inventions needed large capital infusion which had to be committed for a long period. He contends that the catalyst responsible for growth in eighteenth century England was capital market liquidity.

The emergence of well-functioning liquid capital market in the eighteenth century allowed the English to hold assets such as equity, bonds, or demand deposits as savings. The capital markets then converted the liquid financial instruments into long-term capital investments (or loans) to support the production processes. Bencivenga, Smith, and Starr (1966) suggests that the industrial revolution would not have occurred had there not been improvements in the capital markets that allowed manufacturers to obtain long-term loans. Diamond and Dybvig (1983) model the link between liquidity and growth. King and Levine (1993) suggest financial markets and institutions allow economic agents to diversify risk by supporting investment of a portfolio of innovative projects. By so doing financial systems facilitate risk diversification and, in the process, accelerate technological change and economic growth.

Financial systems therefore emerge to minimize the costs of acquiring information on projects as well as monitor and evaluate their performance (see Diamond 1984). Levine (1997) demonstrates the role of the banks in acquiring information with this example. The capacity of financial intermediaries to gather and process information has significant growth implications. As argued by Greenwood and Jovanovic (1990) many firms and entrepreneurs are searching for capital to support their investment projects. Hence financial markets and institutions that are better at screening the viable firms and managers will induce a more efficient allocation of scarce financial capital and resources and consequently faster growth.⁵

⁵ As pointed out in Levine (1997), Bagehot (1873) explains the economic success of England in the mid-1800 by pointing out that England's financial system at the time was very good at identifying and funding profitable projects than most countries.

Stock markets may also play an influential role in the acquisition and dissemination of information about investment projects. The size and liquidity of the stock markets create an incentive for economic agents to acquire information about firms. Groosman and Stiglitz (1980) explain that larger and more liquid markets allow agents with private information to profit from the information. Stock markets do contribute to reducing resources that economic agent must spend to acquire information. Stock markets stimulate the acquisition of information and consequently substantially improve the allocation of resources.

Another role of financial markets and institutions, besides reducing the costs of acquiring information and contributing to the efficiency of resource allocation, is to reduce the cost of acquiring information and monitoring investment projects after financing the activity. In general, owners of firms design financial contracts that ensures that the managers of the firm to manage the firm in the best interests of the owners. At the same time creditors, such as banks, equity, and bond holders, create financial arrangements to force owners and managers to run firms in accordance with the interests of the creditors.

Financial markets and institutions also function to mobilize savings for investments. Without access to capital, many production processes would be constrained to economically inefficient scales. Through the mobilization of capital, financial markets and institutions create small denomination instruments which provide opportunities for households to hold diversified portfolios, invest in firms, and to increase asset liquidity. Sirri and Tufano (1995) and Carosso (1970) suggest that without pooling, households would have to buy and sell entire firms. Hence by mobilizing financial capital, households can enhance risk diversification, liquidity, and promote the productive sector of the economy through the efficient allocation of resources. Mobilization of savings does not come cheap.

Financial system also promotes specialization and productivity movements because its activities lead to lower transaction costs. Greenwood and Smith (1997) demonstrate the links between exchange, specialization, and innovation. They argue that more specialization requires more transactions and because each transaction is costly, financial arrangements that lower transaction costs facilitate greater specialization and consequently promote productivity gains. These productivity gains in turn also spur financial market

development, implying that economic development can spur the development of financial markets.

Financial Structure and Growth

In this section we examine if the financial structure (that is, the degree to which the financial system of countries is intermediary- or market-based) matter for long-run economic growth, concentrating on the relative merits of intermediary- versus market-based financial systems. The literature has debated this issue for a long time, beginning with reference to Germany and the United Kingdom in the late nineteenth and early twentieth centuries. Gerschenkron (1962) and Goldsmith (1969) and Porter (1992) indicate that the intermediary-based system in Germany permitted a closer relationship between intermediaries and firms than was possible in the market-based system in the United Kingdom. The United States is a financial-market-based economy while Japan, like Germany, is a dominant intermediary-based system.

Economic theory suggests that an economy's savings and investment are balanced at a particular level of interest rates. The neo-classical Golden Rule posits that the optimal growth path aligns with the real interest rate. Theil (2001) notes that the financial sector was long overlooked in the literature due to the seminal work of Modigliani and Miller (1958). The Modigliani-Miller theorem proposes that a company's market value is the present value of its future earnings and underlying assets and is independent of its capital structure. Thus, it does not matter whether a company finances its growth through borrowing, issuing stock shares, or reinvesting its profits. This theorem significantly influenced corporate finance when introduced in the 1950s. However, the recognition of asymmetric information and its impact on economic relations between borrowers and lenders has diminished the theorem's relevance.

The relation between investors/borrowers and savers/lenders, in imperfect markets and asymmetric information, is characterised by agency costs. Agency costs occurs because of the hidden actions and hidden information of the borrower, who is perceived to be better informed than the lender. That is why financial intermediation comes in to address the agency problems with a

comprehensive contract between lender and borrower covering all eventualities and ensuring the compatibility of individual incentives. Financial intermediation also ensures that transaction costs that emanate from the asymmetric information between the investor/borrower and saver/lender are substantially reduced. Financial contracts are also framed to induce incentive compatibility between borrowers and lenders, including choice of equity versus debt contracts, by allowing rights to monitor, or by differentiating the investment projects in stages which can be easily monitored. Furthermore, investment laws also ensure investor protection and therewith reducing the informational imbalance between borrower and lender.

Financial intermediaries must therefore be seen as the bridge between borrowers and lenders in reaching agreement on the size of a financial investment, its maturity and risk. In general, households prefer short-term investment at low risk and endowed with small amounts of savings while enterprises have divergent preferences and need large sums to finance their projects. Financial intermediaries and especially banks use economies of scale to transform households' savings into corporate debts. In addition, banks provide payment services which stimulate economic growth as well as improve the allocation of resources. Financial institutions, by addressing asymmetric information and agency costs, play a more prominent role in accomplishing an efficient allocation of capital.

A Simple Model of Growth, Financial Integration and Financial Development

In the annex we demonstrate the positive contribution of finance to economic growth. The model shows that financial development reduces the loss of resources required to allocate capital, increase the savings ratio, and raise capital productivity. Furthermore, it has to be noted financial development include financial sector technology and technological progress and it and financial integration contributes to the growth of the economy by reducing information asymmetries, facilitating risk sharing, and enhancing the overall functions of the financial system. In addition, financial integration and financial development enhance technological progress in the financial industry. Financial integration and financial development also individually contribute to economic growth by improving total factor productivity,

generating innovative ideas, developing efficient production processes, improving institutions, and other outcomes of technological progress.

A result of the model is that the growth rate of per capita income rises with total factor productivity, which is made up of financial integration, financial development, and technological progress. The growth rate of per capita income also rises with the effective-saving rate and declines with the depreciation of capital-labour ratio. The model demonstrates the importance of financial integration and financial development in achieving economic growth.

In theory, there are several channels through which financial integration should affect economic performance. The implications of the model, which is derived from a standard neo-classical framework, is that financial integration of the continent, investors in any African could have access to all financial markets on the continent. Opening capital markets, through financial integration, generates capital flows from capital-abundant countries toward capital-scarce countries, thereby promoting growth in the poor countries through acceleration in the convergence process. Mishkin (2007) also uses standard neoclassical model to stress that financial integration enhances allocative efficiency and the sharing and trading of risks motives of investors. The central argument of Mishkin is that is that financial integration facilitates a more efficient allocation of international resources by allowing funds to flow from rich countries, who are capital rich to developing countries, who are capital poor but with a high marginal productivity of capital. Such inflows to developing countries would then complement their limited domestic saving, reduce their cost of capital and lead to increased investment and economic growth. The movement of capital from bigger economies on the continent, which are capital affluent, to the smaller economies, which are relatively capital scarce, leads to higher growth in developing economies and welfare gains for both groups. This strengthens a view that financial integration enables an economy to borrow from foreign sources for financing domestic investment and to increase access to advance technology and management skills, thus promoting productivity growth (Arif-Ur-Rahman and Inaba 2020).

On the downside, financial integration could potentially be a vehicle for spreading economic vulnerability across economies. It also transmits macroeconomic instability such as financial crises. That is why it is very

important that policymakers put in appropriate safeguards to ensure that financial integration promote significant growth benefits which outweighs these risks. One such policies to avert panics in financial markets is for central banks lend early and freely (i.e. without limit), to solvent firms, against good collateral, and at appropriate interest rate (Bagehot 1873). Bagehot (1873) and Hicks (1969) further argue that financial system played a critical role in igniting industrialization in England by facilitating the mobilization of capital. Schumpeter (1934) emphasized the importance of the banking system in economic growth and highlighted circumstances when banks can actively spur innovation and future growth by identifying and funding productive investments.⁶

According to Thiel (2001), the share of savings spent on allocating resources to investment also includes fees to market organisations or financial intermediaries, the spread between banks' borrowing and lending rates. Competition ensures that the spread is determined by the real costs of financial intermediation. It must be noted that inefficiency in the provision of financial services, taxation of the profits of financial intermediaries' profits and a compensation for the risk undertaken by the intermediary influence also influence the spread. Hence the minimization of the spread would ensure an efficient use of savings for productive investments. Harrison et al. (1999) finds that higher economic growth raises the profit margin of financial intermediation, allowing entry of more banks and raising their specialisation. The entry more banks reduce the costs of intermediation and increasing economic growth.

There are four competing views in the literature for explaining the relationship between the financial structure and growth. These are: the intermediary-based view, the market-based view, the financial services view, and the law and finance view. The first two views suggest that financial markets and intermediaries are substitute sources of financial services, while the last two suggest that financial markets and intermediaries are complements in the provision of financial services.

⁶ For empirical evidence on how finance positively influences growth see Kizito and Lean (2018), Ibrahim (2020), Bopkin et. Al. (2017) and Samargandi et. al. (2015), Aziakpono (2013) and Lake et. al. (2022).

The intermediary-based view suggests that intermediaries have the capacity to identify good projects, mobilize resources, monitor managers, and manage risk. It is further suggested that financial intermediaries are very effective at financing projects that are characterized by substantial asymmetric information (e.g., adverse selection and moral hazard), because they have built the capacity to separate “good” borrowers from the bad ones. Intermediary-based systems are noted to be effective at supporting economic growth of countries at the early stages of economic development than market-based financial systems.

The market-based view emphasizes the role of markets in diversifying and managing risks. Some firms, in environments where the financial market are developed, at a certain point of their life-cycle rely mostly on market financing, such as equity or bond financing. Allen and Gale (1999, and 2000), argue that industries, which are faced with continuous technological advances (and where the information is sparse, and diversity of opinion persists) should turn to financial markets (bond and stock markets) for its capital needs. Market-based systems are seen as encouraging long-run economic growth.

The financial services view points out that financial intermediaries do provide complementary services to those provided by markets. The primary emphasis behind this view is the importance of the overall level and quality of financial services rather than the channels through which those services are provided. It places focus on the creation of a conducive-environment for better-functioning intermediaries and markets.

The law and finance view, an extension of the financial services perspective, argues that the distinction between intermediary-based and market-based systems is of secondary importance. Instead, the focus should be on the legal environment and the enforcement of contracts. Proponents of this view suggest that the legal system plays a crucial role in determining the growth-enhancing nature of financial services.

Empirical investigations of these views of financial structure and long-run economic growth are inconclusive. Levine (2000) and Demirguc-Kunt and Levine (2001) find that the distinction between intermediary- and market-based systems is not as important but rather a country's legal system and the quality of its financial services are most important for fostering economic

growth. However, Tadesse (2001) finds that the difference between intermediary- and market-based financial systems is important for explaining economic growth. Tadesse argues that for countries with underdeveloped financial sectors, intermediary-based systems outperform market-based systems, while for countries with developed financial sectors, market-based systems outperform intermediary-based systems. In contrast, Levine and Zervos (1998) argue that higher stock market liquidity, irrespective of the development of intermediaries leads to higher growth.

On balance, the literature suggests that financial structure - the mixture of financial markets and intermediaries - is not important for explaining differential growth rates across countries. Countries do not grow faster, and firms' access to finance is not systematically easier in either market- or intermediary-based system. Germany and Japan - major intermediary-based systems - and the United States and United Kingdom - the foremost market-based systems - have had similar growth rates over time. This implies that what a country needs is a sound legal system that effectively protects the rights of investors and enforces contracts efficiently. This implies that countries developing their financial markets should focus on legal, regulatory, and other policy reforms that encourage the proper functioning of both markets and intermediaries, rather than concern themselves with the degree to which their national financial system is market- or intermediary-based.⁷

Payment System in Africa

African payment systems for trade and business have been plagued by long-standing issues, including being cumbersome, underdeveloped, fragmented, costly, and inefficient. These challenges significantly hinder intra-Africa trade and impede the establishment of a common market on the continent. In contrast to the swift global money transfers taking mere minutes, conducting business payments across African borders often entails days, weeks, or even months. The absence of cost-effective payment systems in the region proves to be a substantial drain on both resources and time for business professionals.

⁷ For more on the issues see: Allen and Gale (1997, 1999 and 2000), Dolar and Meh (2002), Diamond (1991), Levine (2000), Levine and Zervos (1998), Tadesse (2001) and Demircug-Kunt and Levine (1996). These papers offer insights and empirical evidence to support the important and positive role of financial development for economic growth.

Since gaining independence, overcoming this challenge has remained a persistent obstacle to the growth of intra-African trade.

The persistent underdevelopment of payment systems remains a significant barrier to trade and the continent's pursuit of a unified market. Unlike the rapid international fund transfers spanning minutes globally, cross-border business transactions within Africa often extend over prolonged periods—ranging from days to weeks or even months. The absence of efficient and cost-effective payment systems in the region imposes substantial costs, consuming valuable resources and time for businesses operating within this sphere. Managing multiple currencies further amplifies international trade expenses, with businesses grappling with challenges related to currency conversion costs, market uncertainties, and the complexities of dealing with multiple non-convertible currencies. These challenges are compounded by inefficiencies in payment mechanisms, insurance requirements, and customs guarantees.

A well-developed and efficient payment system offers a multitude of benefits that extend both directly and indirectly across national, regional, and global spheres. Firstly, such a system plays a pivotal role in promoting cross-border trade, intra-regional trade, and regional integration by directly influencing the efficiency of goods and services circulation and accelerating economic expansion. Secondly, an efficient payment system holds the potential to foster competition, bolster efficiency and productivity, and enhance the overall effectiveness in the movement of goods and services across the African continent. Thirdly, it facilitates sound monetary policy and effective liquidity management, contributing to the integration of monetary and financial sectors. Furthermore, it expedites customs processing, government transactions, and supports foreign exchange trading, thereby enhancing the overall economic landscape.

Despite the challenges, Africa is making significant strides, with financial technology playing a pivotal role in deepening financial integration across the continent. These innovative technologies are facilitating cross-border payments and underlining ongoing financial reforms in African countries aimed at fortifying essential payment systems that support commercial transactions and business activities. According to McKinsey (2022), Africa's e-payments industry generated approximately \$24 billion in revenues in 2020, encompassing both domestic and cross-border payments. Remarkably, around

\$15 billion of this revenue originated solely from domestic electronic payments, constituting 47 billion individual transactions with a total transaction value exceeding \$800 billion.

The Pan-African Payment and Settlement System (PAPSS), developed by Afriexim Bank to support the African Continental Free Trade Area, aims to alleviate payment constraints within Africa's complex network of 55 countries and around 40 different currencies. PAPSS represents a potentially transformative development for cross-border payments. However, despite the progress made with PAPSS, only a small percentage of the continent's transactions—between 5 to 7 percent—are conducted through electronic or digital channels. This contrasts sharply with countries like Turkey, where 50 percent or more of transactions occur electronically. This disparity highlights a significant growth opportunity in e-payments across Africa. Advancements in payment methods for enhanced convenience and scalability, coupled with the development of supporting infrastructure, could significantly leverage this untapped potential. Regional initiatives such as the Southern African Development Community Real Time Gross Settlement System (SADC RTGS) are already improving transaction settlements within regions that would have previously required more complex and expensive correspondent banking arrangements and counterparties outside of Africa. Currently, more than ten African countries are in the process of launching central bank digital currencies (CBDCs). While none have gained widespread adoption yet, the potential use cases of CBDCs address enduring challenges with payments and transfers in Africa, including offline payment solutions, cross-border payments, and targeted cash transfers to specific populations.

Africa urgently needs to strengthen its payment infrastructure by embracing innovative financial technology upgrades. Despite commendable global leadership in mobile money adoption, usage, and innovation, a critical challenge remains to extend beyond the success achieved in payment solutions. Addressing the unmet demand for diverse and underdeveloped financial services is pivotal for facilitating the digitalization of additional sectors within the economy. Remarkably, the number of mobile money accounts in Africa has now surpassed that of traditional bank accounts (Brooking 2019). While most transactions primarily involve domestic remittances, there is a discernible shift towards leveraging these platforms for various domestic purposes. This includes facilitating utility bill payments,

salary disbursements, and transactions for goods and services, indicating a broadening scope of mobile money utilization beyond remittance purposes.

Africa also needs to enhance interoperability to achieve successful payment ecosystems. At its core, interoperability between payment systems involves enabling communication among various elements within the payment infrastructure. While technology is a critical component, payment systems also rely on a set of scheme rules that delineate operational guidelines and interbank service levels. In the current landscape, consumers and businesses enjoy a plethora of options for electronic payments, be it through traditional bank accounts or third-party wallets. However, these diverse payment systems often operate on incompatible infrastructures, lacking integration. To navigate this complexity, banks, infrastructure providers, and non-bank payment service providers manage intricate IT systems, procedures, and rules to bridge connections across multiple payment systems. Enhanced interoperability among payment systems is fundamental to fostering competition in payment services. This competition acts as a catalyst for innovation, driving the development of advanced products and services for end-users. Furthermore, improved interoperability streamlines payment processing, making a substantial contribution to expanding financial inclusion—an imperative policy objective in many markets. By dismantling barriers between payment systems, we can pave the way for the emergence of efficient, cost-effective, and innovative payment ecosystems. This advancement will be instrumental in advancing digitalization both domestically and internationally, benefiting end users and fortifying the broader economy.

Concluding Remarks

The financial integration of markets and institutions in Africa necessitates clearly defined long-term objectives that extend beyond sectoral efficiency, incorporating economic development and global competitiveness. This process also demands the acknowledgment that achieving a minimum level of harmonization in regulatory frameworks and facilitating cross-border financial activities require reforms in public administration. This includes addressing issues related to tax treatment, banking and insurance legislation, and the joint supervision of securities markets.

African countries must commit to a significant degree of fiscal harmonization and economic coordination to prevent financial crises that could impede effective financial integration. This commitment is crucial for establishing a framework that not only enhances the efficiency of financial sectors but also contributes to broader economic development and competitiveness on the global stage. By addressing regulatory inconsistencies and promoting collaboration, African nations can create a more resilient and integrated financial landscape, fostering stability and growth across the continent.

Countries in Africa face significant obstacles in implementing an orderly process of financial integration, comparable to what has been achieved in Europe. Firstly, there is a lack of the political cohesion necessary to execute protocols and develop parallel legislative programs that are essential for successful financial integration. Secondly, the heterogeneity of national regulatory systems and chronic fiscal imbalances could impede any form of financial integration. Thirdly, the lack of recognition of foreign regulations, coupled with frequent acquiescence to interest group pressures, does not bode well for the integration process. Lastly, currency misalignments on the continent also pose a serious challenge.

Addressing these challenges is essential for strengthening any forms of financial integration. Political consensus, harmonization of regulatory frameworks, and fiscal coordination are imperative for overcoming these hurdles. Additionally, promoting transparency, reducing currency misalignments, and resisting pressure from interest groups are crucial steps toward establishing a more integrated and resilient financial landscape in Africa.

In economic literature, there is no clear consensus on whether the nature of the financial structure significantly impacts economic growth. Proponents of both the intermediary- and market-based views argue about the role of financial intermediaries and markets in promoting growth. Another perspective suggests that intermediaries and financial markets are complementary in fostering economic performance, emphasizing that the critical factors are the quantity and quality of services provided. The ongoing debate revolves around whether a more developed banking sector or a more dynamic financial market is the primary driver of economic growth. Some assert that an effective banking system alone is sufficient for economic development, while others

stress the importance of well-functioning financial markets. The nuanced discussion highlights the intricate relationship between financial structures and economic growth, suggesting that an optimal scenario may involve a combination of both intermediaries and markets, along with a focus on the quality of financial services provided.

For Africa to advance its development agenda, a blend of financial intermediaries and financial markets is essential. Both market- and intermediary-based systems offer distinct comparative advantages. Financial markets excel in funding new technologies and projects, especially in situations where there is little agreement on how firms should be managed. Conversely, intermediaries possess expertise in differentiating between bad and good projects, making them highly effective at addressing moral hazard and adverse-selection issues between lenders and borrowers. This dual approach recognizes and leverages the unique strengths of each system, providing a more comprehensive and adaptable financial infrastructure to propel Africa's development objectives.

African governments, working in collaboration with central banks, financial institutions, the private sector, and key stakeholders, must actively strive to ensure the interoperability and standardization of payment systems across the continent. The potential benefits derived from achieving interoperability between these systems are extensive. They include the expansion of payment network access, heightened transparency for system participants and national authorities, improvements in the efficiency of both domestic and cross-border payments, and the stimulation of increased competition. This, in turn, catalyses the development of more innovative products and services for end-users.

African countries should strengthen their partnerships with the private sector and international collaborators to boost investments in technologies vital for supporting payment systems. This includes nurturing the development and uptake of innovative financial technologies (FinTech), encompassing mobile payments, digital wallets, and online payment platforms. Additionally, it is imperative for these nations to prioritize enhancing telecommunication networks, expanding internet accessibility, and establishing resilient financial infrastructure to efficiently support electronic transactions.

African governments must prioritize mobilizing the necessary financing to invest in crucial infrastructure such as electricity generation, transmission, and distribution. Additionally, it is imperative to allocate substantial funds towards building critical internet infrastructure, including hardware, software systems, and robust fibre-optic networks, to effectively support and advance financial technology and payment systems across the continent.

The African Union, in collaboration with African countries and regional economic communities, needs to collectively develop an integrated payment services market at the continental level. This collaborative effort requires support and guidance from both national authorities and continental/regional bodies, providing practical direction, coordinating national initiatives, and offering financial support for critical components. With the overarching objective of establishing an African Economic and Monetary Union, the vision for payment system integration in Africa should prioritize the creation of an integrated, cost-effective, easily accessible, and risk-mitigated system. This strategic approach aims to foster greater economic collaboration and efficiency across the continent.

African governments must enact and implement robust regulatory policies to ensure the operational efficiency, stability, security, and transparency of payment systems. In this context, African regulators should actively facilitate investors in updating 'know-your-customer' requirements and open-banking regulations. Cross-border collaboration is crucial for enhancing payment systems in the realm of international transactions. Furthermore, harmonizing regulations across jurisdictions is essential to expedite innovation in the payment sector. This coordinated regulatory approach will contribute to a more secure and efficient payment landscape, fostering trust and facilitating seamless transactions across borders.

Annex

A Simple Growth Model with Financial Integration

In this Section a simple model is used to explain the link between finance and economic growth. The model will show that financial development would reduce the loss of resources required to allocate capital, increase the savings ratio, and raise capital productivity. Let the output of an economy be summarized by a simple Cobb-Douglas of the following form:

$$Y_t = AK_t^\alpha L_t^{(1-\alpha)}, \quad 0 < \alpha < 1, \quad (A1)$$

In this production function, Y_t is output, A represents technology, K_t is the capital input, and L_t is the labour input. Human capital and government spending could have been added to the production function, based on suggestions from Lucas (1988) and Barro (1990), but would have added complexity to the derivation of the results. All other factors that are influencing output at a given time, such as spending, physical and human capital are summarized in A (Solow residual).⁸ The subscript t indicates time. Expressing equation (A1) in per capita terms by dividing by L :

$$y_t = Ak_t^\alpha, \quad (A2)$$

In equation (A2), y , per capita income is Y/L and k , capital to labour ratio, is K/L . Now linearize by taking the log of both sides:

⁸ According to Ductor and Grechyna (2015), A is often used to denote financial development, technical progress in the real sector, or the quality of institutions in the literature. To factor the real sector into Equation (1), A could be divided into two separate parts. In his empirical work Akinlo (2021) divides A into financial development and real sector in the economy.

$$\log(y_t) = a + \alpha \log(k_t) \quad (\text{A3})$$

For simplicity let $\alpha = 1$ then the growth rates of per-capita income and per capita-capital is:

$$\dot{y}_t = \dot{k}_t \quad (\text{A4})$$

Borrowing from Solow (1956) we have the following standard equations:

$$Y_t = C_t + S_t \quad (\text{A5})$$

$$I_t = \gamma S Y_t \quad (\text{A6})$$

$$\dot{K}_t = I_t - \partial K_t \quad (\text{A7})$$

$$l = \dot{L}_t / L_t \quad (\text{A8})$$

In equations (A5) – (A8), C is aggregate consumption, S is savings in the economy, I is investment, s is marginal rate of savings, $(1 - \gamma)$ is the share of savings spent on allocating resources to investment, and l is the growth of the population which is assumed to be the same as the growth of employment. From equations (A6) – (A8) and (A2), it can be shown that:

$$\dot{k}_t = \gamma s A k_t - (l + \partial) k_t \quad (\text{A9})$$

Or

$$\frac{\dot{k}_t}{k_t} = \gamma s A - (l + \partial) \quad (\text{A10})$$

The left-hand side of equation (A10) is the growth rate of capital per labour which from equation (A4) is the same as the growth rate of the economy:

$$\dot{y}_t = \gamma sA - (l + \partial)$$

(A11)

Extending the observation of Ductor and Grechyna (2015), A , the Solow residuals, could include factors such as financial integration and financial development (technology) and based on equation (A11) one can state that expansion in financial development leads to a rise in per capita income.⁹ Hence if F_1 and F_2 are respectively measures of financial integration and financial development then we could specify a functional form for A as:

$$A = G(F_1, F_2, R)$$

(A12)

$$\frac{dG}{dF_1} \geq 0 \text{ and } \frac{d^2G}{dF_1^2} \leq 0$$

(A13)

$$\frac{dG}{dF_2} \geq 0 \text{ and } \frac{d^2G}{dF_2^2} \leq 0$$

(A14)

$$\frac{dG}{dR} \geq 0 \text{ and } \frac{d^2G}{dR^2} \leq 0$$

(A15)

Where R is the rest of the residuals in A . Equations (A13) to (A15) impose the assumption that function G is concave, suggesting the A increases with the factors and exhibit diminishing returns. It must be noted financial development include financial sector technology and technological progress and it and financial integration contributes to the growth of the economy by reducing information asymmetries, facilitating risk sharing, and enhancing the overall functions of the financial system. Furthermore, financial integration and financial development enhance technological progress in the financial industry. R also enhance technological progress in the rest of the economy. These three factors individually contribute to economic growth by improving total factor productivity, generating innovative ideas, developing efficient production processes, improving institutions, and other outcomes of technological progress.

Now for simplicity, let us assume that the functional form of A is linear. Hence, we shall rewrite equation (A12) as:

⁹ See Atta-Mensah (2017) for more growth.

$$A = \beta_1 F_1 + \beta_2 F_2 + \theta R$$

(A16)

It must be noted that when $\beta_1 = 0$ implies that there is no financial integration. Similarly, when $\beta_2 = 0$ then there is no financial development. Substituting equation (A16) into equation (A11) yields:

$$\dot{y}_t = \gamma s \beta_1 F_1 + \gamma s \beta_2 F_2 + \gamma s \theta R - (l + \delta)$$

(A17)

Equation (A17) shows that the growth rate of per capita income rises with total factor productivity, A , which is made up of financial integration, financial development and the Solow residual or technological progress. The growth rate of per capita income also rises with the effective-saving rate, γs , and declines with the depreciation of capital-labour ratio $(l + \delta)$. The implication is that if $\gamma s A > (l + \delta)$, per capita will expand. Equation (A17) demonstrates the importance of financial integration and financial development in achieving economic growth.

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Chapter 7

ENSURING VALUE CHAINS WORK THROUGH THE AfCFTA – THE CASE FOR COFFEE

Solomon S. Rutega and Celestin M. Gatarayiha

Abstract

Coffee plays a major role in the economy of African countries, contributing significantly to foreign exchange earnings and to the monetization of the rural economy. However, Africa is yet to realize the full potential of this crop, especially as the African coffee sector is underperforming by many statistical indicators. The coffee sub-sector in Africa is still encumbered by a number of interrelated structural constraints along the value chain, especially those pertaining to low farm-level production and productivity, lack of value-addition infrastructure, and access to affordable finance. Worse still, these challenges have been further aggravated by pandemics and regional conflicts, together with the changing weather conditions caused by climate change. Meanwhile, it is important to note that the coffee sector still holds a key that could unlock Africa's inclusive growth and prosperity because of the abundant opportunities that exist. For instance, the creation of the AfCFTA offers a great opportunity to accelerate the expansion of the coffee trade at the regional level, promote domestic consumption, and strengthen economic integration and structural transformation. Therefore, as the continent with the youngest population in the world, the restructuring of the coffee value chain in Africa should be a priority with the involvement of youth and women, combined with adequate investment in value-addition infrastructure.

Key words: *AfCFTA, African coffee, sector transformation, value chain addition, empowering women and youth.*

Introduction

Coffee (*Coffea spp*) is one of the most traded and consumed commodities worldwide, with an estimated 2.4 billion cups consumed per day and an estimated retail value of 70 billion dollars as of 2020 (ICO 2020). Coffee is crucial for the economy of more than 60 countries, and is the main source of income for more than one hundred million people (Hoffmann 2014, ICO 2020). The increase in the use of coffee as a stimulant beverage has favoured the expansion of coffee cultivation and trade.

Africa, the second largest continent in the world, is the birthplace of both Arabica and Robusta coffee, and has the largest number of countries that grow coffee. Over 53 percent of the rural population of the 25 African coffee-producing countries are involved in coffee growing, and an estimated 10 million households derive a livelihood across the value chain. Coffee is also a vital contributor to foreign exchange, and accounts for a significant proportion of tax income and GDP for a number of countries on the continent (African Trade Report 2022).

Unfortunately, limited (or nil) formal export of roasted coffee to the traditional export markets occurs in many producing countries in Africa, due to high import tariffs in the traditional markets imposed on roasted and ground coffee, as well as due to non-tariff barriers operating in such markets (Guei and Schaap 2015, ICO 2020). Nevertheless, available International Coffee Organization (ICO) statistics indicate that Africa exports about 13 million bags of green coffee per annum on average, but also imported approximately half of this amount for its consumption. This demonstrates the potential for building a wholly integrated coffee value chain on the continent, from production of green coffee to fully value-added products, for trade within the continent. Targeted investment in value-addition activities, technologies, and appropriate policies to promote the intra-continental trade in coffee therefore seems to be the main missing link to increase intra-Africa trade in coffee, as well as to increase domestic consumption of the commodity in producer countries. As such, the AfCFTA is a great opportunity that needs to be harnessed.

This paper presents an analysis of the coffee value chain in Africa, implications of the implementation of the AfCFTA, and the role of women and youth in the development of the African coffee sector. It builds on existing (ICO) country-level statistics and previous studies on the African coffee sector

to offer practical recommendations and solutions for policy makers and coffee stakeholders in support of a sustainable and inclusive development of the sector.

Coffee Production

Coffee remains a strategic commodity in several developing countries, particularly in African Member States of the InterAfrican Coffee Organisation (IACO). It contributes to formation of GDP and export earnings, generation of income for rural economies, the fight against poverty, and maintenance of populations in rural areas. However, despite Africa being the origin of coffee and with the largest number of countries growing it, coffee production has experienced mainly stagnant or negative growth over the last three decades of the late 1980s to 2000s, from an annual average production of 19.8 million 60kg bags in the 1980s, to less than 19 million such bags in the 2000s, representing a reduction of its share of the total world production from 27 percent to 11 percent in the same period (ICO Market report March 2023, Figures below).

The coffee sector in Africa is challenged by a number of interrelated constraints along the value chain, especially those pertaining to farm-level production and productivity, value-addition, and produce marketing. Other factors affecting the performance of the coffee sector in Africa include reduced (or lack entirely of) extension services for smallholder farmers, weak organizational capacities of smallholder farmers, weak marketing positions of smallholder farmers, the vulnerability of farmers to low prices and low income, aging farming population/limited youth engagement in coffee farming, limited access to affordable finance, poor rural infrastructure, and poor climate change adaptation and mitigation.

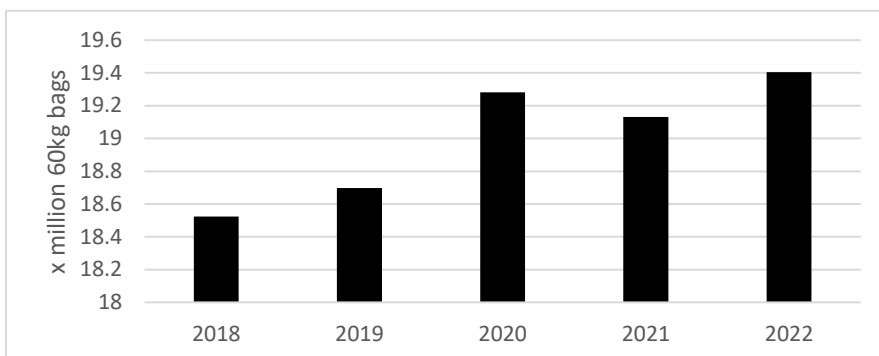


Figure 6: World coffee production in 2022

Source: ICO Market report March 2023

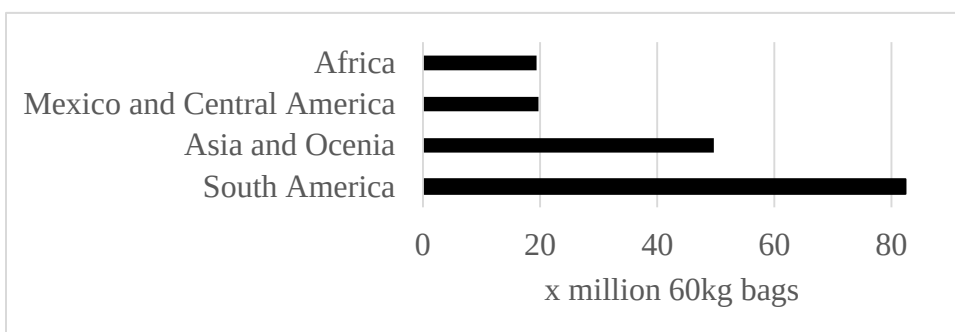


Figure 7: African coffee production 2018-2022

Source: ICO statistics

In addition to a lack of application of good agricultural practices and/or extension and agronomic services, as well as coffee diseases and pests, climate change is increasingly becoming a significant challenge. Being perennial, coffee is reported to be one of the crops that will be the most affected by climate change. Experts indicate that due to climate change, 50 percent of suitable areas where coffee is grown will likely become unsuitable by 2050 (Bunn *et al.* 2015). This unsuitability will be caused by increases in temperatures, unpredictable rains, more extreme weather events, and outbreaks of pests and diseases. This in turn will result in low yields and production, poor quality, high production costs, and loss of financial resilience for farmers. Eventually, climate change will lead to high deforestation to clear new areas for coffee.

The other critical factor that affects the sustainable production of coffee and limits farmers' incomes is coffee's low price on the international market. This demotivates farmers, leading to replacement of coffee with other crops like cocoa, maize, banana and others, depending on the country. In general, prices are dictated by the international market and transmitted locally through either an auction system, or through direct sales. The weak marketing position of small-scale farmers stands in the way of a sustainable coffee sector in Africa. Having farmers organized into structured groups facilitates access to markets and reduces transaction costs. It also reduces the cost of inputs through group purchases at bargain prices. Yet very few exporting countries in Africa have well-structured producer cooperatives with sufficient financial and managerial capacities. Even where, in some countries, smallholder farmers are organized into cooperatives to better market coffee, their capacity is limited due to low capital investment in infrastructure and financial resources.

Lack of financial support from public authorities is a major challenge for investments in coffee culture. In most Member States, it is difficult to obtain credit from commercial banks for producers considered to be insolvent. Formal financial institutions are generally only lightly involved in financing the cultivation of coffee.

The COVID-19 pandemic further exacerbated the situation by disrupting activities along the entire value chain across Africa, leading to stockpiling of coffee at farm levels, reduced prices to growers, reduced domestic consumption due to closures of coffee-roasting units, cessation of movements and meetings, and closure of distribution outlets.

Value-Addition and Domestic Coffee Consumption in Africa

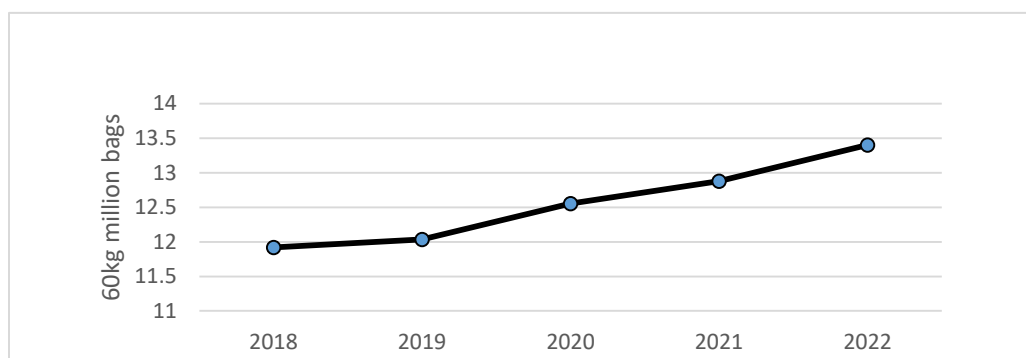
Domestic consumption

Unlike production, coffee consumption in Africa marked a slight growth between 2018 and 2022 (Figure 7). Available statistics from the ICO indicate that during the same period, Africa exported about 13 million bags of green coffee per annum, on average, but also imported half of that amount for domestic consumption. In a study carried out by Agwanda *et al.* (2021) on domestic coffee consumption in selected coffee producing countries in Africa, it was observed that there has been an upward trend in domestic coffee

consumption in all the countries studied during the time covered. Ethiopia showed the highest annual growth rate of 5,256 tonnes, followed by Uganda (320 tonnes) and Kenya (140 tonnes). These statistics indicate that consumption is already on the rise. What is critical is to put in place mechanisms for catalysing and sustaining an increased growth rate driven by increases in small to medium coffee roasters in coffee-producing countries, coupled with increases in out-of-home coffee consumption and socio-economic factors including positive growth in GDP per capita and growth in the middle-class.

Despite the increase observed, domestic consumption of coffee in African coffee-producing countries is still very low. Apart from Ethiopia, which consumes more than 50 percent of its total coffee production, in other African coffee producing countries, domestic coffee consumption is insignificant. The key barriers to increased coffee consumption include limited access to good quality coffee in the domestic market, high prices tied to processed coffee and packaging, limited promotion of coffee consumption - especially high-end coffee brands, inefficient marketing and distribution channels, inadequate transformation facilities, religious beliefs, competition with coffee by other beverages, lack of knowledge and skills in proper coffee preparation, misconceptions and misinformation regarding coffee and health, limited promotion of coffee compared to competing beverages such as tea and soft drinks, inadequate availability of low-cost café chains, and the belief - particularly among farmers - that coffee is exclusively a cash crop and limited to the local roasting and blending industry, to name just a few.

Figure 8: Trend of coffee consumption in Africa



Source: ICO statistics

To promote domestic consumption, and going beyond the traditional perspective of trading green coffee, the Inter-African Coffee Organisation (IACO) started promoting an agribusiness approach that leads to the transformation of the entire coffee value chain through Public-Private Partnership approaches to drive campaigns. Some of the initiatives undertaken by IACO include the establishment of the ‘Drink African Coffee Build Africa (DACBA) programme, the establishment of coffee training centres and coffee kiosks in universities in member countries, and capacity-building for youth and women in coffee. In view of Africa’s vast young population, promoting coffee consumption among the youth presents a great opportunity for increasing domestic coffee consumption and creating job opportunities.

Value-Addition

As Africa’s economy continues to rely on the export of primary commodities, the continent remains a major source of enrichment for other economies that add value to the raw materials from Africa. The status of coffee value-addition in Africa varies across countries and regions. While some countries have made significant progress in adding value to their coffee, others are still struggling to fully exploit the potential of their coffee industry.

Some African countries, such as Ethiopia and Kenya, have made great strides in adding value to their coffee by developing strong brands and marketing

strategies that highlight the unique characteristics and quality of their coffee (Agwanda *et al.* 2021, Tamru and Minten 2023). These countries have also invested in value-added processing, such as roasting, packaging, and blending, which has increased the market value of their coffee and created new revenue streams. Other countries, such as Rwanda and Uganda, have also made progress in adding value to their coffee by focusing on improving the quality of their coffee through certification and grading, and investing in processing facilities and marketing strategies that target premium markets. However, despite these successes, many African countries still face significant challenges in adding value to their coffee. Limited access to financing, inadequate infrastructure, and a lack of technical expertise are among the key barriers to value-addition. In addition, many African coffee producers still rely on low-value export markets, which limits their ability to capture the full value of their product. To address these barriers, investing in processing facilities and marketing strategies - and focusing on sustainable and ethical production practices - can help African coffee producers capture more value from their products, and build a stronger and more profitable coffee industry on the continent. The emergence of the AfCFTA offers a great opportunity that needs to be utilized.

Status of the African Coffee Trade and Policy Implications

The end of the International Coffee Agreement and the quota system in 1989, and the subsequent adoption of market liberalization policies led to sharp declines in international prices for coffee. The most affected countries were from Africa because of their prevailing low productivity and high costs on income. The world price of green coffee on the international market is determined by forces of supply and demand, which are mainly skewed in favour of consumers. The ‘green’ coffee classification used by the New York Board of Trade (NYBOT) at the Futures market categorizes coffee as ‘Colombian Milds’, ‘Other Milds’, and ‘Brazilian Naturals’ for Arabica coffee, and ‘Robusta’ coffees category. African Arabica coffees fall under ‘Other Milds’, which fetch low prices (Bozzola, *et al.* 2021).

By 2023, Africa’s coffee exports averaged 13 million bags per annum, 11 percent of the global market (ICO 2023). The value of the coffee trade on the global market is estimated at 446 billion dollars per year, and African exports are estimated at 2 billion dollars, representing only 0.4 percent of the global

market. This is because most of the coffees in Africa are exported as green coffee and non-value-added (ICO 2015). Moreover, there is no formal export of roasted coffee from Africa to traditional markets (Guei and Schaap 2015, Agwanda *et al.* 2021) due to high import tariffs and non-tariff barriers imposed on roasted coffee en route to traditional markets for African coffee, coupled with the logistical challenges associated with roasted coffee, given its perishability and consumer perceptions regarding the quality of coffee roasted at origin.

In addition, intra-continental trade on coffee - both green and value-added - has likewise been insignificant due to challenges related to logistics and infrastructure, inadequate investment in coffee marketing, as well as tariff and non-tariff barriers. With this situation, the continent imports significant volumes of value-added coffee for local consumption, indicating a potential for intra-Africa trade in value-added coffee that needs to be seized upon.

Some countries have inaugurated policies to improve their coffee exports, which in turn has a considerable impact on coffee value chain operations and how its actors benefit therefrom. For example, in 2008 the Ethiopian government set up the Ethiopian Commodity Exchange market (ECX) to organize the Ethiopian coffee trade and the prices producers receive. It was made compulsory for traders and exporters to go through the ECX unless they are certified cooperatives producers, or export straight from their commercial plantations (Gashaw and Kibret 2018). Regional economic integration also has the potential for a positive impact on coffee trade in Africa, including increased market access, reduced trade barriers, improved infrastructure, harmonization of policies, and increased collaboration (Tuluy 2016).

For readiness under the AfCFTA, there is a need to support SMEs and local companies through capacity-building and capital investment. Key to this is the ability to mobilize investment capital for upgrading existing infrastructure, acquire skilled human capital, develop and promote continental coffee brands, improve the value proposition *vis-à-vis* brands from multinational roasting companies in the region, and increased investment in logistics marketing. Part of the readiness for the market created through AfCFTA is to leverage resources and technical capacity through strategic partnerships, both private and public.

Coffee Standards

Standards and conformity assessment procedures in coffee are set to protect consumers, workers, and the environment, as well as to facilitate trade and market access. These standards provide a framework for ensuring fair prices, services, quality, safety, and efficiency in products and processes. Most of the coffee in Africa is traded under the standards of the Specialty Coffee Association (SCA) of America and the European Union (EU). However, several African countries have developed their own standards for coffee grading and classification that have been recognized globally (Ruben and Verkaart 2011).

For example, Ethiopia is the birthplace of coffee and has its own standards, the ‘Ethiopian Commodity Exchange Standards’ for coffee grading and classification. The ECX grades coffee based on size, colour, and defects (Gashaw and Kibret 2018). Kenya, known for producing high-quality coffee, has the Kenya Coffee Board, which set standards for the grading and classification of coffee based on size, shape, and quality of the beans. Tanzania also has its own coffee standards, which focus on bean size, shape, and colour, as well as the presence of defects such as insect damage or mould. In Uganda, the Uganda Coffee Development Authority (UCDA) has set standards for grading and classification of coffee, which include the size, colour, and quality of the beans. These standards are designed to ensure that coffee produced in Africa meets certain quality criteria and is suitable for export to international markets. IACO has partnered with the African Organisation for Standardisation (ARSO) to collaborate in harmonizing these standards to facilitate the coffee trade in the region, and adapt standards to the African market context.

African Digital Trade

Food safety has become a central issue in the global coffee value chain, with the emerging generation of new coffee consumers concerned with quality, the environment, transparency and data, especially in real time. The third-wave coffee movement, for example, emphasizes farm-to-cup traceability: a global coffee culture of knowing the story behind the cup.

Digitization has the potential to transform the African coffee trade by improving transparency, efficiency, traceability and visibility of producers to facilitate their participation in differentiated markets. E-commerce took off well, with green bean online marketplaces and online auctions becoming more common (Abendin and Duan 2021).

The level of digitization in the African coffee sector varies widely across the continent. While some countries and companies have made significant progress in adopting digital technologies, others still face challenges. Various digital systems have been explored in Africa's coffee sector, including blockchain technology, to unite all parties in the coffee supply chain and facilitate the exchange and tracking of information and payments, thereby fostering greater trust. Digital methods are also essential for improving shipping and logistics, ensuring the efficiency and traceability of coffee beans from producer to buyer.

To this end, various mobile applications have been developed to help coffee farmers in Africa access relevant information about coffee production, pricing, and marketing. These user-friendly applications are available in multiple languages to cater to the needs of different users. In addition, digital payment systems are being used to improve efficiency and transparency in the coffee supply chain, and enable coffee farmers to receive payments directly from buyers, reducing the need for intermediaries and improving the speed and security of transactions.

However, there are still many challenges to be addressed in terms of digitization in the African coffee sector. For example, access to digital infrastructure, such as reliable internet connectivity and electricity, remains a significant obstacle in many rural areas. In addition, many smallholder farmers lack the skills and knowledge needed to effectively use digital technologies. The success of digital technologies in producing countries will depend heavily on necessary structural reforms, infrastructure development, and capacity-building.

Some of the existing initiatives and platforms for supporting E-commerce and digital trade in Africa are provided by the AfCFTA, African Development Bank (AfDB), Africa Union through its AE-Trade Group, and the African Alliance for Electronic Commerce (AAEC). While there have been positive developments in the digitization of the African coffee sector, there is still a

need for greater investment in digital infrastructure, training and education for farmers, legislation, and collaboration among stakeholders to ensure that the benefits of digital technologies are fully realized. These will only be realized fully if youth - who are the proportionally the most significant consumers of Information Technology (IT) - are involved. Young people can play a critical role in the development and implementation of e-trade solutions in the coffee sector, since they are often more familiar with digital technologies and have the skills to develop and implement e-commerce platforms and other digital solutions. Additionally, youth entrepreneurs can leverage e-trade to create new business models that address specific challenges in the coffee sector.

The Role of Women and Youth in the Development of the African Coffee Sector

Women and youth play significant roles in the African coffee industry's success; hence, their involvement can help ensure a sustainable and equitable coffee industry for the future. They constitute the majority of the continent's economically active population and are the engines of trade, both within and beyond borders.

Women represent more than 70 percent of the labour in coffee, doing everything from picking to sorting to processing (Gottlieb 2022). In some areas of fieldwork, their contribution can reach up to 90 percent. Moreover, higher gender equality within the household allows for further investments in health and education. There is substantial evidence that female control over household income increases the share of resources allocated towards household goods, such as food, education, and health (Robinson 2012). Increased fair participation of women within the supply chain is expected to enhance the equal distribution of benefits, hence contributing to gender equity as well as livelihood improvement. Improved livelihood implies increased access to economic opportunities. This has a direct contribution to achieving SDGs on poverty, hunger, jobs, environmental conservation, and gender equality (Glazebrook and Opoku 2020). However, there exists a gender imbalance from the ownership and control of resources to the participation of men and women in the coffee supply chain (Glazebrook and Opoku, 2020, Kangile *et al.* 2021). The coffee supply chain is male-dominated, and though women are highly integrated into the lower end of the coffee supply chain,

they have limited control over the proceeds coming from coffee production and trading.

As much as empowering women in coffee for creating a more equitable and sustainable industry is of utmost urgency, it requires a multifaceted approach that addresses the complex social, economic, and cultural factors that limit their participation and influence in the coffee industry. IACO, in collaboration with key partners and Member States, has committed to promoting gender equality in the coffee industry through a range of initiatives, including creating a unified platform for women in Member States to dialogue and share their experiences, and supporting women's entrepreneurship and leadership in the sector.

Youth participation in the African coffee sector is also crucial for the sustainable development of the industry. The coffee sector is one of the most important sources of income and employment in many African countries, particularly in East and Central Africa. However, the aging of the coffee farming population and the lack of interest among young people to engage in the coffee sector poses a threat to the industry's future. Africa has the youngest population in the world compared to other continents (World Bank 2022), and by the 2000s, it was estimated that approximately 60 percent of Africa's population was under the age of 25, with about 70 percent of the population under the age of 35 (AUC, 2019). The proportion of youth in Africa is expected to remain high, with the United Nations projecting that by 2050, the continent will be home to 1.3 billion young people aged 15 to 24.

A number of challenges, including lack of education and awareness about the potential benefits of the industry, limited access to financing and infrastructure, and competition from other industries conspire to limit youths' interest in the coffee sector (ICO 2021). To address these challenges, governments need to create opportunities and incentives for young people to participate in the coffee sector, through training and capacity-building programmes, mentorship and coaching, and access to finance and markets. Governments can work with private sector actors and development partners to create an enabling environment for youth participation in the coffee value chain.

The promotion of youth participation in the coffee sector can be encouraged through entrepreneurship and innovation by supporting young entrepreneurs

in developing new and innovative approaches to coffee production, processing, and marketing. Another approach is to promote the use of technology in the coffee sector to make coffee farming more attractive and profitable for young people. Additionally, addressing the systemic barriers that prevent young people from participating in the coffee sector - such as land tenure issues, lack of access to credit and markets, and gender inequality – will bolster youth participation in the coffee sector. To create a more inclusive and sustainable coffee sector that benefits everyone, a concerted effort from all stakeholders is required. For example, IACO has been working in partnership with the private sector and key partners to promote youth engagement in the coffee industry by supporting youth-led coffee initiatives, through the establishment of coffee training centres and providing training and technical assistance to young coffee farmers and entrepreneurs, as well as promoting entrepreneurship and innovation in the sector. Meanwhile, to create jobs and brand awareness of coffee's origins in Africa, IACO has introduced the first African youth barista championship, to be held annually in different countries on the African continent.

Impact of AfCFTA Implementation Success on the African Coffee Value Chain

The focus on regional agricultural value chains provides pathways to enhance agro-processing, thereby fostering opportunities to add value to agrifood exports such as coffee. So far, 10 African countries - including Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia - participated in the AfCFTA's Guided Trade Initiative (GTI), seeking to facilitate trade among interested AfCFTA State Parties that have met the minimum requirements for trade under the Agreement (African Union 2023).

The AfCFTA will promote regional integration and cooperation among African countries, which could lead to the development of more efficient and cost-effective supply chains for the coffee sector (Nsabimana and Tirkaso 2020) and also greater collaboration between coffee producers in different countries, allowing them to share knowledge and expertise, and to work together to improve the quality and sustainability of their coffee production.

The AfCFTA will provide coffee producers with access to a larger market, as the free trade area will create a single market of over 1.3 billion consumers (Echandi *et al.* 2022) which will increase demand for African coffee and provide opportunities for coffee producers to expand their businesses and increase their exports (Simola *et al.* 2021). The stability and predictability of African markets are likely to stimulate investment in coffee value-addition, creating more jobs and generating more revenue for African economies. The AfCFTA aims to promote sustainable development, which is essential for the long-term viability of the coffee value chain in Africa. By promoting sustainable production practices and supporting smallholder farmers, the AfCFTA could help to ensure that the coffee value chain in Africa remains competitive and resilient in the face of changing market conditions. To achieve this, African countries should provide complementary policies to enhance productive capacities, promote investment, and develop policies to address challenges such as infrastructure deficits, transport links, trade barriers and logistics. At the same time, African coffee sector actors should prepare themselves to take advantage of the opportunities provided by AfCFTA. The existing IACO partnership with AfCFTA, and the expected integration of coffee as a strategic commodity under the AU, presents an opportunity for supporting the African coffee sector under the AfCFTA and the Agricultural aspects of Agenda 2063 of the AU.

For the AfCFTA to be a success, it must be complemented by similar progress on other AU initiatives such as the Pan-African Payment and Settlement System (PAPSS), AfCFTA General/Credit Fund, and the AfCFTA SME financing facility - which facilitates access to finance for SMEs (especially women and youth enterprises) across the coffee value chain, IATF for market access and branding, AfCFTA E- certificate of origin via E-tariff book to assist IACO in the collection of data and statistics, and AfCFTA Dispute Settlement Body (DSB) to help coffee traders in settling contractual disputes and reduce trade risks.

Conclusion and Recommendations

Coffee is an important crop for the economies of Africa. It contributes a significant proportion of GDP, tax income and foreign exchange, and to achieving the SDGs.

African countries need to develop and provide complementary policies that enhance productive capacities, promote investment, and address challenges faced in the value chain in promoting value-addition and intra-Africa trade. The successful implementation of AfCFTA presents a great opportunity for the transformation of the coffee sector in Africa. By creating a larger market and addressing some of the challenges faced by the sector, it is also expected to help in improving the livelihoods of African coffee producers, as well as contributing to the continent's economic growth.

Under the AfCFTA framework and the partnership of IACO (as the specialized regional coffee body), and together with the adoption of coffee as a strategic commodity under the AU Agriculture 2063 agenda, the coffee sector has great potential in transforming through value-addition.

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Chapter 8

AfCFTA RULES OF ORIGIN AND TRADE FACILITATION MEASURES

Mark Pearson

Abstract

Generally, AU Member States see economic growth as being achieved through manufacture and the associated trade in goods and services. Manufacturing is dependent on efficient supply chains that allow just-in-time (JIT) and just-in-sequence (JIS) deliveries directly onto the production lines, allowing the use of modern manufacturing techniques and reduced inventory levels. The AfCFTA introduces two components that should allow investors and existing manufacturers to introduce efficiencies in manufacturing processes that could make manufacturing in Africa more efficient and allow the production of more globally competitive manufactured products. The first of these components is the comprehensive package of trade, transport and transit instruments that are described in the Annexes to the AfCFTA Protocol. The second component is the introduction of the process of cumulation in the rules of origin between AfCFTA members, which allows a manufacturer in one country to source component parts originating in one or more AfCFTA countries free of duties and use them in the manufacturing process to manufacture a final product that can then be sold free of duties in all other AfCFTA members. Not only does the AfCFTA expand the market for goods made in Africa, but it also provides an incentive for both local and foreign direct investment.

If use of goods and components made in Africa could be taken advantage of through the cumulation provisions of the AfCFTA, then manufacturing would be made even more efficient and make a significant contribution to African economic growth, and thereby improve quality of life for Africans.

Key Words: Trade, Transit, Transport Facilitation, Rules of Origin, Cumulation, Supply Chain Logistics

Introduction

The African Industrial Index¹⁰ shows that progress on industrialization is being made in that 37 out of 52 African countries have industrialized over the past 11 years. During the AU Summit on Industrialising Africa, held in Niamey, Niger in November 2022, African leaders reviewed the continent's progress in industrialization, economic diversification, and the AfCFTA and acknowledged the progress made but urged AU Member States to take steps to improve the pace of industrialization.

As manufacturers do not produce all components of a finished product themselves, they rely on efficient global supply chains for JIT and JIS deliveries directly onto the production lines. In this manner, manufacturers can reduce their inventory levels and so reduce the costs of manufacturing. Some industries, such as assembly of internal combustion engine (ICE) vehicles or electric vehicles (EVs) rely on methodologies whereby over 1,000 components are added to a vehicle as it moves along an assembly line. If one component is not available, then the whole assembly line stops. In African countries, it is not unusual for imported materials and component parts to be delayed by border agencies, either by Customs to ensure that all duties and other taxes have been paid, or by other border agencies to ensure goods comply with consumer or industry safety standards.

In the process of industrializing, African states need to attract investors who are willing to invest in manufacturing plants that produce goods (component parts and finished products) that originate in Africa. Implementation of the AfCFTA - and especially the AfCFTA provisions on trade, transit and transport facilitation and cumulation provisions in the Rules of Origin – is key to the creation of efficient supply chain logistics.

¹⁰ <https://www.afdb.org/en/documents/africa-industrialization-index-2022>. The Index provides a country-level assessment of the progress made by the 52 African countries based on 19 key indicators.

Rules of Origin

Preferential Rules of Origin are critical components of a free trade agreement and need to strike a balance between being ‘liberal’ enough to encourage trade in originating goods to take place, and ‘stringent’ enough to guard against trade deflection.¹¹ If the Rules of Origin (ROO) are too stringent (and therefore too difficult to comply with) then the FTA will be of no benefit to producers and traders as, by not being able to comply with the ROO, they will not be able to trade in originating goods with other African States free of duties. If, on the other hand, ROO are too lenient, third parties would be able to gain access to African markets on a duty-free basis, which would lead to a loss in revenue from trade taxes, more competition for local producers, and lower incentives to investment in the manufacturing sector in Africa.

In the case of the AfCFTA, Member States have decided to develop a set of Product Specific Rules of Origin (PSRO), meaning that there is a specific (but not unique) ROO for each product, defined by its Harmonized System (HS) code, either at the two-digit (Chapter Head) level, the four-digit (Heading) level, or at the six-digit (Sub-Heading) levels. The AfCFTA PSRO need to cover substantially all categories of goods traded on a preferential basis within the AfCFTA.¹²

The literature on Preferential Rules of Origin, such as UNCTAD and World Bank publications, often focus on the need to ‘liberalize’¹³ Rules of Origin with the understanding that there will be a higher uptake of preferences under free trade agreements - and therefore, in the case of the AfCFTA, higher levels of inter-Africa trade in originating goods. But not all share the view that making compliance with ROO easier is the solution for economic growth

¹¹ Trade deflection occurs when non-members ship their goods to a low tariff FTA member and then re-ship to a high tariff FTA member.

¹² Article XXIV:8 of GATT states that “substantially all of trade” must be liberalized if a customs union or a free trade area is qualified to meet the requirements for exemption under Article XXIV. The term “substantially all trade” is not defined in GATT Article XXIV and the definition of “substantially all trade” in the AfCFTA context is still under negotiation and indications are that Member States are looking at a relatively low figure, with a figure of 81% being mentioned.

¹³ Liberalization of Preferential Rules of Origin means different things to different people but, in general, it means making the Rules of Origin easier to comply with, with the aim of improving preference utilisation rates.

through industrialization and trade. For example, in a Position Paper¹⁴ prepared by the African Association of Automotive Manufacturers (AAAM), which draws on the work done by the AAAM Working Group on ROO, it is argued that the PSRO for the automotive sector (HS Chapter 87)¹⁵ should be in the range of a minimum of 40 percent originating material and a maximum of 60 percent non-originating material, so a 60 percent value of non-originating material (VNOM) rule.

The difference - and a major innovation in the AfCFTA Rules of Origin - is the introduction of a cumulation provision. This is an innovation in that the REC Rules of Origin do not have cumulation provisions, although some free trade agreements African States have signed with other customs territories, such as the Economic Partnership Agreements signed by some African countries with the European Union, do have cumulation provisions. The benefit of cumulation in the AfCFTA is that it allows one member of the AfCFTA to source a raw material or an intermediate good to be used in the manufacture of a finished good free of duty, and for that good or intermediate product originating in one AfCFTA member to be considered to have originated in the country in which the final product is manufactured.

Article 8 of Annex 2 of the AfCFTA provides for cumulation between State Parties to the AfCFTA. All State Parties are considered as a Single Territory so that cumulation means that:

- Raw Materials or semi-finished goods originating (meaning products which meet the AfCFTA's PSRO) in any of the State Parties and undergoing working or processing in another State Party, shall be deemed to have originated in the State Party where the final processing or manufacturing takes place; and
- Working or processing carried out in any of the State Parties shall be considered as having been carried out in the State Parties when the materials undergo further working or processing in a State Party; and
- Products (defined as outputs of a manufacturing process, even if it is intended for later use in another manufacturing operation) further manufactured (meaning that they go beyond simple working or

¹⁴ "An AAAM Position Paper on Rules of Origin in the Auto sector within the AfCFTA" March 2021

¹⁵ HS Chapter 87 covers not only automotive products but also all automotive components. Because of this the PSRO needs to be a value addition rule rather than a change of tariff classification or a specific process rule.

processing as defined in Article 7 of the ROO) in a State Party shall be considered as originating in the State Party where the last manufacturing process takes place.

This allows, for example, component parts of a motor vehicle to be made in one State Party and used, free of duty in the assembly of a vehicle in another State Party. It also allows a component part to be imported from a country that is not a party to the AfCFTA (i.e. a non-African country) and further worked or processed, as long as the processing goes beyond simple working or processing but does not necessarily need to comply with the AfCFTA PSRO and be used in the assembly of a vehicle in another State Party.

This cumulation rule is intended to encourage foreign direct investment into manufacturing in State Parties and, in the process, encourage the establishment of regional and continental value chains. For example, continuing the hypothetical regarding the manufacturing of automobiles (HS Chapter 87), if an automobile is to be considered to have originated in Africa (and can therefore be traded free of duty within the AfCFTA State Parties), and assuming a 60 percent VNOM PSRO is agreed on, a minimum 40 percent of the vehicle, by value, must originate in one or more AfCFTA State Party, and a maximum of 60 percent can be non-originating.¹⁶ The cumulation rule makes it considerably easier to reduce the value of non-originating material.

Tier 1 suppliers, which, in the case of the automobile value chain, supply Original Equipment Manufacturers (OEMs) - such as BMW, Nissan, Toyota, Nissan, VW, etc. - with prefabricated components for the automobile (such as headlight clusters, brake systems, car seats and infotainment consoles), under the AfCFTA cumulation provisions could, for instance, import the component parts of a braking system or wiring harness or headlamp cluster from countries outside the AfCFTA and assemble these into the final product (braking system, wiring harness, headlight cluster, etc.) and export these component parts to State Party B free of duty and as a component of a vehicle being made in State Party B, and these component parts, under the provisions of the cumulation

¹⁶ In actual fact, as at July 2023, the PSPO for Chapter 87 is still being negotiated but the African Association of Automotive Manufacturers (AAAM) are supporting a 60 percent VNOM rule.

rule, be deemed to originate from a State party B where the vehicle is assembled.

These component parts may not necessarily comply with the AfCFTA PSRO but, within the cumulation provisions of the AfCFTA, what is required is that the working or processing must go beyond the working or processing that are considered insufficient to confer origin, which are listed in Article 7 of the AfCFTA Rules of Origin Annex.

The AfCFTA Rules of Origin provide sufficient market access incentives, through the cumulation provisions, to attract investments in the industrial sector and to promote the establishment of regional and continental value chains. The automotive industry has been used as an example, but cumulation provisions can be applied to all industrial sectors.

Trade and Transit Facilitation

The industrialization process is dependent on efficient supply chains, which are required if a manufacturer is to use JIT and JIS manufacturing processes without it being necessary to maintain large inventories.

Efficient supply and value chains depend on implementation of trade, transport and transit facilitation measures and instruments designed to allow a free flow of goods across (and between) borders, from the point of departure of the good to the point of arrival. For African countries, and especially landlocked countries, generally speaking, the cost of inland logistics (meaning from the African port the good is imported through to the final destination in a country which does not have a port) is significantly higher than the cost of logistics from the overseas origin of the good to the African sea port. The cost of inland transport (from the port to the final destination in Africa) is dependent on many factors, including:

- Distance from the port to the final destination for an import, or from the source to the port of export for exports.
- Mode of transport. It usually costs less per tonne-kilometre, and involves less carbon dioxide emissions, to transport goods over long distances by rail than it does to transport the same goods by road.
- Time taken between the port and the final destination, or point of departure to the port. Time taken has a direct impact on costs of transport partly because a transporter will charge more for a journey

that takes longer than anticipated¹⁷ and partly because of demurrage costs incurred.

The costs associated with distance or mode of transport cannot easily be changed in the short term. However, with the use of trade, transport and transit facilitation measures and instruments, the time taken to complete a journey can be reduced significantly.

The AfCFTA addresses Customs Cooperation, Trade Facilitation and Transit in Annexes 3, 4 and 8 of the AfCFTA Protocol on Trade in Goods respectively.

Annex 3 of the AfCFTA Protocol on Trade in Goods addresses Customs Cooperation between State Parties, the objectives and scope being to:

- Ensure cooperation in all areas of Customs administration aimed at improving the regulation of trade flows and the enforcement of applicable laws within the State Parties, by:
 - providing for common measures for which State Parties are encouraged to comply with in the formulation of their Customs law and procedures; and
 - establishing appropriate institutional arrangements at continental, regional and national levels.
- Ensure mutual administrative assistance through ensuring appropriate Customs laws are observed; preventing, investigating and combating customs offences; making documents necessary for the application of Customs law available; facilitating the simplification and harmonization of customs procedures; and ensuring the smooth flow of trade and the integrity of the international supply chain.

Annex 3 also commits State Parties to:

- Undertake to establish, use and continually upgrade modern data processing systems to facilitate effective and efficient Customs operations and transmission of trade data amongst themselves.

¹⁷ Costs of transport include fixed costs (depreciation, insurance, vehicle taxes, driver salary, etc.) as well as variable costs (fuel and lubricants, tyres, toll fees and road user charges, etc.). If a transporter is able to do four return journeys a month instead of two return journeys a month, the fixed costs for the month remain the same and only the variable costs change. Therefore, the transporter will need to charge more per journey if only two trips are done instead of four trips.

- Use internationally accepted standards, especially those adopted by the World Customs Organization (WCO)¹⁸;
- Develop or adopt interconnectivity of computerized Customs clearance and information systems in collaboration with stakeholders;
- Facilitate the exchange of data with stakeholders; and
- Exchange information electronically and in advance of the arrival of persons, goods and means of transport.

Annex 4 of the AfCFTA Protocol on Trade in Goods addresses Trade Facilitation and is similar to the WTO Trade Facilitation Agreement (TFA)¹⁹ in its coverage. Annex 4 promotes the fundamental principles of trade facilitation through transparency, simplification, harmonization, and standardization, and addresses: Enquiry Points; Advance Rulings; Pre-arrival Processing; Electronic Payments; Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges; Risk Management; Post-clearance Audit; Establishment and Publication of Average Release Times; Trade Facilitation Measures for Authorized Operators; Expedited Shipments; Perishable Goods; Use of International Standards; Use of Information Technology; Single Window; Freedom of Transit; Documentation; Review and Appeal; use of Customs Brokers; Pre-shipment

¹⁸ All State parties of the AfCFTA are also members of the WCO and signatories to the Revised Kyoto Convention (RKC), which is the main WCO trade facilitation instrument and harmonizes and simplifies Customs procedures and practices by providing standards and recommended practices for modern Customs procedures and techniques. Contracting parties to the RKC accept the Body and the General Annex to the RKC, which are binding. The General Annex of the RKC commits contracting parties to the following key principles:

- transparency and predictability of Customs actions;
- standardization and simplification of the goods declaration and supporting documents;
- simplified procedures for authorized persons;
- maximum use of information technology;
- minimum necessary Customs control to ensure compliance with regulations;
- use of risk management and audit-based controls;
- coordinated interventions with other border agencies; and
- partnership with the trade.

¹⁹ The WTO Trade Facilitation Agreement was the first Agreement concluded at the WTO by all of its Members. The Agreement entered into force on 22 February 2017 when the WTO obtained the two-thirds acceptance of the Agreement from its 164 Members. Section I of the TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It clarifies and improves the relevant articles (V, VIII and X) of the General Agreement on Tariffs and Trade (GATT) 1994. It also sets out provisions for customs cooperation.

Inspection; Border Agency Cooperation; and Other Measures to Facilitate Trade.

Annex 4 also stipulates that each State Party shall establish and/or maintain a National Committee on Trade Facilitation.

Annex 8 of the AfCFTA Protocol on Trade in Goods, which is in line with Article 11 of the WTO TFA, provides for the means of transport used in transit trade to be licensed by the appropriate licensing authorities of the State Parties in accordance with their national laws and regulations and for all transit traffic operations to be covered by Customs bond and sureties' arrangements and use AfCFTA transit documents. Annex 8 addresses the following:

- State Parties granting all transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose;
- Not to levy any import or export duties on the transit traffic, but may levy administrative or service charges equivalent to services rendered;
- Makes no discrimination in the treatment of persons, goods and means of transport coming from, or bound to State Parties, and
- Rates and tariffs for the use of their facilities by other State Parties shall not be less favourable than those accorded to their own traffic.

In terms of securing supply and value chains necessary to allow manufacturers to benefit from JIT and JIS delivery, the following provisions of Annexes 3, 4 and 8 are likely the most relevant:

- Customs Cooperation and Mutual Administrative Assistance: To secure an African supply chain which is, for example, along a transport/trade/transit Corridor (referred to henceforth as a Corridor) which crosses one or more borders, it is essential for national Customs agencies to cooperate fully with each other both to ensure law enforcement and to ensure sharing of information and data. Presently, although there are Customs cooperation and mutual administrative assistance agreements in place, Customs may not share data which is essential for pre-clearance and common risk management to take place. For example, if goods are moving along a Corridor, it is not uncommon for Customs of the country the goods are arriving at to not have information on the goods (such as the bill of lading) before the goods physically arrive at the border. In this situation Customs and other border agencies cannot pre-clear, cannot provide expedited

services to Authorised Operators, cannot carry out risk assessments prior to the arrival of the goods at the border and, in the case of road transport, cannot adequately manage the queue of traffic.

- Trade Facilitation²⁰:
 - Advance Rulings: Advance Rulings are written decisions made by Customs authorities at the request of an importer that are legally binding on both parties. They provide certainty on the HS classification and what tariff will be applied to the import. If an importer has an Advance Ruling from the Customs agency of the country of final import this should simplify the process of final clearance.
 - Pre-arrival Processing: Pre-arrival processing involves the, usually electronic, submission of a goods declaration to Customs prior to the arrival of the goods at the border. This simplifies the import process as goods can be cleared before they arrive at the border and so do not need to be stopped for a documentary check, or a scan or a physical inspection.
 - Electronic Payments: There are many advantages to electronic payments for cross-border services including lower levels of corruption, quicker transactions and pre-payment before goods arrive at the border, allowing pre-clearance to take place.
 - Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges: This allows goods to be released by Customs prior to the payment of duties, taxes, fees and charges where the final classification of the goods, assessment of value or other transactions are pending. This allows goods to leave the border area quickly.
 - Risk Management: A Risk Management system which is common to Customs and other border agencies on both sides of the border would have significant benefits, including common channelling of goods into low, medium and high-risk lanes so avoiding situations where one Customs or other border agency assesses the risk differently to another agency. In an optimal situation, low risk cargo should not be stopped at the border; medium risk cargo could undergo a scan and/or a

²⁰ Note that Freedom of Transit is considered important in the context of securing cross-border supply chains, but this is addressed under Annex 8 rather than under Trade Facilitation.

document check and high-risk cargo could be physically inspected and/or scanned. Therefore, even in situations where there are joint inspections taking place, if risk assessment is not common to Customs and other border agencies on both sides of the border, there is a strong possibility that goods will be unnecessarily delayed at the border.

- Post-clearance Audit: A post-clearance audit is a structured examination of a trader's relevant commercial systems and processes, financial and non-financial records, physical stock and other assets, as a means to measure and improve compliance. It is conducted after the release of the goods from Customs control. It allows goods to be released to the importer immediately and for the audit to be done at a later date.
- Trade Facilitation Measures for Authorised Operators: Authorised Operators are trusted traders that have undertaken to fully comply with Customs and other border agency procedures and regulations in return for preferential and expedited treatment, such as fast tracking through the border. Authorised Operator, or trusted trader schemes often do not work in the African context because the Authorised Operator or trusted trader does not receive the envisaged benefits unless Customs can risk assess, pre-clear and assign goods to a fast-track lane before the goods arrive at the border.
- Use of Information Technology: There have been significant improvements in use of information technology (IT) by Customs and border agencies. However, there is usually a requirement for Customs and other border agencies²¹ to make more use of IT and, through the improved use of IT, further improve trade facilitation.
- Single Window: Trade Single Windows are designed to simplify traders' interactions with the border and to do this by allowing traders and transporters and other stakeholders to lodge standardized information and documents once (a single entry) to fulfil all import, export, and transit related regulatory requirements. The efficacy of national Trade Single Windows

²¹ Other border agencies are usually less advanced in their use of information technology than Customs is.

is varied but Single Windows are an essential component in trade facilitation.

- Border Agency Cooperation: Border agency cooperation refers to cooperation between border agencies on the same side of a border. This type of cooperation is essential for the smooth implementation of all the above trade facilitation measures important in securing efficient cross border supply chains in Africa.
- Transit Facilitation: Free movement of goods (and vehicles and drivers) in transit is a vital component of the security of the supply and value chain and it is essential that all State Parties grant all transit traffic freedom to traverse their respective territories; do not impose any import or export duties on the transit traffic; and do not discriminate in the treatment of persons, goods and means of transport coming from, or bound to State Parties.

Operational National Trade Facilitation Committees (NTFCs) are important to ensure implementation of trade facilitation measures that will secure regional and continental supply and value chains, but the way that NTFCs are structured and operate needs to be re-examined. The role of an NTFC is to facilitate and coordinate, but what is needed is a body to champion trade facilitation. Implementation of trade facilitation measures requires combined actions by, usually, multiple agencies and private sector organizations, as well as an implementation budget, which should come from government rather than International Cooperating Partner grants. For example, a common risk assessment instrument needs not only cooperation between border agencies, but also agency agreements, possibly changes in legislation and regulations, and a budget to make it happen. This may require a directive from a higher authority. An NTFC is chaired by a senior official from the Ministry responsible for international trade; the members of the NTFC include counterparts from other ministries, private sector and International Cooperating Partners, none of which the NTFC chair has any jurisdiction or authority over.

Conclusions

In conclusion, it can be said that the AfCFTA provides a solid platform that supports the process of securing supply and value chains essential to the process of JIT and JIS manufacturing, particularly through the cumulation provisions of the AfCFTA Rules of Origin, as well as through the Trade

Facilitation measures outlined in Annex 4, the Customs Cooperation and Mutual Administrative Assistance measures outlined in Annex 3, and the Transit Facilitation measures outlined in Annex 8 (all being annexes of the AfCFTA Protocol on Trade in Goods).

However, implementation of the cumulation provisions of the ROO, of the Trade and Transit instruments and measures, and of Customs Cooperation could be further strengthened and improved by:

- Explaining in more detail to Africa's manufacturers and policy makers the potential there is in the cumulation provisions to secure supply and value chains and expand industrialization, taking maximum advantage of the AfCFTA's market access provisions for originating goods. The AfCFTA Rules of Origin Manual does address cumulation, but almost in passing, with only one example (pertaining to textiles) given.
- Strengthening the NTFCs so that they can be more proactive and national champions of trade and transit facilitation instruments and measures.
- Instructing the NTFC to carry out an assessment of the practical reasons why trade facilitation is not taking place at the pace which is needed to transform African economies and to act, in a proactive manner, on the results. The practical reasons could include:
 - Macroeconomic policy constraints: the main function of African revenue authorities is usually, if not always, to raise revenue. If Customs Officers fail to collect the taxes due, they risk losing their jobs. However, it is acceptable behaviour to detain a truck/train for days to ensure the correct revenue is collected, ignoring the overall cost to the economy.
 - Institutional Arrangements: No supra-national rules-based institutions to administer cross-border trade, transport and transit facilitation.
 - Resource constraints: Although one-stop border posts, coordinated border management systems and inter-agency agreements may have been designed and put in place, in many instances resources have not been made available to allow implementation to take place.
 - Technical capacity constraints: It may be the case that border agency staff are aware of what needs to be achieved in terms of trade and transit facilitation, but are not trained in how to

implement the required measures and instruments, and therefore lack the technical and administrative capacity to implement the provisions of the agreements signed.

- Coordination and communication constraints: There are instances when Customs at a border does not get a Bill of Lading prior to the arrival of the goods and, because of this, are not able to implement risk assessment and pre-clearance prior to the arrival of the goods at the border. They also cannot prioritize goods in a queue so there are no benefits from Authorised Operator or trusted trader schemes.
- Developing a data backbone for major African corridors, with the data being available to border agencies, freight forwarders, clearing agents, shipping agents, importers and exporters, and other stakeholders. The intention is to put data relating to the movement of goods onto a shared data backbone so that all relevant players have access to the data they need (and only to the data they need) to allow the free movement of goods along Africa's corridors. It is thought that the required data already exists and includes data from:
 - The FAL Convention Maritime Single Windows, which all members of the International Maritime Organization and signatories to the FAL Convention have committed to implement by January 2024.
 - Terminal Operating Systems and Port Community Systems.
 - Customs Management Systems.
 - Cargo Tracking Systems.
 - Customs Bond Guarantee Systems.
 - Data from digitized weighbridges and toll gates.
 - Corridor Monitoring Systems
 - Electronic Trade Single Windows

Figure 9 shows the data sources for the Corridor Backbone in relation to the processes implemented along the Corridor.

Figure 9: Trade Corridor Data Backbone

	MARINE TRANSFER	PORT ENTRY AND EXIT	PORT PROCESSES	PORT CUSTOMS CLEARANCE	LAND TRANSIT	BORDER CLEARANCE	LAND TRANSIT	ICD ENTRY AND EXIT PROCESSES
								
DATA SOURCES	Maritime Single Window							
		Terminal Operating Systems						
		Port Community System						
				Digitised (electronic) Customs Management Systems				
				Cargo Tracking Systems				
				Customs Bond Guarantee Systems (including Cargo Seals)				
				Digitising and Linking Weighbridges				
				Corridor Monitoring Systems				
						Electronic Trade Single Window		

- Establish the Industrial Development Forum that has been proposed by the AfCFTA Secretariat to fast-track Industrial Partnership Agreements. This will add new dimensions to the industrialization process, such as provisions on trade-related industrial measures, and strengthen the provisions of the AfCFTA, as will the AfCFTA Trade in Services Protocol.

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Chapter 9

HARMONIZING AFRICA'S SPECIAL ECONOMIC ZONES UNDER THE AFRICA CONTINENTAL FREE TRADE AREA

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Abstract

While the Africa Continental Free Trade Area (AfCFTA) already establishes that goods manufactured within Special Economic Zones in Africa (SEZs) will be subject to Rules of Origin (ROO), Member States are still negotiating on the conditionalities under the ROO that will help a fair integration of SEZs. Positions communicated by Member States have been polarizing. Against a background of the continental disarray on treatment of zones, this paper refers to different country experiences and analyses the various dimensions that need to be harmonized to integrate SEZs under the AfCFTA. It furthermore investigates the one common denominator of differentiation amongst zone and non-zone enterprises: export-related incentives. It recommends three ways through which Africa should treat SEZs under ROO in order to minimize the conflict and competition between SEZ-based enterprises and enterprises of domestic trade areas: (i) duties levied on imports originating from each other's economic zones (ii) differing treatment of export-oriented enterprises and non-export-oriented enterprises to accessing ROO, and (iii) compulsory technology variable input for goods produced by zone enterprises.

Keywords: Africa Continental Free Trade Area, Export Processing Zones, Rules of Origin, Special Economic Zones

Introduction

Africa is home to 237 zones, functioning under different appellations such as Free Zones, Export Processing Zones (EPZs), Special Economic Zones (SEZs), and Industrial Parks (IPs). These terms are used interchangeably and are often tied to particular regimes of preferences. As the continent makes progress towards a common market under the AfCFTA, one bone of contention arises in regard to the application of Rules of Origin (ROO) on Africa's economic zones. The ROO under AfCFTA provide for the elimination of import and export duties within the FTA for all goods originating - or substantially transformed within - the customs territory. The AfCFTA makes provisions for SEZs to also benefit from the same treatment, should their products meet the originating criterion. This uniform treatment creates two problems.

1. If goods that receive preferential treatment in SEZs are considered as originating products and leak into customs territory, this could give an incentive for tariff-jumping.
2. If the preferential duty schemes granted to producers in SEZs offer a significant competitive advantage *vis-à-vis* local firms based outside SEZs, non-SEZ producers would be at a disadvantage (UNCTAD 2021).

As zone formations are retained, the ultimate losing parties are local enterprises functioning outside the zones who must compete for the same markets with the zone-based firms - albeit equipped with lesser privileges and support. A reconciliation of this situation is therefore urgent. In its Handbook on SEZs in Africa, UNCTAD (2021) seeks to harmonize SEZs enterprises with the terms of trade and investment of local enterprises while simultaneously retaining the competitiveness of zones in order to propel industrial development. The critical question is: how to attain this oxymoronic ideal as the conceptualization of economic zones in Africa itself is based on differentiation. This paper seeks to answer this question by adopting a simple comparative methodology under which it refers to global best practices and customizes their application to the specificities of the African situation.

Conjoined Levels of Alignment

The integration of economic zones under the AfCFTA should be addressed at two levels: (i) regional, and (ii) national.

Regional

Regional Economic Communities (RECs) are building blocks of the AfCFTA. Countries will still be subjected to the rules and regulations of their respective RECs, which in turn should be aligned with AfCFTA. This paper conducts a comparative analysis of EAC and COMESA understandings of economic zones.

The EAC treats economic zones as follows:

- (1) Article 29 of the Protocol on the Establishment of the East African Customs Union defines EPZs as “a designated area or region in which firms can import duty free as long as the imports are used as inputs into the production of exports” (EAC 1999). They are allowed to sell 20 percent of their annual production to the DTA.
- (2) Article 31 of Part G of the Protocol on the Establishment of the East African Customs Union (titled ‘SEZ’), strictly refers to the “establishment of freeports for the purpose of facilitating and promoting international trade”. Related provisions reference warehousing, simplified customs procedures, international trade supply chain centres (which allow locals and foreigners alike to import and export goods globally), and that “goods entering into a freeport shall be granted total relief from payment of duty and any other import levies except where the goods are removed from the freeport for home use” (EAC 1999).
- (3) Annex VII of the EAC Customs Union Protocol elaborates on the ROO: the EAC has two criteria for determining eligibility for ROO: (i) wholly produced; and (ii) substantive transformation.

EAC’s treatment of economic zones is confusing. Firstly, there is a separate regime for EPZs and SEZs. Secondly, only EPZs contain manufacturing enterprises that will benefit from export-related incentives, while SEZs are

seen as freeport spaces that are in no way engaged in the substantive transformation of any product, and are therefore not eligible for export-related subsidies. This reveals that EAC is more focused on how to regulate the nature of trade transactions - import, exports and re-exports - rather than focusing on the structures under which these occur.

COMESA too does not address economic zones directly. Its relevant provisions relate to generic activities of zones that require regulation, without conversing with the zone format.

- (1) Article 64 concerning the Common Market Tariff Treatment, advocates to “(g) adopt common procedures for the establishment and operation of free zones, free ports, customs supervised factories and export drawbacks” (COMESA 1993a).
- (2) Article 159 concerning Investment Promotion and Protection allows for private investors to have the right to benefit from a series of fiscal exemptions and duties regardless of their location.
- (3) Article 2.12 of the Procedures Manual on the implementation of the Protocol on the Rules of Origin catering for products to be traded between COMESA Member States is the only provision that addresses economic zones. It states that “[g]oods produced in Export Processing Zones within Member States shall be granted preferential tariff treatment if they meet the requirements of the COMESA Rules of Origin” (COMESA *b* 1993).

At present, COMESA recognizes only EPZs as a zone-type eligible for preferential tariff treatment. In May 2021, COMESA tabled a report regarding a Framework of Managing Special Economic Zones and Industrial Parks for approval to the Council of Ministers (COMESA 2018c).

A comparison of EAC’s and COMESA’s treatment of economic zones is illustrative of the entrenchment that would exist across the eight African RECs. Except for a common understanding of the established EPZ concept, both RECs have a disparate understanding and treatment of zones. The EAC equates SEZs to freeport areas, which do not engage in any export activities nor benefit from any export-related subsidies. Contrarily, COMESA is formulating a framework for SEZs that will drive industrialization. Implicit to COMESA’s understanding of SEZs is one where there will be active transformation of local goods for export purposes. Secondly, while COMESA

regulates zone incentive packages under its general investment policies, EAC has specific provisions for each type of zone. Moreover, the criteria for determining ROO are different in both RECs.

National

Ideally, members of a common REC would have their national economic zone policies aligned to that of their REC. This is not the case:

- (1) National provisions are not aligned to those of the REC of which they are a member: e.g. while EAC rules allow for only a maximum of 20 percent of production of export-oriented enterprises goods to be sold to the customs territory with import duties (EAC 1999 p.25), Tanzanian regulations allow for the sale of 30 percent of EPZ's manufactures to be sold to the customs territory (Government of Tanzania 2002), and 20 percent of sales allowed by exporting SEZ enterprises (Government of Tanzania 2006).
- (2) Nations have two or more different sets of provisions for EPZs, SEZs and IPs. Often, despite being under the same REC, economic zones of countries (and the investment activities thereof), are regulated by different regimes. This complicates any alignment at REC level on issues such as:
 - whether freeports and SEZs should be subjected to similar treatment as according to the mandate in the EAC protocol;
 - whether to treat SEZs and EPZs separately. While Kenya provides EPZs with time-bound tax holidays, its SEZs' tax exemptions are not time-bound. Tanzania exempts both its SEZs and EPZs from corporate tax for 10 years, after which the EPZs get a remission but not SEZs. Rwanda exempts only those investors investing to the minimum benchmark applied to specific sectors from tax, or if the enterprise exports 50 percent of its produce, it is then eligible to pay 15 percent tax - regardless of whether it is in a zone or outside (Republic of Rwanda 2015). Moreover, Kenya and Tanzania both have separate legislations to regulate EPZs and SEZs. They contrast with Rwanda, which has a single legislation to regulate all investments - inside or outside zones.

Figure 10: List of Regulations on Economic Zones in 14 East African Countries

	COUNTRY	EPZ	SEZ
1	BURUNDI	None	February 2017, Decree 1001: Creation of SEZ at Warubondo and the Management Authority
2	COMOROS	None	None
3	DRC	None	Law No. 14/022 of July 7, 2014, establishing the regime of SEZs in the DRC
4	DJIBOUTI	None	None
5	ETHIOPIA	Industrial Parks Proclamation No. 886/2015 Industrial Parks Regulation No. 417/2017 Industrial Parks Development Corporation Establishment Regulation No. 326/2014 Ethiopian Investment Board Industrial Parks Directive No. 06/2017	
6	ERITREA	None	None
7	KENYA	EPZ Act 1990	SEZ Act 2005
8	MADAGASCAR	N° 2007-037 of 14 January 2008 « les Zones et Entreprises Franches à Madagascar »	N° 2017-23 of 28 November 2017 « Zones Economiques Spéciales »
9	RWANDA	Regulated under Investment Promotion and Facilitation Law 2015	
10	SEYCHELLES	None	None
11	SOMALIA	None	SEZ Law 2021 of Republic of Somaliland
12	SOUTH SUDAN	None	None
13	TANZANIA	EPZ Act 2002	SEZ Act 2006
14	UGANDA	Free Zones Act 2014	

Source: Compiled by Author, 2022

A lack of understanding as to whether to regulate EPZs, SEZs, and any other type of economic zone under specific provisions - or to treat them under generic investment regulations - has consequences for how they adhere to GATT.

Case Studies

The AfCFTA is not the first FTA where existing economic zone formats of multiple Member States have had to be harmonized. EPZs have existed since the 1950s, and several countries have already had to either harmonize their respective economic zones regime according to a greater regional economic agenda, or have had to simply review their economic zone regimes in pursuit of a more liberal national economy. How did FTAs in which these countries were participating treat zone-manufactured goods? How did they define access of goods produced in preferred zones to the customs territory in the face of a lesser-privileged community of enterprises from the DTA, or in the face of countries that are also Member States of the FTA but that do not have any economic zones? The examples below are of successful experiences of regional harmonization that have been able to maintain the relevance of these zones in generating income and development.

- (1) European Union (EU): Goods taken out from the free zone to other parts of the customs territory are considered as non-union goods and therefore not eligible for preferential treatment, unless their customs/ROO status is proven (European Union *a*, Article 249)
- (2) Gulf Cooperation Council (GCC): Goods that originate in GCC Free Zones do not qualify for preferential treatment and are to be considered as foreign goods, even when their manufacturing process utilizes local raw materials. (Common Customs Laws of GCC States, Article 85)
- (3) North American Free Trade Agreement (NAFTA): Components originating from within an economic zone are considered as originating and can therefore contribute to the computation of qualifying for ROO (NAFTA 2018)
- (4) CAFTA-DR (Central America FTA - Dominican Republic):

“An importing Party may deny the preferential tariff treatment... if the good is produced in a duty-free zone or under another special tax or customs regime in the territory of a Central American Party or the Dominican Republic...” However, this is accompanied with the provision that the importing party should also extend to such product “tariff treatment that is no less favorable than the tariff treatment it applies to the good when produced in its own duty-free zones or other special tax or customs regimes and entered into its territory” (CAFTA-DR Annex 3.3.6 p.5).

Most of the above FTAs (except for the CAFTA-DR) are straightforward in their treatment of goods from SEZs - either they access the customs territory on the same conditions as the domestic enterprise should they meet the ROO, or they can only access the customs territory under the capacity of non-originating products, regardless of whether they meet the ROO or not. There is no nuance.

Africa has a variety of economic zones, including:

- zones producing strictly to export outside of the customs territory and benefiting from export-related incentives;
- zones producing for both customs territory and overseas markets, and benefiting from export-related incentives;
- zones producing strictly for customs territory, yet benefiting from export-related incentives;
- non-zone-based enterprises exporting outside of the customs territory and benefiting from export-related incentives; and
- zone-based enterprises not benefiting from export-related incentives

Therefore, there is a need to identify one common criteria across all the above zones that can become the determinative factor for their treatment under the AfCFTA. How to distinguish between which enterprises benefit from duty and quota free access to the AfCFTA, and which ones do not? As we see, the *zone* factor itself is not determinative in the case of Africa, as export-related incentives are not contingent upon location within a zone. The main demarcating factor is *access to export-related incentives*. Location inside or outside a zone is only a secondary-level filter that further segments the larger

community of enterprises benefiting from export-related incentives into smaller cohorts which benefit from additional incentives. Rather than questioning whether zone-based enterprises should qualify for ROO, the question should be: whether enterprises benefiting from export-related incentives should qualify for AfCFTA ROO?

The observation that it is access to export-related incentives (including but not limited to duty-free import of raw material, ~~machinery~~ and equipment) that is the ground for discrimination indicates that an equitable approach would be to establish a ROO criterion that will place a high value on transformation. In doing so, we would speak directly to the export-related incentives granted to some enterprises. This paper proposes two scenarios for ROO treatment to accommodate economic zones.

Proposal 1: Differed Treatment of Export-Oriented Enterprises and Non-Export Oriented Enterprises to Accessing ROO.

Export Processing Zones were the initial form of economic zones adopted in Africa in the 1970s. These were fenced areas with incentive packages aimed at attracting FDI in manufacturing. Some of the incentives were subsidized rental, utilities and infrastructure, and duty-free import of raw materials, capital goods, equipment, and machinery to be used in the manufacturing process. An export quota was imposed towards foreign markets (averaged at 80% of their produce), and EPZs were allowed only 20% of sales to the DTA (albeit upon payment of customs duty). However, there are also countries such as Mauritius where firms do not need to be located in a fenced area to benefit from this incentive package. They could be located anywhere in the DTA and benefit from the same incentive package if they meet the eligibility criteria of the export quota. Firms were conferred EPZ status through a licence.

Comparatively, SEZs are exclusively geographically-based zones. It is only by being located in a particular territory that SEZ firms would be eligible for a specific incentive package. This incentive package, although allowing for benefits such as duty-free imports of raw materials, capital goods, machinery, and equipment etc., does not necessarily impose a quota for sales within the

customs area or apply duty in that respect, nor does it impose a sales quota for export outside of the customs area.

However, there are some countries whose practices are inconsistent with the two zone types. Although counted under the SEZ nomenclature, elements of Ethiopia's IPs render them closer to EPZs. They are vertically integrated units housing foreign and local investors engaged in specialized sectors of production. However, within these IPs, while the wider zone benefits from a generic incentive package, there are specific Business Income Tax Exemptions granted to enterprises within the zone which engage in "direct export or supply as production input to a producer exporter of at least 80 percent of own products" (EAC). Alternatively, enterprises located in the DTA also exporting - albeit a lower percentage of 60 percent of their products - are granted the same business income tax derogation. The limits and years of derogation vary from sector to sector.

This proposal makes the case for differential treatment of enterprises that benefit from incentives on the basis of export-related performance (whether to the customs territory or beyond) - and those that benefit from incentive packages notwithstanding their export performance. In most countries, this would amount to differential treatment of EPZs and SEZs firms. The differential treatment proposed here in order to increase an equitable treatment under AfCFTA ROO is that: enterprises that benefit from export-related incentives are imposed an 80 percent quota for sales outside of the customs territory. They should be allowed only 20 percent sale to the customs territory. (It is to be noted that the traditional share percentage is maintained here, but is now in proportion to the larger continental customs territory, therefore resulting in a relatively expanded market for all parties). This provision can be operationalized through the issuance of export processing licences to companies within or outside zones that benefit from export-related incentives.

The imposition of an 80 percent quota directed towards exports outside of the customs territory is based on the fact that, before the AfCFTA, the major share of exports of export-oriented African enterprises was already directed outside of Africa. This was even though they had the freedom to sell at least 20 percent of their products within the customs territory - albeit with customs duty. The examples below illustrate this:

- Mauritian export-oriented enterprises do not function within zones. In

2019, Mauritius counted 114 export-oriented enterprises (Statistics Mauritius 2019) which exported t-shirts of a total value of $\approx$ US\$91.3m to the world. Of this total, 29 percent was exported to Africa, of which 99.9 percent was directed to COMESA and SADC. Therefore, Mauritian export-oriented enterprises exported only 28-29 percent of their production to SADC and COMESA (ITC Trade Map 2022).

- In 2019, Ethiopia had nine functional industrial parks focusing on textiles and apparels. In 2019-2020, they generated an export income of \$109.5m (Ethiopian Investment Commission 2021). Ethiopia's total export of textile and apparel items 61 (Articles of apparel and clothing accessories, knitted or crocheted) and 62 (not knitted or crocheted) for the same year to the world amounted to \$159,734,000 - of which only 0.33 percent was intended for Africa (ITC Trade Map 2022). The remainder was exported to USA and Europe. However, it should be noted that this was prior to the suspension of the Africa Growth and Opportunity Act (AGOA) derogation, which took effect on 1st January 2022.

The proposal to differentiate between enterprises that benefit from export-related incentives and impose on them an 80 percent quota for sales outside of the customs territory - and a limit of 20 percent within the customs territory - is based on the following premises:

- (1) Enterprises which are being granted export-related incentives should deliver on the comparative privilege they have *vis-à-vis* enterprises which do not benefit the same.
- (2) Enterprises granted export-related incentives have established access and know-how to penetrate foreign markets. They should therefore adhere to the norms and standards requirements of these markets.
- (3) If enterprises benefitting from export-related incentives are not encouraged to pursue their traditional markets outside of the customs territory, there will be intense competition within the Common African Market. Consequently, foreign markets will not be serviced, reducing Africa's foreign exchange income. There is a need to secure the balance, and demarcate the responsibilities along the manufacturing value chain, rather than

displacing the entire trade itself.

- (4) This measure can be of added value if complemented by a plan to synergize efforts of non-export-oriented enterprises of the zones with enterprises of the DTA. Under this scenario, enterprises of the DTA are encouraged to shift to the vicinity of the zones to develop ancillary services. Referring to the case of SmithTown²² in Ireland and the Taiwanese EPZ strategy, this provides the possibility of developing clusters of domestic suppliers of intermediate input adjacent to the zones, which will sell their goods to zone enterprises for transformation. Thus, zone enterprises, supported by clusters of local suppliers from the DTA, will meet the ROO, and be able to sell duty and quota-free within the AfCFTA.

This also reinforces the purpose of export-oriented enterprises of the zones, allowing them to fully service the overseas markets for which they do not need to meet ROO and therefore can resort to cheaper imports. In certain lines of production, it is even possible for non-export-oriented enterprises of the zone to become transformers of locally sourced raw materials into intermediate goods and feed the EPZ's chain of production for export, thereby reducing imports. Figure 11 and Figure 12 illustrate these scenarios.

22 "One of the keys to Shannon's success, says Ryan, was the construction of a second zone. Smithstown, an industrial estate next to the free zone, was developed as a satellite location for mainly Irish businesses who became sub-suppliers to the larger businesses. 'You have to provide the Smithstown, you have to provide that indigenous industry starting point,' he said. Otherwise, local businesses and the local economy might not benefit much from having an SEZ in the area" (The Guardian 2016).

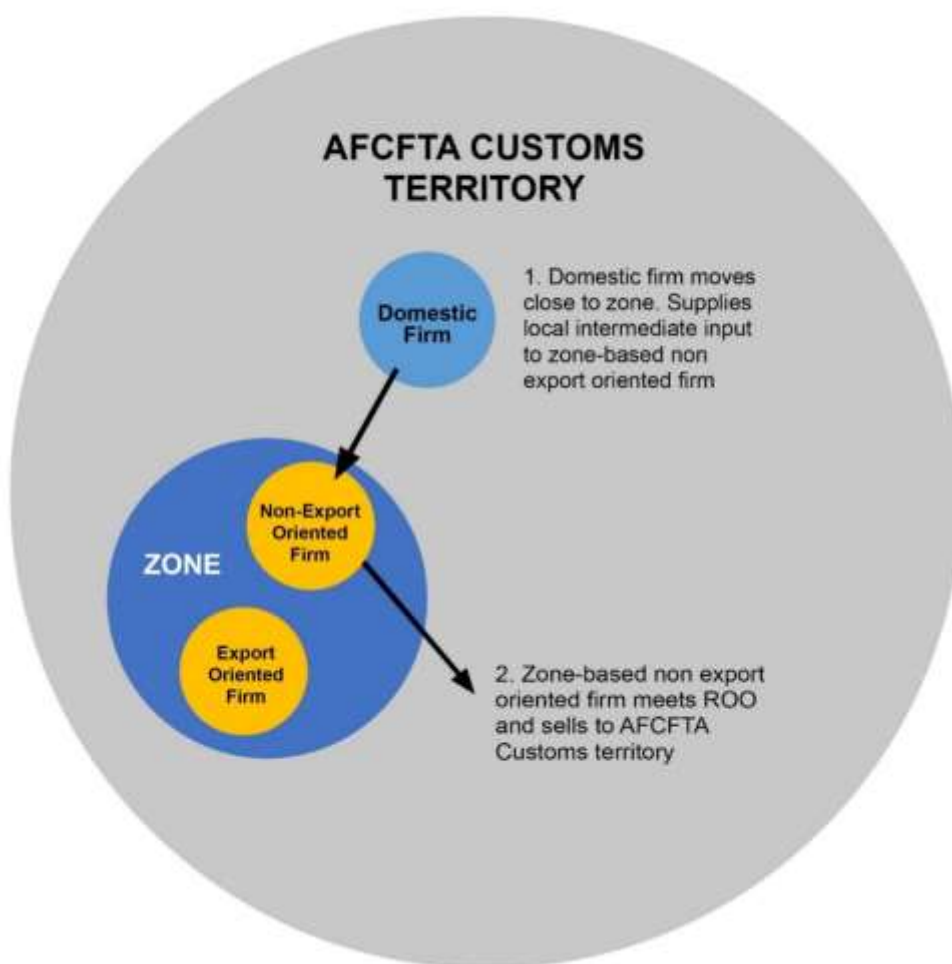


Figure 11: Differential Treatment of Export-Oriented Enterprises and Non-Export Oriented Enterprises to Accessing ROO (Scenario 1)

Source: Author 2022

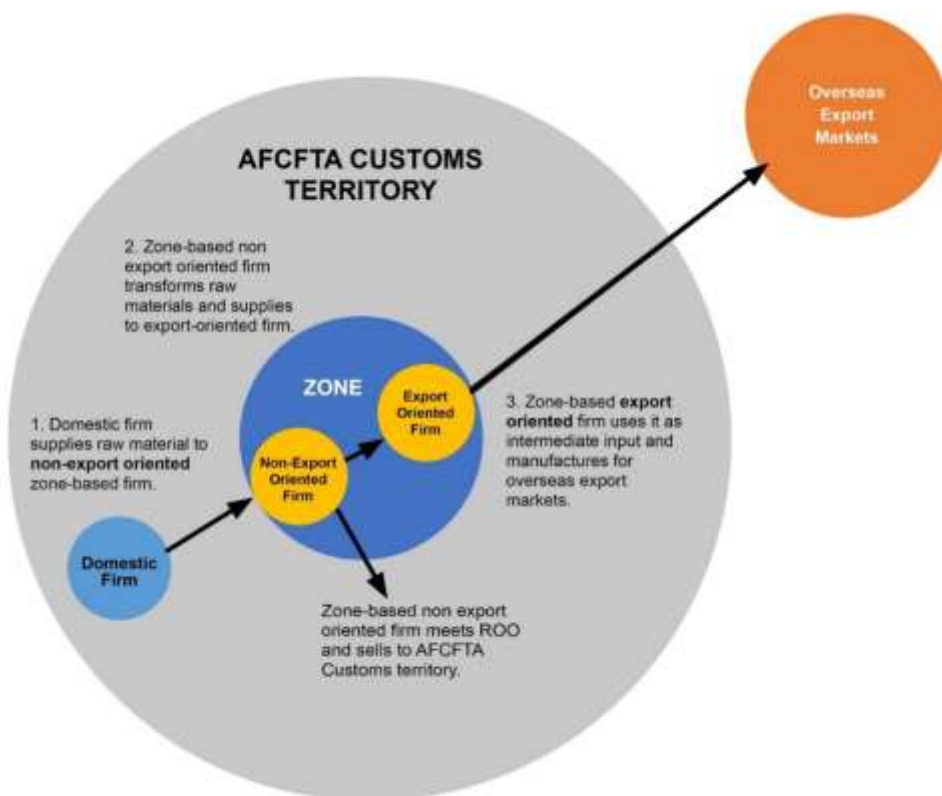


Figure 12: Differential Treatment of Export-Oriented Enterprises and Non-Export Oriented Enterprises to Accessing ROO (Scenario 2)

Source: Author 2022

Proposal 2: Compulsory Technological Input Variable in EPZ/SEZ produced goods

One of the core incentives to economic zones across the board is duty exemption on the import of equipment and machinery used in development of the zone (for developers) or in the manufacturing of products (for enterprises). Comparatively, few African countries allow firms of the DTA area to benefit from duty-free import of equipment and machinery. Given that one of the major contentions under the AfCFTA is over the fact that zone-based firms will benefit from duty-free and quota-free access to the customs territory

market - despite benefiting from more incentives and though having minimal transformational input as compared to the domestic firms - it is proposed that zone-based firms comply with one more (albeit compulsory) requirement in addition to whichever criterion of origin that would apply to qualify their product as originating: that is, the value of technological input.²³

The ‘technological input’ variable alludes to investment in innovative machinery and equipment by the firm, applied to upgrading the product or production process. It could be measured by variables such as additional income that this technological input will generate as opposed to the erstwhile technology applied by the enterprise²⁴, in terms of per-product market value and/or the exceeding market value of the increased production capacity (indicators of an improved production technology). Enterprises benefiting from export-related incentives should be assessed on this at regular intervals to measure their continued technological advancement, which would legitimize their duty-free and quota-free access to the same market as those enterprises that do not necessarily benefit from this support. Below is an illustration of how the proposed scenario will unfold under current conditions.

COMESA confers originating status to products based on five criteria. At present, enterprises - whether they are based in zones or not - have to abide by anyone being able to export to the COMESA customs territory without any duty or quota. This proposition imposes a compulsory criterion of ‘Technological Input’ in addition to any of the already established five criteria applicable to enterprises benefiting from export incentives. The additional compulsory criterion should be a measure of the technological input involved in the processing or transformation of the product manufactured by the enterprise. Currently, ‘equipment and machinery’ - the only measures of innovation - are accounted for under the Value-Added Criterion as follows: “operating cost of the machine being used to manufacture the goods; the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods; ... the cost of special designs, drawings or layout; and the hire of tools, or equipment for the production of the goods... depreciation and maintenance of... plant and

23 This idea is based on the global trend intent on measuring the value addition of technology and IT in businesses in the quest of innovation and implementation of Industry 5.0.

24 Same principle as WIPO’s IP valuation method

machinery, tools and other items used in the manufacture of the goods” (COMESA 1993a).

This accounting of machinery and equipment is static and does not reflect any improvement that zone-based firms should be doing frequently by dint of the incentives they receive. As such, at present there is no tangible output that justifies the duty-free import of machinery and equipment that is allowed to zone-based firms as opposed to firms operating in the DTA.

African SEZ Practices

While many countries have attempted SEZs, very few have registered sustained good performances. Of these, exemplars are Coega in South Africa, and Tanger Med in Morocco. In 2001, South Africa launched its first SEZ, called the Coega SEZ. It has companies in automotive, logistics, agro-processing, energy, and metallurgy, among others. Of the nine total SEZs that South Africa houses, Coega is the only one that stands out with a turnover performance of $\approx$ US\$763.7m in 2021. This represented a growth of nine percent compared to 2018 (Statistics South Africa 2023). The second example of a successful SEZ is that of the 2002 Tanger Med Zone in Morocco, which also focused on the automotive industry. The Tanger Med Zone spurred a further five more SEZs in the region, which focused on automotive, logistics and light manufacturing, and by 2018, together, the six SEZs had welcomed 470 firms (TangerMedZones 2023). While both South Africa and Morocco have developed numerous other SEZs since, the cases of Coega and Tanger Med are particularly noteworthy in that they had the comprehensive support framework that allowed them to grow.²⁵ These included: connectivity for people as well as for transportation of goods; infrastructure including roads and plug-and-play buildings; utilities (water, power, and related back up

²⁵ For example, the SEZs that followed Coega have not proven themselves. At a meeting of Members of the Select Committee on Trade and Industry, Small Business Development, Tourism, Employment and Labour, on the progress of the implementation of the Special Economic Zones and the Industrial Parks Revitalisation Programmes held in 2021, the Ministry of Trade and Industry indicated that SEZs needed intervention in the following broad areas: security of the zones from vandalism, compliance to regulatory requirements for waste, water, renewable energy, health, fire etc., improved roads and infrastructure, governance issues, human resources and labour, financial support, market conditions, amongst others (Parliamentary Monitoring Group 2021).

provisions, sewerage, telecommunications); proximity to labour; one-stop-shop at the disposition of zone investors for labour, business facilitation, and other issues; SEZ-specific legal provisions; dedicated authority for SEZ and its enterprises promotion, business facilitation, monitoring and evaluation, and local community integration, whose board contains not only representatives of different ministries but also private sector representatives; fiscal and non-fiscal incentives for enterprises; and especially, a focus on complementary sectors and related activities to create a comprehensive industrial value chain, including logistics services in and around the SEZ. The provisions of this list are mutually inclusive. Though the requirements are voluminous, they create the favourable preconditions for a successful SEZ in Africa.

Conclusion

The situation of economic zones in Africa is particular, as no African countries have sustained experience in successful zone-based economic activity. Therefore, as the continent is faced with the dilemma of how to level the 237 zones at varying stages of operationalization (nearly all with a varying structures), with the millions of other enterprises already functioning in the DTAs of 55 countries, there is a need for a solution which will ensure the complementary success of all parties through differentiated treatment. The basis of differentiated treatment in the AfCFTA discourse has always been between enterprises located in zones versus those not located in zones. This is linked to an understanding that only zone-based enterprises benefit from distortionary export-related incentives, thereby giving them an advantage over enterprises of the DTA. However, as we note in this paper, this is not necessarily the case. This paper makes the case for a change of prism: to that of differentiation between enterprises benefiting from export-related incentives versus enterprises not benefiting from export-related incentives. The ‘zone factor’ is to be applied as a secondary filter to this initial categorization, to further break down the cohort in terms of new roles that can be assigned to them as part of the new regional value chain under an enlarged customs territory. By so doing, SEZs will be endowed with a sustained role in the development of a common African market on an equitable basis with DTA enterprises.

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Chapter 10

TOWARDS A CONTINENTAL INDUSTRIAL POLICY?

Bruce Byiers

Abstract

A key objective of the AfCFTA is to promote industrialization through the creation of regional value chains (RVCs). While there is broad agreement on the need for African economies to industrialize, capture greater added value domestically, and diversify from exporting raw materials, there is less clarity on how to do so. Though the AfCFTA may offer new opportunities, it may also face the same political economy challenges that have undermined previous endeavours. After briefly reviewing recent industrial performance in Africa and the logic of the AfCFTA, a second section discusses past regional industrialization strategies in that light, including those of the regional economic communities, and the AU Accelerated Industrial Development for Africa (AIDA) Action Plan. It examines their objectives and how they have been implemented. Based on this discussion, a third section draws lessons and possible inputs to a new continental African industrialization framework that avoids the pitfalls of past industrialization strategies, while offering a way for countries to use the AfCFTA as a tool for promoting industrialization.

Keywords: *AfCFTA, industrialization, regionalism, RVCs*

Introduction

The importance of Africa's industrial ambitions has only increased with the COVID-19 pandemic and the conviction that "Increased intra-African trade is what will drive economic development post-COVID-19" (Mene 2021). More broadly, it reflects the 'return of industrial policy' globally, signalled already in 2010 (Rodrik 2010) but with increasingly explicit adoption by its erstwhile critics such as the IMF (Cherif and Hasanov 2019) and by the EU and US in their bid to secure access to inputs for the green transition (e.g., Wolf 2023). The 2022 AU theme "Industrializing Africa: renewed commitment towards Inclusive and Sustainable Industrialization and Economic Diversification", (AU 2022a) and the extraordinary AU summit on Industrialisation in Africa in November 2022 further reinforced the idea that the AfCFTA's success depends on industrialization and vice versa.

Although recent data suggests both rising industrial production, coupled with a higher share of manufactured and thus value-added in intra-African trade, there is nonetheless broad agreement on the need for African economies to further industrialize, diversify away from exporting raw materials, and retain greater added value. But while the ambitions of using the AfCFTA to promote intra-African trade and thus facilitate a change in economic model for the continent and promote industrialization are clear, there is less clarity on what this means in practice. As the AfCFTA SG Mene stated in 2022, there may be a need "to craft a continental industrialisation strategy, to be embraced by national authorities, to facilitate the attainment of the AfCFTA industrialisation and sustainability objectives" (Mene 2022). With regards sustainability in particular, there are growing calls for industrialization efforts to be 'green', in spite of Africa's historically low contribution to carbon emissions. Even if some African leaders espouse a 'development first' narrative, the 'green industrialization' agenda will nonetheless affect global trade and thus shape the opportunities and constraints for African industrialization efforts (Byiers *et al.* 2023a).

Given past attempts to promote industrialization through Africa's regional organizations, this chapter draws on those experiences to discuss the implications for promoting industrialization at a continental level. It does so using the framework proposed by Mkandawire (2014) of political factors for successful regional integration. His approach aligns with more recent discussions of 'development bargains' as necessary for policy implementation

and change to take place (Dercon 2022), thus helping identify an approach that might support movement towards continental industrial policy that can overcome or align with national interests.

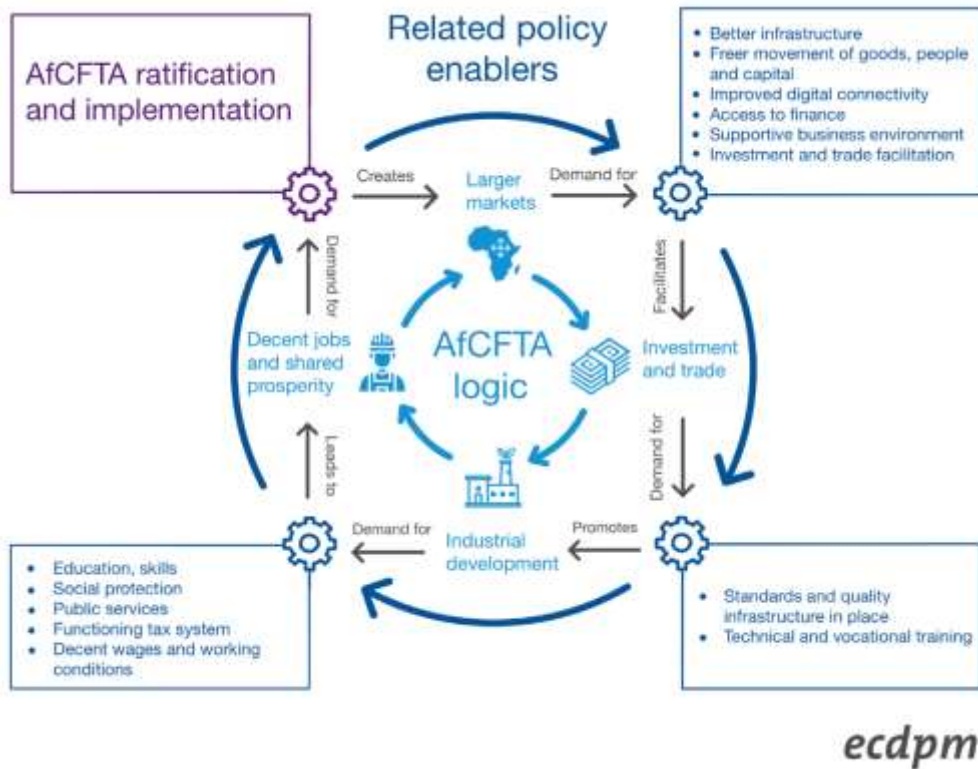
The AfCFTA Logic and Framework for Analysis

The case for using the AfCFTA to promote industrialization in Africa is highlighted by a recent news article (Hill 2022) titled: “The Metals for Your [Electric Vehicle] Are Stuck in a 30-Mile Traffic Jam”. As it infers, external markets do and will rely on Africa’s minerals for the global ‘green transition’, thus underlining the potential for a functioning AfCFTA to help move from extraction to processing of raw materials such as cobalt and copper. But at the same time, the 30-mile traffic jam for minerals to exit DRC reflects the challenge facing intra-African trade on the ground, where a mix of physical, bureaucratic and political barriers limit trade flows across borders, in spite of DRC and its neighbours’ membership in the SADC and the free trade area it offers²⁶. These reflect key issues to be addressed for promoting industrialization through the AfCFTA.

As Figure 13 illustrates, the AfCFTA’s functioning is linked to a range of complementary and mutually dependent processes, wherein investment and industrial development are central. Ratification and implementation of the AfCFTA are hoped to reduce tariffs and NTBs, thereby creating larger markets, encouraging greater investment, industrial development and diversification, and consequently creating more and better jobs, thus further enlarging the market. But as Figure 13 also shows, each step in the logic depends on a range of ‘policy enablers.’ Each of these policy enablers is subject to a range of interests and incentives around which there must be coalitions of interested and influential actors for them to be implemented, and thus for the AfCFTA logic to flow.

²⁶ DRC does not implement the SADC FTA.

Figure 13: Industrialization at the Core of the AfCFTA Logic



Source: Apiko *et al.* 2020

The renewed emphasis on industrialization through intra-African trade builds on recent positive trends. UNECA work (Songwe 2019) has shown that intra-African trade has a higher share of manufactures than non-African trade, while the past deindustrialization trend since African independence appears to have slowly been reversed, albeit building on informal manufacturing firms (Kruse *et al.* 2022). Luke *et al.* (2023) provide evidence that, outside Southern Africa, manufacturing employment has been growing in Africa as a percentage of total employment from 1991 to 2021. Mold (2022) also provides evidence that regional trade agreements have boosted intra-African exports by 27 to 32 percent on average, further underlining the potential for continental trade and industrialization to be mutually supportive.

These gains could arguably have been even higher. Tariff preference utilization rates by firms engaged in trade through existing FTAs vary widely and are

lower for intra-African regional trade than in trade agreements beyond Africa (UNECA 2021). Byiers *et al.* (2023b) cite Mozambican government data showing that only 36% of eligible imports from SADC and a mere 7.2% of eligible exports to the region used the FTA in 2013-2017. The vast majority of Mozambican trade with its region is therefore treated the same as trade beyond the region, undermining the benefits of the FTA in place. Although a result of a combination of factors - from limited tariff preferences above MFN rates, complicated ROOs, and time-consuming bureaucratic procedures - the outcome reflects the challenge of trading even with an FTA in place. Private sector surveys of CEOs across the continent confirm the challenges for traders in terms of “access to trade information, trade-enabling infrastructure and trade finance” (Utomi 2022). These will be key for promoting regional and continental value chains and industrialization through the AfCFTA.

Part of the challenge for using regional agreements for industrialization is the political economy dynamics that shape which policies are implemented and how, at the national level. As Dercon puts it, “why the rhetoric was followed by action in some places and not in others is at the centre of understanding how development works” (Dercon, 2021). Looking more closely at regional integration and industrialization, Thandike Mkandawire offers the following hypothesis:

“If regional integration is not perceived by Member States as a solution to their national ambitions, then regional integration as an argument for industrialization makes no sense. So, we have to go back to the politics of industrialization at a national level and the policies of development at national level to understand why Member States may want to have regional integration” (Mkandawire 2014).

Beyond formal agreements, policies and strategies, he therefore suggests seven aspects that must align for regional integration to take place (Mkandawire 2014). These seven ‘I’s are:

1. ***Initial*** conditions
2. ***Ideas***
3. ***Interests***
4. ***Individuals***, who play a very important role in African politics
5. ***Institutions***, formal *and* informal
6. ***Industrialization*** conditions

7. *International* context

Aligning these seven ‘I’s is akin to a regional version of Dercon’s (2021) ‘development bargain’: “a commitment by those with the power to shape politics, the economy, and society, to striving for growth and development”.

The next section discusses past regional industrialization strategy experiences in this light, seeking to highlight the role of Initial conditions, International context, and the Industrial base in helping explain “why are things the way they are’, as well as the interaction of Interests and Individuals with the main beneficiaries from the AfCFTA between and within countries, the combination of which is likely to shape the way in which the AfCFTA can be used to promote greater industrialization. These will then interact with Ideas to help determine how continental industrialization bargains might emerge.

Regional Industrialization Strategies

Regional Ambitions

Although industrialization has long been at the heart of continental and regional cooperation agendas, the outcomes of these have often been limited. The following list shows some of the key policy frameworks that have been agreed at the regional and continental levels to promote industrialization in Africa:

- AIDA - 2008 - Accelerate Industrial Development for Africa (AU 2008)
- ECOWAS West Africa Common Industrial Policy 2010-30 (ECOWAS 2010)
- EAC Industrialisation Policy 2012-2032 (EAC 2012)
- SADC Industrialization Strategy and Roadmap 2015-2063 (SADC 2015)
- COMESA Industrialization Policy 2015-2030 (COMESA 2015)

In Mkandawire’s framework, these strategies represent *Ideas*, and to some extent provide the *Institutions* for regional industrialization to take place, building on *Initial conditions*. However, they largely fail to take account of the wider context, and particularly *Interests* and *Individuals*, something that emerges from examining their progress so far.

To take the case of AIDA, at the extraordinary AU Summit on Industrialisation held in Niamey in November 2022, Heads of State noted “with concern the slow progress recorded so far on the implementation of these continental [industrialization] strategies and programmes” and their “limited impact on industrialization, structural transformation and overall development towards the achievement of the ultimate goals of the African Union Agenda 2063” (AU 2022b). Byiers *et al.* (2018) similarly find that the studied regional industrialization strategies “largely ignore the competition dynamics between states in specific sectors. Moreover, their implementation is complicated by the fact that mechanisms used to pursue national industrial objectives often contradict regional commitments”. These challenges are discussed below.

Each of the above regional industrialization strategies assumed a shared or common regional goal that could be met by adopting the priority sectors of Member States at a regional level. However, precisely because they are *national* priorities, those same sectors are often the target of trade bans between regional partners. Figure 14 summarizes the priority sectors defined by the EAC and the related trade bans.

Figure 14: EAC Priority Sectors and Trade Relations

EAC Priority Sector	Trade relations
Iron-ore and other mineral processing	Iron-ore subject to a Ugandan export ban since 2011 to promote Uganda’s own smelting industry, (though smelters import ore), with a Kenyan ban being discussed ^{27,3}
Petro-chemicals and gas processing	Subject to a Kenyan ban on Tanzanian gas exports in 2017, though subsequently lifted and 2021 has seen discussions of a gas pipeline (Mwakyusa 2017)
Agro-processing	Subject to multiple bans between EAC members including a Tanzanian ban on Kenyan milk products, a Kenyan ban on Ugandan dairy products (Wakabi 2020) and Kenyan maize import restrictions (Kibii 2021, Omondi 2021, Okoth 2021)
Fertilizers and	Imports subject to standards ‘crackdown’ in Kenya in 2019

²⁷ See (Odyek 2019) on the ban, its effects (NPA 2017) and (Kamau 2021) on the Kenyan retaliation

agrochemicals	(Mutai 2019)
Pharmaceuticals	Subject to trade disputes between Kenya and Uganda in 2020 (Anyanzwa 2019)

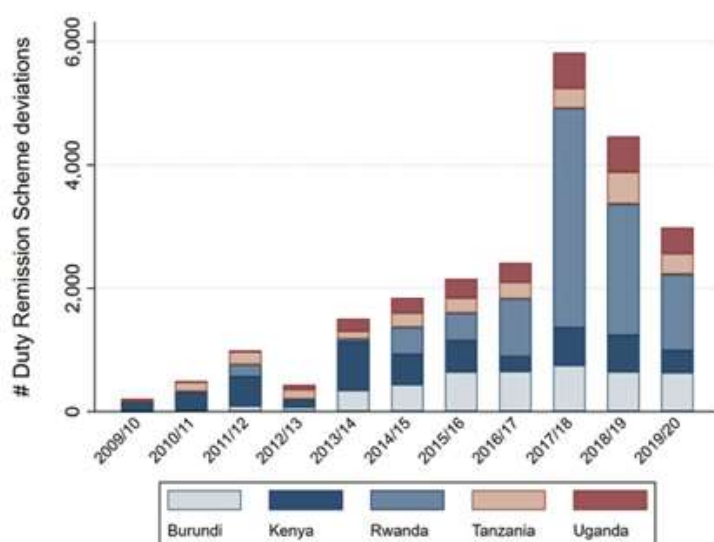
Source: Byiers *et al.* 2021

To take one example, Kenya banned all imports of dairy from Uganda in 2019 due to concerns over aflatoxins (Blanshe 2021). At the same time, this was an effective way of keeping out competition from the fast-emerging Ugandan dairy sector and protecting the domestic Kenyan industry, which has been the traditional dairy giant (Ndii 2020)²⁸. The ban led Ugandan processors to scale down their dairy operations (Nakaweesi 2021).

Further, Rauschendorfer and Twum (2020) show how the EAC countries use sector-wide Stays of Application and firm-level Duty Remission Schemes to deviate from the agreed upon CET in order to protect specific industries, shown by country in Figure 15. While this is arguably a means to use industrial policy tools to develop local industries, they also find evidence of “favouritism of individual firms”, where EAC states increased tariffs at the sectoral level through Stays of Applications while at the same time granting access to the same product to specific firms through the Duty Remission System.

²⁸ Average costs of production in this country are substantially lower thanks to extensive farming (grazing) compared to that of Kenya (Van Campenhout *et al.* 2021).

Figure 15: EAC Member State Use of Duty Remission Deviations



Notes: A Duty Remission Scheme deviation takes place when a firm is granted a tariff lower than in the CET on an imported product.

Source: Rauschendorfer and Twum 2020

This kind of favouritism clearly reflects the importance of understanding *Interests* and *Individuals* at a national level, and their implications for regional trade and industrialization efforts. Ruckteschler *et al.* (2021) find that politically connected manufacturing firms in Morocco received substantially higher non-tariff protection after tariffs were lowered to imports in the Association Agreement with the EU. Similarly, for Tunisia, Kruse *et al.* (2017) find that sectors with a higher share of firms with previous links to the Ben Ali family tended to have a higher number of technical barriers to trade in place, creating protective barriers to trade for those imports. Whether or not related to specific individuals, Karkare *et al.* (2022) similarly discuss the challenge facing Nigeria in promoting industrialization while adhering to regional trade commitments, where its 2019 unilateral border closure with Benin undermines any cross-border value chain development in a bid to allay domestic tensions from key industrial players.

Further underlining the role of between-country competition, Odiye (2018) cites the case of Côte d'Ivoire poultry. During the negotiation of the regional

common external tariff and the Economic Partnership Agreement (EPA) with the EU, both Côte d'Ivoire and Nigeria managed to have chicken agreed for protection as a regional sensitive product. While that allowed Côte d'Ivoire to serve the regional market and revitalize its poultry sector, within less than a month of signing the final EPA document, eight regional ECOWAS countries instituted similar chicken-development schemes and introduced both formal and informal protection against Côte d'Ivoire and other regional chicken producers (Odije 2018). In the 1990s, Hyundai invested in a car manufacturing plant in Botswana to serve the regional market. South African and regional consumers might have benefited from new access to Hyundai cars, but the South African auto industry pulled weight to limit imports from Botswana and the Hyundai investment closed (Mguni 2019).

Examples of industrial policy 'successes' also highlight the challenge of promoting national firms and sectors and maintaining regional trade commitments. Whitfield *et al.* (2015) show how the success of the sugar sector renaissance in Mozambique was dependent on an alignment of various domestic political factors - including provincial voting allegiances - but also on a surcharge on sugar imports, including from partner SADC FTA countries.

These examples then highlight the importance of recognising and taking account of *Interests* and *Individuals* in terms of the firms and sectors that are likely to be affected by taking a common regional approach to any one sector. As they also show, between-country *Interests* and competition for investment can also undermine regional industrial initiatives.

Beyond this, the *international* context clearly also plays a role in shaping regional industrialization efforts in practice, interacting with the *individual* concerns of producers and farmers. In some sectors, there is a question of why an African producer would sell to another Africa producer if a greater price can be sought elsewhere?

Ghana is among the leading African producers and processors of cashews with a national strategy to promote the value chain, but like other countries in the region with processing ambitions, firms struggle to buy raw cashews from farmers at farmgate price, given competition from especially Indian buyers (Boafo and Lyons 2021). In Côte d'Ivoire, government measures to stimulate cashew processing - a priority sector - include a ban on exports of raw cashew nuts to its neighbours, and export taxes on those passing through the ports as it is easier to collect taxes at ports than at porous inland borders (van Seters and Konnon 2018). While this raises much-needed revenues, it also favours

extra-regional exports to cashew processors in India and Vietnam over exports to neighbouring countries such as Ghana. Exporters are interested in favourable/highest prices, and the government in raising valuable revenues. From this perspective, it makes little difference whether the processing happens in Asia or in the neighbouring country, as long as it is not in Côte d'Ivoire (Byiers and van Seters 2018). The same holds true for other cashew producing countries. Large-scale smuggling on the other hand undermines the Ivorian objective if not that of the region (arguably leading to informal regional value chains; *ibid.*). These dynamics may help explain why, despite seemingly low tariffs within regions, for example the EAC customs union, African RECs engage more in non-regional GVCs than they do in RVCs (de Melo and Twum 2021).

In North Africa, Morocco has successfully promoted investment into the automobile sector, with connected 'ecosystems' that have been shaped by interactions between government, industry associations, training centres and investment and export promotion agencies (Hahn and Auktor 2018). But production is heavily oriented towards the European market rather than the African continent - Moroccan automobile industry is dominated by French companies with 90% of its exports going to Europe (Furlonger 2021). Current efforts by the African Association of Automotive Manufacturers (AAAM) seek a sub-agreement within the AfCFTA for the auto sector but limited actual tariff reductions (Cokayne 2021), restrictiveness of ROOs, and challenges related to standards beyond the AfCFTA may continue to be important barriers for RVC development unless explicitly addressed.

Beyond industrialization strategies *per sé*, West Africa's '*offensif riz*' to promote rice production and the EAC's textiles and apparel strategy also suffer similar woes. National governments are more concerned with self-sufficiency or being the source of value-added, and hence adopt protective policies individually. The SADC Industrialization Strategy states that the key challenge for corporate and government policymakers is "to identify and prioritise entry points into value chains, which from a SADC perspective involves identifying tasks that can be undertaken competitively and how they might be shared within regional value chains in SADC" (SADC 2017). But a lack of coordination ultimately undermines this ambition and thus the goal of creating larger regional markets to encourage investment and ensure competitiveness (Odije 2019).

Broadly speaking, there is a political focus on national industrialization, and therefore little attention to RVCs to support transformative industrial and economic development (Ismail 2022). Further, some point to the tendency of industry to cluster in a few locations, leading to agglomeration benefits, meaning that smaller countries will find it hard to attract investment (Black *et al.* 2019). Overall, national policies and positions commonly result in competition between countries rather than complementarities, as Mkandawire suggested, and as manifested in the regular trade wars and policies that undermine regional customs unions and FTAs.

To further illustrate, Oqubay (2018) cites a list of industrial policy instruments applied in Ethiopia, to some success. These include industrial parks targeted at export sectors, and broader export promotion through target setting, retention of foreign exchange earnings, and duty-drawbacks for exporters, combined with investment incentives and sectoral policies, for example in cement and horticulture. At the same time, import bans were used to protect domestic sectors, to further bolster the domestic cement sector, with protective tariffs to support domestic manufacturing (*ibid.*). While broadly seen as a success at a national level, and managing to link *ideas, institutions* and *incentives*, the challenge reflected here and by the example of Nigerian import bans and border closures cited above, is to link such approaches with a continental market integration approach. Notably, Ethiopian industrial policy was implemented without joining the COMESA FTA, despite being a member of the regional organization (Verhaeghe and Woolfrey 2017).

Nonetheless, an array of recent studies examines sectors with the potential to create continental RVCs. These include studies from the AU and OECD (2022), UNCTAD (2021), ITC (2022) and UNIDO (Hartwich and Hammer 2021). These all provide in-depth discussions on the structures and trade opportunities around key potential African RVCs, but take little explicit account of the *Individuals* and *Interests*, not to say power and politics, that the above discussions underline as being important both between and within states.

Instead, the challenges to RVC development can be broadly summarized as follows:

1. *Ideas* - or conceptual challenges, around the lack of understanding of what it entails to engage in RVCs and the resulting limited institutional arrangements in terms of industrial park development, or cluster development to make domestic firms into reliable suppliers.

2. *Institutional* challenges around incoherent trade and industrial policies, weak linkages between producers and processors, lack of context-specific strategies for industrial upgrading, underdeveloped innovation systems and local learning networks, untargeted skills development, lack of consultation with the private sector.
3. And *Initial conditions* in terms of, e.g., weak infrastructure, inconsistent quality, inappropriate technology, unreliable digital connectivity.

As such, the RVC studies broadly fall short of considering the *interests* and *individuals*, or to finding overall ‘development bargains’ around between and within countries that have shaped outcomes at a regional level.

Lessons Learned and Inputs To A Continental Framework

The above discussion raises important issues for moving towards a new continental industrial policy, as the AfCFTA SG has suggested (Mene 2022). We draw the following key lessons.

First is the need to design any regional or continental industrial policy as a *complement* to, rather than *aggregation of*, existing national industrial policies and strategies. That is, rather than grouping national priority sectors at the regional level as has been done in the past, they must seek to provide regional public goods that can help support national interests and build up industrial capabilities. In this regard, Byiers *et al.* (2018) highlight the positive example of the COMESA regional leather initiative, now expanded continentally (ALLPI 2023), as a resource for countries seeking to develop their leather sectors. That is, rather than attempt to promote the leather value chain from a top-down perspective, it rather takes the form of a demand-led support programme, thus fitting the interest-criteria suggested by Mkandawire as quoted earlier, and allowing those countries in need of leather processing capabilities to apply for support. Such centres might be set up in other value chains in a similar way.

Another lesson is the need to see industrial policy, whether at the national, regional or continental level, as a *process rather than a document*. This aligns with the approach proposed by Hausmann *et al.* (2008) at the national level, where industrial policy is an iterative process of identifying and addressing

missing public inputs, coordination failures of necessary complementary investments such as sectoral platforms, and minimising the potential risk to investors to overcome ‘self-discovery failures’, whereby firms are unwilling to invest due to the risk of free-riding. Complementary to this, Chang and Andreoni (2020) discuss the need for industrial policy to help address four things: reduce uncertainty for firms, encourage learning in production, provide a stable macroeconomic environment (including demand management), and allow for ways to address conflict or distributional issues. All of these provide useful points for thinking about the right level and form of support for promoting regional value chains and industrialization through the AfCFTA.

Aiginger and Rodrik (2020) point to four other ‘transformations’ that seem particularly relevant:

- As the world economy increasingly circulates around services, they propose that industrial policy must go beyond ‘industry’ or manufacturing to develop economic activities more broadly. The protocols on services and e-commerce offer opportunities to do this in the context of the AfCFTA.
- They advocate a move away from “top-down policymaking, targeting pre-selected sectors, and employing a standard list of subsidies and incentives” which has been the basis for the industrial policies presented above. Instead, “industrial policy is a search process; it requires embeddedness without allowing hostage-taking”, i.e., the state must seek to understand business needs and address challenges without succumbing to capture, while regional approaches should therefore arguably seek to focus on specific value chains.
- Thirdly, they state that “support of structural change and productivity growth can no longer serve as a policy goal without any consideration of the direction of technological change” (ibid). With increasing ‘green industrialization’ ambitions, this point goes beyond the impact of technology on employment patterns, but also on carbon-emissions (and potential external trade effects).
- Finally, “industrial policy can no longer be an isolated policy, developed on its own and competing with competition, regional, and other growth policies”.

The current discussion of the AfCFTA as a basis for industrial development itself responds to this final point that industrial policy cannot stand alone - but

it also highlights the challenge of identifying complementarities between continental approaches that support industrialization, as well as those operating at different levels. While the AfCFTA can be seen as *the* continental industrial policy instrument, at a more legalistic level, it is in reality an FTA of FTAs, where existing regional FTAs are explicitly recognized as its institutional building blocks (AU, 2018). An AfCFTA-related industrialization strategy would therefore have to identify ways to complement and support inter-REC trade and value chains, while intra-African trade is likely to remain primarily intra-regional at least in the short term.

The coexistence of an AfCFTA industrial ambition along with those of the RECs highlights the need for a continental strategy to seek to complement existing (functioning) policies and strategies rather than aggregating or seeking to coordinate those. Although the annual AfCFTA-REC meetings offer an opportunity to define the precise continental value-added of such a policy, the importance of *national* ambitions implies the need for a hybrid approach. Relatedly, the African Union Commission Department for Economic Development, Tourism, Trade, Industry, Mining (ETTIM) is undertaking various initiatives to help design continental policies and strategies to support RVC development, including through work with UNIDO, UNECA, and AUDA-NEPAD (AU 2022a). But seeking to coordinate these different efforts may itself be a distraction from the lessons above, about the need for a more ‘bottom-up’ approach to supporting specific sectors, value chains, and arguably corridors and other bottlenecks to trade and well-functioning RVCs.

This may already be somewhat underway as part of the AfCFTA Private Sector Strategy. That has prioritized an initial list of four value chains for interventions, based on high potential for meeting demand locally and the ability to produce the goods locally (AfCFTA 2022). The sectors are:

- agriculture and agro-processing
- automotive
- pharmaceuticals and
- transportation and logistics

Through the AfCFTA Industrial Advisory Council, work is reportedly underway to engage with key actors in these value chains such as textiles, in order to understand the sector and propose joint ways forward, not least to end

the deadlock to agreeing on AfCFTA ROOs. As presented at the AfCFTA Business Forum, that work seeks to i) understand the nature of the sector, ii) design a common vision for the sector, and iii) create working groups to turn that vision into practice (UCT 2023). Arguably, the AfCFTA Guided Trade Initiative might also serve to identify where interests align.

Such an approach would already address some of the past challenges of regional industrial policy approaches, if indeed it can explicitly identify and work with or around vested interests within key sectors. Promoting industrialization at a continental level will need to be targeted in specific sectors where Mkandawire's seven 'I's align and thus 'development bargains' can be found between and within countries. That will require intelligence gathering beyond technical studies and an iterative process approach that can adapt to changing circumstances, rather than a document for Heads of State to sign.

With increasing concerns over climate and the need for a 'green transition', it will also be increasingly important to advance an industrialization path that is responsive to the need for climate change action, without jeopardizing African prospects for economic transformation (Said and Triki 2022). This may offer opportunities for 'first mover' countries (Byiers *et al.* 2023a). Finally, policies need to adequately take into account the large extent of informal cross-border trade that dominates trade flows in the continent, which are not only left out of official estimates but also underestimate the true magnitude of intra-Africa trade (e.g., see Mold 2022, Apiko and Byiers 2023).

Overall, referring back to Mkandawire's seven 'I's, one can summarize a bottom-up, 'problem-driven' approach to build on the above as follows:

1. ***Initial conditions*** Within *sectors or value chains*, seek to understand and take explicit account of these initial conditions by understanding how different sectors operate, in a technical sense, but also in terms of which firms dominate, the degree of competition, and where current production and markets exist. *Within countries* it is important to also understand their political salience in terms of their role in employment creation and growth trajectory, while *between countries* it will also be important to acknowledge where one or several countries are dominant. In some ways the existing RVC diagnostic reports mentioned above already do some of this. Finally, it is important to recognize that the challenges to trade *within RECs* and existing

regional FTA implementation and utilization will remain important - requiring that a continental industrialization push, also build on and work with REC processes to facilitate trade and remove barriers to RVC creation.

2. ***Ideas*** Build on the clear political momentum around the AfCFTA and growing pressure to create jobs and promote a green transition by framing any trade and industrial policy efforts in those terms. Even where blockages to regional trade are within-RECs, the political momentum around the AfCFTA and industrialization can be used to promote necessary reforms to lower the barriers to trade, and to encourage flexibility among policy-makers. Ideas will also arguably be important to show that the benefits of cooperation can outweigh those of competition, and that the 'green transition' may offer opportunities and not only threats.
3. ***Interests*** For specific *RVCs or sectors*, what are the current interests of producers - e.g. what would it take for those currently exporting directly to sell to processors from neighbouring countries? What specific problems are faced by exporters and those who might be able to invest in processing? At a *national* level, seek to understand the degree to which these genuinely receive political prioritization and why - to what degree are firms currently protected and building on rents, or are they competitive to open up to wider markets. It will also be important to acknowledge and adapt to the potentially varying interests among Member States in the AU industrialization processes and the AfCFTA processes to avoid duplication, and inconsistencies.
4. ***Individuals*** Related to the above, who genuinely wants to promote RVC participation within the sector or at a national level and why? How much power do they have politically and economically, and to what degree does this support or undermine the wider industrialization ambition of the sector, country and continent. This essentially implies seeking to move beyond an understanding of the economic viability of specific investment and RVC initiatives to their political viability, where cooperation benefits trump those from competition.
5. ***Institutions*** Beyond examining the functionality of existing agreements and strategies to support and encourage investment and RVC participation, whether in terms of national laws or border processes, seek to understand the *informal* or unwritten rules that

perhaps govern a sector or relations between VC actors, and that may therefore need to be considered for change to take place. That may relate to trade facilitation processes but also the way that existing regional agreements are used in practice, for example the EAC customs union exceptions discussed above. There is also a clear place for other continental frameworks to support industrialization, perhaps requiring a focus on how PIDA/SAATM/FMP can be leveraged to promote industrialization through the AfCFTA. This might also relate to the process of engaging around transport corridors, where the formal and informal institutional frameworks can have an important effect on how these contribute or not to RVC creation and regional industrialization. Other important *informal* institutions that may be important to clarify relate to those between the AfCFTA, AUC and RECs. Although there are regular *formal* meetings, steps may be required to define and improve their coordination based on *informal* relations and understandings. To paraphrase Andrews (2014), it is important to focus on *functions*, not institutional *forms* that may only be superficial, regardless of them being ‘best practice’.

6. ***Industrialization conditions*** Be clear about where the current challenges, problems and blockages are to promoting investment and industrialization - where have previous policies failed and why; and similarly, to what factors can successes be owed and built upon through an AfCFTA framing.
7. ***International context***. Although this chapter has not explored the international context beyond Africa, the changing international context around US-China-EU industrial policies and competition for access to raw materials also offers opportunities and risks, depending on how African states respond, and the degree to which they genuinely seek regional and continental cooperation. The recent passing of a Carbon Border Adjustment Mechanism and Critical Raw Materials Act among others in Europe (Byiers *et al.* 2023a) are all likely to have some impact on African industrialization, potentially limiting exports beyond the continent, but also offering opportunities where intra-African cooperation and common positions can take precedence (e.g. Luke *et al.* 2023).

Conclusion

Overall, this paper has discussed the issues involved in using the AfCFTA process to move towards a continental industrial policy. As the paper presents, in spite of positive signs of rising industrialization in intra-African trade, there remains a need to encourage further investment, job creation, and thus trigger further market demand. The AfCFTA offers a tool to do this, but nonetheless will rely on a wide array of parallel processes for industrialization processes to further emerge from it.

The paper takes as a starting point Mkandawire's (2014) observation that states need to see a benefit to their industrialization to engage regionally. It further builds on the seven 'I's that he identified as being key for such regional cooperation to take place, applying this to past attempts at promoting industrialization at the regional level in Africa.

As the above discussion highlights, the AfCFTA offers a positive alignment of *Institutions & Ideas*, in the form of the ambitions laid out in the AfCFTA Agreement and adopted and ratified by a continuously rising number of African states. While that appears to offer a strong basis for adding industrialization to the agenda, the discussion of regional industrialization processes demands caution. Although there may be buy-in at heads of state level, past experiences also show the importance of the other 'I's of *initial conditions, interests, individuals, the industrial basis, and international context*. Very often, implementation gaps relate to interests and individuals who stand to lose, where combined with power or access to power can undermine the grand ideas that have been agreed on.

Although a common African market may be some way off, a likely precondition will be greater levels of industrialization across the continent, and greater engagement in RVCs. While the AfCFTA offers a framework to build these, any policy approach to do so would do well to heed the words of Mkandawire.

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PART II

PILLARS FOR A MODERN COMMON AFRICAN MARKET

Chapter 11

THE PROSPECT OF AN AfCFTA DIGITAL SINGLE MARKET

Paul R. Baker and Loan Le

Abstract

In parallel with economic integration, digitalization has become a key pillar in African policy and strategic development toolkits and continental regional integration objectives. As a step towards accelerating digitalization, the Digital Transformation Strategy (DTS) for Africa 2020-2030 identified establishing a Digital Single Market (DSM) as part of the integration priorities of the African Union. The forthcoming AfCFTA Digital Trade Protocol and the African Union Continental Harmonization Strategy towards a Single Digital Market by 2030 will shape countries' alignment, build predictability and transparency, improve online market access, and strengthen the regulatory landscapes for cross-border flows in Africa. Efforts at building regional DSMs (or the like) have been explored at different levels by different regional groupings in Europe, Latin America, and Asia-Pacific. In the context of Africa, establishing a DSM requires careful scrutiny of the existing specific political, social, and economic conditions. Contributing to existing work promoting deeper integration under the AfCFTA, this chapter examines the concept of a DSM for Africa and how it fits into the African vision for integration and development, evidence of progress and gaps in the pre-conditions for success, and considerations for the possible pathways to leapfrog in this transformation.

Keywords: AfCFTA, Continental Digital Single Market, Regional Economic Integration, Digital Trade

Introduction

Africa's digital economy is poised to become a major and sustained source of growth. The continent has witnessed substantial mobile phone ownership growth, with 61 percent and 33 percent of the population now having access to mobile phones and the internet, respectively. Growth in broadband services is impressive, led by mobile broadband, which reached 42 percent of the population in 2022 (ITU 2022). According to a jointly developed report by International Finance Corporation (IFC) and Google (2020), the Africa digital economy has the potential to add up to US\$180 billion to Africa's GDP by 2025. Currently, 19 of the top 20 fastest-growing countries in the world are in Africa. The continent also has the world's youngest, fastest growing, and increasingly urbanized workforce (Google and IFC 2020). These demographics, coupled with improved lifespan and education levels, major investments in ICT infrastructure, and strengthened competition amongst internet service providers (ISPs) are expected to boost both the demand and supply capacity of digital goods and services, which in turn contributes to continental digital economic growth.

There are strong indicators of support for prioritizing and accelerating digitalization on the part of the continent's leadership. The AU's Digital Transformation Strategy (DTS) (2020-2030), adopted by the AU Summit in February 2020, identifies, among its objectives, the need to "build a secured Digital Single Market in Africa by 2030 where free movement of persons, services and capital is ensured and individuals and businesses can seamlessly access and engage in online activities in line with Africa's Continental Free Trade Area (AfCFTA)."

The AfCFTA provides an opportunity for cooperation on important aspects of the continent's digital transformation toward a digital single market.

Pathways to Digital Single Markets

- (i) Digital Single Market: a definition

While there is no agreed definition on the Digital Single Market, it can be inferred as a market comprising the characteristics of a single market on the digital space. The World Bank (2018) identifies a DSM as one in which cross-border barriers to providing and accessing digital infrastructure, content, and services are eliminated. It is one in which a seamless and competitive regional digital ecosystem drives a reinforcing cycle of economic growth, investment, innovation, job creation, and improved service delivery (World Bank 2018). The European Union (EU) provides a slightly different definition: “A Digital Single Market is one in which the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence” (EC 2015). This second definition reflects the situation that the EU DSM is built upon: the existing structure of the EU Single Market with the four freedoms (i.e., the free movement of goods, capital, services, and people). The Digital Transformation Strategy for Africa (DTS) (2020-2030) offers a similar definition to that of the EU, given Africa’s journey toward a single economic community. Many regions around the world have also been embarking upon a similar route to Africa with respect to digitalization. As noted below, the achievements and obstacles faced by these regions will provide useful signposts for African in the establishment of a DSM that is aligned to Africa’s aspirations.

(ii) The EU Digital Single Market

In order to appropriately appreciate the challenges faced in the course of regional integration, it is worth taking a comparative look at the history of the EU Single Market. The EU has been said to achieve a unique level of political and economic integration; however, the making of the EU as it is today also has undergone many peregrinations. The EU ‘single market’ was the results of decades-long economic, social and political integration built on a foundation of various treaties and enforced by various sets of laws and rules.

In 2015, the European Commission (EC) developed a Digital Single Market strategy (DSM strategy), which aims at uniting individual digital markets across the Union. By bringing down the barriers to the digital economy, the Union is expected to gain an additional €415 billion in GDP, as well as benefit from expanding markets, better services at better prices, better choice, and new

sources of employment (EC 2015). The strategy encompasses 16 initiatives, which have been divided up into three overarching pillars (**Error! Reference source not found.**). Around 40 legal instruments have been adopted or are under negotiations to provide the legal framework for the fulfilment of the EU DSM objectives across these three pillars. The number of regulations involving the making of the EU-DSM illustrates a sense of the complexity and different areas that Africa may put into the policy agenda for the development of the African DSM as envisioned in the DTS 2020-2030.

Figure 16: EU-DSM Pillars and Key Actions

Pillars	Actions
Better access for consumers and businesses to digital goods and services across Europe	• Legislative proposals for simple and effective cross-border contract rules for consumers and businesses • Review the Regulation on Consumer Protection Cooperation • Measures in the area of parcel delivery • A wide-ranging review to prepare legislative proposals to tackle unjustified Geo-blocking • Competition sector inquiry into e-commerce, relating to the online trade of goods and the online provision of services • Legislative proposals for a reform of the copyright regime • Review of the Satellite and Cable Directive • Legislative proposals to reduce the administrative burden on businesses arising from different VAT regimes
Creating the right conditions for digital networks and services to flourish	• Legislative proposals to reform the current telecoms rules • Review the Audio-visual Media Services Directive • Comprehensive analysis of the role of platforms in the market including illegal content on the Internet • Review the e-Privacy Directive

	• Establishment of a Cybersecurity contractual Public-Private Partnership
Maximizing the growth potential of the Digital Economy	• Initiatives on data ownership, free flow of data (e.g. between cloud providers), and on a European Cloud • Adoption of a Priority Information and Communications Technology (ICT) Standards Plan and extending the European Interoperability Framework for public services • New e-Government Action Plan including an initiative on the ‘Once-Only’ principle and an initiative on building up the interconnection of business registers

Source: EC (2015). *A Digital Single Market Strategy for Europe*.

(iii) The Association of Southeast Asian Nations (ASEAN)

Like Africa, Southeast Asia presents a dynamic environment for the booming digital economy, supported by a young population, growing middle class, and a quick expansion in internet penetration. Southeast Asia is now the world’s fastest-growing internet region, with a user base of 460 million people in 2022. This is equivalent to an internet penetration rate of 76% of the region’s population. The region’s digital economy was growing resiliently despite the COVID-19 pandemic. Its total gross merchandise value (GMV) almost doubled during the 2020-2022 period to reach 200 billion dollars by year-end 2022, and is poised to grow to over 300 billion dollars by 2025, despite the situation with COVID-19. Electronic commerce contributed the most to the region’s growth, while transport and travel-related services are gradually recovering to catch up with pre-pandemic levels (Google *et al.* 2022).

The formation of the ASEAN Economic Community (AEC) in 2015 envisions ASEAN as a single market and production base characterized by the free flow of goods, services, and investments, as well as freer flows of capital and skills. This serves as an enabling foundation in driving the single market agenda and potentially a single digital market agenda of this economic community. The single market drive, combined with provisions on ICT in a Single Market, seems to hint at a DSM analogous to the EU DSM model. However, explicit

reference to a DSM is absent in all ASEAN strategic documents, such as the AEC 2015 and AEC 2025.

All ASEAN Member States put an emphasis on ICT development at the national level, as evidenced by the digital components in various national development strategies such as Cambodia Digital Economy and Social Policy Framework 2021-2035; Making Indonesia 4.0; Malaysia Digital Economy Blueprint 2021; Singapore Digital Government Blueprint; Singapore Industry Digital plans; Thailand's e-Commerce Development Plan; Thailand Digital Government Development Plan (2017-2021); Vietnam National Digital Transformation Roadmap 2025, etc.

The ASEAN Digital Integration Framework Action Plan (DIFAP) 2019-2025, ASEAN Work Programme on Electronic Commerce (AWPEC) 2017-2025 (included as part of the DIFAP 2019-2025), ASEAN Strategic Action Plan on Consumer Protection 2025 and ASEAN ICT Masterplan (AIM) 2020 contain relevant elements contributing to the transformation of ASEAN towards a digital economy by consolidating a regional consensus on strategic directions to develop e-commerce and digital integration. The AIM 2020 advances the many achievements of preceding regional digital programmes but enhances them further with the inclusion of "ICT in the single market," reinforcing the AEC 2015's explicit move towards a single market and production base (Peña 2019). The approach and way forward for the ASEAN Cross Border Data Flows Mechanism have been approved in 2019 by the 19th ASEAN Telecommunications and Information Technology Ministers' Meeting (ASEAN 2019).

While there are no documents that contain explicit direction towards the DSM, this could go at a pace comfortable to each and all Member States, in accordance with the bloc's culture and governance arrangement²⁹.

African Digital Trade

Trade in digital goods and services comprises the two major flows in the DSM. Africa's low performance in ICT and digital trade implies that there is plenty

²⁹ The ASEAN approach to cooperation among its Member States, also dubbed "the ASEAN Way" – following the bloc's regional anthem - prioritizes a consensus-based, non-conflictual way of addressing problems through compromise, consensus, and consultation in the informal decision-making process. See Caballero-Anthony (2022).

of room for improvement. In terms of trade in ICT goods, Sub-Saharan Africa ranks as the lowest among all regions in the world for both imports and export of ICT goods³⁰ (as a percentage of the total value of goods imported and exported, respectively). Notably, Africa's exports of ICT goods in 2019 were insignificant at 0.41% of total goods exports, while low imports of ICT goods raise concerns about supply capacity and access to ICT products for the continent's digitalization objectives, given that Africa is far from self-sufficient in ICT goods.

Figure 17: Trade in ICT Goods by Region

Region	ICT goods imports (% total goods imports)	ICT goods exports (% of total goods exports)
East Asia & Pacific	25.94	28.46
Europe & Central Asia	8.18	5.07
Latin America & Caribbean	13.44	8.50
Middle East & North Africa*	9.39	4.65
North America	13.39	7.97
South Asia	10.17	1.85
Sub-Saharan Africa*	5.02	0.41

*Data for 2020 unavailable; data for 2019 is used instead. Source: World Bank WDI (2023)

There is potential to improve the level of digitally delivered services exports in Africa. For example, digitally delivered exports as a percentage of the total trade in services for Africa is 33.9 percent, the lowest among the five global regions. Combined with the low value of digitally delivered services exports, these numbers suggest potential under-performance of the overall trade in services in Africa. As a proportion of global trade in digitally delivered services, Africa accounts for only 0.89 percent of global digitally delivered

³⁰ The World Bank World Development Indicators (WDI) database identifies trade in information and communication technology goods as including computers and peripheral equipment, communication equipment, consumer electronic equipment, electronic components, and other information and technology goods (miscellaneous). See World Bank (2023).

service exports, compared to 19.75 percent, 25.58 percent, and 53.16 percent for the Americas, Asia, and Europe respectively.

There is also a large discrepancy between exports and imports of digitally delivered services for the continent. According to UNCTADStat, only eight countries in Africa recorded positive trade balances in terms of digitally delivered services. Egypt, Nigeria, and South Africa were among the countries with large trade flows but also large deficits in digitally delivered services. Morocco had the highest net export of digitally delivered services in Africa at 3.7 billion dollars. While Ghana, Mauritius and South Africa recorded digitally delivered services accounting for more than 50 percent of their services trade, many other countries recorded less than 20 percent of services being digitally delivered. This low level of trade in both digital goods and services indicates the need for improving digital infrastructure as well as creating an enabling environment for digital trade and innovation to thrive.

Figure 18: Digitally Delivered Service Exports

Region	Exports (US\$, millions)	% of total trade in services	% of total world
World	3,811,377	62.77	100
Africa	34,068	33.90	0.89
Americas	752,558	71.15	19.75
Asia	974,995	55.61	25.58
Europe	2,026,146	65.29	53.16
Oceania	23,610	41.73	0.62

Source: UNCTADStat

Africa's Digital Readiness

(i) Overall Digital Readiness

Overall digital readiness can be examined in terms of the availability of digital service layers or in terms of the readiness of foundational factors (infrastructure, human/skills, and regulation). From the first point of view, the United Nations' E-Government Development Index (EGDI) could be used as a proxy because it measures three important dimensions of digital society: provision of online services, telecommunication connectivity and human

capacity. According to the E-Government Development Index (EGDI) 2022³¹, Africa's average EGDI was 0.4054, which is below the global average of 0.6102 (UNDESA 2022), highlighting gaps in e-government development and the persistence of a digital divide. Fifty-nine percent of the countries in Africa have a middle EGDI value, and 30 percent have high EGDI values. Four African countries - Mauritius, Seychelles, South Africa and Tunisia – are leading the region in e-government development with EGDI values above the global average (ranging from 0.65 to 0.74). Significant progress has also been made in reducing the number of countries in the low EGDI group (from 13 to 7 between 2018 and 2022).

To explore how African digital readiness will support digital trade and the realization of an African Digital Single Market (DSM), we examine the correlation between digital readiness and the three components of the Network Readiness Index (NRI): the technology pillar for technological readiness, the governance pillar for regulatory readiness, and the people pillar for skill readiness. Digitally deliverable services (DDS) trade is used as a proxy for digital trade, reflecting a certain level of maturity in digitalization on both the demand and supply sides. Data show that African countries (plotted in yellow) currently score low on the index and in trade volume, indicating that foundational improvements are needed to strengthen the digital market.

³¹ The 2020 UN E-Government Survey tracks progress of e-government development via the United Nations E-Government Development Index (EGDI). The EGDI is a composite index based on the weighted average of three normalized indices: the Telecommunications Infrastructure Index (TII), the United Nations' Human Capital Index (HCI), and the United Nations' Online Service Index (OSI). See UNDESA (2022).

Figure 19: State of Africa's Digital Infrastructure

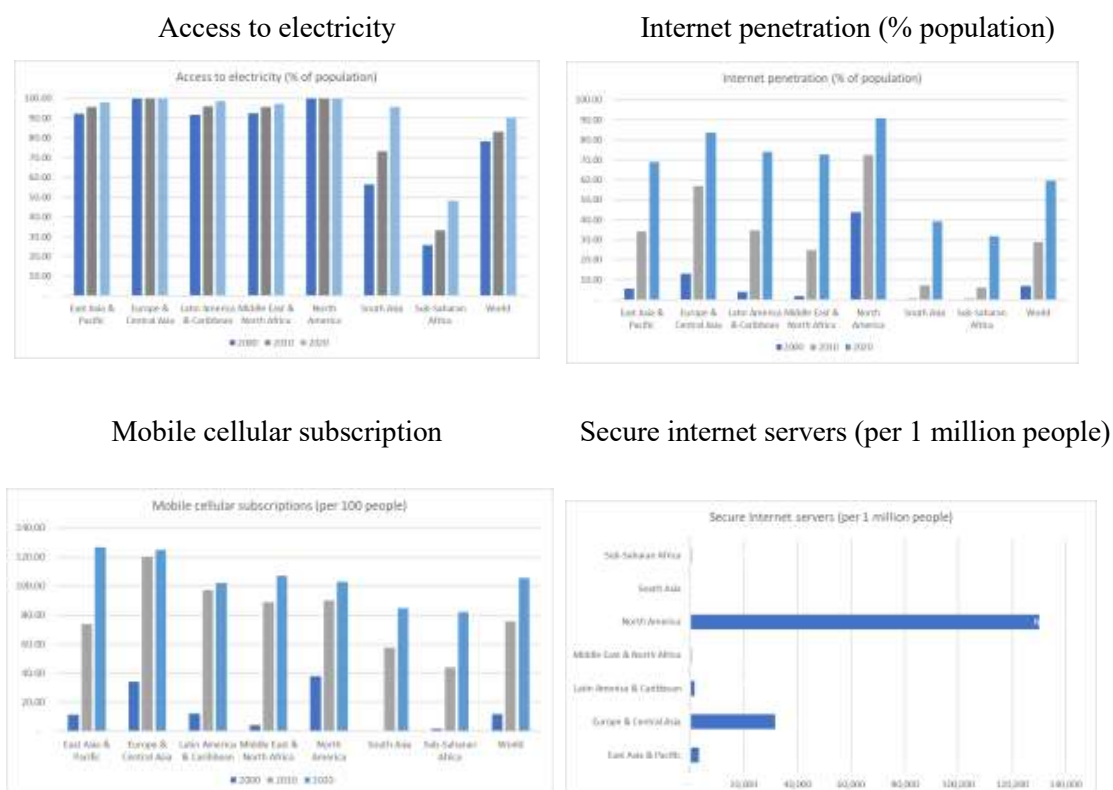


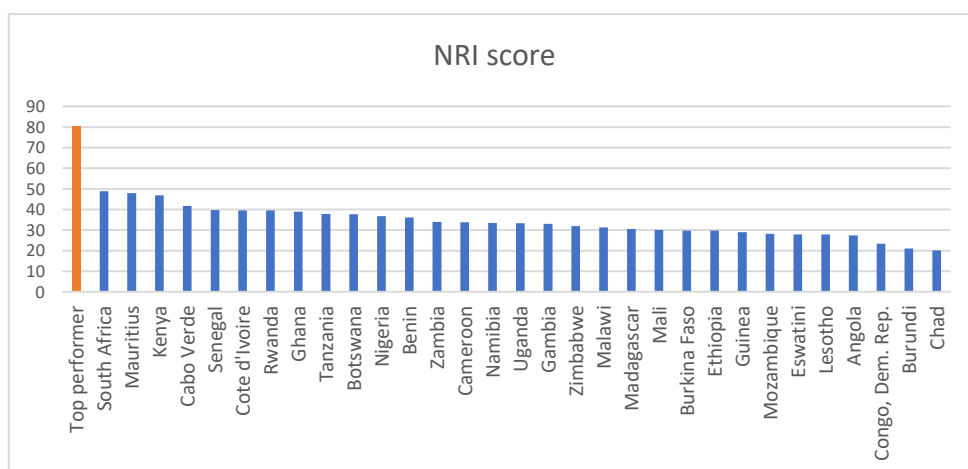
Figure 20: Drivers of Digitally Delivered Trade, 2021

Note: x-axis derived from Portulans NRI (2022): Index for technology assesses the level of technology for a country's participation in the global economy; index for people covers access, resources, and skills to use digital networks effectively; and governance index covers the safety of individuals and firms in the context of the network economy, regulation, and digital inclusion. y-axis obtained from UNCTAD Stats.

Source: Authors; UNCTAD Stats (2023); Portulans NRI (2022)

Looking into specific country statuses, the NRI data show that among the 31 African countries included in the 2022 ranking, the best-ranked African economies are South Africa (68th, up two places from the 2021 ranking), Mauritius (72nd, down one place), and Kenya (77th, up seven places) (Portulans Institute 2022). Among the 50 low performers in the NRI ranking, 28 were African countries. Closely related to the areas comprising the ‘Governance’ pillar, the best-ranked African countries performed relatively better in the ‘Regulation’ aspect, while ‘Trust and Inclusion’ remained weak.

Figure 21: Network Readiness Index for African Countries



Source: Portulans NRI (2022)

Digital infrastructure, application and use of e-government services, and overall readiness of countries indicate significant progress that Africa has made in terms of access and use of ICTs across the economy. Africa’s transition to a digital economy creates opportunities for economic growth and increased job creation, accelerates access to quality basic services such as education and health, and improves government transparency and accountability. Yet, as will be further examined in the following sub-section, the underlying social and economic challenges - including lack of skills, inability to pay and low broadband quality of services - represent a significant digital divide. There is also significant disparity among countries and different regions within countries; thus, substantial efforts are still needed to expand access to infrastructure and services.

(ii) Digital Infrastructure³²

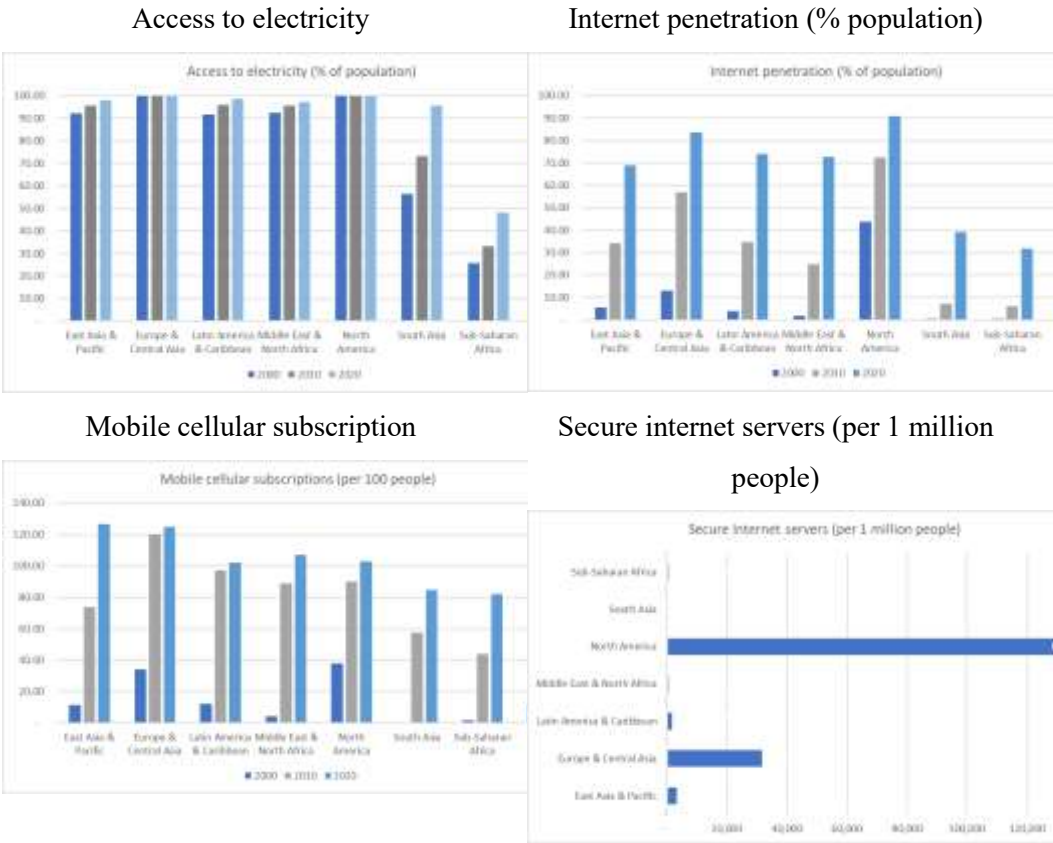
Africa has made notable progress in improving access to key digital infrastructure, though the continent still has some catching up to do. First, electricity is the fundamental condition and a major constraint for the expansion of digital infrastructure in Africa. Electricity fuels a range of activities, from recharging devices to powering mobile base stations and data centres. Overall, the electrification rate in Sub-Saharan Africa is the lowest in the world, averaging 48 percent of the population in 2020, compared with the global average of 90 percent. South Sudan, Chad, Burundi, and Malawi were the four countries with the lowest electrification rates in 2020 (all less than 15%), according to World Bank WDI data. There are also huge gaps in electricity access between rural and urban households in the region. In 2020, access rates among urban households are ≈ 78.2 percent, compared with 28.5 percent among rural households in Sub-Saharan Africa (World Bank 2023). Finally, electricity access intermittency creates further challenges for a digital economy. Major challenges lie in different segments of the broadband network value chain in Africa³³. For the first mile, despite recent developments in the regional submarine network infrastructure, Africa benefits from further liberalization and additional competition in the telecom markets. For the middle mile, Africa has been facing insufficient terrestrial fibre and Internet Exchange Points (IXPs) infrastructure. African countries need at least 230,000 kilometres of fibre, on top of the current 1.4 million kilometres of fibre, to reach planned target levels of universal access by 2030 (Broadband Commission 2019). Furthermore, 42 percent of countries in Africa lack IXPs, which means they have to rely on satellite or submarine fibre across multiple international hubs, resulting in poor end-user experiences and discouraging

³² Digital infrastructure refers to overall physical and software-based infrastructure that is necessary to the delivery of digital goods and services. This may include fibre network infrastructure, server hardware, data centres, IT operating systems, etc. (SDIA 2022). Furthermore, in order for the infrastructure to operate, general infrastructure (including electricity) is also of utmost importance.

³³ The Broadband Commission identifies the broadband network comprised of three segments: first mile, middle mile, and last mile. First mile refers to international internet access where the internet enters a country, including submarine cables, landing stations, satellite dishes, cross-border microwave, etc. Middle mile refers to the national backbone and intercity network where the internet passes through a country, including fibre backbone, microwave, internet exchange points (IXPs), local hosting of content, etc. Last mile refers to the local access network where the internet reaches the end use, including local loop, central office, exchanges, wireless masts. At the last mile, telecommunications operators provide internet services (such as mobile or fixed internet services) to people, businesses, and governments. See Broadband Commission (2019).

hosting content locally (Internet Society 2018). For the last mile, while connectivity on the continent has continued to expand for both mobile and fixed broadband infrastructure, low internet penetration and high subscription charges remain the key barriers to access to the internet.

Figure 22: State of Africa’s Digital Infrastructure, *Source: World Bank WDI (2023)*



Source: World Bank WDI (2023)

Access to electricity

Mobile cellular subscription

Internet penetration (% population)

Secure internet servers (per 1 million people)

The fibre-optic submarine cable systems in Africa have been expanding rapidly, bringing better prospects for the continent's connection capacity. It is estimated that there are approximately 1,389 million kilometres of terrestrial fibre links, 936,000 kilometres of which were operational in 2018 (Broadband Commission 2019). On-going projects, including the two mega submarine cable projects, Google's Equiano and Facebook's 2Africa, will further add to the continent's broadband capacity. The 2Africa cable system - the 37,000-kilometre-long, high-speed subsea cable subsea project - will circle the entire African continent with 21 landings in 16 African nations and double the continent's total internet capacity by 2024 (Digital Council 2021). The Equiano subsea cable project will extend along the continent's Atlantic coastline with landing points in Namibia, Nigeria and South Africa (Submarine Cable Networks 2023). Yet fibre networks have yet to fully penetrate Africa; the Central African Republic, Eritrea and South Sudan all lack a fibre connection to the submarine cables (Broadband Commission 2019).

In 2021, internet penetration in Africa was estimated to be 36% (or 473 million people) online, and an additional 300 million will likely join by 2025 (World Bank 2023, African Union 2020). Africa has the lowest penetration of fixed broadband worldwide, though that has been increasing of late. According to the World Bank WDI, fixed broadband subscriptions in Africa in 2020 were just 0.59 per 100 people, much lower than the world average of 15.8 per 100 people. Subscription charges in Africa are still higher than those in middle-income countries, and more than twice as costly as those in North Africa (Broadband Commission 2019).

Mobile broadband is the principal channel of internet connection for people across Africa (*Ibidem*). Mobile cellular subscriptions in Sub-Saharan Africa almost doubled during the 2010-2020 period, though they remain below the global average of 105 subscriptions/100 people, according to the World Bank WDI. This indicates a gap, but also room to grow. According to GSMA, 46 percent of the population (or 515 million people) in Sub-Saharan Africa has subscribed to mobile services in 2021, indicating an increase of almost 20 million since 2020. It is estimated that another 100 million new subscribers will be added by 2025, taking the mobile services penetration of the region to 50 percent of the population. In 2021, smartphones accounted for 49 percent

of the SSA total connection, which is expected to increase to 61 per cent in 2025. While 3G remains the dominant connectivity technology in Sub-Saharan Africa, there is a growing shift towards 4G and exploration of 5G in a number of countries (GSMA 2022). In this context, the availability of affordable 4G and 5G devices will be crucial to new technology adoption for Africa.

Furthermore, the digital divide remains a major predicament for Africa. Most of the 14 percent of the world population in Sub-Saharan Africa cannot afford a smartphone, thus preventing them from accessing the technologies underpinning digital transformation. Around 90 percent of children in Sub-Saharan Africa do not have access to a computer, and around 80 percent do not enjoy a basic internet connection (Gokhale 2021). According to GSMA (2022), in 2022, the gender gap was 13 percent for mobile device ownership and 37 percent for mobile internet usage in sub-Saharan Africa, the highest after South Asia. Bridging the digital divide is therefore crucial for equitable access in the African digital market.

On the service layer, data centres have become a key enabler as the content hosting infrastructure of the digital economy (TechUK 2019), especially for the prospect of a continental DSM. Currently, Africa accounts for only one percent of global data centre capacity, two-thirds of which is located in South Africa (Oxford Business Group 2021). The lack of data centres on the continent can prove to be a major impediment to other digitalization efforts, as data will need to be hosted outside of the continent, which might lead to higher international bandwidth demand, connectivity and storage costs, data latency, as well as uncertainty of personal data protection (Broadband Commission 2019). Already, investments have been pouring into these largely unserved areas on the continent. In 2020, US tech giant Amazon launched its first data centres in South Africa, following the earlier launch by Microsoft in 2019 (Paul 2020). In the same year, Africa Data Centres secured US\$300m from the United States government's International Development Finance Corporation (DFC) for expansion and acquisitions (Burkitt-Gray 2020). In 2021, Liquid Intelligent Technologies received through the International Financial Corporation (IFC) US\$250 million in equity and debt investments to develop hyperscale data centre capacity in Egypt, Kenya, Nigeria, and South Africa through its subsidiary, Africa Data Centres (IFC 2021). In 2022, Equinix announced plans to enter the South African market with a US\$160 million data centre investment in Johannesburg, which was then closely

followed by global leading IT infrastructure company NTT in early 2023 (Darwen 2022, Hutchinson 2023). These major investments have caused impressive growth prospects: Africa's data centre markets are expected to grow at a compound annual rate of 12 percent to exceed US\$3 billion in value by 2025 (TechinAfrica 2020).

One of the main obstacles to ubiquitous connectivity in Africa will be investment. According to the World Bank, achieving universal, good-quality internet access across Africa by 2030 will come with a \$100 billion bill. From this, 75 percent of required investments are for establishing and maintaining broadband networks, while 20 percent consist of building user skills and local content foundations, and around 5 percent for building adequate policy and regulatory frameworks to increase competition, drive down pricing, or improve affordability (Broadband Commission 2019). For all productive infrastructure (including electricity, water, and transport services) to allow firms to thrive in industries with strong comparative advantages, the African Development Bank (AfDB) (2018) estimates investment needs of around 130–170 billion dollars a year up to 2025, with a financing gap in the 68–108 billion dollar range (AfDB 2018). To address this financing gap, Africa needs a holistic model to attract and accelerate investments in these much-needed areas.

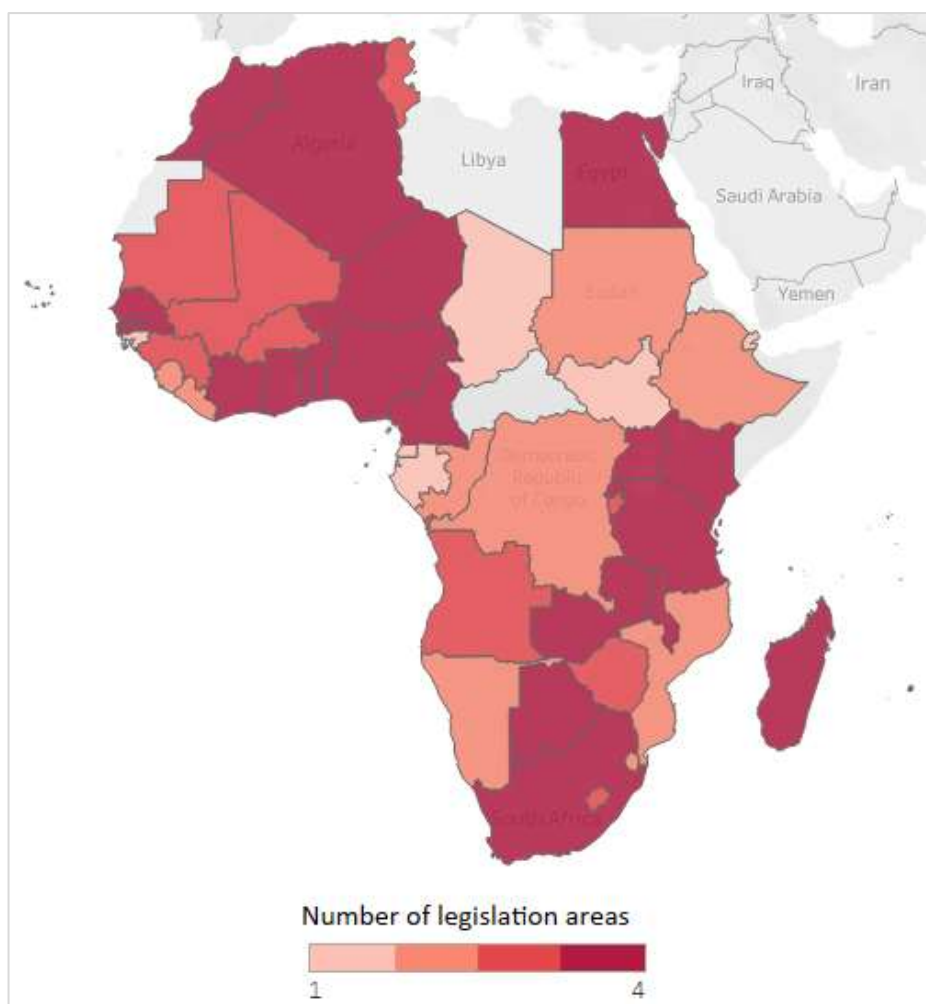
(iii) Digital Regulations

The e-commerce regulatory frameworks of African countries remain fragmented. UNCTAD identifies four key areas of e-commerce legislation in the fields of e-transactions, consumer protection, data protection/privacy and cybercrime. According to the UNCTAD Global Cyberlaw Tracker, cybercrime is the area where most African countries have some legislation, while consumer protection is the least regulated area among the four cyber laws. Thirty-three out of 55 African countries (61 percent) currently have formal legislation on e-transactions and privacy and data protection. However, as discussed below, there exists divergence among countries' approaches in these important areas of e-commerce legislation.

Figure 23: State of Digital Regulations in Africa

	Electronic Transactions	Consumer Protection	Privacy and Data Protection	Cybercrime
Number of countries with legislation	33	28	33	39
% of all African countries	61%	52%	61%	72%

Source: (UNCTAD 2022)



Africa (Countries with legislation)

Electronic Transactions: 33 (61%)

Consumer Protection: 28 (52%)

Privacy and Data Protection: 33 (61%)

Figure 24: E-Commerce Legislation in Africa

Source: UNCTAD Cyberlaw Tracker (2023)

Having an ‘e-commerce law’ or similarly titled instrument is not necessarily indicative of the soundness of the country’s regulation on digital trade (Daza Jaller *et al.* 2020). While strict regulations may inhibit innovations, insufficient safeguards due to a regulatory vacuum may also hamper the

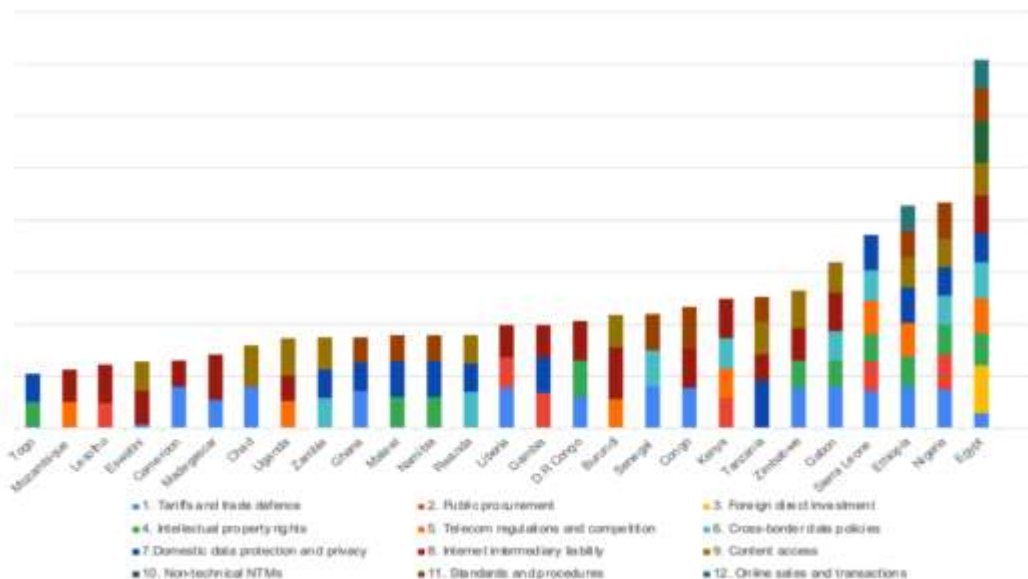
development of digital trade due to uncertainty - and limit integration thereof. Furthermore, divergences among regulatory requirements between countries will further add compliance costs to digital businesses, thus hampering the pace of digitalization.

According to the United Nations Economic Commission for Africa (UNECA) (2023), African Digital Trade Regulatory Integration Index (RDTII)³⁴ scores reveal the lack of an extensive policy agenda across several areas relevant to digital trade such as online sales, non-tariffs measures (NTMs) and cross-border data flows. The main impediments to digital trade integration in Africa cover: internet intermediary liability; domestic data policies; high effective tariffs applied on ICT goods imported; intellectual property rights (IPRs), telecom regulations and competition; and content access. Furthermore, at the country level, the RDTII scores reveals significant heterogeneity in African digital trade integration. For example, Togo only maintains regulations on intellectual property rights and domestic data, while Egypt's legislation covers all digital-related areas in the RDTII framework, most of which also represent significant barriers to digital trade integration, except for tariffs, trade defence, and public procurement. As a result, the regulatory heterogeneity induces business costs across Africa.

³⁴ The United Nations Regional Digital Trade Regulatory Integration Index (RDTII) framework provides an overview of the digital trade policy environment across 12 policy areas. The index scores, ranging from zero to one, imply how significantly the regulatory environment adds to “the cost of doing digital trade-related business” (zero indicates no limitation or no regulation, and 1 indicates prohibitive requirements).

Figure 25: African Countries with High RDTII 2.0 Scores, by Pillar (2022)

Source: (UNECA 2023)



At the individual country level, the divergence in approaches to digital regulations are significant in emerging areas, such as on data governance and electronic authentication. For example, regarding data protection, the African Union Convention on Cybersecurity and Personal Data Protection (the ‘Malabo Convention’) was adopted in 2014. As of March 2022, among the 55 African countries, only 14 have signed and 13 have ratified the convention (AU 2022). At the level of Regional Economic Communities, the Southern African Development Community (SADC) Model Law and the Supplementary Act on Personal Data Protection within the Economic Community of West African States (ECOWAS) (2010) to the ECOWAS Treaty establishes principles of data processing in the respective regions, including the composition of a Data Protection Authority (DPA). Among the 32 countries with data privacy laws in Africa, fifteen have not appointed a DPA, the lack of which poses an impediment to the effectiveness of continental data protection legislative frameworks (Greenleaf and Cottier 2020). There are also disparities in the enforcement of data protection rules across countries. While some countries – such as Ghana and Mauritius – effectuate action or fines for non-compliance with relevant personal data

protection legislation, in other countries - such as Morocco, Nigeria, Senegal, and Tunisia - the laws do not require notification of breaches (Banga *et al.* 2021). Data localization measures also come at different levels of strictness – from Senegal’s non-requirement to South Africa’s data localization requirements for only data, to Nigeria’s catch-all approach which requires all data to be processed and stored locally, using local servers (Tavengerwei *et al.* 2022).

Similarly, divergence is observed in the regulatory framework for electronic transactions and electronic signatures. For example, while Nigeria recognizes all types of e-signatures as legally equivalent, South Africa assigned differentiated legal validity to certain types, and Kenya and Senegal only recognize specific e-signatures, which are either issued or validated by a recognized institution (*Ibidem*). There appears to be general support for source code disclosure in the promotion of technology transfer to developing countries (Banga *et al.* 2021). Some African countries have also detailed source code disclosure requirements to their benefit: Nigeria expressly requires multinational enterprises to disclose a software’s source code and algorithms before it is dispatched in Nigeria for security purposes. In comparison, South Africa only requires the mandatory disclosure of source code where the software will be used by government (Tavengerwei *et al.* 2022).

Outside of the continent, there have been three FTAs with e-commerce rules incorporated. The Morocco-United States Free Trade Agreement (FTA) (2004) was the first treaty signed by an African country with e-commerce provisions. The provisions in the Morocco-US FTA state basic rules regarding no duties on electronic transmission and non-discrimination of digital production. The China-Mauritius FTA (2019) and the Mauritius-India Comprehensive Economic Cooperation and Partnership Agreement (CECPA) (2020), incorporated more e-commerce provisions, such as those on data protection, data flow, government data, and paperless trade (Burri and Polanco 2020). In this context, developing a region- or continent-wide framework would contribute to harmonizing digital trade rules and accelerating trade in goods and services regionally and globally.

At the multilateral level, there has been relatively minor involvement of African negotiators in proposing areas for negotiations. Among 89 World Trade Organization (WTO) members joining the E-Commerce Joint Statement Initiative (JSI), only six are African countries (Benin, Burkina Faso,

Cameroon, Cote d'Ivoire, Kenya, Mauritius) (WTO n.d.). While participation may draw away resources from other activities, the lack of participation in initiatives shaping the global framework on digital trade will mean African voices and positions will not be reflected in the outcomes of such negotiations.

(iv) Digital Skills

Africa's population is young and growing fast. Rapid technology adoption makes the continent a fertile ground for innovation in digital and emerging technologies that have implications for the growth of the digital economy. Africa's tech ecosystem has been on the rise in recent years, especially in Egypt, Kenya, Morocco, Nigeria, and South Africa, with untapped potential for ICT talent (WEF 2022).

The state of digitalization of the economy in Africa shows a continued high demand for relevant skills and awareness of the benefits of digitalization. Therefore, the necessity does not end with the support of basic digital skills for all, but includes support for advanced skills to promote local ICT professionals and support them to create new digital technologies and innovative business models catering to local requirements and challenges. However, the International Telecommunication Union (ITU) (2021) points to a significant skills gap in Africa. According to ITU's data, except for Zambia as the outlier, the other four countries for which data was available record very low ICT skills³⁵ at less than 15 percent for basic level, less than 6 percent for standard level, and less than 1 percent for advanced level. The IFC (2019) estimates that by 2030, more than 230 million jobs in sub-Saharan Africa will require digital skills. The majority of the demand for these digital skills will be from non-ICT jobs generated by enterprises adopting digital technologies

³⁵ The ITU's assessment of ICT level is based on self-reported behavioural measures of digital skills across three levels: (i) 'basic skills' refer to capabilities in performing computer-based activities such as copying or moving a file or folder; using copy and paste tools to duplicate or move information within a document; sending e-mails with attached files; and transferring files between a computer and other devices; (ii) 'standard skills' refer to capabilities in performing computer-based activities such as using basic arithmetic formulas in a spreadsheet; connecting and installing new devices; creating electronic presentations with presentation software; and finding, downloading, installing and configuring software; and (iii) 'advanced skills' refer to capabilities in performing computer-based activities such as writing a computer program using a specialized programming language. See ITU (2021).

(IFC 2019). This points to the need for upskilling to meet the increasing demand for ICT skills on the continent.

Figure 26: ICT Skill Levels in African Countries, 2019

Country	Basic	Standard	Advanced
Cabo Verde	14.4	5.6	-
Cote d'Ivoire	12.3	4.0	0.7
Niger	6.4	2.6	0.9
Togo	3.1	1.6	0.5
Zambia	43.6	25.2	6.6

Source: ITU (2021)

In addition to digital skills, innovative capacity is a major driver for sustainable economic development, growth and competitiveness of an economy, as it increases productivity, value creation, and opens new opportunities for societies, as well as new markets for businesses. The innovation environment in Africa can benefit from further development. As an illustration, the World Intellectual Property Organization (WIPO) (2022) ranks Mauritius as 45th and South Africa as the top leader in the Sub-Saharan region at 61st out of 132 countries in the Global Innovation Index 2022, followed by Botswana (86th) and Kenya (88th). Innovation and entrepreneurship can be nurtured through strong training curricula in educational institutions and mentorship programmes. To promote digital innovations, economic growth and jobs pioneered by young African innovators, a regional approach needs to allocate the scarce resources of quality education and highly skilled youth effectively, increase opportunities, raise awareness, and facilitate regional exchange.

Conclusion and Policy Implications

The key barriers to an African continental DSM revolve around access to infrastructure, a digital regulatory framework to ensure a trust and enabling environment, and digital skills. Specifically, the analysis of necessary conditions in support of the DSM by 2030 as well as of the lessons learned from similar initiatives give rise to some policy implications for the developing of the African DSM.

First, multiple enabling regulatory dimensions need to be harmonized and modernized throughout the continent to ensure interconnected markets that enable greater connectivity and affordability of access to the internet, a trusted and secure digital trade environment, and an inclusive digital economy. As these issues are interdependent, the digital transformation needs to be supported by greater collaboration between policy-makers, regulatory authorities, and other stakeholders to effectively harness and channel technological progress and successfully address the regulatory challenges of digitalization across traditional categorizations and their corresponding regulatory norms and institutions. The required ‘collaborative regulation’ environment marks a fundamental departure from existing regulatory practices where most regulators are working in silos, and in many cases with overlapped or competing authority.

Harmonization and modernization of the policy and regulatory environment will contribute to the objective of the DSM; however, this alone will not be sufficient. Other key enablers, such as digital literacy and digital skills of the workforce, logistics, infrastructure, financial resources, and institutional re-engineering are critical.

Policies and regulations for a DSM must build on existing regional policy and legal harmonization frameworks such as, for example, the AU Convention on Cyber Security and Personal Data Protection (Malabo Convention) and various regional legal frameworks and model laws, such as the EAC Legal Framework for Cyberlaws or the SADC model law on electronic transactions. However, these frameworks must still be fully and consistently implemented throughout the regions. Some of these laws need to be reviewed and updated to support the objectives of a continental DSM. Given the lack of digital trade and e-commerce rules in regional trade agreements in Africa, the AfCFTA Protocol on Digital Trade will be the ideal instrument to provide these provisions. This Protocol will serve as a continental framework on e-commerce, thus advancing the goal of an African DSM by 2030.

Second, at a time when the most critical challenges facing Africa are multisectoral and there is a diverse range of actors on the continent, it is imperative to strengthen coordination and coherence within Africa and collectively to capitalize on its comparative advantages. As noted in the ASEAN and Latin America cases in the previous section compared to the EU, the lack of a regional institutional framework supported by strong political will from Member States will significantly slow down progress of a DSM. In

Africa, due to the work-in-progress status of the common market and its relevant institutional configurations, the complexity involved and time required to align Member State policies and legislation will be considerable. In this context, key coordination mechanisms for implementing global and continental frameworks in Africa, including leading institutions, the various RECs, the AU, and the AfCFTA Secretariat, will be essential vehicles for joint programming, helping African countries work to identify challenges and plan and implement their interventions jointly rather than in silos.

For the AfCFTA Protocol on Digital Trade, the continent has the opportunity to push for a deep and meaningful protocol based on international models. In terms of coverage, the Protocol should cover electronic transactions and electronic authentication, but also areas that will contribute to the realization of DSM objectives like electronic transmission moratoria, prohibition of source codes and algorithm transfer requirements, data protection, data localization, digital taxation, etc. In addition to laws and regulations directly affecting digital trade flows, such as electronic transactions and cross-border data transfers, other major areas requiring attention include cross-border retail e-payments, adequate IPR protection for digital content, and provisions for digital taxation to address growing concerns of, on the one hand, leakages of government revenues, and on the other hand, competition among countries to attract investments that might lead to a ‘race to the bottom’. The level of enforceability, however, lies in the negotiations among AU Member States for the reconciliation of sometimes contradicting positions among countries.

Third, despite all the benefits fuelled by digital technologies, there are also several concerns arising from the digitalization process, including market concentration, loss of privacy and security threats, potential negative social and environmental impacts, the digital divide, etc. In addition to traditional trade barriers, regulations on IPR, data flows, and privacy are likely to emerge as new sources of comparative advantage as well as trade barriers in the digital space (WTO 2018). The distributive impact will also be likely to arise with the new business model, with ‘winner-takes-all’ dynamics and new forms of barriers (such as to data flows) (WTO 2018). These are even more challenging to countries whose domestic regulatory framework on digital trade has not been developed. As noted by Haddad (2022), developing countries - and especially LDCs - have rarely been involved in rulemaking on digital trade, and therefore specific concerns relating to their development needs might not have been fully reflected in digital trade talks.

Among the most discussed concerns regarding digital transformation lies the issue of the digital divide³⁶. The World Bank GovTech Maturity Index³⁷ shows that digital inequality in the world is on the rise due to the different paces with which developed versus developing countries are implementing digital transformation (Gutierrez 2022). The lack of adequate infrastructure remains the main impediment to connectivity (World Bank 2020), and thus the capability to capture the benefits of digital transformation and digital trade. Disparities in access and connectivity will amplify existing divides among, as well as within, economies and subsets of society (Portulans Institute 2022, UNESCO 2023, ITU 2021, ITU 2022). Inclusive growth could become harder as digital transformation becomes more pervasive, thereby barring the ability to connect and achieve entry for lower-income groups. In addition to adequate infrastructure, a stable investment and business environment created by an enabling regulatory framework will be crucial.

Lack of awareness and skills to use and benefit from e-commerce is another specific challenge that needs addressing across the continent. As noted by Ciurak and Ptashkina (2018) “the economics of the digital economy also promotes skewing of distributional gains, with skilled workers and connected individuals moving ahead, while others fall behind.” The ITU (2021) points to the divide that exists between countries: while in developed countries, 65 percent of all individuals have basic digital skills and 49 percent have standard skills, these numbers in developing countries are much lower, at 46 percent and 20 percent, respectively. This gap risks further dividing developed and developing countries, as well as skilled and unskilled workforces, in the context of increasing digital trade and digital economy. For bridging skills gaps, education and training play a key role in equipping the workforce with the right set of skills and ensuring that everyone enjoys the benefits of the digital transformation (ILO 2021).

The resulting stratification of the digital transformation also gives rise to other social concerns. For example, as a result of the ability to virtually deliver services (including through Mode 1 – Cross border provision of services),

³⁶ The digital divide is defined as “the unequal access and utility of internet communications technologies and explores how it has the potential to replicate existing social inequalities” (Ragnedda and Muschert 2013).

³⁷ The GovTech Maturity Index (GTMI) introduces a measure of GovTech maturity in four focus areas: supporting core government systems, enhancing service delivery, mainstreaming citizen engagement, and fostering GovTech enablers—to assist the design of new digital transformation initiatives. See World Bank (2022).

there has been a revolution of the so-called ‘gig’ economy. The gig economy has changed the nature of work arrangements by providing flexible employment opportunities. However, the gig economy’s flexibility also involves more precarious work, social and professional isolation and work-life imbalance (Charles *et al.* 2022). It also creates a gap in access to social benefits, such as unemployment insurance and health benefits (Ciuriak and Ptashkina 2018). Furthermore, digitalization requires more advanced digital skills from the workforce, thus it risks excluding unskilled workers. For the most marginalized groups, lack of access to digital infrastructure, digital devices and the internet, coupled with inadequate formal education systems, make it difficult for them to benefit from digitalization progress (Charles *et al.* 2022). In this sense, policy efforts should focus on ensuring the quality of employment for the gig economy - especially for women, young people and marginalized social groups - concerning decent conditions of work (including work hours, occupational safety and health standards, and social security). One example for policy consideration could be the inclusion of the gig workforce into social security systems.

Digitalization, including processes used for trade-related purposes, also triggers various environmental concerns. The distribution, packaging and return of goods are the primary source of carbon emissions directly linked to e-commerce activities. Weideli (2013) calculates that one online shopping process may leave a carbon footprint of 1.5kgCO₂, much lower than traditional shopping. However, a consumer’s shopping behaviours that include both online and offline shopping steps (such as conducting both online search and store visits before making purchasing decisions) are not always environmentally better. Another issue relates to greenhouse gas (GHG) emissions stemming from the production and use of electronic devices that are supporting the expansion of e-commerce. For example, according to Greenpeace (2017), up to 80 percent of GHG emissions resulting from smartphones can be traced back to their production, with 16 percent to customer usage throughout its lifecycle. The production of a single smartphone uses as much energy as the amount needed to charge it for a decade. Furthermore, as the demand for electronic devices increases, concerns have been raised over electronic waste (e-waste). Per the United Nations Global E-waste Monitor Report, in 2019, around 53.6 million tonnes of e-waste were generated globally. The rates of recycling e-waste however differ greatly, from 11.7 percent in Asia to 42.5 percent in Europe (Forti *et al.* 2020). The amount of e-waste is rising at an alarming pace, reaching over 74 million

tonnes in 2023, and projected to reach nearly 110 million tonnes by 2050, with the majority coming from Asia (Parajuly *et al.* 2019). These issues call for policies addressing the efficiency of energy supply and use in the digital economy, the management and recycling of electronic waste, and the overall reduction of emissions.

These potential externalities of digital trade point to the need for a proper policy framework, at both the domestic and regional level, to further positive outcomes and mitigate unintended impacts to ensure distributive outcomes of digital trade and the larger digital transformation. There is a need to balance regulations with facilitation to avoid locking out of the digital market vulnerable groups, such as women, the informal workforce, and small and medium enterprises (SMEs). Policies appealing for increased investments in digital infrastructure should be designed under a sustainable development microscope to ensure healthy competition as well as environment and social consciousness. Lastly, digital skills strengthening will be key to ensuring the organic and sustained growth of the African digital economy.

Digital technologies are unlocking new pathways for rapid economic growth, innovation, job creation and access to services in Africa. However, there are still challenges in implementing the digital transformation. These include strengthening the coordination framework, aligning policies and sector regulation, and the need for a massive scaling-up of investment and dedication of resources. To reap the benefits of digital transformation, abundant, low-cost connectivity is essential, as broadband drives productivity, innovation, and growth. To address these challenges, the AUC and its partners should identify and address barriers to harmonizing laws and regulations, and lobby for necessary reforms that ensure future investment in digital transformation.

Africa is at the junction of heightening digital transformation and regional economic integration waves. This is a good place to build a continental harmonized framework without incurring huge costs of adjustment. However, the complexity in harmonizing Member States' legislation will require substantial efforts and time to become aligned. Therefore, governments should play a role in fully digitalizing to gain trust and acceptance from businesses and citizens alike. In this sense, awareness-raising, education and training will be critical to ensure African citizens are up to speed with the digitalization process. For the benefit of citizens and businesses, a common approach to consumer protection, privacy and cyber security should be adopted. It is also important to ensure competition and cooperation within and across

jurisdictions to ensure a pro-innovation ecosystem. Additionally, an effective and fair taxation system should be achieved to contribute to government revenues while eliminating a 'race to the bottom'. Finally, it is important to consider impacts on jobs, environment, and society.

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Chapter 12

A VIRTUAL REALITY: MAKING A CASE FOR A COMMON AFRICAN MARKET E-RESIDENCY

Michael Kottoh, Richard Adu-Gyamfi, and Edem Adzogenu

Abstract

To accelerate making the transition from a free trade area to a common market, Africa must take advantage of digitization to break new ground especially where low-hanging fruits exist. One such digital low-hanging fruit is the possibility of creating a digital common market through the e-Residency programme to complement operationalization in the material world. E-Residency allows non-resident nationals to access government services and professional services from anywhere in the world such as registering and operating a company and accessing financial and legal services remotely. Even though the idea and practice of e-Residency has not been tried before in any regional economic community worldwide, existing lessons at the country level in Estonia serve as a demonstration effect for Africa. This paper explores possibilities for digitizing the two Rights of the Common African Market (CAM) - the Right to Residence and Right to Establishment - via e-Residency for African citizens. This objective is guided by the following key questions: (i) How might an e-Residency programme work in the context of the CAM? (ii) What could be the possible guiding elements and regulatory frameworks?

Keywords: e-Residency, Regional Integration, Common African Market, Technology Adoption

Introduction

The momentum with which the African Continental Free Trade Area (AfCFTA) came into being gives an indication that Africa partly sees continental integration as a contributing force towards achieving its Agenda 2063 - The Africa We Want. Protocols guiding the AfCFTA are yet to be fully completed for the 1.4 billion-consumer market size. We contend however, that the AfCFTA must be accelerated into a common market.

Recent studies about digitalization and trade echo the need for African policy makers to make digitalization an integral part of continental ambitions. For instance Kere and Zongo (2023) urged policymakers to make room for digitizing information and customs procedures. For business practitioners, digitalization has become a necessity to boost export competitiveness by engaging international trade. Given the arguments above, digitalization could enhance continental integration and consequent economic development.

In a common market, emphasis is placed on free movement and rights to establishment and residence. This requires a much greater degree of political and economic cooperation, complemented with harmonized policies in health and safety, social security, and education among member countries (Wu 2004). Therefore, in transitioning from a free trade area to a common market, there is an opportunity to digitalize the Right to Residence and Right to Establishment via e-Residency for African citizens.

What is e-Residency?

The term e-Residency refers to a government-backed digital identity that allows non-resident nationals to access government services and other market services from anywhere in the world (Blue 2021, Prause 2016). A number of countries offer e-government services to non-nationals. For instance, Seychelles operates the digital nomad system³⁸ and Azerbaijan operates the e-Residency and mobile residency systems³⁹. The most popular extant e-Residency programme worldwide is the e-Residency programme of Estonia - introduced in 2014 and allowing non-residents to register, own and operate a company in Estonia, as well as utilize services such as banking and financial transactions, and legal and tax services. By February 2023, Estonia had over 100,000 e-Residents from 176 countries. Given its popularity, this paper will

³⁸ <https://www.sovspot.com/blog/seychelles-digital-nomad-visa/> accessed 23 May 2023

³⁹ https://www.eeas.europa.eu/node/52823_en accessed on 23 May 2023

focus on Estonia as the primary case study to throw light on the concept and practice, and draw lessons for possible adoption under the Common African Market (CAM).

The Problem

A review of existing models and literature on e-Residency shows that they are, at best, concepts that have not been widely tried and tested at the regional or continental level. Rather, the concept has gained popularity at the country level, especially in Estonia. Tammpuu *et al.* (2022) examined the perception of e-residents of Estonia towards the concept of e-Residency from an individual-state relationship. Research by Blue (2021) revealed that the introduction of e-Residency in Estonia in 2014 has attracted freelancers and entrepreneurs worldwide to the country's state-projected value and beliefs. Uljala and Scupola (2018) investigated the attributes of e-Residency that facilitate or hinder its adoption for virtual entrepreneurship under the lens of technology. Prause (2016) addressed how the concept of e-residency may facilitate industry 4.0 and entrepreneurship benefits for companies using the e-Residency platform in Estonia. Kotka *et al.* (2016) outlined the benefits, risks and lessons learned from the Estonian e-Residency experience.

The aforementioned studies throw light onto the workings of e-Residency from the individual, industry and country levels. While these illuminate our understanding, they fall short in enriching our standing as to how e-Residency could complement regional or continental integration ambitions. In Africa, a continental e-Residency programme at the level of a common market can arguably grant natural and legal persons access to digitally operate across Africa without being physically present in the country. Thus, it could be used as a tool to digitalize the two Rights of CAM - the Right to Residence and Right to Establishment.

In the case of Estonia, the most recent available statistics show that e-Residency generated over €100 million in direct economic benefits over its initial eight-year period - with over 100,000 e-residents from 176 countries since 2014, and over 25,000 Estonian companies registered online by e-Residents⁴⁰. The lessons from Estonia may inform policymakers in the African context. This chapter addresses two questions: (i) How might an e-Residency programme work in the context of the CAM? (ii) What could be the possible

⁴⁰ Facts about the success can be found at <https://e-estonia.com/wp-content/uploads/factsheet-e-residency-feb2023.pdf>

guiding elements and regulatory frameworks? In this way, we enter previously uncharted terrain to develop a preliminary framework that will initiate the discussion about e-Residency in Africa in support of the AfCFTA. E-government practitioners and services providers may find this paper useful and draw insights to guide decision-making.

The Case for a Common African Market e-Residency

The case for an e-Residency programme as part of the CAM rests on several arguments. The relatively slow pace of progress on visa-free intra-Africa movement, coupled with minimal interest by State Parties in ratifying the AU Protocol on Free Movement of Persons (FMP), show the difficulties in implementing Rights to Residence and Establishment in Africa. As of now, only four countries out of 54 Member States have ratified the FMP. Hirsch (2021) explains that the hesitancy of African countries to commit to the FMP Protocol relates to the assumption that Member States may have to relinquish sovereignty on matters concerning the movement of people and its implementation process. Furthermore, Member States may be of the notion that ratification of the Protocol could translate into the immediate implementation of phase one, the right of entry and abolition of visa requirements. There are also national security issues relating to visitors overstaying any temporary residency granted, coupled with the potential influx of criminals with consequent increases in domestic problems and fraud. Though these concerns are valid, lessons from the implementation process of the AfCFTA teach us that it would require adequate time to get the ratified Protocol implemented. An e-Residency programme thus represents a potential opportunity that can allay the fears of Member States against matters of sovereignty. Member States will still be in charge of issuing e-Residency based on a common agreed continental framework. Their participation will be an exercise of sovereignty rather than partly relinquishing it. E-Residency may thus be easier to implement as it avoids many of the implementation challenges of physical residency and accompanying security issues. Therefore, it might be relatively easier to get Member States to ratify and implement an e-Residency programme as a first step, than it would be to ratify and implement fully-fledged Rights to Residence and Establishment.

For a continent with the largest youth population, continental e-Residency provides an opportunity to tap into the digital savvy and tech enthusiasm of African youth. The recent emergence of remote and virtual work practices since the COVID -19 pandemic presents an important opportunity to introduce

and implement e-Residency and make the concept easily relatable to key stakeholders such as governments, legislators, regulators, and citizens. A CAM e-Residency presents an opportunity to speed up Africa's digitalization agenda.

What Might an Africa e-Residency Programme Actually Look Like?

An African e-Residency programme must take inspiration from real world examples such as Estonia, but it must also be contextualized for the African situation, address the complexity of the multi-jurisdictional context, account for the diverse levels of digital maturity in different jurisdictions, and accommodate currently low levels of e-government services. In that sense, an African programme and its implementation will be a more complex version of existing models like Estonia, and will also need to incorporate new dimensions and break new ground that the Estonia model has not yet touched. Nonetheless, we can imagine the essential features and functionalities of an African e-Residency programme. We outline these below.

1. An African e-Residency programme can be described as an African Union-promoted, government-backed identity system (issued by an AfCFTA State Party), and a multilateral digital passport (recognized by the African Union and RECs) that enables African nationals to apply for and be granted e-Resident status in another State Party. For example, a Zambian citizen who lives in Lusaka can also become an e-Resident of Rwanda without having to physically relocate to Rwanda.
2. Under the programme, the e-Resident can benefit from a category of services in Rwanda that can be electronically accessed from Zambia. These may include: company formation and operation of a business, opening a bank account and accessing banking services, payment services, taxation services, and other contracting, legal and professional services (as is the case with Estonia).
3. Implementing countries will be at liberty to decide what layers of benefit and services an e-Resident may qualify to access. Therefore, there will not be a set of benefits cast in stone under an e-Resident status.

4. No Right of physical entry: e-Resident status may not automatically qualify a person with right of entry into the country where they are e-Resident. As the name implies, this is an electronic virtual resident status, not a physical one.
5. Immigration opportunities: While an e-Resident status may not grant the right of automatic entry, participating countries may choose to elevate their e-Residency offering by linking it to travel and immigration opportunities as they deem fit. For example, a country can decide that all of its e-Residents will have automatic visa-free entry, or fee-free visa on arrival, or privileges relating to accelerated immigration application processing.
6. Under a CAM, the e-Residency programme will not aim to replace the traditional two Rights of Residence and Establishment. Instead, e-Residency would aim to provide a virtual / pilot version while countries work on implementing traditional modalities for the two Rights.

Charting a Model for CAM e-Residency

The literature reviewed and the case of Estonia serve as a guide in charting a model for CAM e-Residency. Thus, for CAM e-Residency to work, three key elements must be present, which we label as supply-side elements, demand-side elements and an enabling regulatory framework. Figure 27 below illustrates a model for e-Residency.

Figure 27: A Model for CAM e-Residency

Source: Authors' own construct

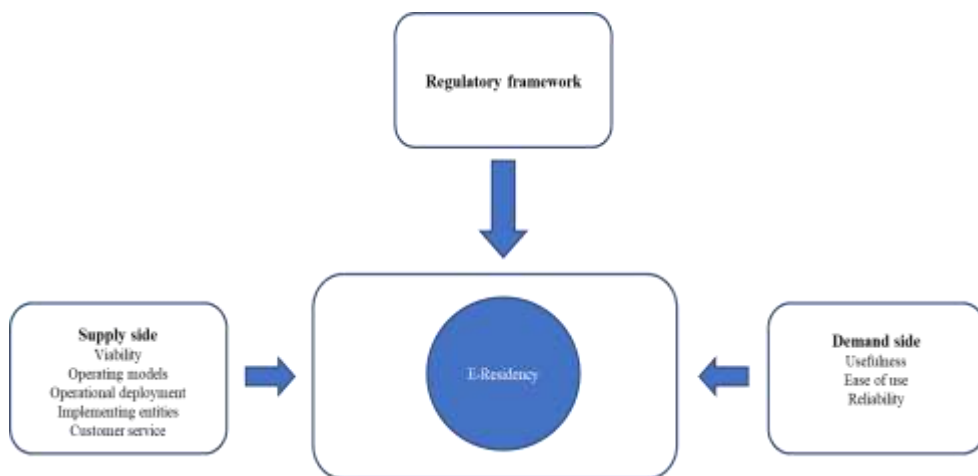
Supply-Side Elements

These constitute all the elements required to be in place before and during the operationalization of the e-Residency programme. We contend that for the supply side of e-Residency to be viable, there should be operating models, operational deployment, implementing entities and a dedicated customer service.

Operating Model

The components of the e-Residency programme must work together to fit in the overall ambition of the African we want. Specifically, the value proposition of the programme must address the pain points of the user. This means that the operating model must be user-driven and take the views and interests of users into consideration. For instance, co-creating the operating model with the e-Residency user will increase inclusive participation. It should also empower the implementing entities to execute the delivery of the e-Residency programme.

Operational Deployment



By operational deployment, we mean resources harnessed to initiate and deliver the e-Residency programme. The e-Residency scheme must be executed with the right logistics, which must include high-speed internet and fully digitalized information technology infrastructure for effective action. This must be followed with a delivery system that is punctual and timely. The deployment may be carried at the national, regional or continental level. On whatever level, service provision and delivery must follow a common pattern and be streamlined to avoid unnecessary complexities that may deter the user from pursuing the e-Residency programme.

Implementing Entities

National, regional and continental bodies shall constitute the implementing entities. This also means that e-Residency may be applied for via a designated entity at any national, regional and continental level. The entities providing e-Residency must exhibit competency and know-how acquired through targeted trainings for the purposes of providing services centred on the e-Residency programme. In other words, the work of the trained implementing entity must be allowed to carry on for a minimum of five years. This will be enough time to train a new group that may join or take over from initially assigned personnel. In relation to this, the implementing entities must produce a digital knowledge management manual to guide new service-providing personnel of the e-Residency programme. A stable implementing entity, whether at the national, regional or continental level, has the strong tendency to sustain the supply side of the e-Residency programme.

Dedicated Customer Service

Dedicated customer service for the e-Residency programme ensures commitment and boosts the morale of the user, whether as an applicant or an e-Resident. Dedicated customer service must also address any challenges that the user faces, and follow up to capture whether the service provided was effective. Such customer service must also be fully digital and around the clock to gain customer trust.

Viability

The e-Residency programme must be able to work successfully with minimal challenges. That is to say that the operating model, operational deployment, implementing entities and customer service must address every possible pain point of the user. As usefulness relates to the user's perception of the e-Residency programme fulfilling its purpose, viability relates to the success of the programme seen from the eyes of the service provider. From this standpoint, the success of the e-Residency may rest in both the supplier and the user.

Demand-Side Elements

The demand-side elements reflect those that users are most likely to consider before they decide to patronize the e-Residency programme. We argue that for the user to appreciate and be moved to apply for the e-residency programme,

they must perceive its usefulness, ease and reliability. These may guarantee the sustainability of the programme from the demand side.

Perceived Usefulness

Davis (1989) defines perceived usefulness as “the degree to which a person believes that using a particular system would enhance his or her job performance.” The author outlines ten items that should help to determine what constitutes perceived usefulness. In the context of the e-residency programme, we provide three of the items to emphasize their core importance. First, the e-Residency programme must be effective. That is to say, it must fulfil the purpose for which it was intended. Second, the user must come to realize that signing up for the e-residency programme is critical to their job. Third, it must facilitate better job performance for the user. Thus, natural and legal persons that utilize e-Residency must see an improvement in their business or in their public life. We are of the view that when these three items are present, users of the e-Residency programme will be able to perceive its usefulness and patronize it.

Ease of Use

Davis (1989) outlines ten items to guide our understanding in capturing the ease of use. Three of these items have been selected as those the user may wish to experience before patronizing the e-Residency programme. First, e-Residency should not be cumbersome. The application process leading to its issuance must be simplified to sustain the interest of the user. Second, it must not be frustrating. The process should run smoothly, avoiding delays and hidden costs. Third, the user must fully understand the e-Residency programme within a short period. When these items are present, the likelihood of patronizing the e-Residency programme may increase.

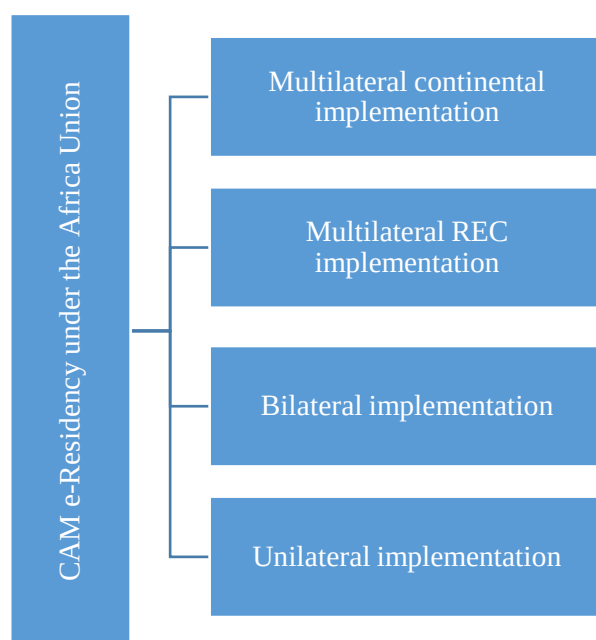
Reliability

Reliability is also an issue of trustworthiness. A reliable e-Residency programme means that any African from any part of the world can apply and be granted the same services and opportunities as another user from another part of the world. The level of accuracy must be highly predictable, and any variation in application should be minimal. When users for which the e-residency is intended receive the assurance that they will not be discriminated against due to the reliable nature of the programme, there will be increased confidence in the use of the e-Residency programme.

Regulatory Framework

We envisage four possible levels of regulatory adoption and deployment. Given the complexity involved in rolling out an e-Residency programme at the continental level, the African Union should create a continental policy and regulatory framework that could guide unilateral, bilateral and multinational implementation of CAM e-Residency. See Figure 28 below, which proposes an AU-led process to develop a continental model framework for e-Residency as a core pillar of the CAM. The continental framework will avoid imposing a top-down blanket implementation binding on all ratifying states. Instead, the continental framework will provide a multi-layered arrangement where states will opt into the programme based on a menu of bottom-up implementation modules that states will be at liberty to choose as they deem fit.

Figure 28: CAM e-Residency under the African Union



Source: Authors' own construct

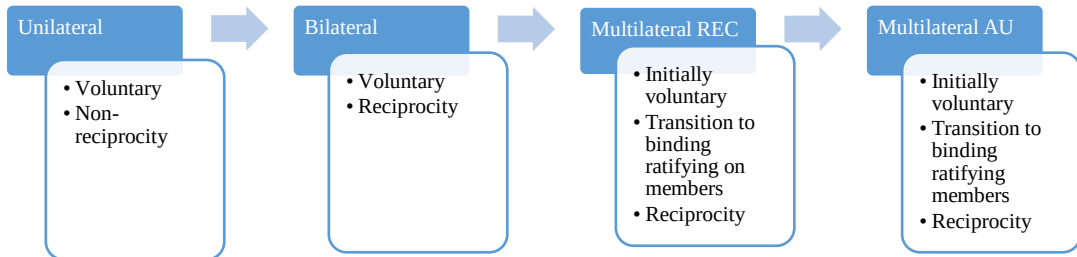
Once the continental framework is developed, countries are at liberty to opt into a voluntary implementation, under the rules of engagement enacted in the

continental framework (see Figure 29 below). We propose the following multi-layered modules for implementation.

- **Unilateral implementation** – State level:
 - Where a country can proceed to start implementation unilaterally and issue e-Residency cards to other African countries' nationals under the AU continental framework.
- **Bilateral implementation** – State level Government to Government (G2G)
 - Where any two African countries can decide to enter a bilateral implementation of the AU continental framework by mutually recognizing e-Residency issued to each other's nationals.
- **Multilateral implementation** – Regional Economic Community (REC) level
 - Where Member States of a REC decide to multilaterally implement the AU continental framework and mutually recognize e-Residency for citizens of the REC. This may also involve inter-REC arrangements.
- **Multilateral implementation** – African Union level
 - Where the continent as a whole implements a pan-African e-Residency programme that is mutually recognized by all ratifying states.

The beauty of the proposed continental framework is that it will be crafted such that it makes provisions for regulations and rules of engagement under which states and RECs may opt into any of the above implementation modules. This flexibility and freedom of choice of module will constitute the core strength of the proposed continental arrangement. Not only will Member States and RECs be at liberty to choose the modules they prefer, within the framework, Member States and RECs will also have the freedom to design their specific operating models as they see fit. Due to practical considerations, any attempt to execute an AU-level multilateral implementation will run into the typical challenges of continental treaty implementation that have saddled many of the existing continental agreements. It is for this reason that the above bottom-up approach is proposed. Nonetheless, the door should not be shut on the possibilities of a top-down AU-level implementation. Indeed, our proposal is that all three modules should be promoted simultaneously, although we place greater emphasis on state-level and then REC-level implementation as the more feasible entry points.

Figure 29: Multi-Layered Modules for Implementing CAM e-Residency



Source: Authors' own construct

Conclusion and Topics for Future Research and Deliberation

It is possible to digitize the two Rights of the CAM - the Right to Residence and Right to Establishment - via e-Residency for African citizens. Rather than providing an exhaustive treatment of the subject, the goal of this piece was to kick-start a discussion on the topic by suggesting a preliminary conceptual model that emphasizes three main critical success elements for an e-Residency programme: regulatory frameworks, supply-side and demand-side elements.

Since this is a preliminary overview, several unaddressed issues should be taken up by future research and deliberation including the following:

- **Supply-side issues:** how to make e-Residency work successfully in the context of existing low levels of e-government services across the continent; how to design actual e-Residency use-cases and offerings that are of practical benefits to e-Residents in the African context; how countries can craft strong value-propositions for their e-Residency offerings; how to structure interoperability of e-Residency platforms across jurisdictions; types of data privacy requirements and regimes to operate e-Residency; how to price e-Residency services; technical operating guidelines for e-Residency implementation.
- **Demand-side issues:** there will be a need for a demand-side survey of African nationals regarding perceptions and expectations of African e-Residency to inform the process for the design of supply-side and regulatory models.

- **Regulatory issues:** key topics and themes for future consideration include the legal foundations of e-Residency in a pan-African context; the relationship between e-Residency and existing company law regimes; dispute resolution frameworks under a pan-African e-Residency scheme; data privacy regulations; how to loop e-Residency into immigration systems such as visa-free travel; how to integrate e-Residency into the AU FMP Protocol.

It is our hope that this paper will trigger a flourishing of numerous discussions, ideas, debates, research, and prototypes, leading to regulatory agreements, treaties, pilots and eventual implementation. We propose the establishment of a multi-stakeholder ***AU e-Residency Programme Working Group*** to steer this process. For such a working group, one immediate task may consider how the e-Residency programme would interface with other relevant instruments such as the AfCFTA Protocol on Trade in Services, and more broadly, the two existing frameworks on migration: the African Common Position on Migration and Development (ACPM), and the Migration Policy Framework for Africa (MPFA). The latter two are particularly important given that currently, regulated migration in Africa can only be undertaken within these two frameworks, yet they are not binding on AU Member States. Similarly, the working group may also consider how the proposed e-Residency programme can address implementation challenges that arise based on bilateral and multilateral arrangements for the movement of people across borders. Virtually all RECs (including CEN-SAD and IGAD) have such arrangements with teething challenges that need to be addressed.

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Chapter 13

THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN PROMOTING INNOVATION, CREATIVITY AND TRADE WITHIN THE AFRICAN CONTINENTAL FREE TRADE AREA

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Abstract

Creativity and innovation are the drivers of the knowledge economy. The creative and cultural industries in Africa generated approximately US \$ 4.2 billion in 2021. The level of innovation within the continent is relatively low, however, there are several countries that have performed above expectation, relative to their level of development in Africa. This may be attributed to among other things, the intellectual property legal and institutional framework. There is a huge opportunity for regional trade in Intellectual Property goods and services within the AfCFTA. Protection and enforcement of intellectual property rights are important components of creativity and innovation especially in the context of the AfCFTA. Most countries, in Africa have national laws and are party to international treaties on intellectual property. However, due lack of a continental regional instrument, the existing fragmented legal framework may create barriers in the context of the AfCFTA. The Protocol on Intellectual Property provides the basis for cooperation among State Parties. This chapter focuses on the role of intellectual property rights in promoting creativity and innovation for purposes of trade within the context of the AfCFTA.

Key words: Innovation, Creativity, Intellectual Property, Trade

Introduction

“Intellectual Property is just one mechanism among many bringing about development. It should be used to support and enhance legitimate economic aspirations of all developing countries, especially in the development of their productive forces, comprising both human and natural resources. Intellectual Property should therefore be complimentary and not detrimental to individual national efforts at development by becoming a veritable tool for economic growth” (WIPO)

Goods and services as well as intangible assets such as intellectual property form a continuum that complement each other. Intellectual property is one of the core elements in global trade and development. Common markets such as the European Union, in addition to the free movement of goods, persons, services, capital as well as the right of establishment and right of residence, include intellectual property rights as core elements of trade at regional level. Protection, and enforcement of intellectual property rights is a key component for intra African trade within the framework of the African Continental Free Trade Area (AfCFTA). The AfCFTA recognises the importance of intellectual property. Article 4 (c) of the Agreement Establishing the AfCFTA provides for the cooperation by State Parties on *inter alia*, intellectual property rights. It further provides, under Article 7 for the Phase II negotiations which led to the adoption of the AfCFTA Protocol on Intellectual Property Rights in January 2023.

Intellectual property does not exist in a vacuum. Article 3 of The AfCFTA, seeks to among other things, enable a single market for services and goods, in line with Africa Union Agenda 2063, creation of a liberalised market, and promotion of industrial development. These can be achieved through a balanced and robust intellectual property regime that fosters innovation and creativity for trade and development. Protection and enforcement of intellectual property rights stimulates development and distribution of new products and services based on creativity and innovation. Exploitation of innovations through intangible property such as creative works and inventions provides intellectual capital for use in local trade, cross-border trade, and international trade. Intellectual capital contributes to the knowledge economy that is the driver of the 4th Industrial Revolution.

Several countries in Africa rely on value addition, technology transfer and setting up labour intensive industries which make them major consumer of goods and services from developed countries. A strong policy framework will spur industrial development through the ambitious *moonshot* approach which requires creation of new industries that rely on the knowledge economy, and creation of intellectual capital. (Cherif, R. Hassanov, F. 2019)

This chapter analysed the role of intellectual property in fostering innovation and creativity to facilitate intra-African trade within the AfCFTA. It framed intellectual property rights within the framework of the AfCFTA common market in light of national and international norms on intellectual property protection as well as trade related aspects of intellectual property.

Theoretical Perspectives

The co- relation between intellectual property and innovation and creativity may be attributed to the two main categories for justification of the protection of IPRs. On the one hand, there is the incentive/reward theory which postulates that intellectual property is necessary as it provides an incentive for creativity and innovation. It is seen to induce or encourage desirable activities. For instance, in the case of patent systems, IPR protection provides an incentive for the inventor to invest in research that will lead to development of new products. Through the patent system, the inventor is granted exclusive rights to exploit the patent for a specified period in return for disclosure of patent information, opening it up to third parties at a consideration. In the case of copyright, the author is granted the exclusive rights to authorise or prohibit the use of the copyright works for a limited period of time, subject to certain limitations and exceptions. The author or rights holder is entitled to compensation for the use of the works by third parties.

The economic theory, which is closely related but distinct argues that protection granted allows for optimal exploitation of intangible artifacts that have been transformed into property rights (Bently 2014). Thus patents, recognise and reward the inventors by providing an economic return for their work and revenues. For instance, in the case of a research institution it may be used to finance further research and development for the benefit of the society. Patent protection makes a work attractive to investment such as venture capital that will enhance the tradeable product and/or service. Copyright is seen to provide an incentive for authors to create or continue to create to the best of

their ability. The incentive/reward theory provides a suitable rationale for protection of patents, utility models (petty patents), industrial designs and copyright and related rights.

On the other hand, the natural rights theory that offers protection by dint of the natural or human rights over the products of one's labour as the works are seen as an extension of the persona as in the case of copyright and related rights. The creator/inventor is thus entitled to a reward for his labour. This also prevents the unjust enrichment by third parties for instance in the case of trade marks or geographical indications, where the unauthorised use of the trade mark or geographical indication would benefit the non IPR holder in the course of trade. (Bently 2014). The natural rights theory provides the rationale for protection granted in the case of trademarks, collective marks, and geographical indications.

Intellectual property is a catalyst for innovation and creativity as it provides incentives to innovators and creators for the benefit of society. Although the chapter uses the terms innovation and creativity together, they cannot be used interchangeable especially in the case of intellectual property. The following paragraphs shall provide a brief discussion on the two separately.

Innovation

IPRs are the backbone of the innovation eco-system and source of innovations, which results in new products to grow economies. Economies grow faster through new industries, rather than just through value addition. The incorporation of IPRs in the innovation policy at continental level seeks to improve the common market functions as well as introduce options for innovation at the national level for the benefit of the State Parties (Van Genugten, W. Meijknecht, A. 2011).

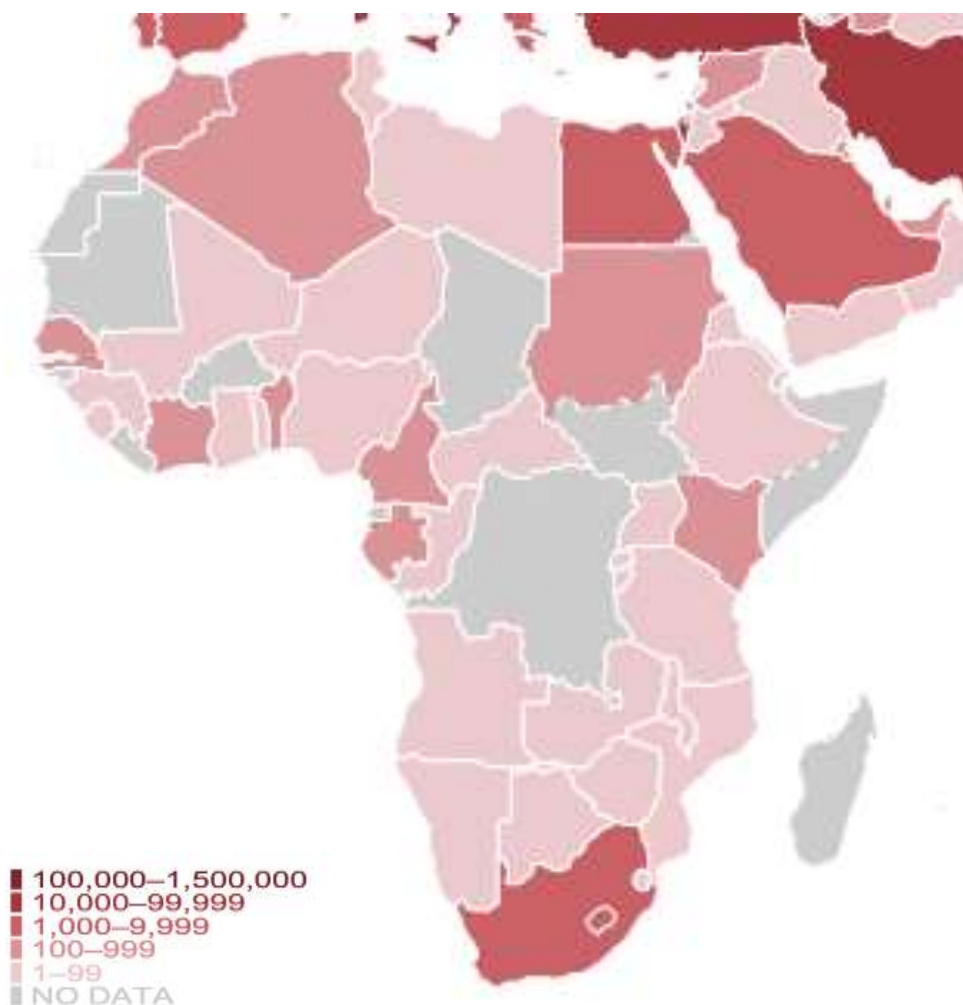
The African Union Science, Technology, and Innovation Strategy for Africa (STISA-2024) anchors science, technology, and innovation (STI) at the centre of socio-economic development for the continent (AU). The strategy has six priority areas namely: Eradication of Hunger and Achieving Food Security; Prevention and Control of diseases; Communication; Protection of our Space; Wealth Creation and Live Together – Build Society. These are buttressed by four pillars: building and or upgrading infrastructure; enhancing professional and technical competencies, promoting entrepreneurship and innovation, and

providing an enabling environment for STI development in Africa. (AU). The STISA -2024 mission is to “*Accelerate Africa’s transition to an innovation-led, Knowledge based economy.*” This will require sustained investment in the knowledge economy for tangible trade outputs in agriculture, clean energy, education, health, manufacturing harnessing intellectual property in science, research, and technology.

Innovation, according to the Oslo Manual is defined to include any new or improved product or process or combination thereof that significantly differs from previous products or processes which have been made available to potential users of the product or process. (OECD 2018).

Innovation in most instances, is linked to the level of patent applications and grant of patents. The figure below shows the number of patent applications in Africa in 2019. It is notable that less than 10 000 patent applications were made in Africa in 2019. This does not mean that the level of innovation in Africa is low. Innovation is not restricted to industrial property such as patents and trademarks but can also be used in the context of traditional knowledge. Juma and Ojwang (1989) were of the opinion that *there should be a new regime of intellectual property rights, which takes into account the unique national needs, regional co-operation, and international competitiveness to cover traditional technologies, intermediate innovations, inventions, and other products of innovative activity.* This is due to the fact that the conventional ways of measuring innovation as per the OECD definition do not take cognisance some of the formal, informal, or mixed formal and informal modes of innovation and creativity in Africa. (De Beer 2014)

Equivalent Patent Applications by Origin 2019



Source: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2020.pdf

It is important to note that innovation is not necessarily linked to technology and patents. It is the process of developing a valuable new process and introducing the same to the market. This may include the formulation of an idea that will result in a new product or process. (Drucker 1985). Innovation

may be technological which will typically be covered by patents, utility models, industrial designs, plant breeder's rights, trade-secrets, or unfair competition and more recently. Cultural innovation would cover creative and cultural industries, although these may also be covered by technological innovations. Commercial or business innovation involves placing a product or service in the market and would cover trademarks, industrial designs, and geographical indications. (Sihanya 2016).

The WIPO Global Innovation Index (GII) 2022, covers the different parameters of innovation. The highest-ranking African Country is Mauritius which ranked 45. Mauritius performed well in market sophistication, institutions, and creative outputs. The intellectual property receipts were equivalent to 0.8 million USD up by 3% in the previous year. High tech exports amounted to 20,1 million USD, while the cultural and creative services exports were equal to 41.7 million USD. The intangible asset intensity was equal to 44.6 % of the total value and the brands were Lighthouse Properties, Alphamin Resources and Phoenix Beverages. High tech manufacturing was equal to 3.8% of the manufacturing output.

The second ranking country in the GII is South Africa which is ranked 61 globally and has invested and made notable achievements in market sophistication, knowledge and technology outputs and creative outputs. Intellectual property receipts were equal to 98 million USD, high tech manufacturing was equal to 20.9% of manufacturing with 542 patents by origin. High-tech exports amounted to 1.8 billion USD The intangible asset intensity 63.6% of the total value in 2021 with the top brands being Naspers, Firststrand, Capitec Bank. Global Brand value was equal to 35.2 billion USD with Global brands such as MTN, Vodacom and Standard Bank. The Cultural exports amounted to 151.8 million USD

Morocco comes in third with a global ranking of 67 and has made significant achievements in high technology sectors, human capital, market sophistication and creative output. Intellectual Property receipts were equivalent to 10.4 million USD, while high-tech manufacturing was equal to 42.8% of manufacturing. Patents by origin were equal to 250. The High-tech exports were equal to 0.9 bn USD and the intangible asset was equal to 65.1% of the total value and the top firms include Itisalat Al-Maghrib, Attijariwafa Bank and Lafargeholcin Maroc. The Global brand value was 2.2 billion USD with global brands such as Maroc Telcom, Banque Populaire du Morac, and

Attijariwafa Bank The cultural and creative services exports were 176.9 million USD.

The fourth country is Tunisia which is ranked 73 globally and has invested and made significant achievements in human capital, research, stem education and technology. It has 180 patents by origin, and high-tech manufacturing accounts for 24.3 % of manufacturing. Intellectual property receipts amount to 22.5 million USD and High-tech exports equal to 0.8 billion USD. Th intangible asset intensity was equal to 44.9 % of the total value in 2021 with forms such as Poulina Group, Banque De Tunise and Society D'Articles Hygienique. Cultural and creative services exports was equal to 2.2 million USD.

Botswana is fifth with a global ranking of 86. Significant investment and achievements are in education, new businesses, Intellectual Property Payments (royalties) and micro credit. The patent output was 3 and intellectual property receipts amounting to 0.4 million USD. The high-tech exports were 16.3 million USD and intangible asset intensity of 16.8% of the total value in 2021. With brands such as ABSA Bank Botswana, Botswana Insurance, and Secheba Breweries. The common thread among the above five countries is that they have in place up to date intellectual property laws and have put in place the relevant institutions and systems in place to facilitate the registration of intellectual property.

The top brands in the five countries enjoy IP Protection under trade and service marks and these allow them to trade across the borders using the said brands. The AfCFTA provides for protection of Trade and Service marks under Article 10. Given the territorial nature of trade and service marks it is important to have a harmonised framework that will allow the trade and use of these marks within the common market.

Innovation is a cross cutting issue when it comes to intellectual property. Mobihealth in Nigeria is an example of how creative sector technologies can be harnessed for other IPR sectors. It has set up kiosk to provide primary healthcare by deploying virtual reality to the underserved population. (AfDB,2022). Development and use of mobile application in different sectors of the economy such as agriculture, transport, healthcare, and education continue to grow.

Creativity

Creativity refers to the use of new and imaginative ideas to come up with something new or generate new solutions. The creative and cultural industries (CCI) which are part of the creative economy or orange economy are dynamic and with the continuous advances in technology have the potential to contribute to socio-economic development in Africa. These industries have grown exponentially in the recent past and have a global appeal. (UNCTAD 2022).

The creative economy consists of the core creative industries, (CCIs) including music, film, software, visual arts, video games, fashion, books, computer graphics, computer generated imagery (CGI), architecture and design, performing arts, and broadcasting. The second category within the creative ecosystem are the interdependent copyright industries. These according to the WIPO Guide (2003) are those that are engaged in production, manufacture, and sale of equipment solely for manufacture, production of copyright protected works. Their existence is dependent on the existence of the core creative industries, and these include manufacture, wholesale, and retail of media for creative works, musical instruments, and photographic equipment. The third category are the partial creative industries which only a specific part of their production is associated with core copyright protected products. Examples include fashion accessories, furniture, footwear, and apparel. The non-dedicated industries support a portion of the activities that are related to the core copyright industries. These include the general wholesale, transport, and communication technologies. These facilitate the creation of employment, trade in core, partial, non-dedicated and interdependent creative industries which can be traded within the common market.

“Africa has all the human and economic resources, and all the energies and talent to shape its own destiny. It may take time, but it does not matter—the movement has begun, and a thousand creative fires are already smouldering. A torrent of images, narratives, and stories that nothing can suppress is about to flow. Africa will inevitably soon get into its stride and pick up steam” (Kaboré G 2007)

The creative and cultural industries (CCI) In Africa generate over US\$ 4.2 billion in revenue with an incredible growth rate. This growth rate outpaces the growth in other sectors across the continent. According to the UN CCI

2020, Report, the sector employs about 5 million people and accounts for US\$ 5 billion in Gross Domestic Product. To spur trade within the AfCFTA Common market, the State parties must make a conscious effort to protect and facilitate the creative economy. To understand the importance of intellectual property in the creative economy, the chapter focused on specific industries in namely, music, film, software, animation, visual arts, photography and content creation and book publishing. Globally, according to UNCTAD (2020), the market for creative products and services grew and between 2010 and 2020, a span of 10 years, the global exports for creative goods rose to USD 524 billion from USD 419 billion. This also had an impact of services that depend on copyright such as advertising, market research and others rose from USD 487 million to USD 1.1 billion.

Use of technology is an integral part of the creative economy and innovative ideas push the industry beyond limits to new frontiers. Examples are Africare, the first South African metaverse, which includes a market place for non-fungible tokens. (AfDB 2022). These technological advances, such as 3D, artificial Intelligence, augmented virtual reality, internet of things applied to the creative industries will continue to accelerate growth and economic development as drivers to the 4th Industrial revolution. The State Parties of the AfCFTA have not taken full advantage of the opportunities created within the creative sector to grow trade within the common market. The IPR Protocol should provide the necessary regulatory framework.

Intellectual Property

Intellectual property refers to the product of the mind and includes industrial property: patents, trademarks, utility models, industrial designs, geographical indications on the one hand and copyright and related rights on the other.

It creates exclusive rights for the exploitation of creative works such as films, paintings, broadcasts, online content in the case of copyright and related rights. Trade marks protect the distinctive and creative signs or words that are applied to goods or services to distinguish them from those one's competitors. The protected marks can be used for licensing and franchising goods and services. In addition, patents rights granted allow the patent holder the right to exploit the product or process for a specific period to the exclusion of all other parties. The rights holder can also grant licences and collect royalties from third parties

who wish to exploit the work at a consideration (Bently L. and Sherman.B 2014).

Intellectual property also includes protection of plant varieties, geographical indications and more recently, traditional knowledge, traditional cultural expressions, and genetic resources. Intellectual property is intricately related to innovation, trade, industrial and economic development and facilitate the stimulation of industrial and commercial growth for economies.

For intellectual property rights to provide incentives for innovation and creativity, they should be calibrated to the level of development of a country, taking into account the available skills, capital, information, and markets. It is important to consider the role of each intellectual property right in the social and economic development of each country. This may involve technology transfer including through licensing of patents etc. (Correa 2007).

Protection of intellectual property rights is territorial. There are international laws and Agreements that are administered by the World intellectual Property Organisation and the World Trade Organisation, which provide the minimum standards for Member States. For the purpose of this chapter, the focus shall be on intellectual property and trade. WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement provides for the minimum standards for the protection copyright, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets).

The TRIPS Agreement recognised that there were several trade related aspects that needed to be enforced across the board for the rights holders to benefit. It made it compulsory for the WTO Member States to meet the minimum standards. This opened up trade in intellectual property goods and services globally.

The IPR Protocol takes cognisance of the fact that anti-competitive practices in the administration of IPRs can result in unreasonable trade practices that may adversely impact trade within the common market or affect technology transfer to rights holders. (Article 4(h)).

Compulsory licensing is another area that is covered under Article 27 of the TRIPs Agreement. The AfCFTA IPR Protocol (IPR Protocol) does not make provisions for compulsory licensing in the main text, and this may be considered in the annexes to the Protocol. Compulsory licensing is important

especially in relation to access to medicine as well as access to knowledge. It allows the government or other authorised entity to grant a mandatory licence for the exploitation of a patent or a copyright protected work. (Sykei J, Shah, S 2020). With the licence, the licensee can exploit a patent within the AfCFTA given that exhaustion is regional. This facilitates movement of products such as pharmaceuticals enhancing trade and development. It also creates opportunities for employment within the manufacturing sector as well as the distribution chain.

On the issue of exhaustion of rights, Article 6 of TRIPs allows Member States to choose their own regimes for exhaustion of rights. Article 7 of the IPR Protocol allows for regional exhaustion of rights, which facilitates intra African trade within the AfCFTA common market. This means that once legitimate goods are placed in the market of one of the State Parties, the same can be traded within the common area. For instance, KETAPA (Trademark) Tea, a product of Kenya, once the said product has been put in the market in Kenya, a third party may buy the same from the open market and sell it in Ghana. This allows for movement of goods and services without the attendant IPR restrictions. Parallel importation within the AfCFTA is permitted.

Geographical indications (GIs) have for a long time been the preserve of wines and spirits. The TRIPs Agreement provides for higher protection for wines and spirits and basic protection for other GIs. There are various products that may be considered for GI protection and used in the course of trade, and these include the following: Penja Pepper from Cameroon, which is protected as a geographical indication. This pepper is highly sought after by high end chefs and is a commodity that is traded within the common market. Other examples include Argan oil from Morocco, Roiboos tea from South Africa, Mananara Vanilla from Madagascar, Sweet Potato from Gabon, Mafeya Pineapple from Guinea, Atcheke from Ivory Coast and Kericho tea from Kenya to name a few. The IPR Protocol provides for the protection of GIs through a sui generis system.

Regarding the protection of products developed from genetic resources and traditional knowledge, WTO and WIPO have discussed related issues for many years. The AfCFTA provides for protection of traditional knowledge, traditional cultural expression, and genetic resources. Article 20 requires applicants for all categories of IPRs who seek to use genetic resources and traditional knowledge to develop products to provide information on source, have proof of prior informed consent, proof of fair and equitable benefit

sharing. This is important for trade in goods derived from genetic resources and traditional knowledge within the AfCFTA.

Counterfeiting and piracy have a negative impact on trade in intellectual property products and services. Counterfeiting is the unauthorised use of a trade mark(s) which is identical to the validly registered trade mark and this incurs any goods, including packaging that infringes upon the rights of the trademark owner. Piracy, on the other hand is the unauthorised commercial exploitation of copyright protected works. The high levels of counterfeiting and piracy are attributed to lack or limited enforcement mechanisms. Part III of the TRIPS Agreement provides for a raft of enforcement measures that include general obligations of Member States, Procedures and remedies, provisional measures, border measures and criminal procedures. It should be noted that given that the trade under the AfCFTA is regional, and the AfCFTA Protocol on IP seeks to provide measures on protection and of IP by the State Parties do not create non-tariff barriers and will facilitate trade. For instance, Kenya recently introduced the recording of all intellectual property products that are to be imported into the country under the Anti Counterfeit Act. While this may be a way to ensure that only legitimate products find their way into the market, it may create a barrier to trade in the same products from other State Parties as rights holders will not be able to export their products to Kenya without registering the same with the Anti Counterfeit Agency.

The IPR Protocol provides that State Parties shall take the necessary measures to enforce intellectual property but ensure that these measures strike a balance between the interests of the rights holders and the users, they should not create a barrier to trade within the common market. The remedies prescribed under Article 27 of the Protocol are injunctions and border measures. Lack or limited enforcement of IPRs interrupts trade in goods and services and creates loss of confidence by discerning purchasers. Rights holders shy away from markets where there is minimal, or no enforcement at all. In the countries discussed in the previous section, the level of enforcement of relatively high thus creating consumer as well as investor confidence.

Intellectual Property and Trade

Exploitation of intellectual property may also be done through licensing, branding, merchandising, and franchising. As previously noted, Intellectual Property grants the innovators and creators exclusive rights to profit from their

work, in turn, granting them incentives to continue creating and innovating. It also encourages sharing of knowledge and information for instance through technology transfer between research institutions, universities, and various industries (WIPO). The IP rights granted facilitate competitiveness within the continental and global market place. This may be through technology licensing agreements which cover patents and or trade secrets.

Trademarks and service marks serve to distinguish the goods and services of one entity to another and are also a mark of quality. These can be used for purposes of branding of products for purposes of trade. An example of the Tomoca Coffee shops in Ethiopia. This is a distinct brand that may be used within the AfCFTA through licensing or franchising. This will provide employment, facilitate trade in the coffee industry and associated products that will eventually grow to continental and global brand. The same may be applied to Woodin, fabrics from Ghana which has opened several stores across Africa. Brands like Phoenix Beverages from Mauritius, Vodacom and MTN from South Africa, Maroc, Telcom from Morocco to name a few can trade across the continent as they are protected as trade and service marks.

Franchising agreements allow the franchisee to use a proven business model and includes a package of intellectual property rights. Nando's is a chain of fast-food chicken restaurants that has franchises in six countries in Africa. The business uses franchises to attract new partners and offer the same food and service across borders. The bundle of rights covered in the franchise agreement include copyright, trademarks, trade-secrets, and related technical knowhow.

Copyright licensing allows for authorised commercial exploitation of copyright protected works by third parties. For instance, composer can licence a producer to reproduce and distribute their music for a certain period of time, within specific terms in exchange for a consideration. The compose may also assign their rights to a collective management organisation which in turn licences users such as broadcasting organisations and entertainment spots and malls and collect royalties from them on behalf of the rights holders. Due to the borderless nature of the internet, cross border licensing is necessary to ensure the use of copyright protected works across borders is adequately protected. This also allows the creation, dissemination of content across the borders.

This may be achieved through a proper regulatory framework that can be implemented by the AfCFTA State Parties.

The AfCFTA Protocol on Intellectual Property Rights, way forward

The Agreement Establishing the AfCFTA was adopted in 2018 and came into force a year later. The General objectives as set out in Article 3 of the Agreement Establishing the African Continental Free Trade Area is among other things, the creation of a single liberalised market for goods and services facilitated by movement of persons in line with the Pan African Vision of an integrated, prosperous, and peaceful Africa as per Agenda 2063. Article 4 (c) of the Agreement provides that State Parties shall cooperate on investment, intellectual property rights and competition policy. This was the basis of what is known as phase two of the AfCFTA negotiations which led to the adoption of the Protocols on Intellectual Property Rights, Investment and Competition Policy. The AfCFTA Protocol on Intellectual Property was adopted in January 2023. (The first Phase was the Agreement and the Protocols on Trade in Services and Dispute Settlement which came into force concurrently). The Third phase involves the negotiation and adoption of the Annexes to, guidelines and schedules to the AfCFTA Protocols on IP, Competition, and Investment.

It is notable that there have been previous attempts to have a continental Intellectual Property Organisation such as the establishment of the Pan-African Intellectual Property Office (PAIPO). PAIPO was created through the Statute of the Pan African Intellectual Property Organisation that was adopted in on January 30, 2016. However, the Statute has not come into force. The other regional IP Organisations include the African Regional Intellectual Property Organisation (ARIPO) which has 22 Member States and the Intellectual Property Organisation (OAPI) which has 17 Member States. The other 15 Countries are not members of any regional Intellectual Property Organisation.

The IPR Protocol seeks to support the realisation of the objectives set out in Article 3 of the AfCFTA. By seeking to establish harmonised rules and principles for protection, cooperation, and enforcement of intellectual property rights. (Article 2).

The AfCFTA Protocol on Intellectual Property sets out the basic principles of protection of intellectual property rights and covers copyright and related rights, marks, plant variety protection, geographical indications, patents, utility models, industrial designs, undisclosed information, layout designs (topographies) of integrated Circuits, emerging technologies, traditional knowledge, traditional cultural expressions, genetic resources, and enforcement of intellectual property. The Protocol gives the general provisions, and any specific provisions shall be covered in one of the Annexes to the Protocol.

The main gaps in the IPR Protocol include

- The main text does not contain substantive provisions in relation to the above-mentioned areas of the IPRs. The Committee on Intellectual Property Rights did not have adequate time to agree and conclude all the substantive issues of the Intellectual Property Protocol due to various constraints such as time.
- limited provisions on building respect and enforcement of intellectual property rights. The provisions on enforcement fall short of the provisions of Part III of the TRIPs Agreement on enforcement of intellectual property rights as well as the latest developments that may pose challenges to enforcement of Intellectual Property especially in the digital environment.
- No specific provisions for licensing and assignment of intellectual property rights. Licensing and assignment of rights, as discussed above are important for trade in intellectual property goods and services.
- The protocol should ensure that there is sufficient policy space to enable State Parties design their national laws to support innovation and creativity in the context of the Africa Continental Free Trade Area.

The Protocol will be completed once the annexes are negotiated to ensure that it fulfils its objectives to harmonise the IPR laws for the benefit of the AfCFTA by encouraging intra- African trade. In the negotiations for the annexes to the Protocol, the following should be considered:

- Industrial development shall be accelerated through innovative and creative technologies

- Intellectual capital and technology are the main drivers for the knowledge economy
- The main purpose of the AfCFTA is to create a common market where services and goods can move freely for the benefit of the State Parties.
- Innovation and creativity are not restricted to the conventional IPRs, but can also contribute to traditional knowledge, traditional cultural expressions, and genetic resources products.
- The annexes should build upon the existing regulatory framework at national, regional, and international levels.

Conclusion

Creativity and innovation, which are intrinsically interwoven with technology are the backbone for industrial growth and economic development. Intellectual protection plays a crucial role in encouraging creativity and innovation. With enhanced protection of intellectual property, there are more opportunities for socio-economic growth and development and trade in orange economy as well as trade in goods and services. On the other hand, intellectual property protection can be a non-tariff barrier within the AfCFTA.

Intellectual property cuts across all sectors within the AfCFTA, namely trade in goods and trade in services, competition, investment, communication, digital trade, women and the youth, agriculture, manufacturing and should not be considered in isolation. Investment in research and development, Human capital, ICT, and emerging technologies provides a basis for creativity and innovation which will spur trade, economic growth, and development.

As stated earlier, for intellectual property rights to provide incentives for innovation and creativity, the IP Protocol should be calibrated to the level of development of a country, taking into account the available skills, capital, information and markets. It is important to consider the role of each intellectual property right in the social and economic development of each country. This may be done through the Annexes to the Intellectual Property Protocol.

Priority areas should be identified for investment to facilitate development include cloud and data centre, digital services, research and development, human capital and a strong but balanced regulatory framework. There is a core relation between the level of intellectual property protection and the level of innovation and creativity within a specific jurisdiction.

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Chapter 14

QUALITY INFRASTRUCTURE FOR THE COMMON AFRICAN MARKET

Nadine Umutoni, Céline Niwemahoro and Hermogene Nsengimana

Abstract

The Common African Market needs an effective Quality Infrastructure (QI) system that meets international requirements and is aligned to the Africa Quality Policy. Even as the AfCFTA deepens into the Common African Market, quality infrastructure must underpin the markets and their operation to attain desired development results. A disconnect between QI elements in Africa, namely: Standardization, Accreditation, Metrology, Conformity Assessment and Market Surveillance, has a negative impact on intra-Africa trade, as goods cannot move from one point to another without being subjected to multiple quality tests. Lack of functional QI compromises companies' ability to be competitive in domestic, regional and global markets. Poor QI leads to multiple technical barriers to trade, failures to ensure safety in industrial production spaces, lack of protection for consumers from unsafe products, and inability to facilitate digitalization and innovation.

Through a systematic review, this chapter finds that although the AfCFTA aims to reduce tariffs, Non-Tariff Barriers, including Sanitary and Phytosanitary measures, can continue to be a major hindrance to effective trade. This is demonstrated by the alarming situation where 48.3% of State Parties would not fully comply with the requirements of Annex 6 as described by the Pan-African Quality Infrastructure (PAQI) TBT Stocktaking document 2020. Standards harmonization, equivalence of Technical Regulations, and mutual acceptance of laboratory test results as pioneered by PAQI Institutions are spurring industrialization and intra-Africa trade. The level of adoption of harmonized African Standards and Conformity Assessment Regimes by RECs

and AU Member States is increasing, hence a number of initiatives of Mutual Recognition Arrangements (MRA) exist among African Member States.

Keywords: Pan African Quality Infrastructure (PAQI), Technical Regulations, Technical Barriers to Trade (TBT), Mutual Recognition Arrangements (MRAs)

Introduction

Quality Infrastructure (QI) is defined as “a system contributing to governmental policy objectives in areas including industrial development, trade competitiveness in global markets, efficient use of natural and human resources, food safety, health, the environment and climate change. It offers a complete package addressing the needs of citizens, customers and consumers, and of enterprises and other organizations that offer them products and services. The Quality Infrastructure System covers essential aspects such as policy, institutions, service providers, and the value-adding use of international standards and conformity assessment procedures” (UNIDO 2016).

The International Network on Quality Infrastructure emphasizes, in its definition, the effectiveness of QI in enabling access to foreign markets, promoting and sustaining economic development and environmental and social wellbeing (INetQI 2021). QI enables businesses to enjoy the benefits of international trade in goods and services, while strengthening business operations, protecting brand standing and managing change. QI is crucial in boosting value-added production and industrialization. It conveys access to higher quality, lower cost goods and services, expedites competitiveness, and spurs economic growth and job creation.

The African Union (AU) has put an emphasis on supporting QI and Technical Regulations development through the AfCFTA Agreement in its Annex 6 (on Technical Barriers to Trade) and Annex 7 (on Sanitary and Phytosanitary measures) (AU 2018). QI is a key pillar for increased intra-African Trade, competitive regional value chains, and trade in ‘Made in Africa’ goods. Some progress has been made at the continental, REC, and national levels in harmonizing quality standards and conformity assessment procedures. The Pan-African Quality Infrastructure (PAQI) institutions, which include the African Accreditation Cooperation (AFRAC), the Intra-Africa Metrology System (AFRIMETS), the African Electrotechnical Standardization Commission (AFSEC), and the African Organisation for Standardisation (ARSO) have pulled together to harmonize QI procedures in support of intra-African trade and support countries to meet international QI practices with a

view to increasing African products' and services' competitiveness in international markets.

However, lack of sufficient coordination between RECs harmonization efforts, still underdeveloped QI systems, and lack of technical regulatory frameworks (which result in diverse regulations and non-equivalent regulations) are issues (UNECA 2020).

This chapter illustrates QI's potential in establishing the CAM. It discusses policy implications for regulators, QI institutions and the private sector, and concludes by outlining strategies for establishing a quality culture in Africa.

African Quality Infrastructure Status - Policy framework

Until 1977, there was no coordination of quality-related issues at the continental level. In that period, the Organisation of African Unity (OAU) together with UNECA met in Accra, Ghana and formed the ARSO as an intergovernmental organization to facilitate intra-African and global trade through harmonization of standards and conformity systems. Currently, ARSO has 42 Member States and 1 Observer member. These are represented by their National Standards Bodies (NSBs).

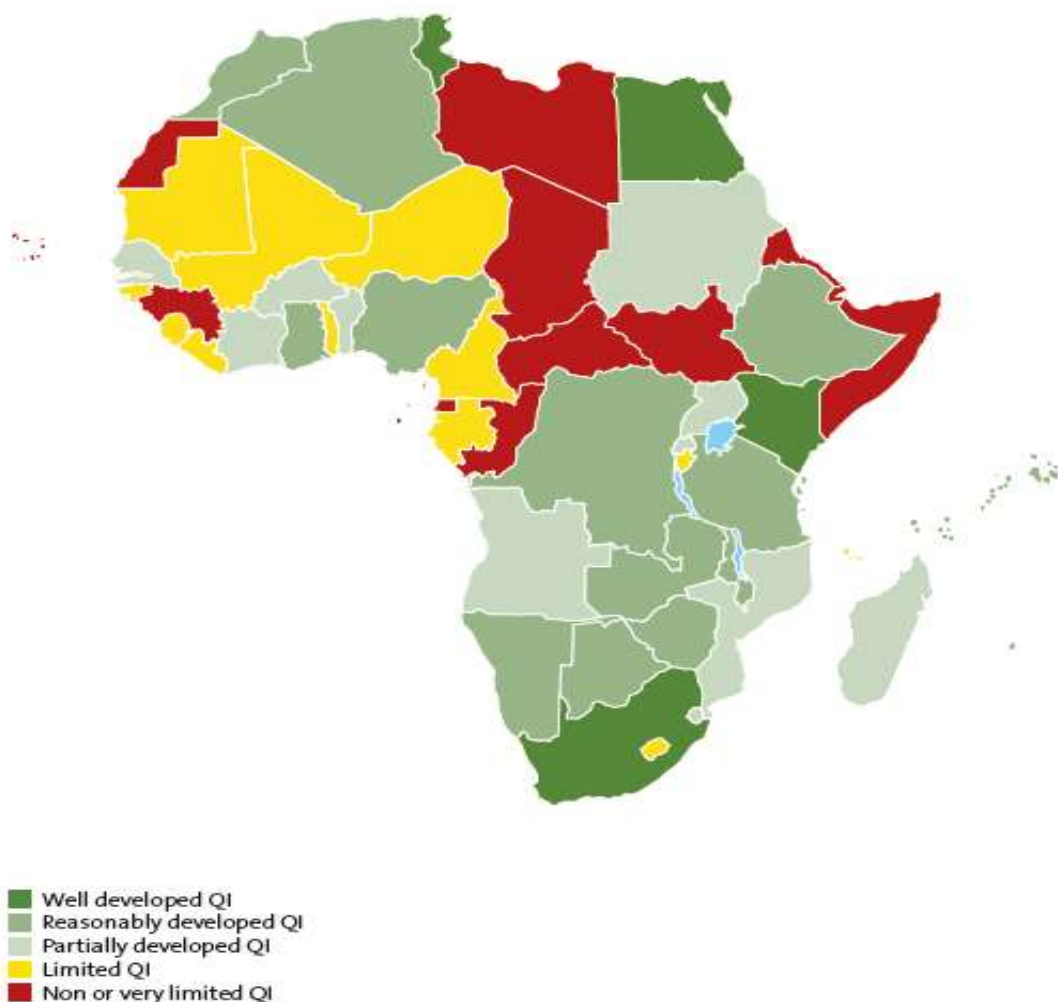
ARSO could only partially meet the continent's needs as the sole representative in all aspects of Quality Infrastructure. To promote electrotechnical standardization in Africa, the African Electrotechnical Standardization Commission (AFSEC) was formed in 2008 as a subsidiary organization of the African Energy Commission (AFREC), with the aim of supporting electro-technical industrialization in Africa through the provision of harmonized electrotechnical standards and Conformity Assessment Procedures. AFSEC has a membership of two categories: statutory members (18 Countries) and affiliated members (13 organizations operating in Africa and promoting electrotechnology). The Memorandum of Understanding (MoU) establishing the Intra-Africa Metrology System (AFRIMETS) was signed in July 2007 by six sub-regional metrology organizations (SRMOs), namely SADC Cooperation in Legal Metrology (SADCMET/MEL), East African Metrology Programme (EAMET), Economic and Monetary Community of Central Africa Metrology Cooperation (CEMACMET),

Secretariat for Metrology of the Economic Community of West African States (SOAMET), Maghreb Metrology Network (MAGMET), and North-East and Western Africa Metrology Programme (NEWMET), (representing 42 countries across Africa.) AFRIMETS was established to harmonize accurate measurement in Africa, establish new measurement facilities, gain international acceptance for all measurements critical to export, and promote environmental monitoring and sanitary and phytosanitary standards. AFRIMETS was accepted as an RMO by the International Committee for Weights and Measures (CIPM) in October 2008 (AFRIMETS 2011). AFRAC was established in 2010 by the African Union and NEPAD (currently AUDA-NEPAD), supported by REC Accreditation Bodies, the International Laboratory Accreditation Cooperation (ILAC), the International Accreditation Forum (IAF), European Accreditation (EA), the Inter-American Accreditation Cooperation (IAAC) and the Asia-Pacific Laboratory Accreditation Cooperation (APLAC), as well as government representatives and other stakeholders.

The AFRAC Mutual Recognition Arrangement (MRA) achieved international recognition status under the ILAC MRA and the IAF Multi-Lateral Arrangement (MLA) on 22nd May 2018. This recognition is expected to promote confidence and acceptance of results produced by African accredited laboratories, inspection and certification bodies. These four institutions, with the assistance of the AU, founded the Pan-African Quality Infrastructure (PAQI) initiative in 2013 as an exchange platform guaranteeing close cooperation between them. Today, all PAQI institutions are internationally recognized, and are involved in corresponding international professional associations on an equal footing. In addition, PAQI institutions play a key role in implementation of the SPS and TBT policies of the AfCFTA Agreement. Within the framework of the multi-level approach, the RECs are a core part of the PAQI Forum, providing their QI expertise for harmonization and ensuring coordination between regional and continental levels.

Quality Infrastructure at the National level

National Quality Infrastructure is defined as the totality of a nation's institutional framework, including both the public and private sectors, that requires the establishment and implementation of standardization, metrology,



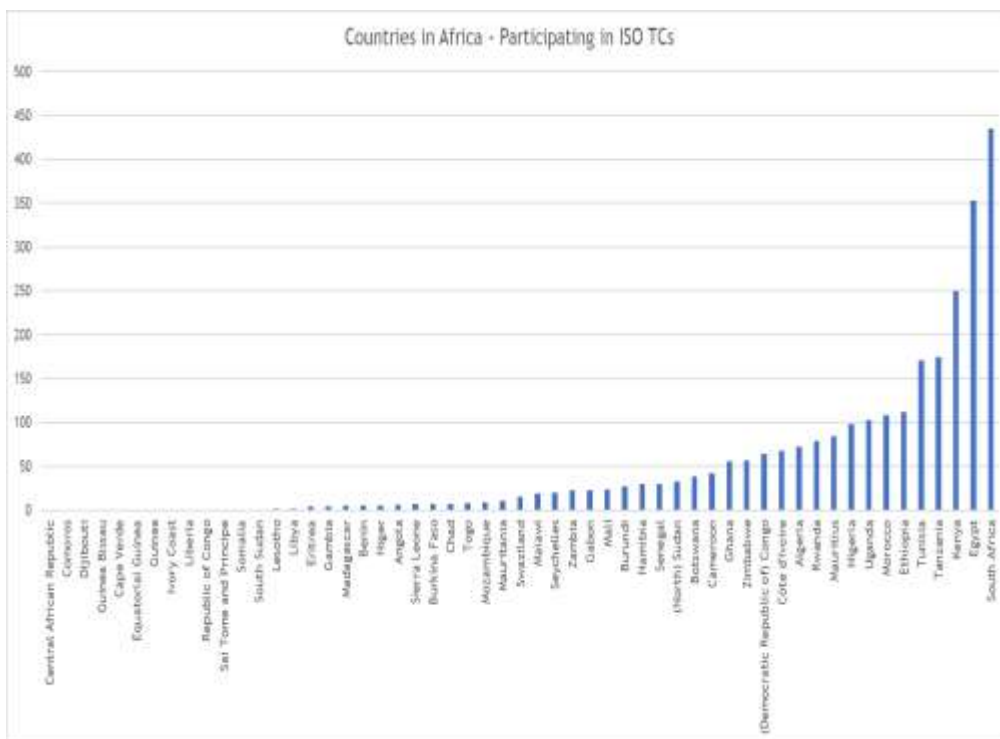
accreditation and conformity assessment (inspection, testing, and product and system certification) and market surveillance services that are needed to give adequate evidence that products and services meet defined requirements, be they demanded by authorities or the marketplace.

Source: PAQI 2020, p.25

In Africa, standardization activities are carried out by NSBs, who are mainly established by governments and mandated to develop standards and provide conformity assessment services. These institutions provide capacity-building support to business communities, private sector, and consumer organizations

as the end users and consumers of standards. Per the PAQI Stocktaking Document 2020, 23 Countries have well-developed NSBs, while nine have no official NSBs or standardization is run by one of the government's departments.

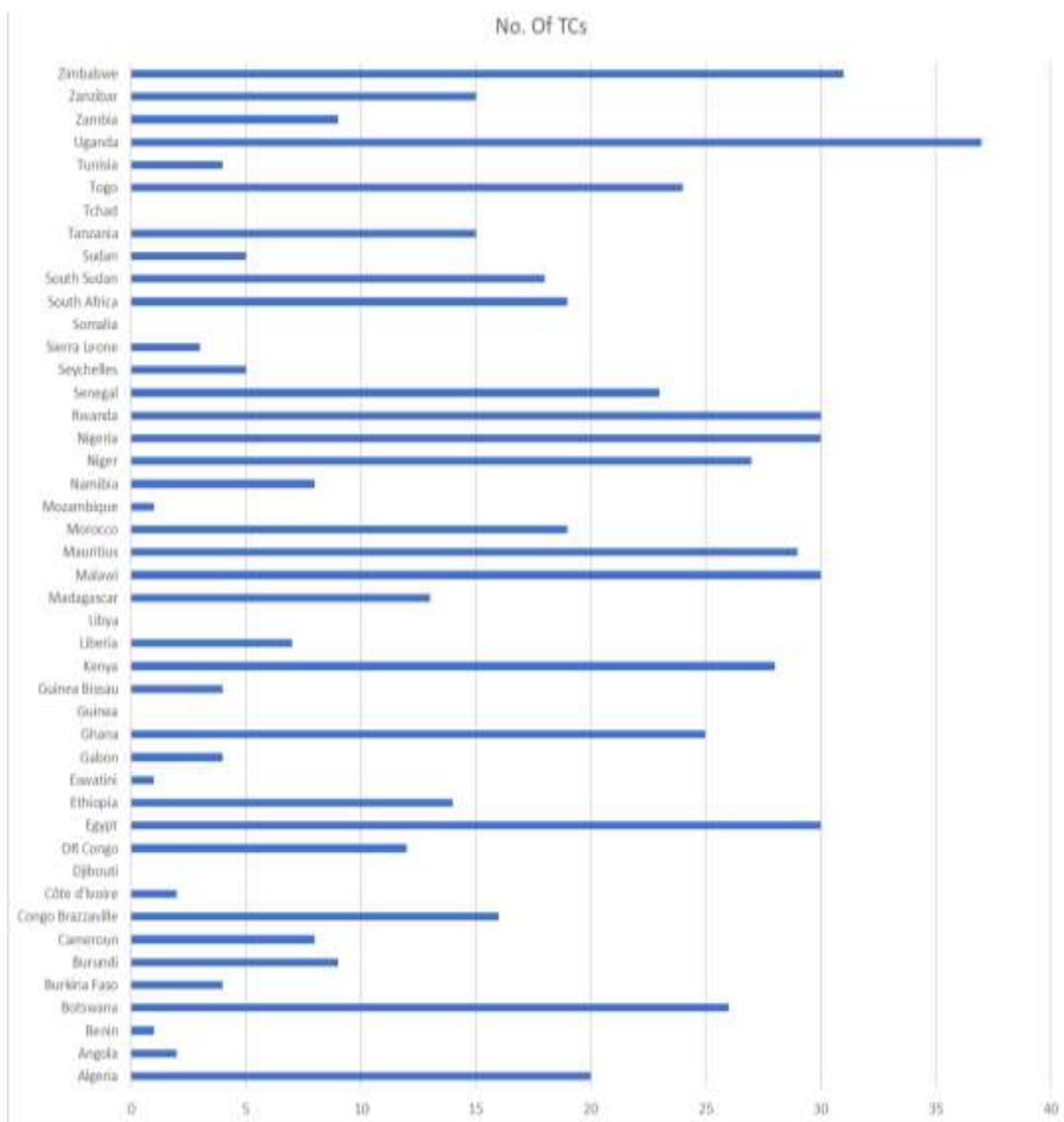
Figure 31: Countries in Africa Participating in ISO Technical Committees (TCs)



NSBs develop standards based on the domestic and international markets' needs, following national priorities and national consumer safety issues.

To facilitate access to foreign markets, especially international markets as a way of boosting national economy and export revenues, African countries participate in the work of continental and international standards setting organizations such as the International Organization for Standardization (ISO) and ARSO, take part in the leadership of Technical Committees, and influence the content of standards in their interest.

Figure 32: ARSO Members' participation in ISO TCs and Subcommittees (SCs)



However, Countries tend to most actively participate at the international level, rather than at the continental level. For instance, some ARSO Members participate more actively in ISO work compared to ARSO's work.

Furthermore, for the purposes of addressing national specific problems as highlighted by the WTO/TBT Agreement (see Figure 33 below), national

standards are still being developed in Africa even if there are equivalent standards at the international level.

Figure 33: WTO TBT Agreement



Source: WTO 1995 - TBT agreement p.128

On the other hand, Metrology services such as calibration, repair, measuring and testing are executed by National Metrology Institutes (NMIs), mostly hosted by the NSBs. To engender confidence in the work performed by Conformity Assessment Bodies (CABs), there are only 13 indigenous National Accreditation Bodies (NABs) in Africa (AFRAC 2020). Accreditation activities in countries with no NABs are carried out by National Accreditation Focal Points, mostly based in Ministries of Trade, Commerce and Industry. The WTO urges its Member States to ensure that Technical Requirements (TRs) and standards prepared, adopted or applied are not creating obstacles to international trade (Manfred and Uwe 2015). At the national level, there is still the challenge of aligning TRs to international requirements, which can lead to a multiplicity of uncoordinated TRs that in turn act as a barrier to businesses. Acceptance of each other's regulations is still a source of contention among African countries, which hampers intra-regional and intra-African trade in general.

QI structures and services, together with TRs, fall under National Quality Policies (NQPs). Only 24 African Countries have NQPs. These Policies are meant to be aligned with the Africa Quality Policy (AQP) to ensure competitiveness and effectiveness. Aligned NQPs do not guarantee efficient and effective QI systems unless successfully implemented over the NQP life cycle (PAQI 2022).

QI at the REC level

In order to implement regional QI-related policies and strategies, a number of RECs have established treaties and protocols, as well as specific QI organs and structures focusing on the elimination of technical barriers to trade. These organs are coordinated in a manner that connects to counterpart continental and international organizations through liaison, membership and cooperation agreements. So far, six RECs have QI related frameworks and policies (*Ibidem*) as follows:

- East African Community (EAC) Standardization, Quality Assurance, Metrology and Testing Act (SQAMT), 2006.
- Technical Barriers to Trade (TBT) Annex to the Southern African Development Community (SADC) Protocol on Trade as well as long-standing structures, e.g. SADC Standardization, Quality Assurance, Accreditation and Metrology (SQAAM) structures for cooperation established in 2008.
- ECOWAS Quality Policy (ECOQUAL) established in 2012.
- COMESA Treaty established in 1993, especially in its chapter fifteen (“Standardisation and Quality Assurance”).
- Principles and procedures for the development and adoption of Tripartite standards, and;
- Central Africa Quality Infrastructure Programme (PIQAC).

Through the adopted AQP, these regional policies are required to align with international best practices and requirements in order to make Africa’s QI more efficient and effective.

QI at the Continental Level

Under Chapter V, Programme element 8.1 of the Lagos Plan of Action, Member States and other key international organizations are expected to support the operations of regional and sub-regional intergovernmental technological institutions including the ARSO (OAU 1980). Support for standards harmonization processes is provided by various international partners in sectors like agriculture and food products, textiles and leather, automotive, pharmaceuticals, chemical engineering, sustainability, cosmetology, financial services, and consumer-related issues (among others). This has led to 1,489 African standards harmonized by ARSO and its Member States to date (ARSO 2022).

Further, the Treaty Establishing the African Economic Community (Abuja Treaty of 1991), in Chapter XI Article 67, calls on Member States to adopt a common policy on standardization and quality assurance of goods and services (AU 1991).

The findings of the PAQI TBT and SPS situational analysis in RECs published in 2017 showed the necessity of a continental scheme to deal with TBT (PAQI 2017) as one of the essential requirements for the success of the AfCFTA implementation. In 2013, the 20th Conference of African Ministers of Industry Declaration on Accelerating Industrialization in Africa recognized PAQI as an initiative to foster industrialization of the African Continent at all levels (national, regional and continental) and a continental platform for all matters related to accreditation, metrology, conformity assessment and standardization in order to enhance the competitiveness of Africa's goods and services (AU 2014). The AfCFTA Agreement addresses TBT and SPS issues, and calls on all State Parties to commit to cooperate in development, harmonization and implementation of standards, conformity assessment, accreditation, metrology and TR activities spearheaded by ARSO, AFSEC, AFRAC and AFRIMETS (AU 2018).

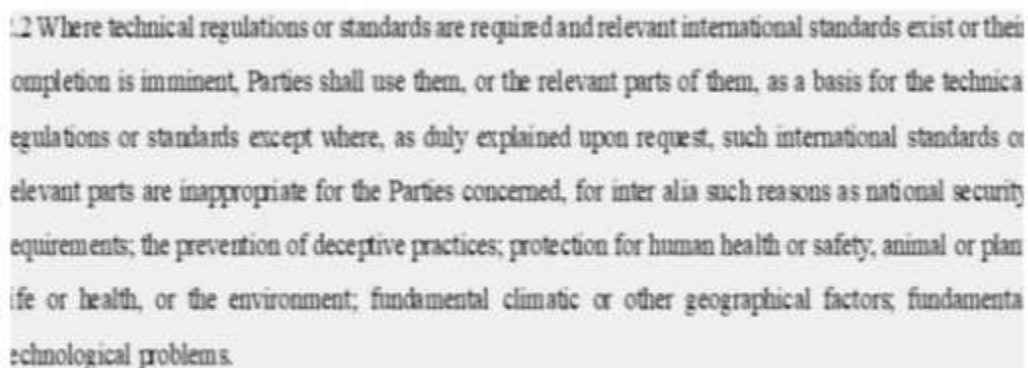
From 2013 to date, one of the major milestones of PAQI is the AQP, which was developed by PAQI institutions under AUC leadership and in consultation with RECs and AU Member States. This was later adopted by the AU Specialized Technical Committee for Trade, Tourism, Industry and Minerals (STC/TTIM) on 3rd September 2021 and endorsed by the 40th Ordinary Session of the AU Executive Council on 02-03 February 2022. The AQP

guides QI operations at the continental level, and targets its alignment with the policies governing national and REC QIs (AU 2022).

Quality Infrastructure in Africa Reducing Technical Barriers to Trade

TBTs occur when an exporting enterprise struggles to comply with varying legal requirements of TRs, standards, and conformity assessment procedures of the recipient country aiming at the protection of human health and safety, or protection of the environment. TBTs also happen when national QI and technical regulatory institutions do not talk to each other, such as discrepancies between developed standards and regulations that create an inability to trade when the cost to adapt company production to those different requirements is high. Adopted product rules by different countries make enterprises undergo additional conformity assessment tests when crossing borders, thus increasing the cost of trade.

Figure 34: Use of Technical Standards in TRs



2.2 Where technical regulations or standards are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for the technical regulations or standards except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Parties concerned, for inter alia such reasons as national security requirements; the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems.

Source: WTO 1995, p.118

According to the AfCFTA Protocol on Trade in Goods, State Parties shall aim to promote: a) compliance with the WTO TBT Agreement, b) the use of international standards and/or parts thereof as a basis for TRs, and c) the application of good regulatory practices. Furthermore, in its clause 9.3, it stipulates that a continental technical regulatory framework should be developed and implemented by Member States. The AUC and PAQI have

cooperated in developing the African Continental Technical Regulatory Framework (ACTReF), which aims to bring convergence on TRs within the African Union.

This proposed framework recommends adoption of National Technical Regulatory Frameworks (NaTReFs) by Member States, which would be aligned with ACTReF and take into account the specificities of each country. State Parties are obligated to cooperate in all areas of standardization, accreditation, and metrology by participating in the work of ARSO, AFSEC, AFRAC and AFRIMETS respectively (AU 2018). At least 17 AU Member States are not effectively participating in PAQI institutions, while a significant number have ratified the AfCFTA as demonstrated in Figure 35 below:

Figure 35: African Union Member States not Participating in PAQI Institutions' Work

Category	Member States	Ratified the AfCFTA	Have not ratified
Non-member of any PAQI institution	1. Cape Verde,	✓	
	2. Comoros	✓	
	3. Eritrea		✓
	4. Sahrawi Arab Democratic Republic	✓	
	5. São Tomé and Príncipe	✓	
Member of only 1 PAQI institution	<u>AFRIMETS:</u>	✓	
	6. Angola		
	7. Central African Republic	✓	
	8. Equatorial Guinea	✓	
	9. Gambia	✓	
	10. Lesotho	✓	
	11. Mali	✓	

	12. Mauritania	✓	
	13. Mozambique		✓
	<u>ARSO:</u>	✓	
	14. Djibouti		
	15. Libya,	✓	
	16. Somalia	✓	
	17. South Sudan	✓	

Source: Authors (2023)

Harmonization of Standards

Harmonization is the alignment of national frameworks, which include procedures, operations and documents highlighting product specifications such as standards, test methods, conformity assessment policies and guidelines with internationally agreed and recognized procedures, standards and practices. In the spirit of unlocking trade and eliminating TBTs, Member States are encouraged to adopt and implement the same standards as trading partner countries.

In Africa, ARSO, through its Technical Committees (TCs) has published over 1,400 harmonized African standards, which include a significant number of international standards recommended to Member States for adoption to ease trade. These standards comprise 683 product standards, 149 service standards, 537 test methods, analysis and sampling standards, and 116 codes, glossaries and units all made available to AU members for adoption. Apart from harmonized standards, ARSO delivers certification schemes under its African Conformity Assessment Programme (ACAP) (ARSO 2022).

AFSEC has adopted 287 International Electrotechnical Commission (IEC) standards and availed them to its Member States for adoption and implementation. Only 13 Countries are active in adopting and implementing these standards and so far, 215 have been adopted by: Cote d'Ivoire, DRC, Egypt, Ethiopia, Ghana, Guinea, Kenya, Namibia, Nigeria, Rwanda, South Africa, Tunisia and Zambia (AFSEC 2023).

To facilitate implementation of these standards by a larger number of Member States, AFSEC has developed guides, six of which are published and five of which are still under development.

AFRAC was confirmed to have maintained its signatory status to the ILAC and IAF MRA/MLA, and therefore its international recognition. AFRAC recognized that the MRA scope has been extended to include 13 fields which Member State accreditation services should consider joining (AFRAC 2023).

AFRIMETS' 736 Calibration and Measurement Capabilities (CMCs) were accepted in the Key Comparison Database (KCDB) of the International Bureau of Weights and Measures (BIPM). State Parties to the Metre Convention and the Associates of the General Conference on Weights and Measures (CGPM) will continue to enjoy the benefits of publishing their CMCs in this database in order to give confidence to service users that their measurement standards and mutual acceptance of calibration and measurement certificates are internationally equivalent. The recently tested AFRIMETS Capabilities and Services Database (ACSD) is expected to support mutual recognition of metrological capabilities to facilitate implementation of the AfCFTA. The information in the ACSD will assist AFRIMETS to better identify gaps and provide for strategic planning for AfCFTA implementation. Member States, especially AfCFTA State Parties, are encouraged to fully utilize this database (AFRIMETS 2023).

Equivalence of Technical Regulations:

The WTO TBT Agreement provides equivalence on two points:

- One for **Technical Regulations** which notes that “Members shall give positive consideration to accepting as equivalent TRs of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations” (WTO TBT Art. 2.7).
- Another one for **Conformity Assessment** stipulates that “... Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those

procedures offer an assurance of conformity with applicable TRs or standards equivalent to their own procedures” (WTO TBT Art. 6.1).

It is observed that cross-border trade in Africa involves both certified and uncertified products. The number of harmonized African standards should therefore be increased to meet continental tariff lines and to contribute to the reduction in conformity assessment clearance times. Certification bodies should be supported to widen their testing scope by adding more testing parameters in order to reduce testing costs.

SPS and TBT interlinkage - Success Stories and Lessons Learned for the Common African Market

The PAQI Joint Committee, comprising executive leaders (chairpersons or presidents, and Head of Secretariat) of PAQI institutions, has established a permanent cooperation with RECs’ TBT and SPS structures, where the latter have designated representatives in the PAQI Forum, which is a platform for information exchange on existing TBT and SPS projects at the REC and continental levels, with the aim of finding better means of harmonization to avoid duplication and wastage of resources. This resulted in cooperation between RECs and individual QI pillars, and the membership of all RECs to the PAQI Forum (PAQI 2023).

Mutual Recognition Arrangements from Theory to Reality

The objective of the AfCFTA Agreement, under TBT Annex 6, Article 4 is to (a) facilitate trade through cooperation in the areas of standards, TRs, conformity assessment, accreditation and metrology; (b) facilitate trade by the elimination of unnecessary and unjustifiable technical barriers to trade through: (iii) identifying and assessing instruments for trade facilitation such as harmonization of standards, equivalence of TRs, metrology, accreditation and conformity assessment. Under Article 8, the Agreement endeavours to promote compliance with the WTO TBT Agreement and mutual acceptance of conformity assessment results of conformity assessment bodies which have been recognized under appropriate multilateral agreements between their

respective accreditation bodies and the relevant mutual recognition arrangements of the AFRAC, ILAC and IAF; and promote participation in AFRAC mutual recognition arrangements.

A number of arrangements among Member States (MSs) have been initiated to further enhance their trade and diplomatic ties, including Ghana, Kenya, Nigeria, Rwanda, South Africa and Zimbabwe, which have undertaken a project to establish a multilateral government-to-government MRA. It will provide an exporting Member State with the authority to carry out conformity assessment against the adopted regulatory requirements of the importing party, in its own territory before export, which will allow for the free flow of trade in goods and services (ARSO 2023).

Article 10 of the AfCFTA Protocol on Trade in Services, dealing with Mutual Recognition, offers a set of criteria for the authorization, licensing or certification of service providers in the context of this agreement. The protocol also stipulates that a State Party should recognize the education and/or experience attained, requirements met, or licences/certifications approved by another State Party (AU 2018).

ARSO Technical Committees involve experts from National Standards Bodies (NSBs), the private sector, and academia. Harmonized standards so far cover only 15 percent of the identified tariff lines under the AfCFTA, hence the need to expedite standards harmonization.

Policy Implications

- Establish a **Continental Technical Regulations Framework** (ACTReF) which can be governed by the Pan-African Parliament (PAP) established by the Protocol to the Abuja Treaty. This framework can be informed by European Union frameworks, wherein the principal regulatory bodies are the European Parliament, the Council of the European Union, and the European Commission. In general, the European Commission proposes and drafts new regulations for consideration and approval by the Parliament and Council. Africa has all the necessary organs to take up the responsibility for TRs. For trade facilitation purposes, the Council of Ministers of the AfCFTA, through the Committee on Trade in Goods (CTG), is vested with the

responsibility of implementing the provisions of the proposed ACTReF;

- Promote the establishment of African intra-regional and inter-regional MRAs;
- Increase national ownership of QI activities and compliance with international best practices. Member States should align their NQPs with the AQP. This has already started with Chad, Djibouti, Rwanda and Somalia.
- Support PAQI institutions in building capacity for experts working on the development and harmonization of standards and conformity assessment (auditors, certifiers etc.) and create greater awareness of standards among QI service users.
- Identify continental capacities and facilitate the transfer of appropriate knowledge and technologies.
- Intensify user-friendly digital platforms and facilitate access to Quality and Regulatory Infrastructure (Q&RI) services.
- Attract investors in QI activities. Some efforts have begun under the auspices of the African Export–Import Bank (Afreximbank) via African Quality Assurance Centres (AQAC) and African Development Bank (AfDB) projects on standardization and Conformity Assessment

Quality Culture

The notion of quality culture comprises the shared values, beliefs, expectations and commitments toward quality that are supported by policies, systems (including the Quality Information System [QIS]) and processes which guide how actions are performed and how improvements are made to everyday practices and consequent activities. It applies to all levels (individual, organizational, societal and national) that together contribute to the development of effective care for quality. Developing a quality culture is the most effective, meaningful and sustainable way to ensure and improve quality, and to embed a dynamic system of change for better competitiveness at all levels. As quality does not only refer to products, but extends to all areas of production, distribution and management, a quality culture is required to assist Small and Medium Enterprises (SMEs) to strengthen their competitiveness sustainably, in order to effectively compete in global markets. The development of a quality culture is crucial for ensuring demand for QI services. Thus, the strengthening of QI and the growth of the private sector are

linked. Enhancing awareness for quality is the first step in achieving a quality culture. A robust and effective Quality and Regulatory Infrastructure (Q&RI) system can act as a catalyst for improving the quality of products and services on a national scale. It can help to stimulate demand for these products and services, which in turn invigorates individual businesses and the economy as a whole.

At the national level (in some MS), quality awards have been established, wherein high-performing industries are awarded and recognized at the national level. A continental quality awards system is being spearheaded by ARSO to develop a quality culture through sensitizing governments, policy makers, organizations and companies on the role of quality in sustainable development and competitiveness in the current globalized and liberalized world economies. As a category, the African Quality Awards mirror extant quality awards, such as the Malcom Baldrige National Quality Award (US), the Deming Prize (Japan), the European Quality Award, the Indian Quality Award, China Quality Award, the SADC Annual Quality Awards, the ECOWAS Quality Award, and the East African Business Council (EABC) Quality Award. There is ongoing cooperation among African universities to operationalize the standards education programmes with specific curricula for certificate level and postgraduate diplomas. The Catholic University of Zimbabwe (CUZ) and the Catholic University of Eastern Africa (CUEA) were the first to initiate this programme. ARSO and ITC also jointly train ‘Quality Champions’, starting with the EAC and supported by Associations of Quality Professionals in five EAC Countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). Furthermore, ARSO and UNIDO are currently cooperating in scaling up QI educational programmes into additional MSs.

Conclusion

Given the low participation of African Countries in continental QI activities, there are numerous implications for non-participating MS economies, as they are unable to take part in QI decision-making forums and platforms in order to access and apply harmonized trade facilitation policies, strategies and information. Industries and SMEs in non- or low-participating MSs are deprived of collaborating on the development of standards and conformity assessment procedures, which blocks their uptake at the national level. This

impacts compliance with external market requirements. Africa's QI is under pressure owing to the implementation of the AfCFTA. Continental QI institutions must move faster to anticipate and offer QI tools and instruments that support effective implementation to realize 'One Standard, One Test, One Certificate Accepted Everywhere'.

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Chapter 15

AFRICA'S MULTI-MODAL TRANSPORT: SUPPLY CHAIN AND LOGISTICS CAPABILITIES IN SUPPORT OF ADVANCING THE AfCFTA DRIVE

Issa S. Baluch

Abstract

This chapter recognizes that the policies that govern maritime, inland waterways, aviation, road and rail transport usage vary across the continent. Aware that efforts are being made at the subnational and local levels to address transport and logistical challenges, this chapter focuses in part on the national, and largely on the continental level, in its analysis. Furthermore, the needs across different transport corridors vary, and implementation of policies often alters dynamics, sometimes with unexpected results. Therefore, blanket reforms without adequate consideration of local and sub-regional contexts is a nonstarter. It is therefore imperative that the recommendations made in this chapter are adapted to the contexts of countries and sub-regions, lubricated by private sector involvement. Countries ought to set up robust monitoring mechanisms that can respond to evolving needs. This is discussed in the final section.

The chapter is divided into four parts; the first two discuss the state of Africa's transport and logistics infrastructure - what is available and how it is utilized - as an overview. The final two discuss pathways toward transport and logistics reforms within the AfCFTA, derived from a practitioner's lens, with practical ways to enhance the sector.

Key Words: Transport, Logistics, supply chains

Introduction

Rarely can an article be written on Africa's transport without citing the continent's weak interlinkage with the rest of the world. Multiple studies have been conducted on this topic (Export Import Bank of India 2018, IATA 2021) and will likely continue if the issue persists. What is interesting to note, and will be discussed further on, is how Africa has (and in some cases has not) utilized the means available and what the linkage between countries has meant for the movement of people, services, capital and goods. Transport is an enabler of numerous functions in society. The ability to move from one point to another and exchange goods and services predates modern day infrastructure. Logistics is the broader umbrella term, which refers to a network of services that support the physical movement of goods, trade across borders, and commerce within borders. It comprises transportation, warehousing, brokerage, express delivery, terminal operations, and related data and information management (World Bank 2023a). At a macroeconomic level, transport and logistics provide access to consumer markets, enable movement of goods and services within regions, and allow for connectivity to the global economy. At a microeconomic level, they determine a country's ability to import and export, its distribution network, costs and output level, thus enabling it to be competitive in the global market (Export Import Bank of India 2018).

Different studies have found that transport infrastructure can add up to 30-40 percent to the costs of goods traded in Africa (TRALAC 2018). For instance, in West Africa, transport costs represent 35 percent of the value of exports, and more than 45 percent of the value of imports in some countries (UNCTAD 2022c). The continent has the most landlocked countries (16) of any region. Studies have shown that revenue losses from inefficient border procedures in landlocked developing countries could exceed 5 percent of their GDP (Export Import Bank of India 2018). The 2023 Logistics Performance Index developed by the World Bank identified three bottlenecks faced by landlocked countries: longer delays in ports than in corresponding coastal countries, corridor delays which are a reflection of the efficiency of the transit system, and overall delays in dwell time inland, including at the destination (World Bank 2023a). The report further highlights that interventions to address the challenges faced by landlocked countries by necessity need to be multilateral. Unilateral solutions just won't work.

One such multilateral approach is the framework of the AfCFTA, an initiative that can be intellectually associated with the Common African Market, articulated in the Lagos Plan of Action. It aims to create one African market serving 55 State Parties and a combined GDP of approximately US\$3.4 trillion (AfCFTA 2023). Previous chapters have discussed the origins and meaning of the Common African Market. This chapter will propose how transport and logistics can be positioned to enable African countries to catapult their position in global trade, and more specifically herald a stronger regional market. The AfCFTA, through its State Parties, rightly identified transport and logistics as one of four high-potential sectors in its private sector engagement strategy (AfCFTA and WEF 2023). This complements a global consensus around the need for a robust transport and logistics network supported by private sector development. The World Bank projects that by 2030, cross-border e-commerce in goods will grow to \$1-\$2 trillion in merchandise value from its current 300 billion dollars. To put this in perspective, recall that in 2019 e-commerce was equivalent to 30 percent of global GDP. This is expected to cause substantial changes in supply chains (World Bank 2023a). It can be extrapolated that regions with better connectivity via transport and logistics are more primed to tap into this (and other) markets.

For Africa to attain the level of connectivity it needs in order to be a major global player in commerce, prioritization of transport nodes is key. Practically, 55 hubs are not feasible, even if Africa were to catalyse the resources necessary to develop such a system, which seems unlikely. Competing to develop these hubs⁴¹ would cause more ill than good, yet the continent does not have time to waste nor resources to splurge. Therefore, the first order of business for the AfCFTA Secretariat and stakeholders rallying for AfCFTA implementation ought to be identifying what could be the potential regional and super hubs that the continent can use to increase efficiency in commerce, bolster ‘Made in Africa’ products, and strengthen its position in the global trade system. This will be discussed later in this chapter.

⁴¹ In order to tap into economies of scale, individual nation-hubs would need to capitalize on external markets, cognizant that the total size of an individual country’s export/import basket may not sustain a robust hub. This could drive down logistics prices as nation-hubs seek to attract business. Given that costs of service provision would be steep for some compared to others, this could result in cost-cutting measures at different points of the service ladder, to the detriment of efficiency and quality. Additionally, landlocked countries would simply be at a disadvantage, given their lack of seaports.

Here, it is important to note that a successful regional logistics hub is characterized by adequate multimodal⁴² transfer systems, good telecommunication systems, reasonable port charges, adequate cargo and container handling facilities, numerous berths, container terminals of varying sizes capable of handling various commodities including dangerous goods, and available rail and road connections to link the hub with local consumer and industrial areas (Baluch 2005). The reader might already associate these characteristics with some of the transport ports of connection on the continent; this, as with every journey, serves as a point of departure, in this case for the AfCFTA.

Hard Assets in Focus: Infrastructure

This first section provides an overview of the existing transport capabilities on the continent. For an exhaustive analysis of each mode and the missing links, the interested reader can see Briceño-Garmendia and Foster 2010, AfDB 2014, and/or UNECA 2022. This section places emphasis on freight over passenger traffic. However, this is not to diminish the impact that the AfCFTA will have on passenger movement across the continent.

Road

Per the latest data (2019), road freight accounted for 76.7 percent of total intra-African freight transport demand. That is, 201,209,152 tonnes (UNECA 2022). Intra-African movement of goods is served by several transport corridors that traverse the continent. These corridors connect inland roads, motorways, trunk roads, primary roads and related link roads such as access roads and ramps, though these are not evenly distributed. Over time, several corridors have been mapped serving different functions, including cross-regional movement. Given the prevalence of different analyses portraying a varied number of corridors, ranging from 17 to 55, this section does not isolate which are the key corridors, but instead focuses on intra-regional road transport as a whole. In its development plans, the continent's current

⁴² Multimodal transport means incorporating transport modes such as sea, air, rail and road. An efficient global multi-modal network is one that overcomes trade and time barriers to meet customers' shipping demands (Baluch 2005).

infrastructure framework has adopted an integrated corridor approach that seeks to ensure that all corridor infrastructure facilities complement each other, i.e. transport, energy, water and ICT - with greater appreciation for multimodalism (PIDA 2020).

A report by UNECA models four scenarios of the impact the AfCFTA will have on demand for transport infrastructure and services on the continent. In the maximum ambition scenario, where the AfCFTA is fully implemented and the continent's plans for freight infrastructure and service improvements are realized, researchers find that Africa would see a doubling of road freight transported by trucks, from 201 to 403 million tonnes (UNECA 2022). Conversely, if other transport modes, including rail, were strengthened, in the maximum ambition scenario the demand for road freight would drop from 76.7 to 69.7 percent. That is, the increase to 403 million tonnes would represent 69.7 percent of total freight transport demand. This is significant, and can be understood as a positive result of improvements that would be made to other transport modes.

In the past, African countries have prioritized road infrastructure investments over rail transport investment, due to the enormous capital investment required for rail infrastructure and rolling stock (Export Import Bank of India). On average northern and southern Africa are further ahead in terms of their road network, with western Africa ranking lowest on road density and road quality (Export Import Bank of India 2018). While it is key to recognize that road transport has been the primary mode through which intra-African movement of goods and services has been undertaken, the goal is also to capitalize on other modes of transport. This is not to suggest that investment in road transport should be stymied, in fact the contrary is the case, as exemplified by ongoing work on the continent including multiple stakeholder-driven engagements (e.g. the continental workshop held in Johannesburg in April 2023 that saw representatives of RECs, transport corridor management organizations, government officials, private sector and multilateral organizations come together to work on harmonization and standardization of regulations in road transport across the continent) (AUDA-NEPAD 2023). Such collaborative efforts should be fostered, particularly at a regional level.

Rail

The total length of the Sub-Saharan African rail network is approximately 84,000 km, covering about 30 million square kilometres (AfDB 2014). Thirteen countries do not have railway lines or sections of international lines. Africa's railway transport is characterized by outdated infrastructure and low maintenance, which has rendered several tracks unusable. Most rail lines are low-speed, small-scale, undercapitalized networks carrying low axle loads (Export Import Bank of India 2018). Another feature of the railways is the variation of models; the cape gauge is the main network in southern and central Africa, while the metre gauge is popular in most of Francophone Africa and much of eastern Africa. North Africa largely utilizes standard gauge rails (Export Import Bank of India 2018). These variations cause complications when it comes to uniformity and cross-border rail connections. The continent should aspire to have more of the standard gauge rails, which have many benefits, including higher stability, higher load capacity, better ability to carry standard ocean containers, and access to a wider array of locomotives and rolling stock (Baluch 2010).

Rail transport is a strategic regional investment in Africa. The ECA report posting different scenarios of AfCFTA implementation foresees an increase in rail freight demand from 0.3 percent (2019) to 6.8 percent under the maximum ambition scenario. That is, from 765,650 tonnes to 39 million tonnes of goods (UNECA 2022). Rail transport is competitive over mid to long distances, and offers the most feasible option when freight involves large volumes (Export Import Bank of India 2018). As countries urbanize and demand grows, rail transport is best suited to meet this demand, with the added benefit of reduced carbon emissions compared to other modes of transport. Increased efforts are going towards the electrification of transport as a substitute for fuel-powered mobility systems. The continent's aspirations include the adoption of modern technology through intercity fast rail. Morocco's Al Boraq train serves as Africa's first (and only) dedicated high-speed railway, ranking sixth on the list of the world's fastest trains; it runs at 320 kph, connecting the port city of Tangier with Casablanca (Jones 2022). Other African countries that operate electric trains include Algeria, Ethiopia and South Africa.

Rail transport is not a dominant means by which freight is moved on the continent. Despite this, passenger traffic is also underdeveloped and underfunded, as private operators opt for freight business (which is more profitable). Railway operations in Sub-Saharan Africa have been marked by

restructuring, which introduced private sector operations. In countries where reforms have not taken place, railway operations have steadily declined or ceased (Export Import Bank of India 2018). Under the AfCFTA, rail can become a more significant means to transport goods and people. This would require targeted interventions with multilateral approaches, given the level of investment needed and distribution of benefits, recalling that landlocked countries suffer most when the cost of transport is high.

Aviation

Aviation is understood to be a very broad category, and includes design, operation and maintenance of aircraft, commercial airplanes, private aircraft, cargo transportation, air ambulance services and military aircraft. This chapter discusses solely civil use of aircraft. It places a larger focus on cargo transported by air vis-à-vis passenger traffic. Per the latest data (2019), airfreight accounted for 0.9 percent of total intra-African freight transport demand. That is 2,319,578 tonnes (UNECA 2022). The World Bank estimates that 6 trillion dollars worth of goods, that is 35 percent of world trade by value, is transported each year as airfreight (World Bank 2023a). According to AfDB, the contribution of air transport could exceed seven times the contribution of road transportation in an economy's growth (AfDB 2012). IATA defines air connectivity as “the degree to which air transport connections support a country's economic development and productivity levels” (IATA 2020). Air connectivity is an important facilitator of international trade. Countries with better connectivity tend to trade more: one percent better air cargo connectivity is associated with six percent more trade (*Ibidem*). By implementing policies that promote improvements in air cargo connectivity and efficient movement of air cargo, governments have a strong potential to improve their trade competitiveness on a global level.

Africa has 925 airports, of which 122 are identified as international airports. The continent's air transport network includes a total of 14,762 air routes (UNECA 2022). Earlier, this chapter noted Africa's weak interlinkage with the rest of the world. Data regarding Africa's air connectivity is largely divided into pre-COVID and post-COVID recovery scenarios, i.e. pre-2020 growth, and post-2021 recovery of disrupted networks. The number of unique city pairs connecting Africa to itself and the world fell to under 100 in April 2020,

compared to upwards of 970 one year prior (IATA, 2020), which even in a recovery scenario, marked the definitive end of some city pairs.

Africa remains in the recovery phase of its air transport connectivity, both for passenger and cargo demands, but with a continuously upward trajectory, with Egypt and Nigeria leading the charge. As of July 2022, passenger traffic on African airlines was 26 percent lower than in July 2019, but had doubled between January and July 2022, while African cargo airlines recorded a two percent uptick in volumes over July 2019. The passenger load factor between May and July 2022 had increased at one of the fastest rates globally, and at a rate faster than the similar period in 2019, to 75 percent. By way of comparison, the best global performer in terms of the post-pandemic recovery is the American (North and South) region, with passenger numbers in July 2022 at 8 percent lower than in July 2019 (IATA 2022).

Prior to this, air traffic passenger numbers in Sub-Saharan Africa had consistently been on the rise, from a low of 4.5 million in 1970 to a high of 66.2 million in 2019, with South Africa leading the pack at 26.2 million passengers. Globally however, the 2019 figure for passengers carried stood at a staggering 4.56 billion, meaning that Africa's contribution to global air traffic was less than 2%. Globally, air transport freight in 2019 stood at 221,496 million metric tonne kilometres, where Sub-Saharan Africa's contribution to this stood at 3,765 million metric tonne kilometres; to put this in perspective, the SSA was just above the United Kingdom's 3,675 million metric tonne kilometres, and around 9% of the global leader United States' 40,793 million metric tonne kilometres (World Bank 2019).

IATA's air connectivity index analyses air traffic connectivity across 3,000 cities globally, concluding that Asia is the most connected region in the world. This is largely due to the domestic markets of China, India, and Indonesia, with close to 14 million destination-weighted seats available in 2019 in the region, and approximately 1 million destination-weighted seats for the same period in Africa. In 2019, South Africa was the most connected African country, with close to 120,000 destination-weighted seats, largely owing to a well-connected domestic network. Many African airlines record low load factors due to the imbalance of capacity and demand, limited commercial cooperation and uncoordinated intra-African networks with other African operators (Export Import Bank of India 2018). This presents a clear opportunity for regional coordination, which will be discussed later on in the chapter.

Maritime

UNCTAD estimates that 80 percent of global merchandise trade by volume is carried out by sea and handled by ports worldwide (AU 2017), which makes maritime transport a strategic economic trade enabler. The continent has a total coastline, including its islands, of over 26,000 nautical miles (AU 2012). Per the latest data (2019), sea freight accounted for 22.1 percent of total intra-African freight transport demand, coming second after road. That is 57,990,267 tonnes (UNECA 2022). In 2020, Africa's container ports accounted for a modest share of about four percent of global containerized trade volume (UNCTAD 2020). These ports are mired with challenges such as underdeveloped infrastructure, inefficient operations, use of outdated equipment, low levels of automation, and container and cargo theft, resulting in significant revenue losses (Export Import Bank of India 2018). Only a few international ports handle large cargo volumes, due to limited availability of good locations for deep-water ports. Another key challenge is space. Due to rapid urbanization in recent years, the areas surrounding ports have developed into cities, rendering expansion of ports in the immediate environment a challenge (Export Import Bank of India 2018). Creating an external depot increases the logistical costs of transporting goods from the depot to the port.

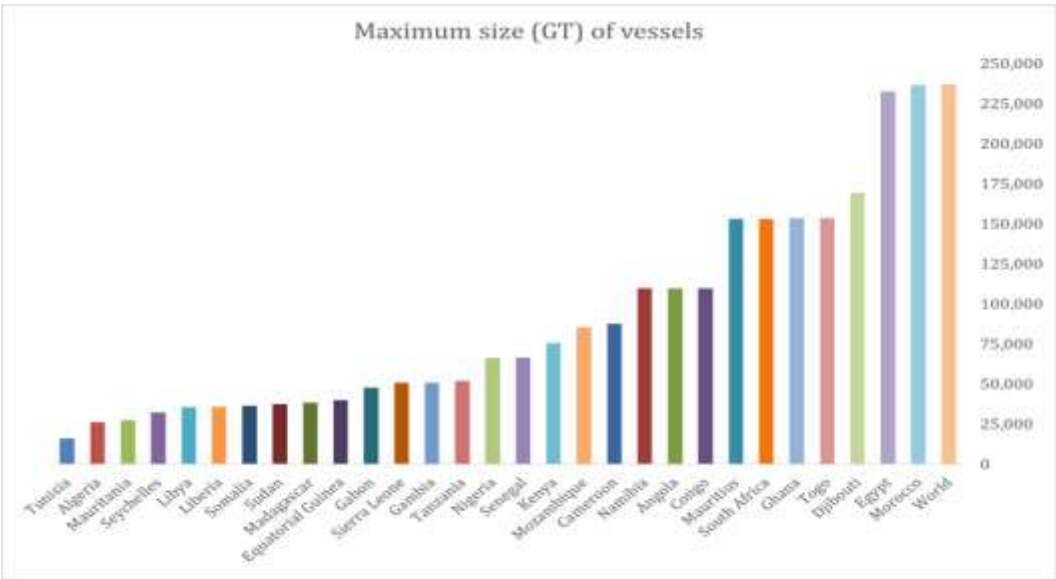
The World Bank Logistics Performance Index report found that about 60 percent of the time it takes to trade goods internationally is spent at sea. The report further states that the biggest delays occur when containers are held up at the origin or destination - at ports, airports, or multimodal facilities (World Bank 2023a). Productivity gains can be achieved by modernizing customs, allowing for electronic verification and clearance of goods, thus reducing stoppage time at borders, and overall reducing delays. The aforementioned report notes that more connectivity creates positive results, such as increased competition for logistics services, higher hard and soft infrastructure investments, increased presence of global logistics operators and exposure to best practices, all of which have a net result of improved logistical performance (World Bank 2023a).

The impact of the COVID-19 pandemic, coupled with the war in Ukraine, have dealt a significant blow to container shipping. Global maritime transport in 2020 faced a decline of 3.8 percent (in terms of overall shipments) over the previous year. The sector however improved by 3.2 percent in 2021, owing to a growth in demand for containerized cargo, and is projected to grow at an annualized rate of 2.1 percent through to 2027 (UNCTAD 2022a). Of the total

goods moved by sea in 2021, Africa contributed to 6.9 percent of total goods loaded and 5 percent of total goods discharged, representing about 1.3 billion tonnes of goods (UNCTAD 2022b), which is the lowest average of all world regions. Until early 2020, container ships offered high reliability at low freight rates, but these have since soared amidst capacity constraints at seaports and reduced container availability (World Bank 2023a). As the effects of the pandemic wear off and demand reduces, freight rates are stabilizing again.

An important metric for African States to consider in trade integration is port capacity, as states move towards higher volumes of trade. According to data regarding the maximum port capacity for container ships in African ports (as of May 2023), Tunisia has the lowest carrying capacity at 16,162 Gross Tonnage (GT) while Morocco and Egypt lead the way with a carrying capacity of 236,583 GT and 232,618 GT respectively (Figure 36) which trend close to the world maximum of 237,200 GT.

Figure 36: Maximum Size (GT) of Vessels 2021



Source: Own compilation based on UNCTAD Directorate of Trade Statistics (2023)

It could be argued that given the limited interconnectivity of African countries through seaports, merchandise trade by sea is not an important factor for the AfCFTA. However, this is debunked when viewed from the perspective of

multimodality of transport. Seaports are useful enablers of trade with the hinterlands. If goods are handled with long waiting times at the port, then the value to businesses is negative. One could take the critique further and suggest that the majority of goods transported by sea end up in other continents and do not directly serve intra-African interests. Take for instance the UNCTAD report that found that 40 percent of goods exported from Africa by sea in 2017 consisted of crude oil (UNCTAD 2018), with destinations including major refineries in the Middle East and China. This, however, does not negate the value of seaports to intra-African trade.

Imports by sea can serve a positive role in intra-African trade, if sufficient local value-addition is undertaken. The rules of origin under the AfCFTA determine whether a product qualifies as made in Africa. For instance, if the product is processed with some imported input, is there sufficient local content to qualify to be made in Africa (approximately 40 percent) or has continental cumulation occurred (input has been imported from another African country-with an existing tolerance value of 10 percent) (AfCFTA 2022)? This is where multimodal transport serves as a necessary anchor to intra-African trade. As an example, inefficiencies at the port of Mombasa could hinder Rwanda (through Kenya) from accessing materials essential for processing goods before exporting to DRC. The importance of seaports to the AfCFTA cannot therefore be overstated.

Inland Waterways

Twenty-nine African countries have navigable water bodies, but only a few have been developed for transport services (Export Import Bank of India 2018). Africa is home to an abundance of inland water resources, including eight major lakes and 11 rivers, which facilitate the movement of people and goods (Figure 37, below). Studies have shown that inland water transport is a fuel-efficient and low cost means by which goods can be moved, as well as more environmentally friendly compared to road, air, and rail transport (Nokelaynen 2018). For developing economies, this could prove to be an important factor in the quest for deeper trade links, especially where inland water resources are able to provide links between countries, and to ease the movement of goods to and from landlocked countries. Countries such as Bangladesh have taken advantage of the presence of this resource as a trade facilitator, with 32 percent of the nation's inland freight being moved through

inland waterways (Solomon *et al.* 2021), compared to less than 10 percent in Egypt, which has an abundance of inland waterways such as the 960-kilometre Aswan-Cairo Waterway and the 220-kilometre Cairo-Damietta Waterway (Nile Basin Initiative 2012).

Figure 37: Major Waterways in Africa



Source ADF (2023)

In West Africa, two stark examples show the imbalance of utilization of inland waterways: the Volta Basin and the Senegal River. The Volta Basin, with an estimated cargo haulage of 255,000 tonnes annually, is a positive example of relative success in the utilization of inland waterways. However, it faces technical constraints including inadequate capital to maintain navigable routes, in light of the capital-intensive nature of dredging needed to keep the waterway deep enough to accommodate large vessels (Solomon *et al.* 2021). Another useful resource would be the Senegal River, but the evidence paints a rather negative picture. The OMVS is charged with the responsibility to oversee the development of navigable use of the river. Consisting of four countries (Guinea, Mali, Mauritania and Senegal), it traces its roots to 1972,

and has carried out many technical, environmental, economic and financial studies (IFGR 2018). Despite this, the river remains sparsely navigable. As a regional example, the nations sharing the river established a framework with which to share development costs and benefits of infrastructure as they aim to operate on the river, but this has borne minimal fruit (UNECA 2021).

Similar occurrences plague the continent, whereby the use of inland waterways is muddled with challenges. These include insecurity, border disputes, sub-standard vessels and technology, and the effects of climate change. For instance, in the DRC, the Congo River is an important lifeline for the movement of goods and people, spanning over 4,800 kilometres and carrying the title of deepest river in the world. However, the overused and under-supervised vessels in use along the course are described as “floating villages crowded with up to 2,000 people, mainly traders and their goods, ranging from sorghum to palm oil” (ADF 2023) and therefore a source of frequent fatal catastrophes.

On the Lake Victoria basin, which is shared among three East African countries, it is estimated that 38.5 million people will experience climate-induced migration by 2050 (Willima 2022), with consequences on the navigability along the Nile River, which links 11 countries on the east and north of the continent. Lake Victoria supports the world’s largest freshwater fishery, producing 1 million tonnes of fish annually and employing 200,000 people; it is also the largest lake in the African great lakes’ region (AGLI 2023).

Realizing the importance of the effective management of inland waterway resources, attempts have been made across the continent to harness the potential of inland waterways in spurring trade within and between countries. An example is the VICMED project, which attempts to create a link between Lake Victoria and the Mediterranean Sea and spur trade along the course of the Nile Basin in the spirit of the New Partnership for Africa’s Development (NEPAD). Championed by Egypt, it has since 2015 been undergoing feasibility studies funded by the Egyptian Government, NEPAD, AU, and AfDB (Almajd 2022). According to Egyptian government officials, the VICMED is the shortest way to connect the basin countries and promote regional integration. The management of such an initiative is of significant importance in giving a much-needed boost to a multi-modal transport network, and if efficiently implemented, would be a key success conduit for the AfCFTA. Additionally, as part of the AU’s PIDA-Priority Action Plan 2,

Europe's Rhine-Danube Water Corridor has been identified as a benchmark by which the programme's integrated corridor approach has been developed, with respect to waterways (PIDA 2020). This demonstrates that transboundary water management is key and serves to enshrine other benefits such as promoting common interests in sustaining water quality, combating the effects of climate change, and enabling proper utilization of food resources including fish. It should therefore be encouraged under the AfCFTA framework.

The State of Play: Utilization

Having outlined Africa's transport capabilities in the first section, section two establishes linkages between available infrastructure and its utilization. It seeks to explain how African states have been faring in this regard. It also places Africa within the global context.

While Africa's transport infrastructure has registered gradual improvement over time, demand outpaces growth. In recent years, this has been further challenged by global shocks that have shifted the way of doing business around the world. In 2020, in the wake of the COVID-19 pandemic, African countries were forced to rethink their position in global trade, having been net importers and susceptible to the adverse effects of externalities that saw countries limit their export of food and other necessities, some of which African states were dependent on. Travel and transportation services dropped by 40 percent in 2020 due to logistical disruptions and mobility restrictions, as well as people choosing to curtail their movements (Seong *et al.* 2022).

In the wake of the pandemic, there was a shift in commodity trade where manufacturing began to be reshored, with production coming closer to the consumer, and the trend of China being the world's factory began to be challenged by more regional epicentres. Countries realized that a shift to regional production places them at a lower risk when global crises emerge, given the stronger incentive that a neighbouring country has to assist in times of crisis to avoid spillover effects. Global Value Chains (GVCs) were challenged, and a broader focus on Regional Value Chains (RVCs) emerged. Amidst this evolution, the road to stronger RVCs in Africa has been characterized by potholes and unexpected turns. Some of the challenges include inconsistent implementation of policies, for instance the regulations agreed upon by RECs on the recognition of COVID-19 test results across countries were spuriously implemented, resulting in traffic snarl-ups as truck

drivers attempted to cross border points (Rédaction Africanews 2022, Goddard 2020).

An acute example of failure in policy implementation is the case of the Kasumbalesa border congestion in 2022 that saw up to 3,000 trucks stuck on the Zambian side, stretching 70 kilometres. The border shared by Zambia and DRC services an average of 500 trucks a day (Chief Editor 2022). The congestion was attributed to several causes, including strikes by border officials and truck drivers, security challenges, inadequate support by the government, and inefficient crisis response mechanisms (Goddard 2022). Less than two months after the two countries' officials met and reached a resolution on the matter, the challenges recurred. A focus on Africa's multimodal transport and logistics bottlenecks is therefore not one of swift solutions with temporary results, but rather lasting solutions with long-term results.

This section discusses Africa's multimodal transport utilization across three modes: aviation, maritime and road transport. The focus is regional, in line with the rest of the chapter.

Flying into Uncharted Territory

In 1999, African Ministers in charge of civil aviation adopted the Yamoussoukro Decision. In it, State Parties called for full liberalization of intra-African air transport services in terms of access, capacity, frequency, and tariffs (AU 1999). On 28th January 2019, during the 30th ordinary session of the African Union Assembly, African leaders launched the Single African Air Transport Market (SAATM), the first flagship project of Agenda 2063 and a vehicle for implementing the Yamoussoukro Decision. SAATM aims to enhance air connectivity across the continent, thereby reducing the journey and waiting times for most passengers by more than 20 percent (IATA 2018). The free exercise of the 1st to 5th freedom air traffic rights, if fully implemented, would result in: the addition of 145 direct country-pairs; an average reduction of 26.4 percent in air transport fares, which would make air transport more accessible to a greater number of consumers; a 27 percent increase in existent route frequency, thus offering consumers more options and flexibility in intra-African travel; shared benefits in terms of direct job creation from the industry; support to service industries such as tourism; and a 0.17 percent boost to the GDP of participating states (AU 2021).

With 34 signatory states, spanning 80 percent of the existing aviation market in Africa (IATA 2023), one would expect to see significant air mobility improvements, but this has not been the case. Delays in implementation of the objectives of the SAATM have been attributed to protectionism for fear of national carriers either being vulnerable or not ready for SAATM, high cost of operations due to unconventional taxes, and Member States being very reluctant to review the restrictive Bilateral Air Service Agreements (BASAs) (AFRAA 2019).

Traffic rights on the continent are quite restrictive, where it either takes too long to gain access, or in some cases access is not given at all. This has been the case even for crucial services such as air ambulances, which were stymied during the COVID-19 pandemic and exposed gaps in regulations, inconsistencies across countries, and led to life-risking situations for both aviation service providers and the patients they sought to serve (Bainbridge 2021). The role of the SAATM is to serve the continent so that consumers can begin to see its true benefits. For instance, a Kenya Airways (KQ) flight from Nairobi bound for Accra but connecting through Lagos, under 5th Freedom rights would be granted access to uplift passengers from Lagos to Accra. This last stretch would economically be icing on the cake for Kenya Airways, given the additional benefit of picking Accra-bound passengers in Lagos as a positive on their balance sheet. Consumers then have a choice between KQ Lagos–Accra or one of its competitors on a Nigeria-flagged airline. Conversely, on the outward flight from Lagos to Nairobi, with an onward extension to Dar es Salaam, under 5th Freedom rights, a Nigeria-flagged airline would have the flexibility to uplift passengers in Nairobi before proceeding to Dar es Salaam. An open African sky benefits consumers, whereas a closed sky benefits no one.

From a regional lens, air transport is an important catalyst for the areas where Africa is competitive, including in agricultural exports. In light of the increasing push for value-addition of goods, African countries ought to consider how improved linkages within the air transport sector can facilitate regional production of goods, such that a cocoa bean harvested in Ghana can be processed in a factory in Ivory Coast and sold to a consumer as chocolate in Cameroon. This would reverse the trend of cocoa beans being exported to Belgium, processed in a factory in Europe, and sold at a mark-up to consumers in Africa. Furthermore, better and more cost-effective flights can encourage more intra-regional movement, particularly in countries where visa openness

has been adopted, such as the East African region. This would serve the regional tourism sector as well as other industries.

Lessons on Air Cabotage Policy from the European Experience

In demonstrating its commitment to the regional Free Trade Area, the European experience offers a valuable lesson for Africa under the AfCFTA. In 2002, the European Court of Justice resolved that the nationality clauses contained in the bilateral agreements between eight State Parties of the European Union and the United States were “a clear violation of the right of establishment” enshrined in EU law and were in contravention of the rules of the community (European Commission 2002). Following the ruling, the air transport agreement between the US and the EU was revised, first in 2007 (European Union 2007) and further in 2010 (European Commission 2010). Prior to its revision, foreign carriers from EU states received differential treatment. For instance, French carriers originating from Germany to the United States could “reject services offered between Germany and the U.S. by any carrier that isn’t substantially owned and effectively controlled by German citizens – which Air France certainly is not” (Shane 2002). States argued that the application of freedoms was selective, based on the economic status of countries. The European Union air transport agreement with the United States is a stark example of the necessity to consider policies at a multilateral rather than bilateral level once a Free Trade Area agreement is in force and serves as a useful precedent.

Sailing through Autonomous Waters

Earlier, this chapter noted the criticisms regarding the utility of sea transport in advancing the goals of the AfCFTA, recalling that African-owned ships account for about 1.2 percent of world shipping by number, and about 0.9 percent by gross tonnage (AU 2012). In this section, the arguments regarding African States’ utilization of sea transport are taken further.

Given the low presence and capacity of African owned ships, African maritime trade largely depends on foreign owned vessels. Cabotage is the transportation of domestic freight or passengers by a foreign carrier. Cabotage rules, as applied to foreign carriers, can have implications at a bilateral or multilateral level. The African Maritime Transport Charter states that “State parties shall

promote cabotage and effective participation of private sector operators at national, regional and continental levels” (Article 15) and further encourages the setting up of national and regional maritime cabotage shipping lines (AU 2010).

While it creates an important framework for engagement within national waters, not all countries in Africa with maritime access are able to implement their cabotage policies. A stark example of this is the Nigerian case. Currently the largest economy in Africa, with a nominal GDP of 506.6 billion dollars (IMF 2023) and petroleum exports valued at 41.378 billion dollars in 2021 (OPEC 2022), maritime trade is of special significance to Nigeria. Twenty years after the enactment of the Coastal and Inland Shipping (Cabotage) Act (2003), the nation is still grappling with competing challenges of fleet expansion of national carriers, inadequate funding to promote local carriers, and inadequate safeguards to protect native ship operators (Anele 2017). Protectionist policies have plagued the state, despite failure to enact policies that mandate the transfer of technology to Nigerian ship operators. A similar trend emerges when other coastal countries are studied.

Maritime cabotage offers an opportunity for the continent to maximize the use of sea routes. A study exploring short-sea shipping (SSS) and its potential in generating positive outcomes for freight networks in the African context evaluated the potential within the SADC region for policies on maritime cabotage to serve as an important determinant in boosting the flow of goods, thereby reducing the unit cost of transport (Konstantinus 2021). SSS development, if well managed, could act as a potential alternative to the capital-intensive development and management of rail networks, and at the same time reduce the overdependence on road networks for haulage. Whereas there exist frameworks for the pursuit of robust maritime cabotage policies, such as those within the purview of the Africa Integrated Maritime Strategy, and regional memoranda such as the SADC Blue Economy Initiative, little has been done towards their operationalization.

SSS initiated at a smaller scale, such as the REC level, would see local carriers gain access to ports at rates free of terminal handling charges within the region, and give room to expanded interoperability with neighbouring RECs as the practice increases in maturity. Through reduced costs of maritime trade and reduced non-tariff barriers (such as the harmonization of regional maritime vessel registries), greater volumes of goods handled at both inland and maritime ports would necessitate more efficient models of port management.

Consequently, the creation of value in previously idle inland and maritime avenues could lead to the emergence of regional and sub-regional hubs for port activity, with direct positive outcomes on the development of port-economies.

The emergence and growth of smaller regional and sub-regional ports that facilitate movement of goods should be a process held in parallel with the development of maritime hubs that serve continental interests, and which will result in processes that are mutually beneficial. For instance, the development of an SSS initiative on the eastern coast of Africa that covers approximately 4,600 kilometres from the south of Somalia to KwaZulu Natal in South Africa could be fertile ground for an international shipping hub that then serves neighbouring coastal countries through a hub-and-spoke model. In effect, trade with parties outside the continent would be conducted via the continental shipping hub(s), from which goods would then be ferried by locally registered vessels or through joint ventures with operators to neighbouring coastal countries. To external trade partners, this would directly provide access to large inland and neighbouring markets, thereby opening Africa to global trade networks, while Africa concurrently develops its own sea and inland networks that facilitate the movement of people and goods under the push for a common market.

As suggested by Acemoglu, Aghion and Zilibotti (2006), the pursuit of an innovation-based strategy - as opposed to an investment-based strategy - is key in a state's pursuit of global competitiveness. Applied to the case of Africa's maritime cabotage, it implies making the best and most efficient use of existing resources and infrastructure, with a view to learning-by-doing and continuous improvement, and maximizing the potential of local markets via increasing their importance for both global and intra-continental trade.

A robust system of knowledge management is a necessary pillar by which these and other suggested initiatives should be based. For instance, in the planning and implementation of SSS across the continent, or management of 5th Freedom air traffic rights across the continent, data collection should be integral to the process, and shared in a manner that affords transparency to stakeholders across public and private sectors, as well as civil society actors. Bodies such as the African Civil Aviation Commission (AFCAC) - which is responsible for the implementation of the SAATM at the continental level - that can be held accountable in the handling of these instruments and operations through public information offices, are an essential stepping stone to the successful transfer of best practices, narratives and lessons learned on

the path towards a harmonized trade regime on the continent. The centralized and easily accessible knowledge of what works and what does not will give actionable insights on how best to adapt practices at continental, regional, or national levels without the incessant need to shuttle back and forth across cities for talking shops that are not a panacea for productivity.

Trucking on the Savannah

Road transport is the prevalent means by which goods and people move across the continent. This is not without its challenges. Regressive rules have led to transport operators bearing greater burdens where cost escalation is evident. Several instances have been reported on Tradebarriers.org such as arbitrary raising of charges for vehicles (South Sudan), a ban on filling fuel reserve tanks for foreign trucks (Zambia), issuance of exorbitant transmit permit fees (Zambia), manual processing of import permits thus increasing waiting times (Mozambique), among others (COMESA, EAC, and SADC 2023). Though change has been demanded, it is gradual and, in some cases, not adequate to the demand.

In a World Bank study conducted to evaluate bilateral road transport agreements regulating international road transport, factors such as the exemptions of permits and quotas, transparency provisions, and double approvals were examined (Kunaka *et al.* 2013). It was established that, of 74 agreements evaluated across the world, 66 of them completely prohibited cabotage practices. Specifically, in Africa, the bilateral road transport agreements that are ranked as some of the least-open globally are found in the Southern Africa region, and are between Tanzania and Zambia, Malawi and South Africa, South Africa and Zimbabwe, and South Africa and Zambia, all of which feature prohibitive cabotage and third-country transport regulations.

Despite the clear interest in trade with South Africa, the bilateral agreements by Malawi and Zambia completely prohibit cabotage, while South Africa and Zimbabwe allow cabotage in their domestic legislation, but on a reciprocal and time-bound basis. Additionally, transport operators are obliged to register vessels in each country that they serve. The result is a region that experiences fragmented road freight services, with vessels conducting empty runs on journeys across international borders, even though, to give one example, cargo ferried by road from Zambia to South Africa has to transit through either Zimbabwe or Botswana, with no possibility of ferrying goods from South Africa to Zimbabwe on the journey back to Zambia. This not only limits

business opportunities, but also muddies the case for environmentally friendly practices, because the truck burns fuel both ways regardless of carrying goods only one way. The call to action in this instance is clear, and places the focus squarely on road transport regulations that are not in line with the goal of a common market for Africa.

The Missing Middle

Having drawn from some of the acute examples of areas where utilization of transport and logistics capabilities has fallen short of the goals of a Common African Market - and by extension the AfCFTA - this section makes a case for a return to the first principles of an African desire for freedom of movement by air, sea, rail and road. The case begins by discussing what an AfCFTA-centred process could look like for transport and logistics, suggesting that the continent needs to re-examine its approach, both from the policy and implementation angles, in order to deliver a Common African Market. While speaking on the topic of threats to open, free and fair trade in Africa, Dr. Ngozi Okonjo-Iweala - Director General of the World Trade Organization stated,

“Those threats are the poor logistics and infrastructure that should support trade on the continent, which we need to improve, and the bureaucratic elements that prevent movement of goods and services within the continent itself. The African Continental Free Trade Area is critical. It’s one of the key instruments to deliver on Africa’s agenda, Agenda 2063, and I believe that if it works, it will really be transformative for the continent. We should expect too much from it, because if we start having very low expectations, it will not deliver” (African Business 2023).

The Case for Policy

Earlier, this chapter noted that Africa’s landlocked countries pay a higher price to trade due to bottlenecks in transport and logistics. It also demonstrated challenges in the utilization of Africa’s transport and logistics capabilities, including the slow implementation of SAATM and weak enforcement of cabotage policies for both maritime and road transport, which limits the intra-regional movement of goods and services. This section will outline an AfCFTA-centred framework with which countries and sub regions can aim to

converge their transport and logistics capabilities. As a point of departure, the chapter suggests as follows:

Characteristics of an AfCFTA-Validated Transport and Logistics Carrier

African countries need to agree on a list of criteria that can be used to identify transport and logistics operators that align with the goals of the Common African Market and qualify for free movement across borders of State Parties. In doing so, some criteria could include:

Figure 38: Characteristics of an AfCFTA-Validated Transport and Logistics Carrier

FACTOR	QUALIFICATION UNDER THE AfCFTA
Origin	The carrier is registered in a state party of the AfCFTA
Operations	The carrier has a licence to operate in State Parties of the AfCFTA (as agreed upon under the framework of RECs, to be adopted progressively as a common framework for the continent)
Representation	The employment basis of the carrier is representative of the State Parties to the AfCFTA, with employees representative of nationalities of State Parties to the AfCFTA (where a carrier is operational in a host country with a positive return on investment for more than a year of operation, the carrier shall actively seek to recruit nationals of the State Party in which it is operational)
Ownership	The carrier is owned wholly or in part by shareholders with nationalities of State Parties of the AfCFTA
Legislation	The carrier shall comply with the laws and regulations of the State Party in which it operates, and shall be bound by The Protocol on Rules and Procedures on the Settlement of Disputes under the AfCFTA.

Source: Developed by Baluch *et al.* (2023)

A transport and logistics operator holding a registered certificate as an AfCFTA-validated carrier shall, in compliance with agreed statutes between State Parties to the agreement, have the privileges of national treatment and freedom of movement and trade across borders. The next section looks at the case for implementation, which is the crux of the chapter.

The Case for Implementation

In its latest report on global logistics performance, the World Bank introduces key performance indicators in its evaluation, under three subsets: dwell time (delays experienced at the same place, such as at ports, airports, and inland facilities), connectivity information (such as the number of international connections at the origin for a given destination), and trade corridor lead time (time differences between events at different locations) (World Bank 2023a). Key Performance Indicators are to a business what butter is to bread. If proportionally applied, they can mean the difference between a well-lubricated operation and a dry distasteful one.

Key Performance Indicators are quantifiable measures of progress toward an intended result (KPI.org 2023). Otherwise stated, KPIs are a set of quantifiable measurements used to gauge a company's overall long-term performance (Twin 2022). Much like a business, a publicly operated entity also needs to set its objectives and have a guideline as to how it intends to meet those objectives, with clearly stated repercussions for failure and rewards for success. Unlike a business, however, public entities can go a step further by sharing with the public how their performance should be measured, as a matter of public interest and to allow for broader accountability.

Meeting the Challenge through Key Performance Indicators (KPIs)

A good set of KPIs consists of objective metrics, comparative elements in order to track changes over time, and reporting tools (KPI.org 2023). There are several types of KPIs, including: financial KPIs that measure how a business is performing on the balance sheet, customer KPIs that generally centre on per-customer efficiency, process performance KPIs that evaluate how well an entity operates, marketing and IT KPIs, among others. An example of business/investor KPIs is available in the appendix. Though there

is a theory involved, most KPIs are context-specific, and measure how an individual servicing a particular function ought to gauge their performance. This section asks: can KPIs be used to make multimodal transport in Africa more efficient?

KPIs in Air and Maritime Transport

Data regarding air transport connectivity show that even though air transport accounts for less than one percent of global trade by volume, it translates to 35 percent of global freight by value. Similarly, it has been demonstrated that a one percent improvement in air traffic connectivity is associated with a six percent increase in trade, and that investment in better connectivity is likely to have a greater impact on the GDP of emerging economies than their developed counterparts (IATA 2021). Air transport connectivity does not, however, exist independently, and can only go as far as the various institutional mechanisms in place to support it allow.

In the African context, the AU Agenda 2063 calls for an African passport by 2018, and the liberalization of air traffic rights within the continent through the SAATM. Similarly, where maritime transport is involved, Africa continues to fall behind the Africa Integrated Maritime Strategy. Even where unilateral approaches are concerned, financial investment in physical infrastructure is not a sufficient condition for efficient seaport operations. There needs to be a measure of how a port operates, and isolate the causes of inefficiencies in order to address the root cause through targeting.

In instances where performance is evaluated, such initiatives tend to be shrouded in secrecy, with information available only to those directly involved in the relevant agencies despite the gravity of such initiatives for the public. Where information on operational efficiencies exists, or is at least made publicly available, the information is generally updated in broad strokes and at times much later than the point at which changes were made. Timely relevant data is necessary for citizens to have the capacity to provide oversight of government services, as well as to provide avenues for public entities to receive feedback for improvement. Without knowing what to periodically evaluate, the citizenry is disempowered and public entities can easily run counter to their stated objectives. This is not to say that all citizens at all times will provide oversight to the providers of public services at ports and airlines,

but it is to affirm that in order for such oversight to exist there needs to be a baseline and basis for performance evaluation.

To illustrate this point, this chapter provides examples of two countries that have successfully utilized KPIs in their port operations.

The case of King Abdullah Port and the Port of Salalah

Located in the Kingdom of Saudi Arabia, King Abdullah Port was in 2021 ranked by the World Bank as the world's most efficient port, while in the neighbouring Sultanate of Oman, the Port of Salalah took the second position. In terms of 2022 container throughput, the former handled 2.9 million TEUs (medium-sized port), while the latter handled 4.5 million TEUs (large port). They are both billed as strategic long-term investments for the two countries, especially in Saudi Arabia where King Abdullah Port is key to the Kingdom's Vision 2030, which aims to leverage its strategic location into a global trade and logistics hub connecting three continents: Africa, Asia and Europe (PDC 2016). To this end, the port is a key pillar in Saudi Arabia's new King Abdullah Economic City, which includes an industrial zone, while the Port of Salalah is a pillar in the Salalah Ecosystem, which includes a tax-free zone and an international airport.

What is also interesting to note is that both ports have similar structures of ownership and management, through PPP models (Public-Private Partnership). The King Abdullah Port is owned and operated by the Ports Development Company, a joint venture of two marine and logistics conglomerates in the Middle East, in conjunction with 17 state agencies and enterprises, and terms itself as the first privately-owned port facility in Saudi Arabia, distinguishing itself from other facilities such as the Port of Jeddah, which is publicly-owned and managed by the Saudi Port Authority (Mawani). The Port of Salalah is a joint venture bringing together APM Terminals, which is a Dutch port operating company and subsidiary of Maersk, as well as other institutional investors and Oman's Government Pension Fund.

These ports pride themselves in the efficiency offered to clients and stakeholders, with global rankings being a reflection of their respective circumstances. The Port of Salalah prominently puts forward the fact that it exists within an ecosystem, where the ease of doing business takes centre stage, and also positions itself as being

more competitive than similar facilities in the region. For example, where multimodal flexibility is concerned, it puts forth standards such as shipment customs clearances conducted within 21 minutes, a dedicated sea-air customs corridor that makes the cargo connection between sea and air within 2 hours of discharge, quick truck turnaround times with zero idle truck costs, and shipping time reduction between Salalah and other regions by an average of 4 days (SalalahPort.com 2023). Structures such as the smart gate system at the King Abdullah Port, which integrates the terminal gate system with the port community system, go a long way in ensuring there is operational efficiency at the port through automation of security functions and reducing the need for human intervention, resulting in lower traffic and faster turnaround times within the port facility (PDC 2022). Management oversight is also key, with daily data collection and periodic review of the status of the ports, which allows challenges to be identified early and mitigated against.

This laser-focus on operation efficiency and high standards acts as a guarantee to potential investors, stakeholders, and clients, affirming the fact that business will be conducted efficiently, and at the most optimal resource level, which acts as a promoter of a port facility in terms of the ease of doing business.

The case of the two ports confirms the hypothesis that the operating efficiency of container ports is positively associated with the competitiveness of ports (Hyuksoo and Sangkyun 2015). Such operational efficiency can only be achieved through the magic of KPIs. This has done wonders in major economies that have left Africa behind. It is therefore necessary to adopt management practices using KPI frameworks across public and private institutions in a bid to enhance transparency and accountability in the collective push towards operational efficiency for Africa's multi-modal logistics framework. Peak performance does not come by accident. It needs to be nourished with professional training, coupled with incentives to reach greater heights. Noting that by improving container throughput in ports, management can earn the ability to charge more for such efficiencies; shipping principals with a strong business acumen would be happy to see their vessels released at a faster rate than the current one. To quote one such operator, Mohammed Akoojee, CEO of South Africa's Imperial Logistics (which was

acquired by the Dubai-based multinational conglomerate DP World in 2022), stated: “[a] big part of business in Africa is reliability”, noting that his clients would rather pay more to know that their goods will arrive on time than for journeys to be cheaper and late (The Economist 2022)

Africa Can Get It Done: Examples from Africa’s Leading Ports

To demonstrate that Africa has what it takes to implement KPIs, this section draws examples from the continent, using a success case where KPIs have been implemented with positive outcomes, as well as a counterfactual case where KPIs have not been implemented effectively.

Leading the pack in African maritime transport is the port of Tanger Med, located in the northern region of the Kingdom of Morocco. It is ranked as Africa’s leading port by the World Bank, and consistently in the World Shipping Council’s Top 50 Global Ports in terms of Twenty-foot Equivalent Units (TEUs) handled (WSC 2021). In 2021, Tanger Med handled 101 million tonnes of goods, representing upwards of 7.1 million TEUs and a jump of 24 percent over 2020 figures. Key highlights of this performance include an upward trend in Roll-On/Roll-Off (RORO) operations, owing to the increase in industrial and agro-based exports, as well as vehicle exports (TMPA 2022). This enhanced export activity points to the growing maturity in local manufacturing activity, which acts as an essential anchor to a port responsible for around 50% of Morocco’s port tonnage.

Elsewhere on the continent, South Africa’s Port Authority in 2022 recorded a total of ≈ 4.1 million TEUs handled across its seven port facilities, against a total potential capacity of 5.7 million TEUs (Transnet 2022). This figure includes the Port of Durban, which is widely ranked as Africa’s second largest port in terms of cargo handled. Additionally, the bulk cargo volume handled decreased by 2.1 percent over the previous year to stand at 72.7 million tonnes, owing to operational constraints such as equipment failure and its impact on reduced container moves per ship working hour and truck turnaround times (Transnet 2022). In other words, South Africa’s cargo volumes across its seven ports combined generally fall below that of the single Tanger Med port.

Poor seaport management has significant effects beyond a port’s hinterlands, and can often be a trade barrier as opposed to a trade catalyst, with dire consequences for the cost of exports and imports in landlocked developing

countries that are dependent on sea trade. The 2022 World Bank Container Port Performance Index highlights further disparities between the Port of Tanger Med and other African seaports. The Index ranks ports on statistical indicators based on unseen and indirectly measurable variables of port efficiency, while an accompanying administrative index is based on average per-hour variables from a vessel's arrival. Morocco's Tanger Med comes first place in Africa (4th globally), followed by Egypt's Port Said in second place (10th globally) and Djibouti's port in third place (26th globally), while Somaliland's Berbera Port is ranked fourth in Africa, but ranks at the 144th globally. This places these ports notably ahead of other African ports including Mombasa, Dar es Salaam, and Durban (World Bank 2023b).

This points to a situation where some African ports with larger capacities and higher levels of investment have failed to adequately manage their resource capacities towards increased efficiency and enhanced ease of doing business. Projects such as the 421 million dollar upgrade of the Port of Dar es Salaam through the 2017 Dar es Salaam Maritime Gateway Project enabled the port to handle post-Panamax shipping vessels as well as RORO activity in a port that is projected to handle over 30 million tonnes of goods per year, and on which neighbouring landlocked countries depend for the flow of goods. Yet, despite the fact of its enhanced physical infrastructure, Dar es Salaam is ranked as 312th out of 348 ports in the aforementioned Container Port Performance (CPP) Index, which is based on indicators that point to the port's overall operational efficiency. It is therefore interesting to note that investment in physical infrastructure does not necessarily equate to operational efficiency, and that upgraded infrastructure alone cannot be a harbinger of good tidings.

Regional Hubs and Super Hubs

The successful logistics hub - and its affiliated regulatory authorities - will be one that fosters a culture of efficiency and works its hardest to satisfy customers by carefully and intentionally facilitating its own share of global trade. (Baluch 2005)

The AfCFTA has greater chances of success by targeting nodes that can be catapulted to regional and super hub status. Against this backdrop, it should be noted that over the next ten years, almost 30 seaports are to be upgraded in capacity and efficiency, but there are no plans for new seaports (UNECA 2022).

One very important type of hub is the sea-air hub, where goods enter by sea and then exit by airfreight for transport to the final destination (Baluch 2005). Sea-air freight provides specific benefits to regional economies, airlines, airports, seaports, forwarders, and importers. It is a complex and potentially lucrative transport chain - a compromise between cheaper and slower sea freight and the faster but more expensive all-air alternative. A good sea-air hub satisfies a basic formula: it must sit midway between origin and destination, and the airfreight cost must not be more than 50 percent of the direct airfreight cost from source to destination. The sea-air hub's location must be strategic in terms of time, transport costs and storage costs (Baluch 2005). A good starting point to develop sea-air hubs is to identify the potential regional and super hubs. Fortunately, UNECA has initiated this process by identifying 65 'ports of importance' for inter-African trade (UNECA 2022). It is important to note that this excludes ports that were found to be too small or located next to larger ports, which would be disqualifying characteristics for a super hub. A total of 142 links were identified connecting the 65 ports. Further refining should be conducted to result in perhaps seven or fewer super hubs, and 10 or fewer regional hubs. From these hubs, inland linkages through feeder lines and fulfilment centres can be developed for the benefit of countries in the region.

The utility of super hubs and regional hubs is in their ability to connect the continent externally and intra-regionally, respectively. In the first case, the super hub becomes the point of connection to the external world, allowing goods to be transhipped, offloaded, processed through a fulfilment centre, and repatriated to destinations within the continent. The second chain involves receiving goods from manufacturing centres on the continent and packaging in readiness for transport to other regions. This can be termed reverse logistics, which is where the countries serviced by the super hub develop feeder lines to serve as distribution centres for their goods to reach other countries within the region. The super hub becomes an artery that serves each country in its region (and potentially the continent) in a bid to avoid double-handling and additional costs/inefficiencies. In cases where the demand at one super hub outpaces the ability to provide services, another super hub within reasonable proximity can rise to meet the excess demand, in a cooperative and business efficient manner. This provides an incentive to logistics service providers who would therefore have an opportunity to service more than one region. Regional hubs, as a subset of super hubs, would serve a similar function at a smaller scale, serving as necessary links between nations in a shared region.

In order to ensure adequate development and deployment of regional and super hubs, some best in class practices that ought to be encouraged are:

- Electronic preclearance of cargo
- RFID scanning of containers and availability on arrival
- Demand forecasting
- Waivers of custom duty and bonds applicable to transit cargo
- Real time data reporting
- Use of Key Performance Indicators to track effectiveness
- Fast-track dispute resolution systems
- Workplace safety including regular audits and monitoring

In total, these aim to provide African countries the opportunity to compete globally and sustain multimodal transport chains, targeting the handling of goods from end to end, while fostering aspects such as data reporting, quality control, trade-related dispute settlement, and arbitration and labour practices.

Lessons on Regional hubs from East Asia

In developing regional hubs, Africa stands to benefit from the experience of China, and more broadly ASEAN. China has several regional transport and logistics hubs, including Shanghai, Shenzhen, Guangzhou and Tianjin. While some models of development use the hub and spoke model (where multimodal systems intersect at the hub), China has utilized a different approach whereby goods and people move from different points without requiring convergence at a central location (Geoarc 2022). By developing multiple transport routes, the nation is able to avoid congestion, increase efficiency and promote mobility across different cities, not only the capital and its environs, but also allowing movement from suburb to suburb. Its high-speed rail network is also especially extensive and interconnected, with 38,000km of rail developed in the last decade alone. This has increased affordability for passenger transport and serves optimally for distances that would otherwise cost more by flight or require longer hours by traditional train. For a country that still has a significant population that is considered low income, the interventions address the needs of the people and provide a useful lesson for African states.

ASEAN in turn provides a useful example for the AfCFTA. In 2005, ASEAN ministers of transport signed a comprehensive multimodal transport agreement which aimed to provide minimum requirements for the registration of ASEAN

multimodal transport operators, define the liability (and limits thereto) of multimodal transport operators and consignors, and unify legal principles to institutionalize multimodal transport operations among State Parties (ASEAN 2005). Already a region known for its transport and logistics prowess (e.g. in the case of Singapore), this agreement served to formalize and bolster multimodal networks and further propelled the status of regional hubs while benefiting multiple nations across the region. Africa can develop such targeted regional multimodal networks through concerted planning and implementation. The continent is adept at the first but often falls short on the second.

Change Management: From Bureaucracy to Technocracy

Transformation of Bureaucrats

The revamp of Africa's transport systems cannot be divorced from the transformation of its transport sector practitioners. This means ensuring the people spearheading the management of transport infrastructure, including airlines and ports, are knowledgeable in the field. This can be achieved through proper training, recruiting, and developing experience in the industry. A clear pipeline of next-generation practitioners needs to be developed through dedicated platforms in universities and institutions of higher learning. Africa is teeming with young people who can be developed into transport sector experts over time. This requires intergenerational collaboration between seasoned professionals and graduates. Building on a culture of quality, standards and innovation, universities can serve as a foundation for field simulations, thereby equipping professionals with best practices as they endeavour to join the workforce. Furthermore, by simulating real-life experiences, such as the bottlenecks experienced at the Kasumbalesa border, early career individuals can iterate solutions and work hand-in-hand with officials in providing oversight of the implementation process (backed by governments and private sector). The culture of political appointees operating ports and airlines must be thwarted if Africa is to become a global leader in transport and logistics.

The re-education of transport and logistics practitioners must be holistic, in the sense that it adapts to recent demands including new frameworks developed under the AfCFTA. Continuous professional development and training linked to job performance can be conducted to keep practitioners up

to date on industry trends. The AfCFTA has a Protocol on Rules and Procedures of the Settlement of Disputes. Mechanisms for dispute resolution that are adapted to the needs of the sector ought to be developed. Clear rules on dispute resolution allow for greater confidence among transport operators. In the case of air transport, traffic rights need to be applied across the board; should these mechanisms fail, provisions for the aggrieved parties to opt for arbitration along clearly established channels must be implemented. Such information dissemination needs to be prioritized with a sectoral lens. This can be achieved through harmonious coordination with professional associations such as the African Civil Aviation Commission. Meaningful involvement of professional bodies in policy processes includes regular engagement through workshops, establishing representative offices, goodwill, and promoting autonomy of actors.

Transformation of Processes

The shift from policy to implementation through KPIs can be achieved through the integration of private sector interests that inherently and inevitably require wide-ranging accountability to stakeholders, where efficiency is a minimum standard. Coupled with the goodwill of the public sector, sweeping reforms can be made in Africa's transport infrastructure landscape that will enhance the free movement of people, goods, services and capital or investment. According to the Asian Development Bank in a study on project financing in developing economies, Private Sector Participation helps to overcome constraints on public sector borrowing, and the private sectors' active participation in all phases of a project life cycle may secure better value for money than traditional design-build models (ADB 2000). The report further underscores that sound legal frameworks for these arrangements are necessary pillars in order to ensure long-term investor confidence, and that public sector participation in identifying key priority infrastructural needs is a catalyst for private sector interest in project financing.

Infrastructure investment is always a challenging subject, whether in Africa or elsewhere in the world. The fixed assets, such as quays, rail track, roads, runways and structures, have long-term horizons. At the same time, the rolling stock - aeroplanes, locomotives or trucks - have shorter life spans. Finally, the operators, even those that are state-owned, face financial and commercial demands that can be measured in months. Combining these different

expectations as measured by return on investment suggests that a public-private financing and operating model is the preferred option. Such a model will work and succeed only in an environment of openness and transparency (Baluch 2010).

In its latest Logistics Performance report, the World Bank highlighted that “private-public dialogue is critical for developing a common fact-based diagnosis and designing impactful interventions” (World Bank 2023a) with a view towards having permanent institutions managing private-public engagement. In addressing transport infrastructure inadequacies on the continent, pursuing private sector engagement in the design, operation, and management of infrastructure such as road networks can have positive effects on easing the flow of goods and people, while generating returns on infrastructural investment. Such ventures on a PPP basis have been tried and tested in multiple parts of the world, such as the 60-kilometre A7 highway that connects the German port of Hamburg to the state of Bavaria. In this PPP, the federal government is the owner of the highway, while the private developer and operator of the highway is paid on an availability model. This provides incentive to ensure that there is minimal congestion on this vital trade corridor, thus embedding Building Information Modelling (BIM) technology during the infrastructure phase that uses sensors to detect any potential harbinger of congestion. In addition, and in order to promote local ownership of the vital infrastructure, the private developer of this highway sub-contracted a consortium of local construction and engineering firms (Via Niedersachsen, 2023). The highway, which consists of two large bridges, nine junctions, and rest areas, has also embedded environmental protection mechanisms such as noise protection ramparts and rainwater retention basins, resulting in a project that, in addition to trade concerns, is cognizant of its environment.

Similarly, where air transport is concerned, partnership with private entities on a concessionary basis can have positive net effects on the management of infrastructure. Portugal’s Humberto Delgado (Lisbon) Airport has since 2013 been managed by a private company, which has since implemented a raft of measures aimed at enhancing efficiency at the facility. Driven by technology and innovation, functions such as border control have been automated through the use of smart terminals and e-gates, and was in 2020 the recipient of ACI Europe’s Best Airport in Europe Award in the 25-40 million passenger category, owing to its technologically enhanced response to the COVID-19 pandemic (Vinci 2023a). The same firm operates Portugal’s Porto Airport,

which has also won multiple awards in the European region, owing to factors such as retail organization, customer service, Air Service Quality (ASQ), departure metrics, and regional connectivity (Vinci, 2023b).

A well-adapted PPP model reduces incentives for monopolization, as the government still plays a crucial role in ownership while private entities handle management and day to day running of the facility. For instance, African countries could develop municipal bonds⁴³ for financing infrastructure development projects through a PPP model. Once the municipal bonds have been issued and the funds raised, the government entity can partner with private companies to undertake the development and operation of the infrastructure project. The private sector brings expertise, resources, and efficiency to the project. The infrastructure project, such as building a toll road or bridge, often generates revenue through user fees, tolls, or other means. This revenue stream can be used to repay the municipal bonds and cover operational costs. The private sector typically takes on some of the project risks, such as construction delays or cost overruns, while the public sector retains certain risks, like demand and policy-related risks. As infrastructure projects developed through PPPs have a significant impact on the community, it is essential to involve local stakeholders in the planning and decision-making processes. Engaging the public helps build support and ensures that the project aligns with the community's needs and values. This has worked in other regions and it is time to make it work for Africa.

Conclusion and Future Prospects

Having a good transport network is important, but how it is managed is also key. Africa can take the next steps forward in enhancing its multimodal transport network through a dual review of its transport policies with an AfCFTA-centred approach, and a shift in its implementation processes guided by KPIs. The first step in ensuring an AfCFTA-centred approach will be to enact tools for trade, including recognition of AfCFTA-validated carriers, decreasing bureaucracy by providing one mutually recognized mark for trade across the continent. Second, by identifying and developing regional and super hubs that take advantage of the AfCFTA-centred process and catalyse intra-

⁴³ Municipal bonds are debt securities issued by local governments to investors, and they are backed by the creditworthiness of the municipality. Investors purchase these bonds and effectively lend money to the municipality.

regional processing of goods and services. This requires a collaborative mindset, and the ability to dedicate resources towards implementation. Third, a business-centred approach to transport management, guided by ROI and KPIs. Here, the chapter has demonstrated use cases showcasing countries that have achieved successful logistics performance through dedicated implementation of reforms with a view to delivering world-class standards. The chapter has proposed that one way to incorporate KPIs in transport infrastructure development and utilization is through a PPP framework.

Incorporating PPP models in infrastructural development is about more than just finances, but also better, measured management and transfer of best practices. PPPs should have an explicit management (KPI) focus in addition to financing clauses. This not only ensures that Africa's current infrastructure is well utilized, it also creates incentives for improvements and ensures a pipeline of transport and logistics practitioners who are able to guide the continent towards operating on a strict commercial basis and competing at a global level. Such an approach would make Africa's transport network responsive to the latest technologies shaping the sector, allowing for its natural evolution and enhancement in a market economy that takes advantage of the most efficient systems available. By doing so, the continent not only maximizes its ROI, but also makes it a norm that public goods such as transport infrastructure are utilized in a manner that is sustainable.

Just as the invention of the wheel first benefitted manufacturing before transportation (through, for instance, spinning clay for functional items such as water containers) (Baluch 2005), so also can the improvements in management of transport infrastructure benefit other sectors. More than one billion people on the continent are counting on it. Africans desire to be able to move across their countries with ease, to trade and interact with one another at a scale unprecedented in history, and this can be made possible in our lifetime. Africa is a vast continent, and the management of its multi-modal transport network is key, especially in the context of the 2023 AU theme of 'Accelerated Implementation of the AfCFTA'. It is time to admit, as a first step, that the current situation leaves a lot to be desired, and maintaining the status quo is not an option. The time to change is now. The vision is clear and the direction is set, the missing piece is AfCFTA-centred policy and effective implementation, guided by KPIs.

The proverbial ball is in the court of practitioners. Will Africa's bureaucrats do what is needed to enhance its transport sector management and spur

Africa's contribution to the global economy, or will the perennial challenge of Africa's lagging position persist? Now is the time to act, moving beyond white papers and into actual implementation, backed by the zeal of the continent's young workforce. History will judge us harshly if, knowing what is now clear, Africa opts not to act.

Appendix

Figure 39: 10 Investors KPIs

(Boucher 2023)

10 Investors KPIs		
By Nicolas Boucher		
Name	Description	Formula
Return on Investment (ROI)	How much money you made compared to your investment	Income from asset / Asset invested
Return on Equity (ROE)	Measures the return on shareholders' equity	Net Income / Shareholders' Equity
Earnings per Share (EPS)	Company's profitability on a per-share basis	Net Income / Average number of outstanding shares
Price-to-Earnings Ratio (P/E)	Price of a company's shares relative to its earnings	Market Price per Share / Earnings per Share
Dividend Yield	Return on investment from dividends	Annual Dividend per Share / Market Price per Share
Debt-to-Equity Ratio	Measures the company's financial leverage	Total Liabilities / Shareholders' Equity
Current Ratio	Company's ability to pay its current liabilities with current assets	Current Assets / Current Liabilities
Quick Ratio	Company's ability to pay its current liabilities with quick assets	(Current Assets - Inventories) / Current Liabilities
Gross Margin Ratio	Measures the profitability of a company's products or services	(Revenue - Cost of Goods Sold) / Revenue
Net Promoter Score (NPS)	Measures customer satisfaction and loyalty	% of Promoters - % of Detractors

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Chapter 16

BLUE AND GREEN ECONOMY UNDER THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) AND THE COMMON AFRICAN MARKET (CAM)

Bineswaree Bolaky

Abstract

With the advent of the AfCFTA aimed at fostering regional trade and an eventual CAM emphasizing freedom of movement in resources, together with the imperative for African countries to build resilience against climate change, the continent has to build comparative and competitive advantages in new or emerging sectors that have a potential for economic growth - but not just any type of economic growth: a growth that promotes sustainable development to allow progress on economic, social and environmental fronts and a growth that takes into account externalities on other African countries and rests on regional and continental collaboration. Increasingly, Africa's trade and regional integration agenda has to address environmental sustainability while leveraging the continent's vast natural capital, including its blue-economy resources to achieve structural transformation and sustainable development. The paper, using a qualitative narrative approach, focuses on four areas of the blue and green economy whose development should gain increased traction on the continent, and provides recommendations on areas where cross-border, regional and joint collaboration should be prioritized in this context. The four areas relate to green manufacturing, sustainable tourism, sustainable and smart ports to support trade competitiveness, and the harnessing of Geographical Indications of origin (GIs) in Africa's blue and green-based trade and economic development. The paper calls for linkages to be strengthened between AfCFTA and CAM protocols and the environment and climate, and recommends the inception of continental and regional maritime companies to improve continental and regional maritime connectivity, as well as the creation of an African institution to verify African GIs.

Keywords: *Blue and Green economy, Tourism, Green manufacturing, Ports.*

Introduction

Time for a New Narrative: The Emergence of New Competitive Economic Sectors through the Acceleration of the Creation of an Africa Common Market Cognizant of Emerging Global Forces

The ongoing dominant narratives on the AfCFTA should be revised in three different ways:

First, the focus on the implementation of the AfCFTA as a preferential trade agreement, resting on the free continental movement of goods and services, should not obscure the fact that the continent as a whole must put in place the building blocks for deeper liberalization, which encompass the free movement of financial capital and labour, in order to accelerate the gains from the AfCFTA itself. For instance, the liberalization of the services sectors on the continent may not yield expected gains if countries lack human and financial capital to enhance their services competitiveness. The free movement of labour, such as free movement of qualified professionals and the enforcement of Mutual Recognition Arrangements (MRAs) can help some countries address immediate shortages of qualified labour to enter new services sectors, such as digital-based services, education and medical services. The CAM shall eventually deepen the expected gains of the AfCFTA as a preferential trade agreement. The foundations of the CAM need to be laid as of now through, for instance, accelerating the ratification of the Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment, as a complement to the implementation of the AfCFTA Agreement. The AU Free Movement of Persons Protocol can also facilitate the freer movement of financial capital and boost intra-African investment as investors move around with their resources and assets. Additionally, the freer movement of natural resources should also be considered in order to promote environmental sustainability within commonly managed natural areas for a better harnessing of natural resources for sustainable development.

Second, narratives should increasingly devote attention to the sustainable management and harnessing of Africa's natural resources that go beyond land-based primary commodities and beyond using the latter as a launch pad for manufacturing and value chain development. Out of 55 African states, 38 are coastal, seven are island states (Cabo Verde, Comoros, Equatorial Guinea, Madagascar, Mauritius, São Tomé and Príncipe, and the Seychelles) and 90

percent of regional imports and exports are conducted by sea (Saggia 2017). Africa's natural capital is vast and rich. A significant part of this natural capital lies in its oceans, lakes, rivers, and waterways that know no borders and whose sustainable management will demand intensified cross-border collaboration. Africa Geographic recalls the various bodies of African water as encompassing "the Mediterranean to the north, the Suez Canal and the Red Sea along the Sinai Peninsula to the northeast, the Indian Ocean to the east and south east, and the Atlantic Ocean to the west, filled with dazzling lifeforms" (Africa Geographic 2018). No wonder the African Union (AU) has formulated an Africa Blue Economy Strategy that recalls that collectively African coastal and island states encompass vast ocean territories of an estimated 13 million square kilometres, and that these water bodies and wetlands can provide opportunities for new sources of economic comparative and competitive advantages in fisheries, aquaculture, shipping, coastal tourism, offshore oil and gas energy mobilization, and other blue economy activities (AU 2019). However, in most African countries the rhetoric in relation to the development of the blue economy has failed to translate into coherent and holistic actionable national strategies (Bolaky 2020). How can Africa take advantage of the AfCFTA and eventually the CAM to leverage its blue economy resources to accelerate the achievement of its development goals? This is an area that merits further research and policy analysis.

Third, the expected benefits of the AfCFTA risk being seriously endangered by the advance of climate change and its related highly frequent and intense environmental disasters. Climate change will be a growing determinant of countries and regions' competitiveness in the future, shifting comparative and competitive advantages around, as fertile lands become arid, new waterways open up, existing ones dry up and new weather patterns emerge. Countries that will succeed at growing their competitiveness in the next 30 years will be those that have successfully integrated environmental sustainability in their economic calculus. But no country on the planet can tackle the costs of climate change on its own without coordinating and cooperating with other countries, given that the planet and its climate system constitute a global commons. Given the complexities of coordinating climate actions at the global level, regional economic blocs should increasingly be leveraged to stimulate coordinated climate actions at a regional level to protect regional commons, as a stepping stone to foster collaboration across regional blocs to protect the global commons. The fight against climate change, as for any global externality, requires simultaneous coordinated actions over a sustained

timeframe, which regional economic communities can facilitate. In Africa, programmes resting on cross-border collaboration such as the Great Green Wall Initiative, stretching across 22 African countries, followed by the Great Blue Wall Initiative are examples of what the continent can achieve by pooling resources and embracing thinking beyond borders.

Additionally, African countries (and the private sector therein) should integrate how the advance of climate change could and should shape their trade, industrial and development strategies. African countries should transition increasingly towards a green economy to build resilience against climate change. Such a transition will ensure that countries manage and exploit their natural resources in a sustainable way that generates current economic benefits and optimizes resource efficiency while minimizing environmental impacts and rapid depletion that can negate future expected benefits from such resources. To avoid a tragedy of the commons, African countries should intensify collaboration on the management of commonly owned natural resources. In designing and implementing strategies to take advantage of the AfCFTA, African countries should bear in mind the foundations underpinning an eventual CAM (free movement of labour, capital and resources) and how such foundations can shape their comparative and competitive advantages in the medium to long run.

With the CAM's emphasis on freedom of movement in resources, together with the need for African countries to build resilience against climate change, the continent has to shape and build comparative and competitive advantages in new or emerging sectors that have a potential for growth. But not just any type of growth: a growth that promotes sustainable development, which allows progress on economic, social and environmental fronts, and a growth that integrates externalities across other African countries and rests on regional and continental collaboration. Increasingly, Africa's trade and regional integration agenda has to address environmental sustainability while leveraging its vast natural capital, encompassing its vast blue economy resources. The CAM could provide a boost to the development of the blue and green economies in Africa, allowing the continent to develop competitiveness in new economic sectors for economic growth, job creation and poverty reduction, while integrating principles of sound environmental management of Africa's natural resources to protect livelihoods for generations to come. The CAM, underpinned by principles of free movement of resources, is a reminder that Africa's natural resources and climate system know no borders, and that

African countries should intensify cross-border, joint and regional collaboration in the management of their common natural resources.

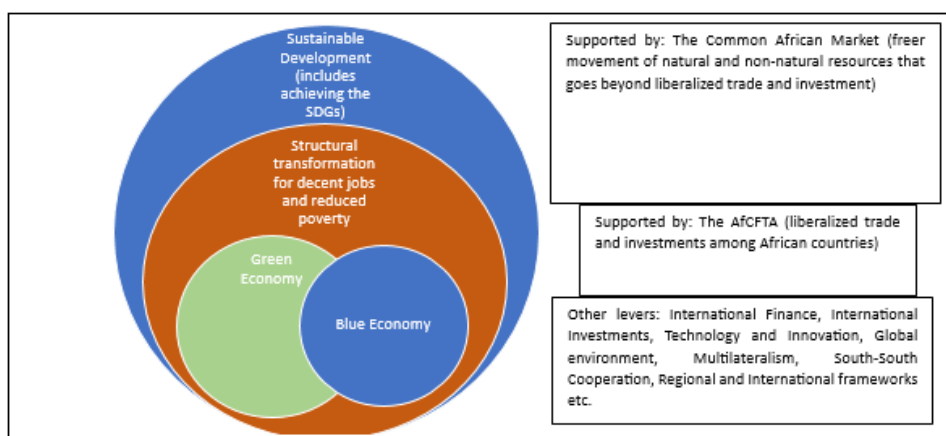
The costs and benefits of creating a CAM have to be estimated with caution, and are rightfully subject to intense scrutiny and debate. Political and cultural sensitivities abound on the thorny issue of free movement of people. However, the CAM rests on a fundamental principle of free movement of resources that can boost the expected benefits of the AfCFTA and augment competitiveness of new and emerging sectors including the blue and the green.

Blue and Green Economic Development Underpinned by Cross-Border, Joint and Regional Collaboration among African Countries

This chapter focuses on four areas of the blue and green economy whose development should gain increased traction on the continent.

Conceptual Framework and Methodology

The UNECA in its Policy Handbook on Blue Economy (UNECA 2016) recalls that the blue economy in Africa covers aquatic and marine spaces, including oceans, seas, coasts, lakes, rivers, and underground water. A range of productive sectors fall under the purview of a blue economy; examples include fisheries, aquaculture, tourism, transport, shipbuilding, energy,



bioprospecting, and underwater mining and related activities (see Figure 41). UNECA stresses that the blue economy promotes the

Figure 40: Conceptual Framework for the Blue and Green Economy in Africa and the Role of Regional Integration

Source: Author

Figure 411: Key Blue Economy Ecosystem Services and Sectors

Type of Ecosystem Services	Blue Economy Sectors
Harvesting of living aquatic resources (seafood, plant marine organisms, and marine-biotechnological products)	Fishing (inland, coastal, and deep seas) Aquaculture Mariculture Pharmaceuticals, chemicals, cosmetics, genetic research
Extraction of non-living resources and generation of new energy resources	Deep-sea and seabed mining Offshore oil and gas Renewable energy Marine salt harvesting Coastal mining of sand, gravel, and other construction materials
Commerce and trade in and around the ocean and rivers	Maritime transport and services Port infrastructure Shipbuilding and repairs River transport Tourism and recreation
Protection	Coastal protection Marine ecosystem protection Water resource protection
Cultural and religious values	Cultural and religious practices
Knowledge and information	Biophysical, socio-economic, and political research

Source: UNECA (2016)

conservation of aquatic and marine ecosystems and the sustainable use and management of associated resources, and builds on principles of equity, low carbon development, resource efficiency, and social inclusion. The concept

integrates the blue economy sectors through a socially inclusive process aimed at triggering Africa's structural transformation, promoting integrated development, and improved regional cooperation and coordination (UNECA 2016).

In its publication on 'Opportunities for micro, small and medium-sized enterprises within the green and blue economies: the case of the Southern African Development Community (SADC)', UNECA, borrowing from the United Nations Environment Programme (UNEP) recalls that the green economy approach considers economic development to be sustainable if it values nature and people and creates decent, well-paying jobs. A green economy involves growth in income and employment driven by investments that reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services. At the same time, the green economy should maintain, enhance or rebuild natural capital, in particular for those whose livelihoods and security depend upon it (UNECA 2023). Figure 42 below highlights examples of green economy strategies and sectors in SADC to illustrate the concept.

Figure 42: Green Economy Sectors and Strategies

<i>Sectors</i>	<i>Strategies</i>
Agriculture	A.1. Support water supply and conservation A.2. Promote the use of adaptive agricultural technologies and techniques and provide incentives for the development of green agribusiness A.3. Promote land-use planning practices A.4. Promote working landscapes with ecosystem services to improve agro-biodiversity
Water	W.1. Enhance integrated management of shared watercourses W.2. Increase water-use efficiency W.3. Enhance and sustain ecosystems W.4. Preserve, upgrade and increase monitoring, data analysis and management W.5. Strengthen capacity in disaster risk reduction
Forestry and biodiversity	FO.1. Plan and implement sustainable forest management FO.2. Increase protected areas in number and coverage FO.3. Provide tax benefits and subsidies for the development of agroforestry FO.4. Support the development of biotrade
Fisheries	F.1. Promote sustainable utilization of fisheries resources F.2. Promote green aquaculture F.3. Strengthen implementation of fisheries agreements F.4. Improve data collection and dissemination systems on fisheries resources
Energy	E.1. Support the use of renewable energy E.2. Promote investment in energy efficiency E.3. Improve energy infrastructure and access to electricity E.4. Reduce deforestation for energy purposes
Manufacturing and mining	M.1. Promote the reduction of the amount of natural resources needed to produce finished goods (resource productivity)

	M.2. Reduce negative externalities associated with waste and pollution M.3. Reduce climate change impacts on manufacturing infrastructure M.4. Support the development of green manufacturing sectors M.5. Promote the adoption of sustainable mining practices
Waste	WAS.1. Support the building and maintenance of wastewater and solid-waste management facilities WAS.2. Strengthen control on hazardous and e-waste disposal and promote waste recycling WAS.3. Support the improvement and regional harmonization of municipal solid-waste management schemes WAS.4. Promote waste recycling, reuse and reduction
Transport	TR.1. Promote investments in climate-resilient transport infrastructure and relocation of infrastructure exposed to climate change impacts TR.2. Promote green public transport networks and multimodal transport TR.3. Encourage trade between countries for (energy-efficient) low-emitting vehicles
Tourism	T.1. Promote the reduction of resource intensity in the tourism sector T.2. Support the protection of natural habitats and ecosystems T.3. Adapt the tourism sector to current and expected climatic changes
Human settlements	C.1. Support the reduction of urban resource consumption C.2. Discourage unsustainable housing and settlement practices C.3. Promote investments in public transport systems C.4. Reduce climate change impacts on cities

Source: UNECA (2023) based on SADC (2015)

Figure 41 above posits a unifying framework linking the blue economy, the green economy, AfCFTA and the CAM. The framework acknowledges the blue economy and green economy as two sustainable development models that can promote structural transformation in Africa to create decent jobs, reduce poverty and accelerate progress towards the achievement of the Sustainable Development Goals (SDGs). There are overlaps and parallels between the green economy and blue economy concepts. Both posit nature as an economic asset that has to be sustainably managed, with the involvement of local communities who possess specialized knowledge of their natural environment to yield sustained economic and social benefits in an inclusive way, while acknowledging that natural capital in itself has to be protected to ensure ecosystem services to the physical environment, without which nature can impose disruptive and costly impacts on economies, societies and livelihoods. There are sectors that can be common to both types of economies. For example, sustainable tourism and sustainable fisheries, which rest on environmentally friendly practices and technologies, can belong to both the blue economy (e.g. sea-based or water-based tourism) and the green economy.

How Can the AfCFTA and CAM Support or Facilitate the Building of Blue and Green Economies in Africa?

African countries need to develop competitive advantages in new or emerging sectors that can create jobs and generate foreign exchange earnings on a scale large enough to make inroads into poverty and strengthen domestic resource mobilization. It may be difficult to build such competitive advantages in ‘older’ traditional sectors where, as latecomers, African firms may not be able to catch up with existing foreign competitors, which have been the first movers in these sectors and its markets. Due to economies of scale, branding and customer loyalty, switching costs, knowledge accumulation, trust-based relationships, and ‘learning by doing’ and ‘learning by exporting’ externalities, first movers may have a persistent competitive edge relative to latecomers in some sectors. The traditional manufacturing sector is a case in point. The blue and green economy can unlock opportunities for African firms to enter in relatively new or emerging sectors and markets where they do not suffer from late mover disadvantages. Green and blue economy products and services derived from locally available natural resources can also offer ‘natural’

advantages for African countries. For example, safaris in relatively unspoilt and uncommercialized areas, or pharmaceuticals based on marine products that are uniquely available in African oceans.

The AfCFTA Agreement, if effectively implemented, can provide a preferential space (through preferential tariffs and non-tariff measures) for African firms and African service suppliers to gain a foothold in African markets using these green and blue economy products and services. These firms can engage in the ‘learning by doing’ and ‘learning by exporting’ processes they need in order to accrue competitiveness and market maturity, and eventually compete in global markets. By integrating environmental sustainability and inclusiveness into the AfCFTA Agreement through specific protocols, African countries have a chance to set tariff and non-tariff measures such as labour and environmental standards to protect their markets from foreign processes, goods and services that can be harmful to the environment, do not alleviate poverty, and/or constitute unfair competition. A Common African Market that imposes common standards on imported goods can prevent harmful foreign competition from undermining local nascent industries in the green and blue economy and avoid a race to the bottom among African countries when attracting Foreign Direct Investment.

In relation to climate change, a CAM can stimulate the adoption of a continental climate change strategy and common climate action policies on the continent, which will promote activities that span borders to better sustainably manage large natural resources and finance large-scale regional or continental programmes. The formation of a CAM can also rally African countries to adopt common positions at climate change and trade-related negotiations to avoid ‘divide and rule’ situations. Finally, a CAM - by promoting free movement of labour and capital - can support the development of blue and green economies by allowing countries to fill capacity and knowledge gaps via importing labour or capital from their African neighbours.

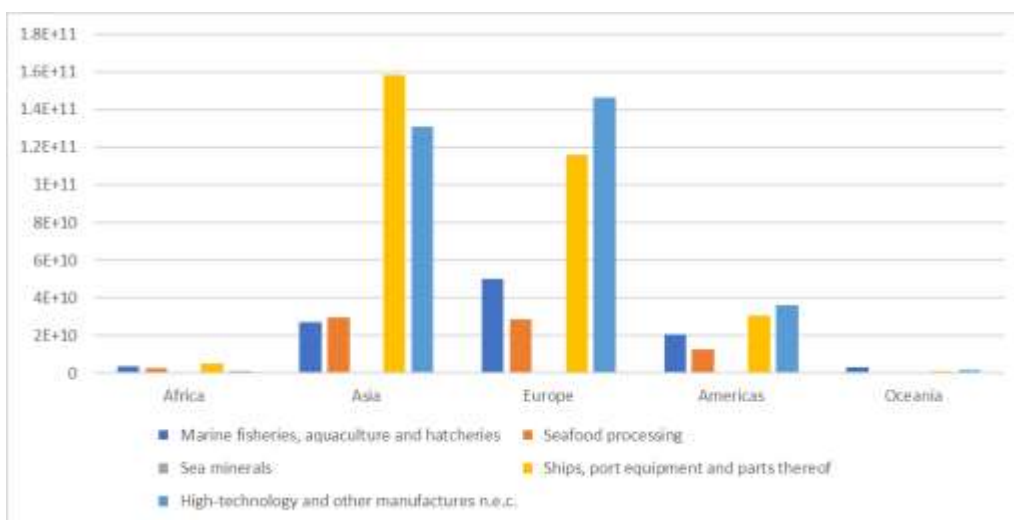
There are difficulties in measuring the blue and green economy, which limits empirical analysis. The development of national accounts and statistical systems to capture the contribution of the green and blue economy to development at the national and regional levels is nascent. UNCTAD released an ocean-based database on trade in 2022, which is the first of its kind. The database reports exports and imports as of 2012 in five broad categories, namely: marine fisheries; aquaculture and hatcheries; seafood processing; sea minerals, ships, port equipment and parts thereof; and high-technology and

manufacturing. Figure 43 depicts exports and imports of ocean-based goods for Africa relative to other regions and by product category. Africa is a marginal player despite its vast oceans and seas, compared to Europe and Asia.

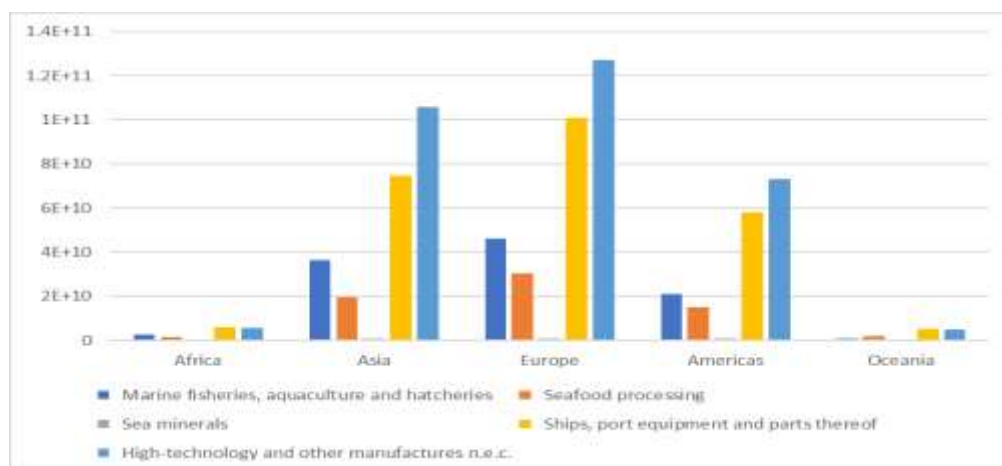
In 2021 total global exports of ocean-based products amounted to a 800 billion dollar market. Africa exported only 13 billion dollars or 1.6 percent of world exports and imported 16 billion dollars or 2 percent of world imports. Intra-African exports amounted in 2021 to 4 billion dollars or close to 31 percent of Africa’s global exports. Intra-African imports represented 2 billion or 12.5 percent of Africa’s global imports. The potential for African countries to tap into the large market for ocean-based goods is huge, both in terms of boosting intra-African trade and extra-African trade.

Figure 43: Africa’s Trade in Ocean-Based Goods Compared to Other Regions in 2021

a. Exports (current US dollars)



b. Imports (current US dollars)



Source: UNCTADStats.

Total exports of ocean-based services (categorized as marine and costal tourism; maritime transport and related services: freight; maritime transport and related services: passengers; port services, related infrastructure services and logistical services; and marine research and development and related licences) were valued at 801 billion dollars in 2021, of which Africa occupied a share of only 16 billion dollars.

Green Manufacturing, Sustainable Tourism, Sustainable and Smart Ports and GIs in Africa's Blue and Green Economic Development in the Context of the AfCFTA and the CAM

Green Manufacturing in the Context of the AfCFTA and the CAM.

Africa has been attempting to leverage industrialization to achieve economic development and transformation for almost sixty years now. Figure 44 shows selected indicators for manufacturing in Africa, compared to other regions. Africa is the region with the lowest manufacturing value-added (MVA) per capita, at only \$206, compared to the world average of \$1,831. Additionally, Africa's share of medium to high technology manufactured goods in its total MVA is the lowest of all regions at 21 percent, which implies that African manufacturing is concentrated in low-technology products, and yet still is unable to dominate that segment, reflected in its low MVA per capita. Africa's

MVA share stands at 1.9 percent. However, African factories are on average more carbon intensive than all regions bar Asia at 0.54 kg CO₂e per US dollar manufactured..

Figure 44: Selected Indicators on Manufacturing in 2021

Region	MVA per capita 2021 (2015 US\$)	MVA growth rate 2021 (%)	MVA share in GDP 2021 (%)	MHT share in MVA 2019 (%)	Share in world MVA 2021 (%)	Industry value-added share in GDP 2021 (%)	Manufacturing share in employment 2021 (%)	CO2 intensity 2019 (Kg/US\$)
World	1,853	7.2	16.9	45.1	100.0	21.8	13.6	0.43
Africa	206	3.7	10.5	21.0	1.9	20.6	7.3	0.54
- Northern Africa	407	3.6	11.3	20.3	0.7	25.0	11.6	0.68
-Sub-Saharan Africa	161	3.7		21.4	1.2	18.4	6.6	0.47
Americas	3,232	7.7	10.1	44.1	22.8	15.9	11.1	0.21
Asia	1,687	7.2	23.4	45.1	54.1	29.3	15.5	0.61
Europe	3,991	7.3	16.0	48.8	20.4	18.1	14.8	0.23
Oceania	2,335	2.9	5.9	26.8	0.7	13.8	6.7	0.37

Source: UNIDO International Yearbook of Statistics 2022 Edition

Yet manufacturing is an important conduit for structural transformation and the technological upgrading countries need to sustain their economic growth (UNCTAD 2011), and for the development of value chains that can unleash opportunities for MSMEs. The global manufacturing goods market, valued at 15.9 billion dollars in 2022, is too large to ignore. For African countries to finally succeed at establishing and consolidating their positions in the world manufacturing market, a new approach towards manufacturing policy-making and its implementation is needed, one that takes into account the new or emerging forces at work in the twenty-first century. These include the advance of climate change and the impending need for a massive decarbonisation of the world economy, as well as the digitalization of economies. Another force at work is the better harnessing of regionalism to achieve economies of scale and competitiveness.

According to Oxford Economics, a transition towards a net zero carbon dioxide emissions world by 2050, as provided for in the Paris Climate

Agreement, will result in a green economy valued at 10.3 trillion dollars by 2050 (in 2020 prices), equivalent to 5.2 percent of global GDP in that year. About four trillion dollars of that value will be captured directly by enterprises developing and producing the green goods and services demanded, and another 6.3 trillion dollars will be coming from the wider supply chains of these industries. Most of the opportunities, according to their calculations, will be supported by renewable power generation and electric vehicle production.

The shift to a decarbonized global economy by 2050 can trigger opportunities for African countries to be first movers in multiple markets for green manufactured products and their auxiliary services. African countries could position themselves to supply a growing global green economy at different stages of the green/sustainable value chains, be they in terms of intermediates or final products. African countries can increasingly leverage the comparative advantages bestowed on them by their large natural resource endowments to supply the green value chains, as well as the fact that it can still power itself mostly with renewable energy. African countries have an enormous potential indeed at developing renewable energy from multiple sources, which they can export within the continent to power industrial-based value chains with clean energy, while concurrently building capacities to supply the renewable energy value chain with intermediate parts. Their vast deposits of minerals can also be industrially processed to supply inputs into the production of green products. For example, Zambia and the Democratic Republic of Congo have ambitions to leverage their cobalt and copper deposits to attract investments in their joint manufacture of batteries for electric vehicles.

Some have argued that Africa can turn the fact that its manufacturing sector is still relatively small to its advantage. Given that half of the continent's potential 2050 GHG-emitting industries have not yet been built, Africa has an opportunity to leapfrog more developed nations and build a low-carbon manufacturing sector as of now, and in so doing avoid the future costs of having to transition from fossil fuels to renewables that the developed world is now having to face, while creating a competitive and more resilient economy that does not rely on resources that will become increasingly costly (Bouchene *et al.* 2021).

However, this leapfrogging cannot happen unless African countries foster regional and continental collaboration and coordination in areas such as mobilizing finance on a large scale to green their industrial infrastructure and develop green manufacturing capacities, collaborating to create cross-border

green industrial zones to achieve economies of scale and attract foreign investment, fostering research and development in clean technologies, sharing knowledge and pooling skills, coordinating legislation to limit carbon dioxide emissions by domestic and foreign investors, harmonizing environmental legislation on manufacturing waste and emissions, designing non-tariff measures to integrate environmental provisions and standards in trade, agreeing on bans of specific inputs in order to reduce GHG emissions, agreeing on support measures for green industry, and maintaining peace and stability on the continent. Such regional and continental collaboration and coordination can be facilitated within a Common African Market that supports free movement of resources, removal of tariff barriers on African green products, and the forging of common African positions on policy, regulatory and legislative issues that relate to carbon emissions. By embedding agreements to preferentially remove tariff barriers to trade on African-made low carbon-intensive goods and services, heavily taxing carbon-intensive goods and services, and defining what constitutes low carbon-intensive goods and services, an AfCFTA and a CAM can support the emergence of a green industry on the continent. Should the AfCFTA Agreement be extended to cover a Protocol on Environment and Sustainable Development (van der Ven and Signe 2021), such a Protocol could contain environmental provisions and standards to support the production and trade of green products and services for intra-African trade that can be expanded over time to target global trade. The different Protocols in relation to the AfCFTA, such as Intellectual Property Rights and Investment could also contain environmental provisions (*Ibidem*) to support the emergence of a green manufacturing sector. For instance, preferential incentives could be allowed for African investments in green manufacturing, while special exemptions within the AfCFTA Agreement could be inserted to treat green manufacturing sectors as sensitive sectors for specified periods.

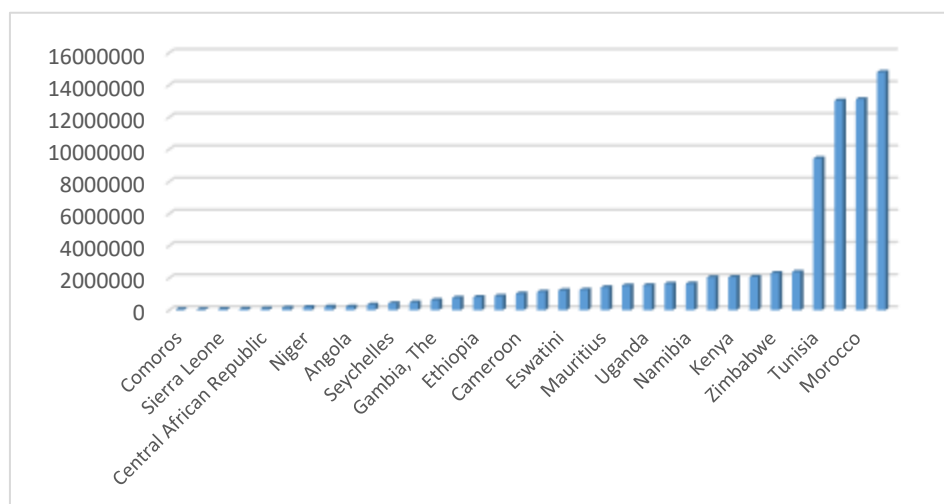
Sustainable Tourism in the Context of the AfCFTA and the CAM

Tourism is a low-hanging fruit in Africa's range of levers for sustainable development. Tourism is an economic sector with significant linkages to the rest of the economy (transport, food and beverages, entertainment, retail trade, etc.), which is why the Tourism Satellite Accounts (TSAs) are the preferred method for gauging the sector's contribution to a national economy. According to the World Travel and Tourism Council (WTTC), prior to the pandemic,

travel and tourism (including its direct, indirect, and induced impacts) accounted for 1 in 5 new jobs created across the world during 2014-2019, 10.3 percent of all jobs (334 million) and 10.4 percent of global GDP (10 trillion dollars) in 2019, with international visitor spending amounting to 1.9 trillion dollars. Yet tourism remains rather under-developed on the continent, despite its vast natural endowments to attract tourists in various segments (blue economy tourism such as the ‘Sea and Sand’ segment, eco- and nature-based tourism for the environmentally conscious, adventure-based tourism, cultural tourism, etc.). Exceptionally, it should be noted that Small Island Developing States (SIDS) such as Cabo Verde, Mauritius and the Seychelles are among the most tourism-intensive economies in the region. Africa accounted for only 3.3 percent of world international tourist arrivals in 2019 (the latest year before COVID-19). Based on available data, international tourist arrivals totalled only 79 million in 2019 in Africa, out of a global market of 2.4 billion. Within Africa, the top five destinations were South Africa (14.8 million arrivals), Morocco (13.1 million), Egypt (13.0 million), Tunisia (9.4 million) and Algeria (2.4 million), accounting for 66.7 percent of the African market (Figure 45). Next come Zimbabwe, Cote d’Ivoire, Kenya, Mozambique, and Namibia to close the top ten.

Sustainable tourism, as part of building green economies in Africa, can be leveraged to not only minimize environmental impacts, but also as part of a deliberate strategy to attract environmentally conscious consumers at a premium and invest a share of the higher tourism revenues to protect and sustainably manage the environmental assets of the country. The use of eco-labels, adherence to environmental standards, and utilization of renewable sources of energy and recycling in the tourism industry, along with the involvement of local communities in the sustainable management of natural assets to market tourism attractions should be part of the strategy. Costa Rica is an example of a country from the Global South that has succeeded in positioning itself as an ecotourism destination, with a significant share of its forests and wildlife designated as protected areas. Rwanda has made progress on the sustainable tourism front in Africa. It offers gorilla trekking safaris to tourists, with stays in community eco-lodges. Tourism has contributed to protecting the animals and maintain the parks in which they live.

Figure 45: Tourism Arrivals by Country in Africa, before COVID-19 (Using 2019 Data)



Source: World Bank Development Indicators Database⁴⁴

Tourism is among the five priority sectors of the AfCFTA Protocol on Trade in Services. The free movement of persons, labour and capital under an eventual CAM can boost tourism competitiveness in Africa in several ways: first, intra-African tourism - spurred by free movement of persons - can become a significant driver for tourism development in Africa, even more so as incomes rise and the African middle-class expands under the AfCFTA, while transport services - another priority sector under the Protocol on Trade in Services - significantly improve. In the Southern Africa region, for instance, South Africa is a major source of tourists for the rest of the region. Visa-free travel among SADC countries and Johannesburg as an air travel hub for the region being stimuli in that regard. Second, significant investments are required to build and sustain a competitive tourism industry, and intra-African Foreign Direct Investment - supported by free movement of capital under a CAM - can contribute to the take-off, especially coming from countries that are more mature tourism destinations or major transport providers such as Ethiopia, Morocco and South Africa. Third, human resources are a critical determinant of tourism competitiveness, an industry where quality of customer

⁴⁴ Data not available for 2019 for Botswana, Burundi, Congo, Democratic Rep. of Congo, Djibouti, Equatorial Guinea, Eritrea, Gabon, Ghana, Guinea, Libya, Liberia, Malawi, Mauritania, Nigeria, São Tomé and Príncipe, Senegal, Somalia, South Sudan and Sudan.

service and competent management are paramount. The recruitment of qualified professionals from some parts of the continent with well-established tourism industries (e.g. Mauritius, South Africa) to work and train under-qualified personnel in other parts of the continent, supported by free movement of labour under a CAM, can ameliorate shortages of requisite staff. The implementation of MRAs can also facilitate in that regard.

Bolaky (2016) notes tourism development in Africa could be pursued within an overall services development strategy that builds complementarities and linkages with other productive sectors such as agriculture and manufacturing, and which contributes to jobs and exports. The author contends that policies are needed in four key areas in Africa to foster the development of tourism: improving tourism competitiveness, engaging in source market diversification, developing 'brand' or niche tourism with local community involvement, and integrating into the global tourism value chain through greater use of ICT. The same author advocated in 2019 for regional integration to be used as a lever for tourism development in Africa. Regional integration can spur the development of a new tourism development model for the continent that exploits complementarities across African destinations to create unique tourism brands, which rest on the implementation of common regional tourism development strategies and the development of regional tourism value chains. Entire sub-regions can be marketed as unique destinations. Tourism clusters should also be fostered nationally to support the regional tourism industry. Continental solutions could be designed to tackle common competitiveness challenges across countries, including accelerating the implementation of the 1999 Yamoussoukro Declaration, and the AU Single Air Transport Market project in order to create an 'open skies policy' on the continent that stimulates competition among airline carriers, lowers intra-continental travel costs and enhances air connectivity (Bolaky, 2019).

In the context of the AfCFTA and the CAM, sustainable tourism development could be promoted through regional and continental collaboration and joint investments by countries. For instance, countries within a REC could market the entire subregion as a destination, with national tourism authorities collaborating to offer multi-country packages and a uniquely differentiated and sophisticated experience for mid- to high-end tourists (e.g. a package that combines Mozambique for its tranquil sandy beaches and luxuriant seafood with safari and shopping experiences next door in South Africa and the 'Livingstone' adventure in Zimbabwe). Regional integration, the building

blocks of a common market, could facilitate the seamless travel of tourists across borders with single visas and through multi-modal transport corridors. National parks that span borders could benefit from joint management by countries and pooling of resources to combat against poaching of animals and illicit trade, and for park maintenance. ‘Transfrontier’ parks in southern Africa have dismantled human-made borders, allowing animals to pursue their traditional migration routes and creating exciting safari options in the area. For instance, tourists from South Africa can cross into Mozambique through the Kruger Park.

The Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA) is a fine example of regional integration and collaboration at work in the area of sustainable tourism. The KAZA TFCA is larger in size than Germany and Austria combined, and lies in the Kavango and Zambezi River basins where Angola, Botswana, Namibia, Zambia and Zimbabwe converge. The Area was established by the five countries in 2011 at a SADC Summit for Heads of State with the following aims: 1) conserve the shared natural resources and cultural heritage of the area; 2) promote and facilitate the development of a complementary and linked network of protected areas that protect wildlife and provide and restore dispersal corridors and migratory routes; 3) develop the KAZA TFCA into a world-class tourism destination offering a variety of breath-taking adventure and luxurious relaxation; 4) promote the free and easy movement of tourists across borders; 5) implement programmes that ensure the sustainable use of natural resources in ways that improve the livelihoods of communities and reduce poverty in the region; and 6) harmonize conservation legislation and natural resource management of the TFCA. In 2014, Zambia and Zimbabwe launched the KAZA UniVisa pilot project to facilitate the free movement of tourists across their borders (including multiple entries), and in 2016 the visa was permanently established following a successful rollout.

Similar regional collaborative initiatives could be emulated across the continent to develop sustainable tourism around African protected areas. Deeper regional collaboration is also warranted in relation to Africa’s seas and oceans, which are fundamental pillars of Africa’s blue economy, encompassing sea-based tourism, seas and oceans that have to be protected from pollution, piracy and pillage, and illicit trade, all of which can threaten sea-based tourism. Mauritius and Seychelles for instance operate a Joint Management Area (JMA) of an Extended Continental Shelf (ECS) area of

about 396,000 square kilometres, of which Seychelles and Mauritius share joint jurisdiction beyond their Exclusive Economic Zone (EEZ). The treaty that established the JMA provides an institutional and regulatory framework for its management, including the conservation, development and sustainable utilization of its natural resources. The treaty is unique and is the first of its kind, as it makes provisions for the joint management of the largest area of maritime space in the world that is subject to joint management. Both countries have agreed to manage the natural resources of the JMA in a manner that is sustainable and consistent with both the precautionary principle and the protection of the marine environment and biological diversity of the area. When it comes to the development of the blue economy, intensified collaboration by countries on joint management of waterways, rivers and seas to avoid the tragedy of the commons should be fostered.

A CAM that recognizes Africa's natural capital (whether land-based or water-based) as a common resource that should be subject to joint management by countries can support a more optimal preservation of the natural capital and its harnessing to develop sustainable tourism in Africa. The free movement of capital, labour, persons and natural resources under a CAM can support the development of competitiveness in services sectors such as tourism, covered under the Protocol on Trade in Services. An eventual linkage between the AfCFTA and the environment can contribute towards protecting the continent's natural capital as a comparative advantage to foster regional (and later global) trade.

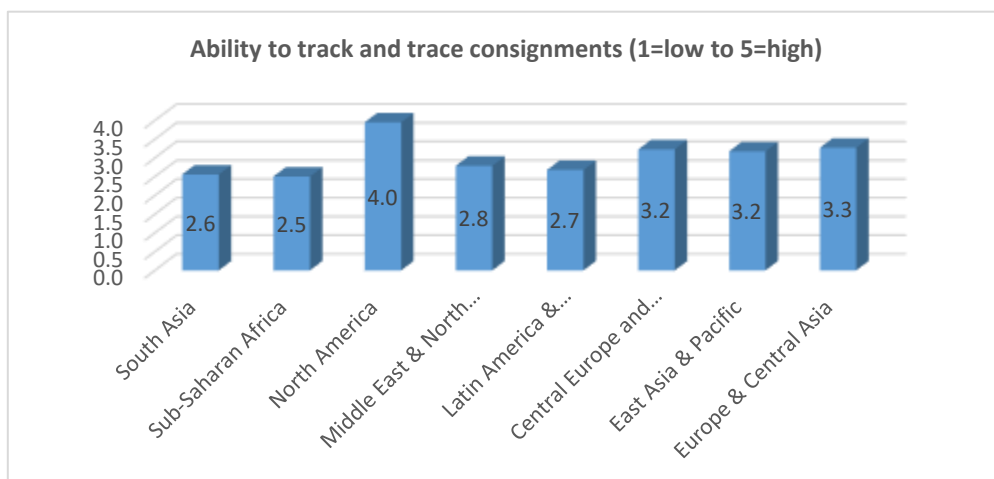
Sustainable and Smart Ports in the Context of the AfCFTA and the CAM

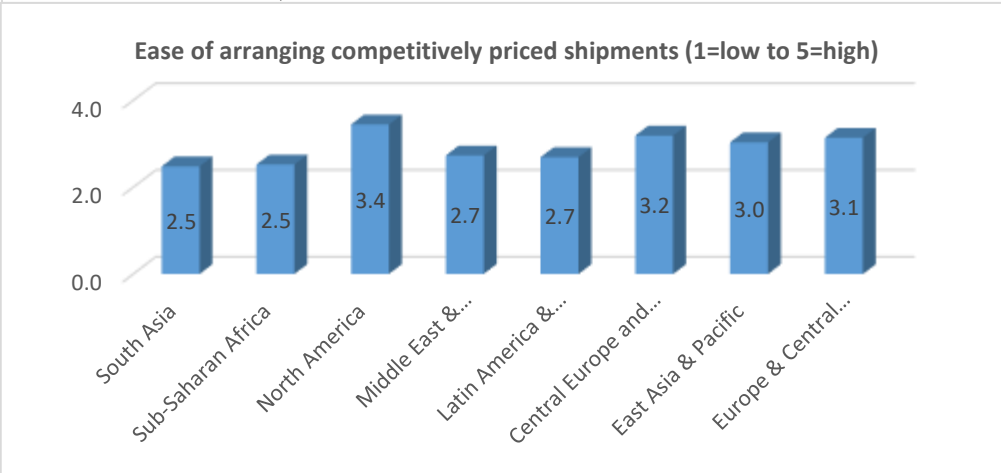
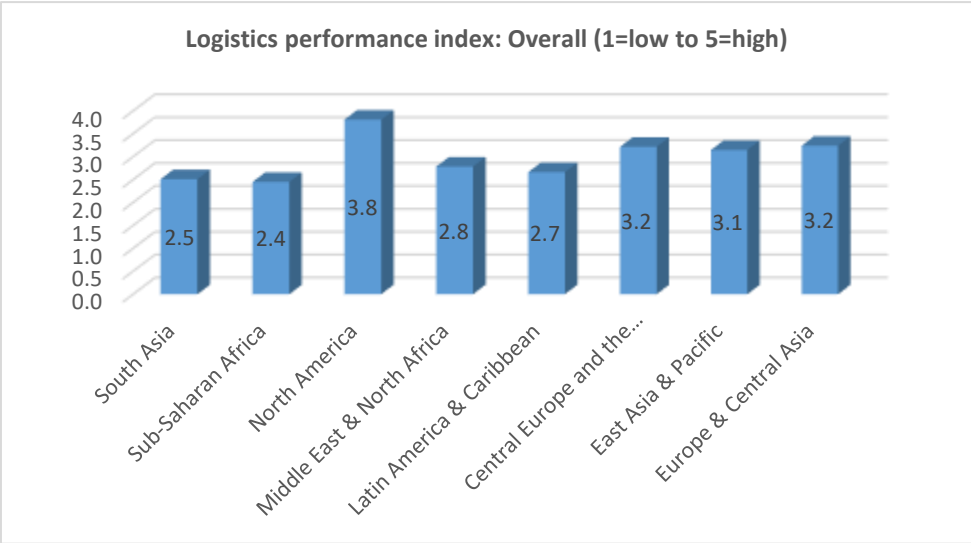
An important plank of developing Africa's blue economy while supporting its trade integration lies in modernizing Africa's ports to augment their competitiveness and environmental sustainability, and improve on maritime connectivity among African countries. Most of Africa's trade is conducted by sea, given the deficiencies and costs associated with Africa's roads and inland transport infrastructure, and limited and costly direct air connectivity among African countries. Maritime efficiency and direct maritime connectivity in Africa therefore are determining factors of trade competitiveness for African businesses relative to their non-African competitors. The AfCFTA and CAM cannot succeed if African buyers find it cheaper to buy from non-African

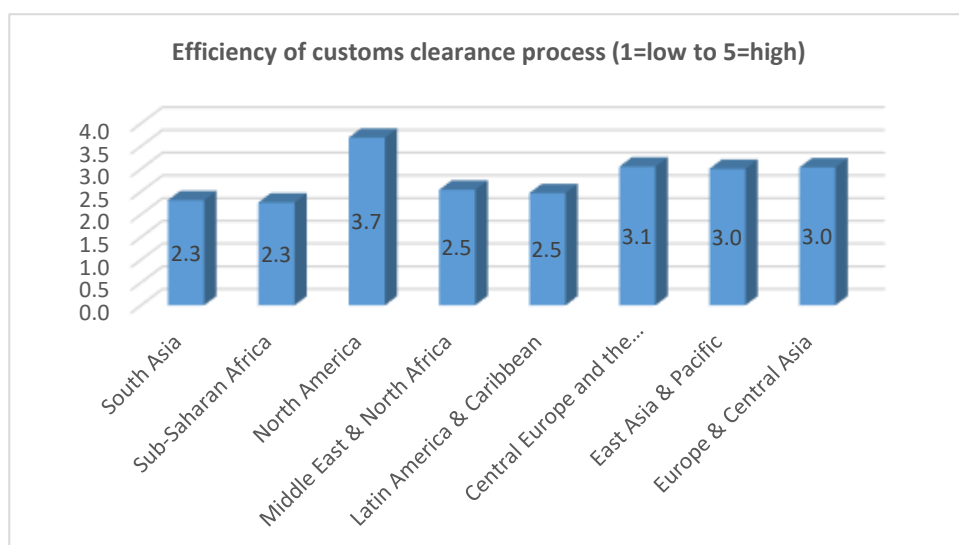
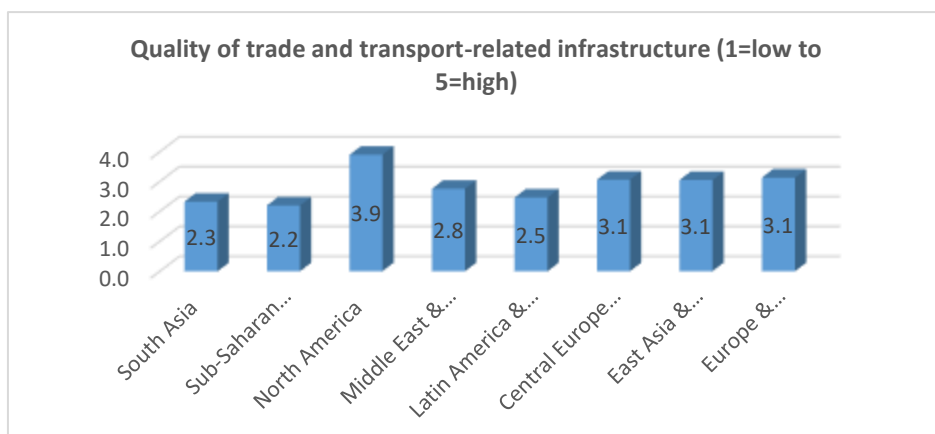
sellers, despite the absence of import tariffs on African goods, because transport costs for African goods are so high that they negate the competitive advantage afforded by zero tariffs on African goods relative to foreign imported ones. Furthermore, the absence of direct maritime routes among African countries can seriously constrain intra-African trade in goods. Improving the efficiency of ports and establishing direct maritime routes must be a priority in the context of implementing the AfCFTA Agreement.

Recent research, using a sample of 27 African countries for the period 2010-2017 and based on the UNCTAD Liner Shipping Connectivity Index as a measure of seaport efficiency finds that seaport efficiency could improve African countries trade balance (Sakyi and Immurana 2021). While factors such as the real exchange rate, household and government consumption expenditures and money supply were found to worsen the trade balance in both the short- and long-run, seaport efficiency was

Figure 46: World Bank Logistics Performance Index by Region







Source: World Bank Development Indicators Database, May 2023

found to have the opposite effect. The results seem to indicate that in designing policies toward enhancing the trade balance in Africa, proper attention should be paid to measures aimed at improving seaport efficiency and that bottlenecks such as inadequate or outdated infrastructure, manual operations, cumbersome documentation procedures, congestion, and delays in the clearing of containers should be addressed in order to improve seaport efficiency (Sakyi and Immurana 2021).

There is significant room for regional and continental collaboration and cooperation in the area of improving port efficiency in Africa as part of developing Africa's blue economy and supporting regional trade competitiveness in the context of the AfCFTA. More investments are needed to increase port terminal capacity, to improve on port and terminal infrastructure, develop transit and transport corridors, improve governance to enhance hinterland connectivity, and simplify clearance procedures through digitalization. The sustainability of these ports should be taken into account in the face of mounting environmental hazards. The financing of such investments could be shared across all beneficiary countries - the country hosting the port, as well as countries along the transport and transit corridors that are benefiting. The creation of pooled funds across countries to support the development of regional ports, dry ports and multi-modal transport facilities under the umbrella of RECs is envisaged as one possible approach. The development of smart ports, i.e. ports leveraging digital technologies to enhance their logistics performance, is the way forward. Smart ports can address challenges linked to operational excellence, migrating activities (challenging external markets) and new business opportunities (Deloitte 2017). African countries must ensure that they do not fall behind other regions when it comes to embracing digitalization to enhance efficiency in supply logistics. Regional collaborative platforms and partnerships could evolve to support the digitalization of ports. African coastal countries should also increasingly embrace the concept of sustainable smart ports in their quest to build greener economies.

COVID-19 exposed how risky Africa's reliance on international shipping companies was, as port calls declined due to shipping companies bypassing destinations to save on costs, and owing to disruptions in supply chains. While much attention is given to Africa's need to invest in rail and road infrastructure to improve on transport connectivity in the context of the AfCFTA, less is discussed regarding the need for the continent to support the creation of regional and even continental maritime shipping companies that can establish direct maritime routes between a range of African countries, in addition to sub-regional cabotage. Regional trade in Africa cannot be enhanced significantly unless regional maritime connectivity improves and more direct maritime routes are established among African countries. Regional and continental cooperation in the context of the AfCFTA and the CAM should address the issue of how to support regional and continental maritime connectivity.

Harnessing of Geographical Indications of Origin (GIs) for Africa's Blue and Green Economic Development

Africa's blue economic development rests on the sustainable management of its vast oceans and seas, which are rich in maritime resources and whose commercialization in turn will have to be supported by investments in local and regional-based research and development driven by local and regional research institutes. Oceans and seas are repositories of resources whose development potential have to be studied, researched, and pilot tested after having been mapped. For instance, Mauritius is interested in exploring the potential of algae as an input for pharmaceutical products, as well as technologies such as deep ocean water cooling and offshore wind to develop ocean-renewable energy technologies (O-RET). In Namibia, kelp farms have been set up offshore in a drive to combat climate change, preserve the marine ecosystem, and to be harvested and commercialized as ingredients for organic products. Regional and continental collaboration on mapping and cataloguing Africa's maritime resources and engaging in R&D to develop the potential of such resources into sustainable blue economy products is an area for future development. The creation of an 'African Centre of Excellence for Blue and Green Economy', to stimulate R&D on technologies for developing the blue and green economy as well as direct research on maritime and natural resources is a proposal to be considered. The set-up of a consortium of Africa's oceanographic institutes could be a starting point to promote peer learning, exchanges of experiences, and joint exploration and research on the continent's marine-based resources.

Africa's ocean-based and other blue economy resources have to be protected from pillage and from illegal, unregulated and unreported (IUU) activities, of which illicit fisheries are an example. A strategy to safeguard these resources from illicit trade and ensure their sustainability can lie in the leveraging of Geographic Indications (GIs) of Origin for their protection and sustainable commercialization. The World Intellectual Property Organization (WIPO) defines a GI as "a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production". An essential step as part of implementing

Africa's Blue Economy Strategy will consist of encouraging the mapping of Africa's seabeds and support marine exploration to gauge and inventory the richness of Africa's marine biodiversity. Certifying the geographical origin of Africa's marine resources and establishing traceability systems and requirements when commercializing such resources is an important step in the fight against IUU activities, which can endanger the sustainability of the resources and steal revenues from countries having jurisdiction over them. However, enforcing GIs can be costly and may demand legislation, international regulations (such as verification of GIs by international buyer countries), and the need to operate adequate monitoring/surveillance and certification systems that some countries may not have capacities and resources for at present. The emergence of a continental institution to verify African GIs should be considered, in addition to strengthened continental coordination on surveillance.

Mozambique's white prawn (*Penaeus indicus*), for instance, has been assessed in a study by UNCTAD as representing a case for GI (UNCTAD 2022). The same argument can be made for plant-based or other naturally based resources where the use of GIs can be leveraged to ensure sustainable commercialization of the derivative products, in addition to being a product differentiation strategy to create a market niche (e.g. Marula-based products in the southern Africa region could be a potential GI). In the context of the AfCFTA and a CAM, regional and continental collaboration on how to leverage GIs to sustainably commercialize products derived from the continent's endemic resources should be promoted, opening room for joint R&D and joint production. The Protocol on Intellectual Property Rights should contain provisions for GIs.

Conclusions and Policy Implications

The AfCFTA and the creation of a CAM could provide a boost to the development of blue and green economies in Africa, supporting the continent to develop new comparative advantages through strengthened regional and continental collaboration to better benefit from intra-regional trade and trade in general, in order to achieve sustained economic growth and job creation while integrating principles of sound environmental management for Africa's natural resources in order to protect livelihoods for generations to come. Increasingly, African countries must seek to collaborate at a regional and

continental level to harness the opportunities from its natural resources. Key challenges to address lie in the mobilization of finance and investments, as well as mustering the human and institutional capacities for implementation. Recourse to the issuance of green and blue bonds, debt for climate or debt for nature swaps, creation of pooled regional funds, and fostering free movement of qualified professionals can be potential areas of collaboration. However, linkages between the AfCFTA and CAM with the environment and climate should be considered to support Africa's transition towards blue and green economies.

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Chapter 17

STEPPING UP ACTION ON SIMPLIFIED TRADE REGIMES FOR A MORE INCLUSIVE AFCFTA AND COMMON AFRICAN MARKET

Philomena Apiko and Bruce Byiers

Abstract

Among its many objectives, the AfCFTA seeks to promote inclusive trade, particularly for women and youth. This paper discusses the role of Simplified Trade Regimes (STR) in promoting inclusive trade among women and youth in existing regional schemes, and some of the lessons these experiences offer for the AfCFTA. The paper begins with a brief overview of the characteristics and scale of small-scale (informal) cross-border trade (ICBT) in Africa. The following section discusses some existing approaches to support such traders, before focusing on the concept of STRs: where they currently exist (principally between COMESA countries), their stated objectives, and main characteristics. The third section then discusses the challenges of STR schemes, the interests and incentives of different public and private actors, the heterogeneity of ICBT, and how they are implemented and their impacts in practice. The final section draws conclusions and policy implications for a potential future continental STR under the AfCFTA.

Keywords: Informal trade, AfCFTA, women traders, trade facilitation.

Introduction

In Sub-Saharan Africa, informal cross border trade (ICBT) represents a large proportion of trade and an important source of non-agricultural self-employment, especially among women. Intra-African trade through the AfCFTA has the potential to promote gender equality by facilitating trade among these traders. However, to date, the integration of these groups into trade policies has been challenging. Women face various barriers to trade, while youth face difficulties in accessing formal employment and decent jobs, forcing them into entrepreneurship and small businesses in the informal sector (UNCTAD 2021).

While reducing tariffs under the AfCFTA will arguably lower the incentive for some informal cross border trade, more could be done to support these marginalized and economically vulnerable actors, leading some of Africa's RECs to introduce measures targeted at informal, small-scale trade. The Common Market for Eastern and Southern Africa (COMESA) adopted a STR in 2010 (COMESA 2021), with standards for the treatment of small-scale cross-border traders to facilitate quicker clearance of goods, reduce costs and improve data capture. These measures have helped to address some of the challenges faced by informal cross-border traders, albeit with varying uptake and usage.

This chapter examines the place and role of STRs in the current intra-African trade landscape, and some of the lessons for the AfCFTA in promoting more inclusive trade for women and youth. The paper begins with a brief overview of the characteristics of informal cross-border trade in Africa, with a particular focus on those linked to gender. The subsequent section discusses approaches to support or address informal trade, before focusing on the concept of STRs: where they currently exist (principally between COMESA countries), their stated objectives, and main characteristics. The third section discusses challenges of STR schemes, the interests and incentives of different public and private actors, the heterogeneity of ICBT, as well as their roles in practice. The final section draws conclusions and policy implications for a potential future continental STR under the AfCFTA.

The Scale and Challenge of Informal Cross-Border Trade (ICBT)

Defining ICBT

While there is no single definition of ICBT, a large share of intra-African trade is informal, small-scale and unrecorded, so that “the informal economy remains pervasive and constitutes a significant share of the total economy” (UNCTAD 2021). Examining a wide range of cross-border studies and extrapolating from those, UNECA (2021) estimates that the share of informal cross-border trade between neighbouring countries in Africa represents between 30 to 72 percent of their overall trade. While a wide range, even the lower bound estimate represents a substantial volume of trade and thus of traders.

This trade plays a key economic role because of the flexibility and the earning opportunities it offers, given the high unemployment rates in most African countries (Nyajeka 2021). Women make up the largest share of informal traders, representing 70 - 80 percent of small-scale traders in some countries (Zarrilli and Linoci 2020). ICBT thus not only contributes to inclusive growth and poverty reduction (albeit unrecorded in official statistics), but also serves as an employer of last resort where formal employment opportunities are not available (UNCTAD 2021).

Gendered Challenges of ICBT

The over-representation of women in the informal economy reflects a series of structural impediments to their participation in more decent, and less precarious, jobs (Kelleher 2020). Access to trade-related information, services and resources in support of women’s trading activities remains weak (UN Women 2022, APRM 2022), while according to Mbaye and Gueye (2018), the prospects of moving into more formal activities are also worse for women, who often have limited access to finance, productive resources, training and skills than men. Moreover, women cross-border traders remain especially vulnerable to abuse, harassment, and confiscation of goods at the border by officials (Brenton *et al.* 2013, World Bank 2020). The marginalization and vulnerability women face when trading across borders reflects wider gender disparities.

Multiple studies cite gendered abuse faced at borders. Efforts to stem this include training initiatives targeting customs officials (who are mostly men), to promote gender-sensitive attitudes, improve the understanding of business operators' rights and obligations, and reduce the incidence of harassment, bribes, undue confiscation of goods, or verbal abuse (UNCTAD 2019). Likewise, traders are encouraged to use more formal trade channels by providing facilities like transport, storage and refrigeration infrastructure (especially for perishable agricultural commodities), or improving water and sanitation facilities, among others. Provision of child-care services is also increasingly seen as being important - a recently established 'Safe Trade Area' at the Busia border between Kenya and Uganda seeks to provide this, among other facilities, to protect cross-border women traders (TradeMark Africa 2023) - as women traders often do not have access to quality child care facilities⁴⁵. However, even in some cases where these services exist, workers are reportedly not able to utilize them because of high costs taken in the form of fees (Sabaa and Quarshie-Twum 2022).

Making regional and continental trade regimes more inclusive of women therefore implies addressing a complex set of challenges.

Approaches to Supporting Informal Traders

Various approaches are being applied to engage with and support women informal traders through the RECs. These include regional gender policies, trade policies and NTB reporting mechanisms, all of which could, in theory, be used to make trade more inclusive for women and youth. In addition, efforts have been made by various RECs to design simplified trade regimes (STRs)

⁴⁵ Another example is the Busia Childcare Centre, a collaborative initiative among the Busia Women Cross-border Association, the County Government of Busia, and the Collaborative Centre for Gender and Development with support from Mastercard Foundation and the University of Nairobi Women Economic Empowerment Hub. The project seeks to redistribute the disproportionate burden of unpaid care work on women through providing day-care for children between 0-4 years of age to enable traders to access quality affordable childcare and free mothers to engage in income generation activities including trade, entrepreneurship and employment. The project is also intended to assist in redistributing the burden of childcare. For more information, see <https://ccgdcentre.org/2023/01/25/24-graduands-transit-from-busia-childcare-centre-to-pre-primary-school/>

with a view to lowering the burden of using official trade channels. This section discusses each of these in turn.

Regional Gender Policies

Some RECs have adopted gender policies and strategies to ensure gender equality and promote women's economic empowerment within RECs. The aim of these is often to inform long-term changes in structural gender power relations and norms, roles and statuses, with specific actions or objectives focused on trade.

Examples include the following:

- Article 17 of the Southern African Development Community (SADC) Gender Protocol obliges Member States to adopt policies and make laws that ensure equal access and benefits for women and men in trade and entrepreneurship, taking into account the contribution of women in the formal and informal sectors (SADC 2008).
- Other REC efforts include the EECOWAS Plan of Action on Gender and Trade, which attempts to address challenges faced by women in trade by making policies work for women (ECOWAS 2015). Priority actions include training and capacity-building for women traders on their rights, custom processes, and trade negotiations, as well as training and capacity-building for customs officers and other border management regulation officers (*Ibid.*).
- The EAC Gender Policy commits to creating an enabling environment for increased access and control of productive resources and economic benefits in both formal and informal activities, and places obligations on Member States to support and promote participation of women in small, medium and large enterprise development and cross-border trade (EAC 2018).

Though notable, these general strategies rely on implementation of complementary gender-inclusive legislation across various sectors, which remains a challenge in many countries. Gender policies may also not directly address the complexities of ICBT at the border, and often lack enforcement mechanisms to check their implementation.

Regional Trade Agreements and Programmes

RECs have programmes that deal with trade facilitation and regional integration more generally. Although the main focus is formal trade through regional trade agreements, the role of ICBT is often acknowledged in official policy documents and programmes.

The EAC and COMESA Treaties recognize the importance of women as a vital economic link between agriculture, industry and trade. Their member countries undertake to increase participation of women in business and promote special programmes for women in small and medium sized enterprises (EAC 1999, COMESA 1993). The COMESA Treaty makes specific reference to creating an enabling environment for effective participation of women in Common Market trade and development activities. Similarly, the ECOWAS Treaty refers to promoting medium- and small-scale industries, while Article 63 focuses on addressing constraints faced by women traders (ECOWAS 1993). The ECOWAS Common External Tariff (CET) removes the main differences in tariffs towards the outside world, thus partly lowering the incentive that had existed for informal trade from low tariff ECOWAS Member States to those with higher tariffs (ECOWAS 2016). Similarly, the Economic Trade Liberalization Scheme (ETLS) allows for the simplification of processes in goods that are often traded by actors involved in ICBT (ECOWAS 2012).

Aside from recognizing informal trade in REC treaties, trade facilitation programmes have been adopted to increase the transparency and predictability of trade transactions and cross-border transport as one of its outcomes (WTO 2017), and to promote the role of women in trade. Examples include TradeMark Africa in the East Africa region (TMA, 2023), the Trade Facilitation West Africa Programme (TFWA), and the Great Lakes Trade Facilitation and Integration Programme (WB 2022), all of which have programmes aimed at supporting and informing female cross-border traders.

Although the role of small-scale informal traders - and women in particular - is acknowledged in formal trade policy discourse, trade agreements and trade facilitation measures are principally focused on recorded trade by larger operators.

NTB Reporting

The biggest gains from the AfCFTA are expected from the reduction of non-tariff barriers (NTBs) and from trade facilitation, which are estimated to raise intra-African trade by “between 50 and 132 percent [with] GDP gains of between 1 and 4 percent” (World Bank Group 2020). NTBs include cumbersome bureaucracies, lengthy clearance processes, unclear rules and corruption (UNCTAD 2019). Monitoring and addressing challenges related to NTBs is one avenue to reducing the incentives for ICBT.

Some RECs have adopted NTB reporting mechanisms to address some of these challenges - like COMESA, EAC and SADC which, under the tripartite free trade area, adopted an online NTB reporting mechanism to enhance transparency and easy follow-up of reported and identified NTBs. But not all RECs have a unified approach to monitoring and eliminating NTBs at the regional level. For example in ECOWAS, multiple classifications of NTBs and tools exist simultaneously, such as the mechanism by Borderless Alliance; International Trade Centre’s Trade Obstacle Alert Mechanism (TOAM); and the AfCFTA NTB online tool (Olayiwola 2020). This duplication need not be a problem in and of itself, but other challenges suggest only moderate effectiveness due to high costs of reporting (by businesses), and the challenge of eliminating NTBs by national governments once identified. In addition, it is unclear if the private sector is sufficiently aware of these tools to make effective use of them.

Questions therefore remain as to the effectiveness of such monitoring mechanisms in terms of stimulating, facilitating or incentivizing national-level governments to comply with regional and continental agreements and their effects on informal cross-border traders.

The above three approaches, though commendable, face various challenges, as they apply to trade more generally and are not specific to ICBT. As such, some RECs have adopted procedures to simplify trade rules to respond to the specific needs of informal cross border traders.

STRs

Simplified Trade Regimes are specifically targeted at small-scale cross-border trade, with an explicit or implicit objective of encouraging formalization of informal cross-border trade. They present a number of trade facilitation-related benefits, such as providing information on trade with other Member States in the regional FTA, reducing some administrative and procedural hurdles at the border through easing clearance costs, and eliminating delays associated with clearing products (TRALAC 2022). Studies indicate the relative costs traders face when exporting the same goods are inversely proportional to their size, with large formal exporters carrying the lowest costs and small-scale traders carrying the highest (Imani Development 2022). The STR can help small-scale traders access the same benefits and preferences that large formal traders take advantage of, drastically lowering the costs of goods crossing the border.

Generally, the design of STRs comprises four main instruments and one common administrative pillar, namely: a simplified customs document, a simplified certificate of origin, a common list of products, and a threshold for the value of the consignment, with Trade Information Desks staffed by officers responsible for administrative processing and verification of the eligibility of goods for the STRs (Mafurutu 2022). COMESA and the EAC have adopted STRs based to some degree on the five pillars in Figure 47, presented along with brief explanations.

Figure 47: Key Pillars of the STR Mechanism

Pillar	Remarks
1 Common list	Product coverage is as per the agreed bilateral list(s) of goods that are eligible for the STR
2 Threshold	Maximum value for consignments that can be imported or exported under the regime by the intended beneficiaries
3 Simplified Customs Document	Simplified customs document for use in import and export clearance
4 Simplified Customs Certificate of origin	Simplified certificate of origin that covers qualifying goods
5 Trade Information Desk	Trade information (help) desks, and trade information officers at participating country border posts

Source: Rwatida Mafurutu (2022); SADC Simplified Trade Regime: Tracing development and implementation progress, TRALAC Trade Brief, June 2022.

Lessons from COMESA STR

As one of the earliest STRs, implementation of the COMESA STR started in 2010. The rationale was to simplify the requirements for small-scale trade to help small-scale traders (a term used in COMESA as opposed to ICBT traders, and used in this section) benefit from the COMESA FTA. By simplifying and speeding up trade and customs processes, it was designed to improve the experience at the border for small-scale cross-border traders, and transform and mainstream ICBT into formal and legitimate cross border trade, while helping improve intra-regional trade data through more accurately and efficiently capturing informal trade (Muqayi 2015).

The COMESA STR has a threshold of \$2,000 for the value of goods eligible to use the STR. It uses a bilateral form of Common Lists for the STR, which means the list of goods is negotiated and agreed between the two neighbouring States that share a common border. This in turn implies that the STR is applied differently at different borders of the same country. In contrast, the EAC has adopted a common regional approach in its list of goods eligible for its STR. Given the overlap in membership of these regional blocs, the need for

information sharing for countries that fall in both RECs is imperative for small scale/informal traders to be able to take advantage of STRs.

Discussions have sought to expand the STR range to include “imports from countries participating in the COMESA FTA” and not just those with a shared border (Gakunga 2019). Subsequently a COMESA decision by the Council of 2019 extended this, allowing all goods meeting the rules of origin from a COMESA FTA Member State to enjoy preferences under the STR, as long as they are on the importing country’s common list (Imani Development 2022).

Recognizing the challenge that the Simplified Certificate of Origin still posed to small-scale traders, this was removed from the required documentation list to reduce compliance barriers in several COMESA Countries (COMESA 2014). This is due to the fact that small scale traders in border towns had difficulties in accessing such certificates, usually only issued in capital cities. Not requiring a simplified certificate of origin has been shown to greatly simplify the trade and increase STR uptake. As such, the Simplified Customs document is the only document currently required for the STR in COMESA (Imani Development 2022, COMESA 2014).

Several studies point to a relatively positive uptake of the COMESA STR, given the benefits it provides users in terms of shorter processing times, tax/duty relief, and (to an extent) protection from extortion and abuse (especially for women traders), as the formalization offered by the STR helps reduce trader’s reliance on informal routes, which can be extremely dangerous (Imani Development 2022).

Nevertheless, effective implementation of the COMESA STR has faced challenges, including reports from traders of not being aware of the STR or how to use it, and not fully understanding what benefits it provided (Imani Development 2022, APRM 2022). Furthermore, common lists are often out of date, and the negotiation of new lists can take significant time and are not updated frequently enough to take into account seasonal availability of agricultural goods, yet this is a significant portion of the goods traded by small-scale traders.

Administratively, there are concerns that STRs reduce the tariff revenue collected at the border, which may lead to opposition from countries reliant on this revenue. A study by Imani Development notes that “fieldwork at

Kasumbalesa found that customs on the DRC side were concerned that implementing the STR would cost them up to \$250,000 per day, which is one of the reasons why implementing the COMESA FTA and the STR is opposed” (Imani Development 2022). Such concerns for revenue loss have resulted in abuse by customs officials who need to meet revenue targets.

Aside from the challenges related to implementation by border officials, it is necessary to also examine aspects of how an STR interacts with the existing system at border crossings. For example, concerns have been raised about the abuse of STRs by traders through aggregation of goods. Anecdotally, this is a concern at the border between DRC and Rwanda in the Great Lakes Region, where - although COVID-19 restrictions led policymakers to encourage aggregation of small-scale traders’ goods into single shipments - authorities suspect large companies of misreporting their shipments as multiple small-scale consignments (Byiers *et al.* 2023).

In summary, STRs simplify procedures for certain categories of goods but still require traders to actively use them and depend on correct implementation by border officials. This creates a gap between the current operation of STRs and their full potential.

Beyond Narrow STRs

Beyond the current narrow interpretation of STRs, questions revolve around how to overcome other border-related procedures, such as those related to sanitary and phytosanitary (SPS) procedures and other taxes, which may hinder small-scale traders from using the formalized system as opposed to informal ways of crossing the border. Zarelli and Lenoci (2020) propose that STRs could be adapted to better respond to the specific needs of informal traders by waiving requirements for certificates of origin (already undertaken within COMESA), relaxing requirements for other documentation on trade of essential goods, or expanding the lists of goods eligible for STR treatment. The assumption is that improving or simplifying the STR would encourage the uptake of the scheme and hence contribute to draw informal traders towards formalization.

Efforts are ongoing in COMESA to address the SPS-related challenges by introduction of a ‘Green Pass’, an initiative aimed at reducing trading

requirements by simplifying and consolidating SPS/TBT (technical barriers to trade) measures and border verification procedures⁴⁶. It has been piloted for fish trade originating from Luangwa District in Zambia and traded across several borders. So far, DRC, Zambia, Zimbabwe have validated the implementation modalities of the Green Pass. This initiative, if effectively implemented, has the potential to reduce time and trade costs related with clearing SPS at borders.

Even though small-scale traders are exempt from paying tariffs for goods under the STR common list and within the threshold, other border taxes - such as VAT, excise duties and other local taxes - remain burdensome for such traders in terms of the time and cost implications for small traders. Where the possibility exists for traders to pay a small informal payment to cross a border, such requirements remain a hurdle to utilization, particularly if enforcement is weak. As discussed below, one of the challenges for addressing small-scale or ICBT is therefore the heterogeneity of the actors involved, whether traders or officials, but also frequent lack of clarity on what ICBT-focused policies seek to achieve.

Policy Implications for STRs and the AfCFTA

Multidimensional ICBT

While the above policies and strategies have undoubtedly helped protect and support traders in some cases, the difficulties faced relate to a range of definitional and conceptual issues.

A first concern relates to the purpose of engaging with ICBT. “While some see ICBT as a problem that needs [to be] ‘stamped out’, others see it as a result of over-regulation with rigid rules and so advocate institutional reforms” to ensure a conducive regulatory environment (Kahiya and Kadirov 2020). The STRs discussed above, while often accompanied by projects to protect and empower women, are ultimately aimed at enhancing state revenues, and/or

⁴⁶ <https://www.comesa.int/countries-validate-green-pass-implementation-modalities-for-fish-trade/>

promoting compliance as a route to formality while protecting health and security (Karkare *et al.* 2021). They assume that once aware of their rights, traders - especially women - will be less susceptible to bribes and abuse of the rules, and thus be more willing to trade through more formal channels (Brenton *et al.* 2013).

However, the persistence of ICBT is well illustrated by Croke *et al.* (2020), who use an experimental approach to measure the effects of training and capacity-building on women traders and officials in the border regions of the DRC and Rwanda, where the COMESA STR is in operation. As they report, although the self-reported incidence of bribes and harassment declined in response to training and capacity-building, women were found to be more likely to cross the border before the official border operating hours to avoid informal payments rather than voice their grievances (*Ibidem*), thus creating ‘informed avoidance’. That is, better information is not enough to encourage more formal compliance, even with STRs.

Part of the challenge is the wide heterogeneity of actors engaged in small-scale or ICBT. Karkare *et al.* (2021) summarize the range of definitions and characteristics of ICBT as reported in Figure 48, where the behaviour of small-scale traders is likely to vary by the nature of the trader, their own incentives for trading, the types of goods, the wider regulatory environment, and how the border officials behave, all of which together will determine how border trade takes place in practice.

Figure 48: Range of Characteristics of ICBT

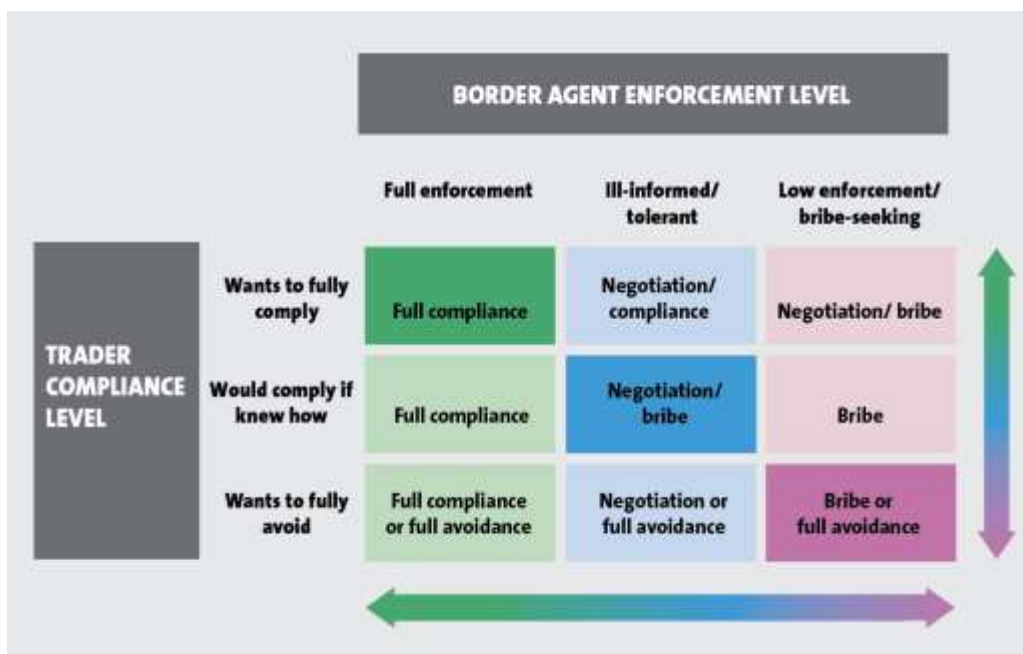
1. **Actor type** - ranging from small-scale traders engaging in survivalist activities, or large organized traders bridging the formal and informal spheres;
2. **Motivations or incentives** - avoidance of taxes and regulatory scrutiny to profit or avoidance due to more 'legitimate' reasons such as high costs;
3. **Type of goods traded** - licit/legal goods such as fruits and vegetables, highly regulated goods like rice or chemicals, or illegal goods like drugs and arms;
4. **Regulatory environment** - registered or unregistered firms, whether registered for trade, whether the goods are regulated or not etc.;
5. **Compliance institutions** - cumbersome or complicated procedures that can easily make one's operations informal; and
6. **Mechanisms** through which ICBT takes place between traders and border agents.

Adapted from: Karkare *et al.* (2021).

The outcomes of cross-border exchanges depend on the interaction of traders and officials, whereas Figure 49 illustrates that full compliance is only one of many likely combinations, depending on the motivations of both the trader and the border agent.

In contrast to the assumption that informal traders would formalize if tariffs were reduced or they were better informed, this highlights that although outcomes may be affected by access to knowledge of procedures, ease of procedures, and time costs, compliance nonetheless entails costs, and border agents can also stand to gain from non-enforcement if this leads to informal payments. In Figure 49, full compliance is only likely in two out of nine of the outcome possibilities that emerge, and even then, requires well-motivated and well-functioning border agents and willing traders. Almost all other outcomes are a mix of negotiation, potentially leading to compliance but also towards payment of bribes, thus helping illustrate the persistence of ICBT, even in the presence of STRs and other supportive policies (Karkare *et al.* 2021).

Figure 49: Motivations and Outcomes of Trade-Border Agent Interactions



Source: Karkare *et al.* (2021)

This analysis helps illustrate the three ‘conceptual fallacies’ that Galliens and van den Boogaard (2023) identify, namely a) that there is a binary distinction between formal and informal economic actors; b) that all informal economic actors are alike; and c) that formalization necessarily spurs a set of positive externalities. If these assumptions do not hold, as seems to be the case, a different approach is required.

Further, as Karkare *et al.* (2021) discuss, the relations between trader and border agent can vary by the type of goods traded and the wider context of a border post. This could relate to whether or not it is in a conflict zone where traders can offer useful security information, or the level of government engagement in a region. Gallien *et al.*, (2019) provide the example of Tunisia, where the government’s implicit acceptance of informal trade in the country’s southern region was in recompense for the limited provision of state investment.

Overall, there is therefore a growing awareness of the need to understand the dynamics around ICBT through greater contextual political economy analyses, and not only identifying STR products on a border-by-border approach, but indeed how relations are maintained between officials and traders

Adapting Approaches

Simplified procedures, with an expanded meaning of STRs, may be needed to capture not only the common lists and thresholds, but also simplified SPS and other border-related impediments to trade. Following the example of COMESA, the possibility of omitting certificates of origin in the AfCFTA STR for goods on the common list could be pursued. Simplified procedures may affect the decision of some informal traders to comply with formal trade rules, but this will be undermined if the remaining requirements entail greater time costs and/or exposure to bribe-seeking border agents. It may require direct interventions to have more direct effects, e.g. cheap certification processes near the border to facilitate compliance. Concerning taxes, a suggestion is to link traders to a unique tax number that would allow border officials to monitor traders and ensure that there is no abuse (Imani Development 2022). However, the discussion above suggests the need to combine such efforts with wider approaches.

Despite the work of Croke *et al.* (2020), informing actors may indeed help to change incentives for informal trade. This includes publicly available information, preferably in the languages of the border town in addition to the countries' official languages (APRM 2022). At the AfCFTA level, use of the eTradeHubs portal⁴⁷ could be a useful tool in supporting women-led small businesses by providing timely information, trade management tools and supply chain information related to the AfCFTA, including on documents, licences, permits, certificates, fees to be paid, and estimated processing times (ICC 2021).

Efforts under the AfCFTA should build upon best practices such as the Trade Information Desks used in COMESA to assist small-scale traders understand

⁴⁷ <https://etradehubs.com/about/>

how to use the STRs. However, as the above discussion suggests, informing traders of the rules may nudge them towards compliance only where they seek to be compliant (and the risks of non-compliant approaches are high enough). Some RECs have established Charters for Cross-Border Traders that enshrine a basic set of rights and obligations for traders and officials, and ultimately aim to improve behaviour at borders and to promote the gradual formalization of ICBT by creating two-way accountability between border agents and traders. Third party oversight of the compliance-enforcement dynamic is necessary to monitor adherence to the obligations of such charters, which will be key when designing the continental STR. A notable example, as seen in Tanzania, is by establishing dedicated gender desks and champions as an avenue for women in ICBT to report cases of harassment and assault (APRM 2022, Charles 2023). Indeed, with the caveat that outcomes still depend on the motivations of traders and officials (Figure 49), a combination of the above may be effective; more Safe Trade Areas as mentioned above could help overcome some of the risks of ICBT by providing a permanent location for traders, some collective oversight and protection, and indeed mutual accountability between traders and officials along the lines of the Cross-Border Charters.

Technology-enabled innovative approaches are key to understanding and assessing ICBT. Leveraging digital solutions to leverage the potential of ICBT may be able to complement the positive practices of STRs. For example, information sharing via the eTrade Hubs app or the ‘Sauti’ platform – a mobile-based platform empowering East African micro, small and medium sized businesses with business information – and/or the use of QR-codes could provide opportunities to ease clearance of goods and also address delays. Similarly, biometric and facial recognition technologies could be used for border immigration purposes to avoid delays associated with rights to entry. After all, goods move with people, and enabling quick clearance of both is imperative.

Finally, continental efforts to develop a common definition of ICBT or small-scale trade may help to move away from the perception of small-scale or ICBT as simply being lost revenue. At present, efforts are underway to agree on a common data collection framework that would allow for a better understanding of actors and drivers and would enhance policies supporting small-scale cross border traders (UNECA 2023). Informal cross-border trade data can inform the formulation of appropriate policies to leverage its potential

impact on job creation and the development of MSMEs, through the linkages between formal and informal trade. Monitoring ICBT is essential for determining sensitive products and corresponding tariff reduction modalities for which a country should actively seek enhanced market access under the AfCFTA, though like the STRs discussed, this might best take place at a border-by-border level. Individual studies have often been carried out under individual projects, but there are a few cases emerging of continual monitoring. Though outliers in some senses, the World Bank (2020) cites Rwanda and Uganda as offering good examples of monitoring this form of trade, although the differences in approaches used mean figures are not directly comparable. This underlines the need for an agreed definition and approach to measurement to help design future policy measures.

Conclusion and Policy Implications

Although youth and gender inclusion is addressed through a range of regional policies (e.g. on gender, trade facilitation and NTBs), Simplified Trade Regimes are specifically targeted at small-scale traders and appear to have met with some success at the border posts where they have been adopted. These allow for traders to trade with far lower bureaucratic demands than regular systems, thus allowing for formal recognition of the trade, and in that regard, protection of traders.

While most policy responses to the phenomenon assume it stems from a lack of information on the part of traders or border agents and/or the high cost of compliance, this chapter highlights the importance of understanding the motivations of both traders and border agents in understanding where and how non-compliance with trade regulations can arise. As the discussion also highlights, studies have shown that even with lower time, bureaucratic and financial costs, better informed traders can also lead to ‘better evasion’.

While a continental STR through the AfCFTA may therefore not be a panacea for this complex area of trade, the political momentum behind the AfCFTA might usefully be built upon to offer such a scheme, in a common continental form, perhaps building on the COMESA and/or EAC schemes. This would provide a basis for countries trading within and between RECs to put the system in place at key border posts where small-scale trade represents a high

proportion of daily trade traffic. At the same time, the discussion above suggests that this should be done in conjunction with other efforts to protect traders, through information as well as facilities and Cross-border Trade Charters, which at the same time may also help make this trade more visible and thus raise mutual accountability between traders and officials.

In moving towards a Common African Market (CAM), which would imply offering freedom of movement of people, goods and services, this would perhaps reduce the incentive for informal cross-border trade by lowering price differentials across borders, and removing border controls. However, in this way, the ‘problem’ of informal cross-border trade would simply become akin to informal economic activity within a single economy. Until then, the AfCFTA process is that which has most political visibility and support, and thus ought to be used to agree on and promote continental norms and basic structures to help protect and support small-scale traders at key borders.

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Chapter 18

ENHANCING SUSTAINABLE, ETHICAL, AND RESPONSIBLE BUSINESS PRACTICES IN THE FUTURE COMMON AFRICAN MARKET THROUGH A NEW APPROACH TO INSTITUTIONALIZING CORPORATE SOCIAL RESPONSIBILITY IN AFRICAN TRADE AND INVESTMENT AGREEMENTS

Jean Bertrand Azapmo

Abstract

Although corporations contribute to the economic growth of the countries in which they do business, concerns have emerged due to cases of ethical transgressions involving some corporations, including scandals relating to child labour, corruption, human rights violations, and environmental destruction.

This chapter examines the extent to which the current approach to institutionalizing corporate social responsibility (CSR) provisions in African trade and investment agreements (TIAs) can effectively contribute to ensuring that, as Africa deepens trade and economic integration, corporations also comply with a minimum set of sustainable, ethical and responsible business principles and standards, with a view to contributing to the sustainable development of the communities and countries where they do business.

To that end, this chapter undertakes a critical legal review of CSR provisions in African TIAs using the framework of legalization, which looks at the characteristics that rules established by institutions may possess along three dimensions: obligation, precision, and delegation. The limitations and policy

implications of the current regulatory approach, notably the inconsistency and heterogeneity in institutionalizing CSR provisions and their weak legal obligations, precision, and delegation dimensions, suggest that a new regulatory approach is necessary to enhance sustainable, ethical, and responsible business practices in the future Common African Market. The recommendations formulated in this chapter revolve around an integrated and enhanced approach anchored on the principles and values of ‘Ubuntu’, the concept that underpins CSR in the African context.

Key Words: Corporate social responsibility, trade and investment agreements, legalization, Ubuntu

Introduction

Although corporations contribute to the economic growth of the countries in which they do business, concerns have also emerged due to cases of ethical transgressions and irresponsible practices involving some corporations, including scandals relating to child labour, corruption, human rights violations, and environmental deterioration (Farchy and Browning 2022, Yannaca-Small 2021, Allen and Craig 2016).

This situation has revived interest in research on corporations' responsibility and the role of law, particularly trade and investment agreements (TIAs), in promoting the adoption of sustainable, ethical, and responsible conduct by corporations, and ultimately, their contribution to sustainable development, (Visser 2006, Lin 2020, Okoye 2012, Buhmann 2006, Patel 2014).

In this respect, one trend that has gained momentum worldwide since the beginning of the 2000s, including in the African context, is the inclusion of corporate social responsibility (CSR) provisions in virtually all modern TIAs (United Nations Economic Programme 2011, Yannaca-Small 2021, Monteiro 2021). This trend began with the inclusion of 'generous' CSR and CSR-related clauses in TIAs, notably the 2003 European Union (EU)-Chile Association Agreement (Joint Declaration Concerning Guidelines to Investors), the SADC Protocol on Finance and Investment 2006 (Article 10), and the ECOWAS Supplementary Act on Investment 2008 (Art.16 (2)). The 2010s witnessed an acceleration, with introduction of more elaborate clauses in TIAs, such as the EU-South Korea Trade Agreement 2011 (Art. 13 (6)(2)), the United States-Mexico-Canada Agreement 2020 (Art. 14(17)), SADC Model BIT Template 2012, Pan African Investment Code 2016 (Art. 22), the ECOWAS Common Investment Code 2018 (Art. 34 (2), and the AfCFTA Protocol on Investment 2023 (Art 38).

This chapter examines the extent to which the current approach of institutionalizing CSR provisions in African TIAs can contribute to ensuring that, as Africa deepens trade and economic integration through the AfCFTA - a steppingstone towards the Common African Market - corporations effectively uphold certain minimum sustainable, ethical, and responsible

business principles and standards, with a view to contributing to the sustainable development of communities and countries where they do operate.

Although CSR has been in existence since time immemorial, there is no universally agreed definition (Dahlsrud 2008, Carroll 1999).

In the African context, Visser (2008, p.482) observed that “the values-based traditional philosophy of African humanism of (Ubuntu) [which] underpins much of the modern, inclusive approaches to CSR on the continent”. The concept of *Ubuntu* derives from the expression ‘*umuntu ngumuntu ngabantu*’ and is translated as “a human being is a human being because of other human beings” (Mokgoro 1998, p.15). It is broadly defined as “a philosophy of life, which in its most fundamental sense represents personhood, humanity, humaneness, and morality” (Mokgoro 1997, p.2). *Ubuntu*’s common identifiable principles and values include community and togetherness, humanness and humanity, dignity and respect, and leadership (Taylor 2014, Kinyanjui 2019, Senooane 2014).

Critical Analysis of the Current Approach to the Institutionalization of CSR in African TIAs

At the heart of the institutionalization of CSR in TIAs, through the inclusion of explicit or implicit references to CSR, is the idea of using TIAs to foster sustainable, ethical, and responsible business practices among corporations, with the ultimate objective of further increasing their contribution to the sustainable development of the communities and countries where they operate. This section examines the trend of including CSR provisions in African TIAs as well as their legal dimensions.

Upward Trend in the Inclusion of CSR Provisions in African TIAs Despite Remarkable Inconsistencies

Analyses have found that - just like in the global context where two phases have been identified in the institutionalization of CSR provisions in TIAs (the period between 2000 and 2010s characterized by the adoption of generous clauses, and the period after the 2010s which saw the appearance of more

elaborate provisions (Peels and Echeverria 2017)) - a similar pattern was observed in the African context. Hence, the early explicit reference to CSR in African policies and TIAs was traced to the early 2000s, in a 2002 policy document titled ‘Objectives, Standards, Criteria, and Indicators for the African Peer Review Mechanism’. Sub-Para. (b) of Para. 4-1 (A) of this document stipulates that one of the objectives of corporate governance is to “ensure that corporations act as good citizens with regards to human rights, social responsibility, and environmental sustainability; promotion of the adoption of Codes of good business ethics (e.g., Cadbury and King Codes)”. In 2006, explicit CSR language found its way into the first African TIA, namely the SADC Protocol on Finance and Investment 2006, in Art. 10 of Annex 1 on Co-operation on Investment of the Protocol, titled ‘corporate responsibility’. This provision obliges investors and investments to comply with the laws, regulations, administrative guidelines, and policies of the host state.

The SADC Protocol on Finance and Investment 2006 was followed two years after by the ECOWAS Supplementary Act 2008 on Community Rules on Investment, whose Art. 16 was even more comprehensive as it was titled ‘corporate social responsibility’. The analysis found that, contrary to the SADC Protocol on Finance and Investment 2006, the ECOWAS Supplementary Act 2008 went beyond the simple requirement to comply with host state laws, regulations and policies, to include references to the development plans and priorities of the host State, the Millennium Development Goals, and the indicative list of corporate social responsibilities agreed by ECOWAS Member States. Overall, the analysis showed that a humble regulatory approach was adopted in crafting the first generation of CSR provisions in TIAs, by keeping the clauses very broad, with no elaboration on the dimensions of CSR.

The 2010s witnessed the emergence of a new generation of CSR provisions in TIAs, which not only featured explicit references to CSR, but also included detailed information on the dimensions and elements of CSR principles and standards⁴⁸. At the regional level, explicit CSR provisions were found in the Agreement Amending Annex 1 (Co-operation on Investment) of SADC Investment and Finance 2016 (Art. 8), and the ECOWAS Common Investment

⁴⁸ This trend was also observed in bilateral investment treaties concluded by African countries. An example is Art. 24 of the Morocco-Nigeria Reciprocal Investment Promotion and Protection Agreement 2016.

Code 2018 (Art. 34 (2))⁴⁹. At the continental level, explicit CSR clauses were included in the Pan-African Investment Code (PAIC) 2016 (Art. 22) titled ‘Corporate Social Responsibility’. The analysis found that this provision articulated for the first time, in a comprehensive manner, the dimensions of sustainable and responsible conduct that investors doing business on the continent should abide by. These include the need to: comply with host state laws and regulations (legal dimension), take into account their development plans, and contribute to their economic, social, and environmental progress (economic, social, and environmental dimensions). The analysis also showed that Art. 22 links CSR and sustainable development of host states and local communities. With these innovations, this chapter submits that even though the PAIC has been criticized for being a non-legally binding instrument (Kane 2018, Serrurier 2019), the innovative features of its CSR clause are remarkable and set it apart from existing TIAs.

Similar to the PAIC, the analysis found that the AfCFTA Protocol on Investment 2023 also features an explicit CSR provision (Art. 38) titled ‘corporate social responsibility’, articulates the relationship between CSR and sustainable development, and provides a comprehensive elaboration of CSR principles and standards that investors should comply with. Hence, Art. 38 (1) begins by urging corporations to “achieve the highest possible level of contribution to sustainable development of the Host State and the local community”. Paragraph 2 then outlines nine sustainable, ethical, and responsible business practices and standards that investors should uphold in the AfCFTA market. These are: stimulate economic, social and environmental progress to achieve sustainable development, strengthening of local capacities, advancement of human capital development, promotion of gender equality and inclusiveness, refrain from seeking illegal exemptions, foster a relationship of mutual trust between the companies and the community, enhance workers’ knowledge of CSR, encourage their business associates (suppliers and subcontractors) to apply CSR principles and standards, and foster benefit sharing arising from their investment with the local communities. Furthermore, the analysis found that contrary to Art. 22 of the PAIC, Art. 38 of the AfCFTA Protocol on Investment went beyond merely highlighting the dimensions of CSR to include new elements and issues. These include: inclusivity, gender, CSR in supply chains (business associates and sub-

⁴⁹ It is worth mentioning that an explicit CSR clause was also included in the Economic Partnership Agreement concluded between SADC and the EU (Art. 11 (3)).

contractors), and the relationship of mutual trust between companies and local communities.

Considering the above innovative features of Art. 38 of the AfCFTA Protocol on Investment on CSR 2023, this chapter argues that the CSR provision has corrected the ‘original sin’ of lack of reference to CSR and casual references to sustainable development in the AfCFTA framework (Amodu 2020). It can even be argued that Art. 38 of the AfCFTA Protocol on Investment now constitutes the new ‘gold standard’ with respect to CSR provisions in TIAs, and that Africa has consolidated its position as a norm setter in this area.

Despite the growing trend in institutionalization of CSR provisions in African TIAs as a means of promoting sustainable, ethical, and responsible business conduct in Africa, and notwithstanding the linkages drawn in those provisions between CSR and corporations’ contributions to the sustainable development of communities where they operate, this analysis shows that the current trend is inconsistent. The first level of inconsistency relates to the lack of references to CSR in some of the major African TIAs, even though they were concluded during the 2010s, which can be considered as the period of consolidation of CSR across the continent. This is the case with the SADC Model Bilateral Investment Treaty (BIT) Template 2012, which simply features implicit CSR clauses prohibiting investors from engaging in corruption activities (Art. 10) and obliging them to comply with minimum standards of human rights, environment, and labour (Art. 15), as well as corporate governance standards (Art. 16). The case of the Tripartite Agreement 2018, concluded among SADC, COMESA and the EAC is even more striking. This is because it does not feature any explicit or implicit CSR clause, or even a reference to sustainable development. This inconsistency has led some scholars to conclude that there is presently a limited appetite for CSR and sustainable development in the regional integration agenda in Africa, and that the focus seems to be on “liberalization of trade and investment at all costs” (Amodu 2020, p. 83).

The second level of inconsistency identified by this analysis resides in the formulation of CSR provisions, including in TIAs concluded by the same REC. For example, whilst Art. 10 of the original Annex 1 (Co-operation on Investment) of the SADC Protocol on Finance and Investment 2006 was expressly titled ‘corporate responsibility’, Art. 8 of the Agreement Amending that Annex 1 adopted in 2016, which deals with the same issues, was renamed

‘investor responsibility’⁵⁰. Similarly, in the case of ECOWAS, unlike Article 16 of the Supplementary Act of 2008 on Community Rules on Investment, which is explicitly titled ‘corporate social responsibility’, Article 34 of the ECOWAS Common Investment Code, 2018, which deals with corporate social responsibility, is titled ‘corporate governance and responsible business conduct’.

The third level of inconsistency lies in the content of CSR provisions. This analysis found that whilst some provisions (e.g. Art. 38 of the AfCFTA Protocol on Investment 2023, Art. 34 of ECOWAS Common Investment Code 2018, and Art. 22 of the PAIC 2016) outlined the dimensions of CSR as well as the minimum sustainability, ethical and responsible standards that corporations should comply with, other CSR provisions examined in this chapter (e.g. Art. 10 of Annex 1 (Co-operation on Investment) of the SADC Protocol on Finance and Investment 2006, and Art. 8 of the Agreement Amending that Annex 1 adopted in 2016), rely exclusively on the host state to determine the dimensions and content of CSR obligations.

It can be argued that beyond the increasing institutionalization of CSR provisions in African TIAs, some serious inconsistencies remain. The analysis of the legal dimensions of CSR provisions in the next section also showed some inherent flaws.

Weak Legal Dimensions of CSR Provisions of African TIAs

As discussed in the introduction, the three dimensions through which the concept of legalization can be assessed were: obligation (the degree to which the rules are obligatory); precision (the degree of clarity in defining commitments and obligations); and delegation (the delegation to a third party of some functions to interpret and apply rules, to resolve disputes, or to make additional rules)⁵¹. This analysis of substantial aspects of CSR provisions,

⁵⁰ Unlike Art. 10 of the original Annex 1, which simply provides that “investors and their investments shall abide by the laws, regulations, administrative guidelines and policies of the host state”, Art. 8 of the Agreement Amending Annex 1 goes one step further to clarify that this should persist during “the full life cycle of those investments”.

⁵¹ The concept of legalization was developed by Abbott *et al.* (2000) and expanded by Goldstein *et al.* (2000) and Blake (2013). It was first used as a framework for

using the framework of legalization, showed that those provisions were very weak and may not steer sustainable, ethical, and responsible business conduct, as much as it would be necessary to increase corporations' contribution to the sustainable development of communities where they operate.

Starting with the obligatory dimension, which is assessed by examining the nature of legal language used in drafting CSR clauses (voluntary and conditional language, an indication of soft law, or in mandatory and legally binding language, a key feature of hard law). This analysis shows a mixed approach. Whilst some CSR provisions analysed in this chapter, such as Art. 16(2) of the ECOWAS Supplementary Act on Investment on CSR uses the conditional language 'should endeavour to apply', which implies that the provision is voluntary rather than mandatory⁵², the majority combine 'hard' and 'soft' language. This is the case of Art. 34(2) of the ECOWAS Common Investment Code which starts with the mandatory verb 'shall', the qualifier 'endeavour' is quickly added. In the same vein, Art. 38 (1) of the AfCFTA Protocol on Investment is full of aspirational terms such as 'shall endeavour' and 'undertake to encourage' when urging investors to comply with CSR principles and standards.

Art. 10 of Annex 1 on Co-operation on Investment to the SADC Protocol on Finance and Investment 2006 and Art. 08 - its successor in the Agreement Amending Annex 1 - are the only clauses that use the mandatory verb 'shall' by stipulating emphatically that investors and their investments shall abide "...by the laws, regulations, administrative guidelines, and policies of the host state". The predominance of the combination of mandatory and voluntary language in drafting CSR provisions in African TIAs is similar to the practice observed in international TIAs, which has led scholars such as Olsson (2015, p.180), to refer to those as 'treaty-soft law' or 'soft hard-law approach' (Lin 2020, p.464). This is because, although they appear to be hard law that imposes obligations on investors and their investment, they turn out to be soft law in nature because of vague behavioural requirements (D'Aspremont 2008, Karmel and Kelly 2009):

analysing CSR provisions in trade agreements in the seminal work of Peels *et al.* (2016).

⁵² Art. 16 (2) of the ECOWAS Supplementary Act states that "where standards of corporate social responsibility increase, investors should endeavour to apply and achieve the higher-level standards".

Whilst it is not disputed that the combination of soft and hard law has the potential to facilitate the advancement and diffusion of CSR as it is the case in other areas where consensus on hard law has proven to be challenging (Newman and Bach 2014, Kirton and Trebilcock 2004), the reality is that the so called ‘treaty-soft-law’ or ‘soft hard-law’ approaches are less likely to enhance sustainable, ethical and responsible business conduct among corporations, unless other parameters are taken into consideration.

Also relevant is the precision dimension of CSR provisions, which is the level of clarity in defining commitments and is assessed by looking at the existence (or lack thereof) of references to specific international and regional CSR instruments (codes, standards, guidelines, and principles). These principles are important in facilitating and guiding the interpretation and implementation of CSR provisions, and thus ultimately determine their effectiveness. Some of the most well-known international CSR instruments include the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the Global Reporting Initiative Sustainability Reporting Guidelines, the UN Principles for Responsible Investment, the UN Guiding Principles on Business and Human Rights, and the UN Global Compact (Mckague and Cragg 2007). With respect to regional codes, principles, and guidelines on CSR, some of the most prominent include the Durban Declaration on Democracy, Political, Economic and Corporate Governance, the ‘Objectives, Standards, Criteria and Indicators’ for the African Peer Review Mechanism, and the Monrovia Principles of CSR.

This analysis showed that CSR provisions of African TIAs examined in this Chapter did not specifically refer to any of the international or regional CSR standards, codes, and principles identified above. Rather, they contained broad and vague references to “internationally recognised CSR standards and best practices” or simply “international best practices” without specifically naming them. For example, Art. 34(2) of the ECOWAS Common Investment Code provides that investors doing business in ECOWAS territory shall promote and engage in corporate social responsibility in “accordance with international best practices”. Along the same lines, para 3 of Art. 38 of the AfCFTA Protocol on Investment also refers to the need for State Parties to encourage businesses to include in their policy documents “internationally recognised standards, guidelines and principles of CSR”.

Even more striking was the absence of references to the King Code⁵³, even though it has been acknowledged by the ‘Objectives, Standards, Criteria and Indicators’ for the African Peer Review Mechanism as one of the Codes for promoting good business ethics in Africa⁵⁴. Similarly, the limited references in CSR provisions to *Ubuntu*’s principles and values in four of the six CSR provisions examined was also a curiosity, given that this is the concept which underpins CSR in the African context. The good news is that this situation has changed recently with the introduction of *Ubuntu*’s principles and values in Art. 34 of ECOWAS Common Investment Code, 2018⁵⁵ and Art. 38 of the AfCFTA Protocol on Investment⁵⁶. While there is scope for improvement, the latest developments are undeniable positive steps in terms of enhancing the Africanization of CSR provisions in the African context⁵⁷.

Thirdly, with respect to the dimension of delegation, which pertains to the existence of third-party authorization to interpret and enforce the rules, resolve disputes, and make additional rules. The analysis revealed that whilst all African TIAs featuring CSR provisions examined in this chapter establish institutions and mechanisms to facilitate the implementation of provisions as well as the settlement of disputes arising, some of the TIAs do not envisage the possibility for state-investor disputes, or the possibility for individuals impacted by unethical and/or irresponsible corporate conduct to bring cases. This is the case with the dispute settlement provision under the AfCFTA Agreement and the Protocol on Investment, and the SADC Protocol on Finance and Investment⁵⁸. Even if the PAIC envisages the possibility for state-state disputes or investor-state disputes before the African Court of Justice, it does not contemplate the option of complaints brought by individuals. The ECOWAS Common Investment Code 2018 is the only TIA that provides for

⁵³ King Codes are published by the Institute of Directors South Africa.

⁵⁴ See Sub-paragraph (b) of Paragraph 4-1 (A).

⁵⁵ This provision only refers to the priorities and needs of local communities, protection of traditional knowledge, and ensuring fair and equitable sharing of benefits.

⁵⁶ Para. 2 of Art. 38 lists the following standards of CSR, which are closely related to *Ubuntu*’s principles and values: promotion of inclusiveness, mutual trust between companies and communities, and benefit-sharing with local communities.

⁵⁷ The concept of Africanization, which broadly refers to the process of making international investment law look African or better reflect Africa’s unique interests, was first articulated by Mbengue and Schacherer (2017) and further developed by scholars like Akinkugbe (2021).

⁵⁸ In the case of SADC, access of individuals to the SADC tribunal was suspended in 2010, and indefinitely in 2012 by a decision of Heads of State and Government of SADC following the Mike Campbell Case of 2007.

the possibility of state-state disputes (Art. 53), investor-state, and investor-investor disputes (Art. 54), as well as the possibility for individuals to bring cases before the ECOWAS Community Court of Justice (Art. 57). Article 57 stipulates that access to the Court of Justice is open to Member States, ECOWAS Institutions, corporate bodies, investors, and individuals.

Overall, this analysis showed that whilst CSR provisions are now a key feature of the majority of African TIAs, the weaknesses of their legal dimensions (obligatory, precision and delegation) is a matter of concern, considering the policy implications of such shortfalls. This is worrisome considering that with the institutionalization of CSR provisions in TIAs, there was hope that CSR provisions would have the same binding effect as other provisions and would be enforced through the dispute settlement mechanisms established under such agreements (Lark and Cutler 2020).

Policy Implications of the Current Approach to Institutionalizing CSR in African TIAs

This section examines implications for states, which are parties to TIAs; regional integration organizations that facilitate the design and implementation of CSR principles and standards; businesses, the subject of sustainable, ethical, and responsible business principles and standards enshrined in CSR provisions; as well as the local communities and other stakeholders who are often affected by the activities of corporations, and therefore stand to benefit from their increased engagement with CSR.

Implications for States

First, the institutionalization of CSR provisions in African TIAs means that states will have to play an active role in enacting enabling domestic policy and legislative frameworks to give effect to CSR provisions. This is particularly the case considering that four of the six CSR provisions examined in this chapter (Art. 10 of Annex 1 on Co-operation on Investment of SADC Protocol on Finance and Investment 2006; Art. 16 ECOWAS Supplementary Act 2008; Art. 8 of the Agreement Amending Annex 1 of SADC Protocol 2016; and Art. 22 PAIC 2016) specifically call upon investors to comply with host state

policies and legislation. The issue here is that African countries are at different stages in terms of CSR policy and legislation development (Gesellschaft für Internationale Zusammenarbeit 2013). Even for countries that have comprehensive CSR policies and legislation, implementation has been a challenge. In the case of Nigeria for example, Amodu (2017, p.161) observes that the adoption of several legislative and policy measures and initiative, has “not lived up to expectations in affording effective regulatory or enforcement framework for corporate accountability and responsibility”, due to many reasons including political considerations in appointing members of institutions responsible for implementing and enforcing CSR standards and principles, and the inherent gaps in the formulation of various legislations.

Secondly, the institutionalization of CSR provisions in TIAs implies that states would need to go beyond the current approach to CSR regulation, which is essentially rules-based compliance, through government-mandated laws. This approach focuses on determining sustainable, ethical, and responsible business standards and principles that corporations should uphold. Going forward, states should envisage other policy tools that governments have at their disposal to promote CSR. These policy tools include facilitating, partnering, and endorsing CSR. CSR-facilitating policies are used by government agencies to enable or incentivize companies to embrace the CSR agenda or drive social and environmental improvements⁵⁹. With respect to partnering policies, they combine public, private, and other resources, stakeholder engagement and dialogue, and public-private partnerships agreements and covenants⁶⁰. Endorsing CSR involves government policies through which political support and publicity are given to corporations’ CSR efforts. Such policies include endorsement of labelling, support for civil society initiatives, and dissemination of best practices. As rightly highlighted by several scholars (Fox *et al.* 2002, Petkoski and Twose 2003, Ward 2004, Nelsen 2008, McBarnet 2009) governments have a broad range of policy interventions that

⁵⁹ This is achieved through enabling legislation; funding support and strategic stakeholder dialogue; awareness-raising; incentives, subsidies, and tax rebates; procurement policies; capacity-building; supporting the dissemination and uptake of labels and certificates; and supporting self-governing agencies.

⁶⁰ One example of CSR partnering initiatives is Proudly South African, a non-profit company set up by the government-led National Economic Development and Labour Council. It involves a campaign to promote South African companies, products, and services to support job creation and economic growth. In return, companies supported are required to demonstrate their commitment to social responsibility.

can be used to steer corporations' behaviour in a certain direction, and these should be used.

Ultimately, the institutionalization of CSR in TIAs means, for states, a new era of collaboration and cooperation with their companies to ensure they are able to meet the sustainable, ethical, and responsible business standards and principles enshrined in CSR provisions and thus maintain their competitiveness and market share in their host state. This is even more important in the African context, considering that most African businesses are SMEs, and that government CSR facilitation and partnering policies would be critical in ensuring that the CSR agenda does result in additional costs (Turyakira 2017, Amaeshi *et al.* 2016).

Implications for African Integration Organizations

Three implications are discussed here: first, the institutionalization of CSR provisions in African TIAs as a means to increase corporations' contributions to sustainable development in the countries and communities where they operate is an explicit recognition that governments alone cannot address the challenges of our time, not even through international law; and that corporations and private governance systems have a role to play (Zaring 1998, Utting 2002, Underhill and Zhang 2008). Hence, the current approach adopted by African integration organizations should acknowledge, endorse, and at least refer to private CSR regimes and initiatives or industry-led standards and schemes, also known as 'non-state-market-driven' governance systems (Ribeiro 2009, p.257). Examples of such schemes and initiatives include the Forest Stewardship Council, Fairtrade Labelling Organizations International, Rainforest Alliance and the Ethical Trading Initiative, social bond principles, and green loan principles. These new forms are enriching and have the potential to enhance the effectiveness of CSR (Sacconi *et al.* 2011, Allen and Craig 2016, Olsson 2015, Schinkel and Treuren 2021), and should be incorporated in future CSR provisions.

Secondly, because CSR is a social and cultural product (Amaeshi *et al.* 2006), the institutionalization of CSR provisions in African TIAs requires that African integration organizations should add more African flavour to CSR provisions to ensure that they reflect Africa's unique traits. This could be

achieved by enhancing references to *Ubuntu*'s principles and values in CSR provisions, or by enriching their dimensions with elements that reflect Africa's unique challenges and interests. Some of the unique challenges facing Africa that are currently left out in CSR provisions include illicit financial flows, the digital divide, climate change, and, most importantly, limited beneficiation from Africa's vast natural resources.

The third implication relates to the process for developing CSR principles and standards as well as that of enforcing them. Since CSR is first and foremost about corporations and their relationship with the societies in which they do business, corporations should be actively involved in the design of CSR provisions by African integration organizations. Similarly, local communities should also play an active role through these phases. In this respect, African integration organizations should establish inclusive mechanisms to ensure that both the private sector and local communities take part in the design of CSR provisions as well as the definition of sustainable, ethical, and responsible principles and standards applicable to business operations. In the same vein, the inclusiveness of dispute settlement mechanisms established under African TIAs should be enhanced to allow for the participation of non-state actors, particularly all potential affected stakeholders such as local communities. This would contribute to holding corporations accountable for cases of unethical and irresponsible business conduct. The possibility of court actions will also exert indirect pressure on corporations to effectively abide by sustainable, ethical, and responsible business principles and standards enshrined in CSR provisions.

In light of the above, the AfCFTA Secretariat and the Secretariats of the RECs - notably the ECOWAS Commission and the SADC Secretariat, whose TIAs are examined in this chapter - have an important role to play in terms of establishing the appropriate consultative multi-stakeholder mechanisms to ensure inclusive participation of all stakeholders in the design of CSR standards and principles. Similarly, they also have a role to play in initiating the various legislative changes that are necessary to enhance the inclusiveness of the dispute settlement mechanism established under their respective TIAs.

Implications for Companies

The institutionalization of CSR provisions in African TIAs means that corporations would have to adjust to a new reality: compliance with sustainable, ethical, and responsible business standards and principles, and contributing to the sustainable development of countries and communities where they operate is as important as the search for profit maximization. In this respect, the first implication is that corporations would need to integrate CSR principles and standards in every level of business organization (internal principles and policies, processes and structure, and activities and outcomes including reporting on CSR). Whilst this may mean additional costs for some corporations (notably MSMEs), the reality is that CSR is also increasingly becoming an element of business competitiveness (Hawkins 2006), particularly in the era of climate change and sustainable development. Hence, it is in the medium- and long-term interest of corporations to embrace CSR principles and standards.

The second implication is that as new forms of CSR governance systems are taken on board, African corporations should also play a proactive role in spontaneously designing and implementing private CSR regimes in their respective sectors, and in so doing, contribute to the governance of CSR. An example of this new approach, which should be emulated by regional and continental private sector organizations and industries, is that of the Ethiopian Chamber of Commerce and Sectoral Associations, which adopted in 2014 a Model Code of Ethics for Ethiopian Businesses. The Code embodies five principles and eight ethical standards, including the need to produce and sell standardized products and services with fair value and price, ensure that business operations do not adversely affect the health and safety of customers and the environment, and be sensitive to the needs, dignity, privacy, culture, and religion of stakeholders (Demamu 2020). By embracing CSR and developing private CSR schemes and initiatives, the African private sector will not only contribute to shaping the CSR agenda in Africa, but also avoid having CSR standards and principles imposed that were developed outside the continent, which are often perceived to be detached from the African reality (Amaeshi KM *et al.* 2006).

Implications for African Local Communities and Individual Citizens

The implication for African local communities and individual citizens is that they should actively participate in the design of CSR principles and standards, and more importantly, be bold enough to bring cases against corporations responsible for unsustainable, unethical, and irresponsible behaviour within their jurisdiction. In effect, whilst the institutionalization of CSR provisions may give assurances that corporations will, in principle, comply with a minimum of sustainable, ethical, and responsible business standards as they conduct business in Africa, the weak legal dimensions of the aforementioned provisions discussed in the previous section of this chapter means that they will have to play an active role in ensuring that corporations effectively abide those standards and principles, so that they do not remain simply aspirational. This approach will ensure that corporations doing business in the African market do not take advantage of weak regulatory frameworks.

Conclusion: The Need for a Harmonized and Integrated Approach to CSR Anchored on *Ubuntu*

This chapter has analysed the extent to which the institutionalization of CSR in African TIAs could contribute to enhancing sustainable, ethical, and responsible business practices in the African market, and in so doing increase corporations' contributions to the sustainable development of the countries and communities where they operate. This analysis showed that whilst African TIAs have embraced the current trend of institutionalizing CSR provisions as a way to enhance sustainable, ethical, and responsible business conduct, the current approach remains inconsistent and heterogeneous, as some of the most important TIAs on the continent do not even make reference to CSR. This is the case of the Tripartite Agreement 2018. This heterogeneity and inconsistency could potentially affect competition among businesses operating in the African market and thus its integrity, given that TIAs concluded at the regional level will continue to coexist with those adopted at the continental level. In this respect, a harmonized or uniform approach would therefore be necessary.

The analysis of CSR provisions in African TIAs using the legalization framework also showed that their obligation, precision, and delegation dimensions are relatively weak. In particular, the combined use of ‘soft’ and ‘hard’ language and the lack references to specific international and regional CSR codes, principles, standards, and guidelines, as well as the scanty presence of *Ubuntu*’s principles and values means that there would be challenges in implementing, interpreting and enforcing CSR provisions. This situation is even more complex in light of the fact that access to the dispute settlement mechanisms instituted under African TIAs are, apart from TIAs concluded by ECOWAS, state-centric in nature and thus not accessible to non-state actors.

In light of these weaknesses and considering the policy implementations discussed above, this chapter concludes with a call for a harmonized and integrated approach to CSR anchored on *Ubuntu*, the concept that best captures CSR in the African context. The elements of this new approach would include: first, a uniform or at least harmonized determination of minimum standards of sustainable, ethical, and responsible business conduct guided by *Ubuntu*’s principles and values of inclusiveness, cooperation, social cohesion, sharing, dignity and respect between businesses and local communities. This will help ensure consistency and a common understanding of *Ubuntu* across the future Common African Market, promote fair competition among companies operating in the future Common African Market, and protect the integrity of that market. The second element is the integration of new systems of CSR governance, such as private CSR regimes and schemes in recognition of the many initiatives that the private sector is developing which have the potential to enrich the CSR governance regime, as well as the prioritization of CSR facilitation and promotion measures put in place by states. These policy measures will support businesses in the implementation of sustainable, ethical, and responsible business standards, and ensure that they remain competitive in an era where CSR principles and standards are increasingly incorporated in market access requirements of many countries, including outside of Africa. The third element is the democratization of the design and enforcement process of CSR standards and principles to allow participation of non-state actors in dispute settlement mechanisms. The possibility for court claims from local communities and other individuals affected by unethical and irresponsible business conduct will certainly exert indirect pressure on corporations to comply with sustainable, ethical, and responsible business standards, so as to avoid the cost of litigation and reputational issues associated

with potential lawsuits. Going forward, it will be interesting to see how the courts will behave when confronted with cases pertaining to CSR issues.

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PART III

PATHWAYS TO THE COMMON AFRICAN MARKET

Chapter 19

AfCFTA IN THE CONTEXT OF GLOBAL AGENDA 2030: POTENTIAL PATHWAYS TO BETTER LABOUR MARKET OUTCOMES

Seth Omondi Gor

Abstract

This paper assesses the potential state of readiness of the labour market in supporting the transition to a Common African Market. As a first step, we undertook a mapping of provisions and instruments of the Agreement establishing the African Continental Free Trade Area (AfCFTA) to Sustainable Development Goal (SDG)-8 targets, to assess their level of alignment. From the provisions and the instruments, we distilled potential labour market outcomes arising from implementation of the Agreement. We then employed an analytical framework and methodology based on the International Labour Organization's Key Labour Market Indicators to assess the status of key labour market indicators and by extension, the state of the labour market. Finally, we used this as a basis for identifying potential pathways to better labour market outcomes. Our findings confirm that in one way or another, all the provisions and instruments of the Agreement correspond to the various targets of SDG-8, even though the mapping may not be perfect. In addition, we find that there is a strong case for additional labour market supportive measures that go beyond implementation, since the various labour market outcomes identified are not automatic and would vary widely across State Parties based on their individual capacities and willingness to institute relevant complementary policies to address adjustment and distributional problems. We recommend that State Parties give due consideration to investment in education, effective labour market interventions, and appropriate macroeconomic policies. To allay fears and security concerns around free movement of people, civil registration should

be enhanced in all State Parties and integrated border management systems - supported by a strong and robust mechanism for the enforcement of laws at the respective national levels – and be established across the continent. To unleash the full potential of 'Industries Without Smokestacks' (IWOSS), we recommend adequate skilled manpower for each sector, good infrastructure to reduce the cost of trade, sufficient quantities of good quality raw materials, and for some sectors such as tourism, political stability and aggressive marketing.

Key Words: Sustainable Development Goal-8, AfCFTA Instruments, Key Labour Market Indicators, Agenda 2030

Introduction

Sustainable Development Goal 8 aims to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. SDG-8 has 12 targets as reported in United Nations Statistical Commission (2016) and 17 indicators. As an important pillar of AU's Agenda 2063 - the continent's strategic framework for delivering inclusive and sustainable development - the AfCFTA has the potential to support the attainment of many of the SDG goals and targets. The convergence between Agenda 2063 and the Global Agenda 2030 and its Sustainable Development Goals is not coincidental. The former predates the latter, which was heavily influenced by AU's Common African Position on the Post-2015 Development Agenda (CAP). The African Union Commission (2022), observed that this is the reason all 17 SDGs fit squarely into the 20 goals of Agenda 2063.

At a broad level, these two sets of objectives find convergence not only through deliberate policy coherence, but also directly through a common focus on promoting sustainable and inclusive growth and development, and indirectly through implementation outcomes of the various provisions and instruments of the AfCFTA Agreement. Even though the outcomes of the Agreement have a bearing on attainment of some of the SDG goals and targets, from a narrow perspective the convergence is far from perfect. Given the very broad nature of the SDG targets, in only a few cases do the Agreement's outcomes fully and directly contribute to attainment of the targets. In some cases, they only partially do so, and in other cases, the outcomes - in their present form - do not contribute to the attainment of SDG-8 targets.

Free movement of labour is a defining feature of a common market, and its role in deepening integration cannot be gainsaid. It is not just an employment or labour market issue, it is also a potential channel for transfer of technology, besides having complementary effects on trade and Foreign Direct Investment flows. Subject area literature documents both the short and long run impacts of trade opportunities on the labour market arising from deeper integration; see UNCTAD (2018), Abrego *et al.* (2020) and World Bank (2020). In the long run, such opportunities create more productive and higher paying jobs, while the short run involves re-allocation of labour or wage impacts within sectors. A functioning labour market that provides true labour force status is

therefore important, not only in creating and sustaining pathways to better labour market outcomes, but also for strengthening deeper continental integration.

The primary objective of this chapter is to assess the potential state of readiness of the labour market in supporting the transition to a Common African Market. We proceed by, first, undertaking a mapping of the AfCFTA Agreement's instruments and provisions to SDG-8 targets to assess their level of alignment. We then employ an analytical framework and methodology based on ILO's Key Labour Market Indicators to assess the potential outcomes of implementing the various instruments and provisions of the AfCFTA Agreement with a view to identifying the status of key labour market indicators - and by extension, the potential pathways to better labour market outcomes.

Mapping Instruments and Provisions to SDG-8 Targets

The AfCFTA Agreement has several provisions and instruments, some of which are already operational, that have the potential to promote attainment of SDG-8. These provisions and instruments do not necessarily map one-to-one with the SDGs, but they do promote - directly or indirectly - the attainment of individual targets or parts thereof. In the absence of any known consistent and non-arbitrary method for mapping the provisions and instruments to SDG targets, this study employs a rule of the thumb to align SDG goals to the various provisions and instruments of the AfCFTA Agreement. This mapping is by no means exhaustive, but it illustrates the importance of the AfCFTA to Global Agenda 2030. Figure 50 lists the various provisions/instruments of the AfCFTA Agreement, and the respective SDG-8 targets to which they correspond.

Figure 50 shows that some instruments, such as the African Trade Observatory and the online Non-Tariff Barriers reporting, monitoring and resolution mechanism, respond to only one target, whereas others respond to two or more targets. The Protocol on Digital Trade responds to a total of five targets. The Protocols on Services and Free Movement of Persons correspond to four targets each, but they both have the potential to respond to five. The Protocol on Women and Youth is presently under formulation

and can therefore not be matched to a target. Should it presumably work towards gender equality, then this protocol would be a good match for target 8.5.

Figure 50: Mapping AfCFTA Provisions/Instruments to SDG-8 Targets

Provision/Instrument	Corresponding SDG-8 Target
1. Protocol on Trade in Goods	8.1; 8.2; 8.3;8.5
2. Protocol on Trade in Services	8.1; 8.2; 8.3; 8.9; 8.6
3. Protocol on IPRs	8.1;8.2;8.3;8.4
4. Protocol on Investment	8.1;8.2;8.3;8.4;8.7;8.8
5. Protocol on Competition Policy	8.1
6. Protocol on Digital Trade	8.1; 8.2; 8.3; 8.4; 8.10
7. Protocol on Free Movement of Persons	8.1;8.2;8.6;8.9; 8.8
8. Pan African Payment and Settlement System	8.1; 8.3
9. African Trade Observatory	8.1
10. Online NTBs Mechanism	8.1
11. Protocol on Women and Youth	8.5

Source: Author

Arising from the mapping of the AfCFTA provisions and instruments to SDG goals in Figure 50, the rest of this chapter discusses the potential outcomes of implementing the respective provisions and instruments, and how these provide an entry point for attainment of the relevant SDG-8 targets and eventually to labour market outcomes.

The AfCFTA Protocol on Trade in Goods, by creating a liberalized market for trade in goods through tariff liberalization, reduces the cost of trade thereby making a wide range of exports (90 percent) more competitive immediately.

The potential effect of this is an increase in production, intra-African trade, incomes and employment opportunities. ITC (2021) estimates that tariff liberalization will increase Africa's income by 0.2 percent, and that resultant improvements in trade facilitation are set to increase income gains from the AfCFTA by some 292 billion dollars. Abrego *et al.* (2019), Chauvin *et al.* (2016), Jensen and Sandrey (2015), World Bank (2020), and Vanzetti *et al.* (2018), all project a similar outcome. These gains are by no means automatic. They are bound to vary widely across State Parties based on their individual capacities and other internal dynamics.

The protocol is structured to catalyse industrialization by stimulating trade in more labour-intensive sectors, particularly manufacturing and agriculture. As a consequence of liberalization, World Bank (2020) projects the volume of total exports of manufactured goods to increase by 29% by the year 2035. At the same time, intra-African trade in manufacturing is projected to increase by 110%. This envisaged growth in manufacturing can be expected to lead to expansion in several sectors and to the development of new industries, thereby leading to the creation of millions of high-quality jobs, particularly for youth. Expansion in manufacturing is therefore expected to help bridge the youth employment gap on the continent. This provision therefore responds to targets 8.1, 8.2, and partly to target 8.3.

The Protocol on Trade in Services seeks to liberalize intra-African trade in services across 12 sectors. It has prioritized five sectors for ongoing negotiations: business/professional services, communications technologies, and finance, transport, and tourism services. All five priority sectors fall under the term 'Industries without Smokestacks' (IWOSS). IWOSS have important implications for the labour market and are critical to attaining SDG targets because they have a high potential for employment-intensive growth, and are particularly renowned for employing large numbers of workers who are moderately skilled. They also exhibit relatively high value-added per employee, and are generally more facilitative of technological change as well as productivity growth in the economy. Figure 51 reports the value-added per employee (as a measure of labour productivity) by sectoral grouping for selected African economies.

Figure 51: Labour Productivity by Sectoral Grouping (Value-Added)

COUNTRY	SECTORAL GROUPING		
	IWOSS	Manufacturing	NON-IWOSS
South Africa	1.3	1.1	1.4
Rwanda	3.4	2.1	0.7
Senegal	2.2	1.4	0.6
Ghana	0.2	0.2	0.1
Uganda	1.4	0.3	0.2
Kenya	1.4	0.7	0.8

Source: Coulibaly and Page (2021)

Figure 51 shows that for all the selected countries save for South Africa, the IWOSS sector exhibits the highest value-added per employee and is, in some countries, almost twice as high as the value-added in the manufacturing sector (see Kenya, Uganda and Senegal). In all cases, IWOSS sectors have a higher value-add than manufacturing, except for Uganda where they are identical. High productivity theoretically implies higher wages.

The selected priority sectors can be relied upon to create jobs as well as new trading and entrepreneurial opportunities for the youth and women. Coulibaly and Page (2021) and Allen *et al.* (2021), both confirm that IWOSS employs women and young people more intensively compared to non-IWOSS sectors. Figure 52 reports the comparative demographic characteristics of workers in IWOSS and non-IWOSS sectors in South Africa for the 2010-2018 period.

Figure 52: Demographic Characteristics of IWOSS and non-IWOSS Workers (2010-2018)

	Employment 2010 (%)	Share	Employment 2018 (%)	Share
	IWOSS	Non-IWOSS	IWOSS	Non-IWOSS
By Gender				
Male	59.7	68.3	58.1	66.7
Female	40.3	31.7	41.9	33.3
By Age				
15-24 years	11.2	7.8	8.9	5.4
25-34 years	36.6	32.2	33.9	29.0
35-65 years	51.2	59.0	56.4	64.6

Source: Author, extracted from Allen *et al.* (2021)

The table shows that IWOSS sectors are more youth- and female-intensive than non-IWOSS sectors. In 2018 for instance, 41.9 percent of employment was accounted for by women, as opposed to 33.3 percent in non-IWOSS sectors. In the same period, 15-24-year-olds accounted for 8.9 percent of employment in IWOSS, compared to 5.4 percent in non-IWOSS sectors, while the 25-34 age group accounted for 33.9 percent of employment in IWOSS compared to 29 percent in non-IWOSS sectors. Unleashing the full potential of IWOSS, however, requires an adequate skilled workforce for each sector, good infrastructure to reduce the cost of trade, sufficient quantities of good quality raw materials, and for some sectors such as tourism, political stability and aggressive marketing.

The protocol therefore responds in part to targets 8.1, 8.2, 8.3, and 8.9. However, the Agreement has more scope under this protocol to support the attainment of target 8.6, but this is conditional on the scope of commitment being stretched beyond the provisions for temporary movement of natural persons.

Digital trade has the potential to boost overall trade by enlarging the marketplace for both consumers and producers. Such expansion will come with a wide range of goods for consumers, more and better job opportunities, and higher incomes to support economic growth. Using digital solutions to facilitate trade has immense benefits to MSMEs, the majority of whom are

women or women-led. This is due to the fact that these groups of traders tend to be disproportionately impacted by cumbersome and lengthy customs procedures at border points. Digital trade can stimulate growth in connectivity and financial access among women, youth and the poor and vulnerable in rural areas of the continent.

The benefits arising from the use of digital solutions are however not equally balanced between genders, leading to a digital gender divide. In fact, access to digital tools - their use as well as ownership - appear not to be gender-neutral. UNCTAD (2020), contend that a critical cause of this digital divide is the high cost of digital solutions, including the cost of internet connectivity, which is a hindrance to all but affects disproportionately more women traders. It further notes that more men than women own mobile phones.

The digital divide is largely fuelled by illiteracy in general, and digital illiteracy on the part of women in particular. UNESCO (2017), estimates that some 83% of women worldwide are literate, compared to 90% of men. This affects women's participation in e-commerce since it makes it difficult for them to read, write, type or use a keyboard, which is a basic prerequisite for using a computer or even a smart phone. A large share of women traders may therefore be left out, especially those with low levels of education, unless simpler and more user-friendly technological solutions are developed to aid their participation. The youth however, do have a much higher propensity to use technology. This protocol therefore opens up possibilities for more intensive participation of youth in trade, and their greater involvement in development. This protocol is critical in stimulating access to markets and finance. Furthermore, digital trade is relatively more environmentally friendly. This protocol addresses itself to targets 8.1, 8.2, 8.3, 8.4 and partly to 8.10.

Negotiated as a separate track, The AU Protocol on Free Movement of Persons, adopted in 2018, seeks to extend visa-free entry into all African countries. The Protocol envisages the progressive realization of the free movement of persons, right of residence, and right of establishment. These privileges have the potential to foster tourism, a key SDG-8 sub target, with its multiple benefits to hospitality, hotel and other related sectors of the economy, enhance technology transfer and innovation with their attendant benefits on productivity growth, and promote integration with its attendant benefits on production, incomes and job creation.

The Protocol on Free Movement of Persons is a good starting point to continental integration. However, several countries are yet to ratify it to make it fully enforceable. The African Union Commission (2021) highlights a number of concerns that State Parties have raised with regard to implementation of the Protocol on Free Movement of People. They include concerns around security and public order, especially violent extremism and terrorism, proliferation of small arms, human trafficking, drug trafficking and cross-border crime, as well as health epidemics, and the inability of some State Parties to guarantee the integrity and standards of international travel documents in line with the requirements of the International Civil Aviation Organization (such as biometric data capture).

It is worth noting, however, that individual countries and Regional Economic Communities have made more progress in advancing Free Movement on the continent via unilateral and multilateral border-opening agreements, even though sometimes such agreements are unevenly implemented. Only 11 countries in Africa require no visa or issue visa on arrival for all African citizens. Hirsch (2020) observes that Benin and Seychelles are the only countries that offer visa-free access to all Africans. Rwanda and Senegal offer a combination of visa-on-arrival and visa-free access; presently, ECOWAS is the only REC whose citizens can travel visa-free to all countries in the region.

SADC's Protocol on Facilitation of Movement of People provides for visa-free travel and rights of residence and establishment subject to domestic legislation. It encourages Member States to develop bilateral agreements between themselves to support the free movement of people. The EAC has a strong multilateral agreement on border opening, but implementation of the agreement is uneven and inconsistent. Its Common Market Protocol provides for the free movement of labour in the region, on the condition that the worker obtains a work permit, a contract of employment, and present travel documents at the port of entry. The right to residence is therefore subject to work permits.

The Free Movement provisions are not well developed in CEN-SAD, but temporary bilateral agreements such as that between Libya and Sudan are prevalent. The treaty establishing the Arab Maghreb Union envisages free movement of people. Although three Member States have ratified the protocol, only Tunisia has fully opened its borders to other Member States. The IGAD Treaty of 1996 envisages free movement, but a relevant framework is yet to

be developed. ECCAS has a protocol on freedom of movement and the right of establishment, but its implementation has been slow. COMESA Member States adopted the protocol on free movement of persons and labour services, right of establishment, and right of residence in 1998. Progress on implementation has equally been slow.

This restrictiveness negates the spirit of continental integration. Okunade (2021) reports the results of the 2016 Afro-barometer Survey on the willingness of citizens of various countries to welcome their fellow Africans to their home countries to work and trade. The survey found 56% of Africans were in support of free movement. The survey noted the strongest support in western and eastern Africa, and significant scepticism in northern Africa. The highest approval rating was in Burkina Faso (81%), and the lowest in Egypt (31%). Other countries' rates of acceptance were as follows: Kenya (76%), Nigeria (62%), South Africa (49%), Tanzania (46%) and Algeria (41%). These findings suggest that there is more scepticism in the larger economies (Nigeria, Egypt and South Africa being the top three largest economies in Africa), and that the perceived benefits of regional integration vary by sub-regions.

The Protocol on Free Movement of Persons has only been ratified by four countries, yet it contains some important rights-based provisions that can particularly enhance mobility for youth. The provisions on free movement of workers - permits and passes and the mutual recognition of qualifications - are particularly relevant to the aspirations of women traders, requiring a less expensive framework for multiple entry into their source markets or export destinations, and to young people seeking educational as well as employment opportunities across borders. When fully implemented, the privileges arising from this protocol are likely to catalyse increased trade flows and deepen continental integration, leading to more jobs and incomes, promotion of tourism, enhanced technology transfer and innovation, and promotion of education in both sending and receiving countries. This protocol has the potential to promote attainment of targets 8.1, 8.2, 8.6, 8.9, and partially 8.8.

The Pan-African Payments and Settlement System (PAPSS) is an instrument for not only increasing the volume of trade across African borders, but also for formalizing a large share of the informal cross-border trade in Africa in line with the aspirations of SDG-8. PAPSS is a real-time payment process that permits originators to make instant payments to beneficiaries in their local currencies, wherever they are in Africa. It eliminates the need to convert local

currencies into vehicle currencies, thereby domesticating intra-African payments. By reducing the need for foreign exchange in intra-African trade, PAPSS reduces the cost of making payments while improving the speed of transactions. This has the potential to increase payment certainty and transparency in trading activities, leading to higher revenues. This instrument promotes partial attainment of targets 8.1 and 8.3.

The lack of accurate information is an impediment to cross-border trade. The African Trade Observatory provides qualitative and quantitative data on trade statistics, exporters, importers, and trade opportunities for all State Parties. This is bound to reduce information search costs, especially for small and upcoming traders, and facilitate more informed business decisions. This, by extension, will help widen market reach and allow trade at lower cost. This instrument therefore responds in part to target 8.1.

The online monitoring, reporting and resolution mechanism for NTBs is intended to eliminate restrictions on market access, reduce trade costs, and increase volumes traded. Its online nature makes it particularly appropriate for tech-savvy young entrepreneurs. The reporting system for this mechanism requires internet access. This may be a challenge to many small cross-border traders, particularly those with low levels of education. This instrument contributes to real income gains, thereby promoting the attainment of target 8.1.

The Protocol on Investment reaffirms the inherent right of State Parties to issue regulations in their territories and to introduce measures to achieve national policy objectives to protect public welfare objectives, including labour standards. It also obliges State Parties to ensure a high level of labour protection. On the other hand, it obliges investors to comply with several investment labour standards including: complying with ILO standards, not using child, forced or compulsory labour, and eliminating discrimination in respect of employment and occupation. This protocol therefore corresponds to SDG-8 targets 8.1, 8.2, 8.3, 8.4, 8.7 and 8.8.

The Protocol on Intellectual Property Rights aims, to among other things, support intra-African trade, and contribute to the promotion of science, industrialization, services, investment, digital trade, technology and technology transfer, as well as regional value chains. This protocol corresponds to targets 8.1, 8.2, 8.3 and 8.4.

The Protocol on Competition Policy aims to enhance competition within the region, with a view to improving market efficiency, inclusive growth and structural transformation of State Parties, and to promote economic integration and sustainable development in the AfCFTA market. This protocol corresponds to SDG-8 target 8.1.

Labour Market Outcomes

The foregoing discussion on implementation outcomes identifies several broad labour market outcomes. This section focuses on outcomes that are aligned to ILO's Key Indicators of the Labour Market (KILM). Since implementation is at the earliest stage, this study considers only the following five key indicators; productivity, wages and compensation costs, employment in the informal economy, youth unemployment, and employment by sector.

Labour productivity

An increase in the productivity of labour is an anticipated outcome of implementing the AfCFTA Agreement. Trade liberalization is expected to attract cross-border investment flows, increase the number of firms involved in international trade, and accelerate integration of local firms into regional and global value chains. An enhanced export trade is likely to raise the productivity of labour. Exports are an important source of productivity growth, since sustained export growth allows firms to accumulate technological capabilities and to learn by exporting. The World Bank and WTO (2020) conclude that firms that are part of the global value chain employ more women than men, that foreign-owned firms employ more women than men, and that firms involved in the export trade employ more women than men. These conclusions suggest that trade liberalization arising from implementation of the AfCFTA Agreement is likely to raise the productivity of female labour by a disproportionate amount.

Wages and Compensation Costs

Increased productivity arising from enhanced export trade is likely to lead to a rise in wages for women. Since implementation of the Agreement is projected to disproportionately increase the productivity of women, it can be expected that their wages and compensation costs will also rise. Expansion arising from trade liberalization is therefore likely to raise not only the rate of labour force participation for women, but also the quality of the jobs (World Bank and ILO 2020). The World Bank and WTO (2020) estimate that developing countries that liberalize trade are likely to double their exports of manufacturing products. This is likely to cause the share of manufacturing wages for women to rise from 24% to 30%, owing to a combination of a rise in productivity and an increase in employment.

Employment in the Informal Economy

Women and youth are disproportionately employed in the informal sector in Africa, with attendant low productivity and poor working conditions. The World Bank and WTO (2020) and Woldemichael (2020), estimate that up to 90% of women in Sub-Saharan Africa are employed in the informal sector. The informal sector pays considerably lower wages, but absorbs women more readily (OECD *et al.* 2020). This implies that women in Africa work in the lowest paying jobs, yet they at the same time also perform unpaid care work at home.

In the same vein, ILO (2020) puts the share of young workers in informal employment in Africa at 95%. This situation runs counter to the aspirations of SDG-8.6 on promotion of youth employment, education and training, particularly in view of the low quality of jobs in the informal sector. An important pathway to reducing the share of women and youth in the informal sector in Africa is for countries to open up for trade, and to expand and sustain exports and imports. This is what effective implementation of the AfCFTA Agreement portends. The World Bank and WTO (2020) observe that workers in high export sectors are more likely to be employed formally. This presents such workers with higher quality jobs arising from job security, opportunities for training, and for other work-related benefits.

Youth Unemployment

Youth are disproportionately unemployed, and in many African countries, a critical challenge is one of integrating them in the world of work. GIZ and AU (2019) estimate the youth unemployment rate in Africa at 14%. This figure masks huge disparities across individual countries. ILO (2020) for instance, put the youth unemployment rate in 2019 at 50.3% for Southern Africa, 10% in Central Africa, and 6.2% in Eastern Africa. At the country level, the disparities range from 0-5% in Tanzania, Rwanda, Burundi, Uganda, Ethiopia, Chad, Niger, Benin, Togo, Liberia, Guinea Bissau and The Gambia to 30-60% in South Africa, Botswana, Namibia, Lesotho, Eswatini, Gabon, Sudan, Libya and Tunisia. This situation has adverse implications for inclusiveness of growth. It reduces growth, induces political and social instability, adversely affects progress towards attainment of SDG-8 targets, causes social inequality, reduces productive potential, and increases the dependency ratio.

Presently, there is a dearth of empirical literature on the potential impact of the AfCFTA Agreement on aggregate employment. This is borne out of the fact that most studies that assess the impact of the AfCFTA are based on dynamic CGE trade models that are all based on the assumption that labour supply is fixed. Karingi and Mevel (2012), Abrego *et al.* (2019), Chauvin *et al.* (2016), AFDB (2019), and Jensen and Sandrey (2015), all simulate the income and welfare effects of import tariff elimination and reduction of non-tariff barriers. They all find a positive income and welfare effect of the AfCFTA for most State Parties, even though the size of income and welfare gains vary according to the model employed. An important exception is UNCTAD (2018), which is based on a static CGE model that allows for variations in aggregate employment. This study finds that AfCFTA induces a long-term increase of 1.2% in employment.

Employment by Sector

Figure 53 reports the average female labour share in manufacturing firms in developing countries by firm characteristics. The figure shows that importing and exporting firms employ more women (33% and 33%) than non-exporting and non-importing ones (24% and 28% respectively). The projected expansion in intra-African trade arising from implementation of the AfCFTA Agreement

is therefore likely to come with a higher share of female labour. GVC-participating and foreign-owned firms equally have a higher share of female labour (37% and 38% respectively), compared to 25% and 27% respectively for non-GVC-participating and locally-owned firms respectively. By raising productivity, trade therefore creates better jobs for women.

Figure 53: Average Female Labour Share in Manufacturing Firms

Firm Characteristic	Female Labour Share	Firm Characteristic	Female Labour Share
Exporting	33%	Non-Exporting	24%
Importing	33%	Non-importing	28%
GVC Participating	37%	Non-GVC Participating	25%
Foreign Owned	38%	Locally Owned	27%

Source: Author, extracted from World Bank/WTO (2020)

The World Bank (2020), projects an expansion in the agricultural, manufacturing and services sectors upon full implementation of the AfCFTA Agreement. The expansion in the agricultural sector is bound to generate more jobs at the lower end of the quality spectrum. Better jobs for youth can be anticipated from expansion in the services sector, particularly in the priority sectors of business and professional services, communications technology and tourism, all IWOSS that employ women and youth more intensively. IWOSS exhibit high value-added per employee and are therefore a critical source of labour and total productivity growth.

The ILO (2020) projects that the agricultural sector will account for 50% of employment in 2023, down from 53.5% in 2011. Abrego et al. (2019) estimate that over 16% of the overall income increase resulting from the implementation of the AfCFTA will come from growth in the agriculture sector. Notably, the share of unskilled labor in agricultural sector exports (measured as a percentage of agricultural value-added) is highest in Africa. Bouet et al. (2021) document this as exceeding 20% for countries such as Benin, Côte d'Ivoire, Ethiopia, Ghana, Malawi, and Togo, indicating that African agriculture is predominantly intensive in unskilled labor. Consequently, youth are likely to benefit from increased employment opportunities, albeit at the lower end of the quality spectrum.

Potential Pathways to Better Labour Market Outcomes

Labour market outcomes identified in this study are not automatic, and would vary widely across State Parties based on their individual capacities and willingness to institute relevant complementary policies to address adjustment and distributional problems. State parties will therefore have to give due consideration to such measures as investment in education, effective labour market interventions, and appropriate macroeconomic policies.

The agricultural sector remains underutilized mainly due to poor agricultural infrastructure, small farm sizes, high costs of farm inputs, and regional trade barriers such as high import tariffs. Whereas total exports have consistently increased over the years, IFPRI (2019) notes that the relative role of processed and unprocessed products has not evolved. This apparent lack of progression along the value chain is a significant impediment towards the creation of decent jobs in the sector. State parties therefore need to re-commit themselves to allocating at least 10% of their total expenditures to agriculture - as agreed under the Maputo Declaration - to raise the sector's productivity. Additionally, State Parties need to raise their expenditures on agricultural research and development, beyond the 1% of agricultural value-added.

To facilitate optimal use of e-commerce in intra and extra-continental trade, all State Parties need to formulate national e-commerce policies, as well as legal, regulatory, and institutional frameworks, along with relevant policy implementation strategies as a first step. To provide solutions to challenges facing women traders in Africa, State Parties should explore the possibilities of partnering with financial institutions to provide risk capital to support women traders to acquire necessary infrastructure at an affordable price, and to build infrastructure that speaks to the needs of women traders with a view to making ICT tools more accessible.

Unleashing the full potential of IWOSS will require an adequate skilled workforce for each sector, good infrastructure to reduce the cost of trade, sufficient quantities of good quality raw materials, and for some sectors such as tourism, political stability and aggressive marketing.

To allay general fears and security concerns with respect to free movement of people, civil registration should be enhanced in all State Parties. In addition, an integrated border management system supported by a strong and robust

mechanism for enforcement of laws at the respective national levels needs to be established across the continent. To implement the Protocol on Free Movement of People, Hirsch (2022) proposes that regional groupings or even ad hoc groupings be encouraged to move ahead on the basis of variable geometry, albeit within the protocol's framework. A more practical approach would be to tie Free Movement of People to other crucial aspects of the Agreement, such as the movement of goods. Additionally, sufficient outreach and publicity needs to be rolled out to create awareness on the protocol.

Afreximbank, the administrator of the Pan African Payments and Settlement System (PAPSS), has the capacity to position itself as the credit facilitator of continental trade. In this role, it can effectively champion inter-bank collaboration, with a view to reducing fees charged for intermediation, thereby enhancing the liquidity profile of payments made across borders. On its own however, PAPSS is not likely to succeed in transforming the value chain for payments and reducing the burdens of cost, inconvenience and time that afflict payment systems in Africa. The onus is therefore on African banks, particularly the largest representatives, to step up to transform and improve intermediation.

Conclusion

Beyond merely promoting trade, the AfCFTA Agreement seeks the development of Africa and its people. The Agreement offers many low hanging fruits that can be harvested immediately. Realization of its full labour market potential, however, hinges on how well the implementation process is planned and executed. How much coherence is attained in prioritizing critical foundational elements, which can then be progressively built upon as outstanding areas of negotiations are finalized, will be key in determining how well the Agreement succeeds in supporting the attainment of SDG-8 targets in the long run. Internal inconsistencies will have to be ironed out. It is not possible to expect that regional value chains will be sufficiently developed with inflexible rules of origin and low trade-supporting mobility. Neither will it be possible to attain food security on the continent when most staple food items are restricted to the sensitive and exclusion lists.

Finally, State Parties must be prepared to tolerate short-term losses and inconveniences for collective long-term gains to be realized. They must be flexible enough to make necessary changes to existing production interests and incentive structures. Additionally, they should inject some political goodwill into the process and commit to reforms that target youth and the female labour force to ensure that gains from integration are distributed fairly across the continent. Lastly, policy makers, RECs, private sector players, academia, research think tanks, ordinary citizens, trade unions, civil society, the media and all other stakeholders must also play their rightful roles to help realize the Agreement's full potential.

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Chapter 20

PATHWAYS TO THE COMMON AFRICAN MARKET: CREATING POSSIBILITIES THROUGH INSTITUTIONAL AND LEGAL FRAMEWORKS

Raisa Nyirongo and Victor T. Amadi

Abstract

To accelerate continental integration into a common market that effectively sustains its objectives, it is essential to have a strong legal and institutional framework. Therefore, this chapter will analyse specific African RECs' legal and institutional frameworks to find leverageable processes or methods. This will include considering notifications, monitoring mechanisms, and measures to address non-compliance.

Keywords: Regional Integration, Africa, Legal and Institutional Frameworks, Compliance

Introduction

Since 2011, Africa has seen an upsurge in efforts to create the policies and measures necessary to achieve the goals outlined in the Abuja Treaty and transform the continent. The African Union (AU) Agenda 2063 policy framework was adopted in 2015, encapsulating several aspirations and highlighting key initiatives, such as establishing the AfCFTA. The AfCFTA is in the preliminary stages of existence. However, the adoption and ratification of the AfCFTA Agreement exhibit some traction that should be maintained and leveraged in fast-tracking the Common African Market and actualizing a deeper level of integration.

A common market, by definition, involves a level of integration wherein Member States eliminate barriers to the free movement of goods, services, capital, and labour within the market, and adopt a common external trade policy (Gathii 2011, Mshomba 2017). It aims to facilitate the flow of trade and investment between member countries, and create a larger market that can achieve economies of scale, increase competition, and boost productivity (Marinov 2014). Under the Abuja Treaty, AU members are to work towards establishing a common market from 2023, and this should be consolidated over a period not exceeding four years (OAU 1991). The AfCFTA's objectives are to "create a single market" and "lay the foundations for establishing a continental customs union" (AU 2018a). The Agreement creates possibilities for expanding its scope to form a common market, but actualizing this and building on the progress of the AfCFTA will not be without challenges.

Recognizing the compliance challenges that Africa's RECs have faced over the years, there is a possibility that progress in the AfCFTA will be hindered due to legal and institutional deficits. Arguably, a robust legal and institutional framework will be essential if the AfCFTA's scope is broadened to establish a common market to provide the basis for the governance, implementation, and enforcement of the agreed-upon rules. Considering that a continental common market framework is yet to be determined, it is valuable to consider and examine the existing frameworks that operationalize a common market within the European Union (EU) and selected RECs in Africa - like the East African

Community (EAC) - to draw best practices and identify challenges. Such a consideration forms the basis of this chapter.

This chapter will begin by highlighting the importance of a suitable framework for achieving community goals. This will be followed by an analysis of the framework's key features for the EU internal market to understand how certain features contributed to the EU internal market's development. The subsequent section will focus on certain features of the framework in place for Africa's integration, analysing whether these aspects can enable the establishment of the Common African Market. To conclude, recommendations will be made on how aspects of the framework can be developed in the coming years as the continent works towards establishing a continent-wide common market.

Importance of Legal and Institutional Frameworks in Establishing the Common African Market

Given that implementation is dependent on Member States, if Member States conclude agreements at the REC level but fail to take steps to give life to these agreements at the national level, REC objectives cannot be achieved. For such a significant problem, it is therefore vital, at the REC level, to develop ways to mitigate this challenge. One way to address this challenge is by developing an appropriate REC institutional framework with supranational status to promote implementation and compliance. The institutional framework of an REC refers to the legal framework that guides the pursuit of the community's objectives (Kaahwa 2017). This includes laws, regulations, procedures, customs and norms that shape participating states' socio-economic activity and behaviour. Therefore, supranationalism, in this context, implies granting regional institutions the power to exercise binding and authoritative powers over Member States (Hay 1966, Rosamond 2000, Fabgayibo 2022).

Designing a suitable framework requires considering the challenges faced thus far in African integration, the needs of the REC, and conducting research into frameworks of other RECs. A suitable framework would include rules on how decisions that will bind Member States are to be made, a system for collecting and disseminating compliance information, and a system to address non-compliance by Member States. As thought is given to establishing a common market, it will be essential to consider first what rules will be in place to guide

decision making; second, how the information will be gathered on the progress states are making in eliminating the barriers to a common market; and, third, how various policy areas pertinent to a common market such as migration and investment, are coordinated. Lastly, in instances of states failing to meet their obligations, how will this be navigated? To best make recommendations for a suitable framework, the subsequent sections will examine the framework that enables the EU internal market and initiatives utilized in selected RECs at advanced levels of integration, like the EAC.

Frameworks Adopted to Establish the European Union (EU) Internal market

The European Union (EU) is an example of a successful regional integration scheme, and creates opportunities to learn lessons to broaden the scope of the AfCFTA to allow for a Common African Market. The EU internal market has been established through a detailed process that has seen the elimination of internal barriers and the adoption of common policies in various areas. The EU internal market is defined as an area without internal frontiers, which permits the free movement of goods, persons, services and capital among European Community (now the EU) Member States (EU 2016b). The internal market was built on the existing EU customs union, in which Member States eliminated customs duties amongst each other and adopted a common customs tariff against third-party states (EU 2016b). Adopting the Single European Act (SEA) of 1986 was a turning point towards establishing the internal market. The SEA sought to facilitate the creation of a single market by the end of 1992, particularly by enabling national governments to pass the necessary laws in the Council of Ministers using qualified majority voting (QMV) rather than a unanimous decision-making system (EU 1987). The change to qualified majority voting for decisions of the Council of Ministers sped up the pace with which legal acts relating to the internal market could be adopted, and removed the veto power of Member States. Qualified majority voting enables a decision to be made with a certain percentage of members of the Council voting. This approach to decision-making applies to various areas, including decisions relating to the internal market (EU 2016b).

To create and sustain the envisioned internal market, the EU adopted a hybrid approach, applying both negative and positive integration, and incorporated

this approach into the rules system, which is supported by the institutional framework. Negative integration refers to removing barriers to trade and integration (Zglinski 2023, Scharpf 1995). The EU has achieved this through legally enforceable prohibitions to prevent Member States from restricting free movement (Cuyvers 2017). Examples can be seen in Articles 30, 34, 35, 49, and 56 of the Treaty on the Functioning of the European Union, which prohibit certain conduct by Member States. For instance, under Article 49, Member States are prohibited from restricting the freedom of establishment of nationals from other Member States. Such prohibitions, however, may be permitted if the restrictions are justifiable (EU 2016b). Since negative integration directs members to remove barriers, it is complemented by the need to adopt common rules. This is where the EU, a supranational institution, uses positive integration. Positive integration refers to using laws to harmonize or replace national laws. The EU Treaty grants the Union several legislative ‘internal market’ competencies. The broadest of these powers may be found in Title VII of the TFEU, with the essential provision being Article 114, which allows the Union to adopt harmonization measures that “have as their purpose the formation and operation of the internal market” (TFEU, Article 114). Through the adoption of community law, the EU has been able to regulate key areas in integration pertinent to its internal market. Thus, the legislative process of the community has been an essential part of building the internal market.

Further, the EU is inclusive in its legislative processes, as the interests of both Member States and the citizens of the Union are recognized in the process of adopting legal acts. Under ordinary legislative procedures, three EU institutions work together: the European Commission, the European Parliament, and the Council of the European Union. The European Commission promotes the general interest of the Union, the European Parliament - composed of directly elected representatives of EU citizens - promotes the people’s interests, and the Council - composed of representatives at the ministerial level from each Member State - represents the interests of Member States (EU 2016b). Thus, all stakeholders’ interests are considered upon adopting common rules, which has played a positive role in establishing the EU internal market.

To enable tracking of progress made, and to curtail actions that hinder progress, provisions have also been made for information to be gathered relating to the progress of Member States in fulfilling obligations. In the initial

stages of establishing the internal market, Member States must inform the Commission of any draft regulations and standards concerning technical specifications before adopting such measures (EU 1985). This was implemented to prevent the creation of new obstacles that would hinder the progress made. The information system of the internal market has since been strengthened with the use of the Single Market Scoreboard (SMS), which keeps track of the transposition of directives relating to the internal market by EU Member States (Moriana *et al.* 2017, Coseta *et al.* 2008). Currently, the SMS provides information on enforcement tools, business framework conditions, and the performance of the single market concerning particular objectives (EU 2023). Concerning enforcement tools, four indicators have been selected to track the implementation of EU law: transposition, infringements, internal market information systems, and ‘SOLVIT’. The transposition indicator provides information on Member States’ performance in transposing relevant laws, and whether laws have been correctly transposed. This indicator shows the transposition deficit, which refers to the gap between the number of single market directives the EU has adopted and the directive that Member States have transposed, as well as the conformity deficit, which refers to the percentage of directives incorrectly transposed (EU 2023). Regarding infringements, the number of pending infringement proceedings, duration of infringement proceedings, changes over the last 12 months, and the time taken to comply with the CJEU’s ruling are monitored (Moriana *et al.* 2017). ‘SOLVIT’ is a problem-solving network used to assist in breaches between citizens or businesses of one Member State and another (EU 2023).

The development of the EU internal market has been pushed further through the EU Commission and Court of Justice of the European Union, which is responsible for ensuring that the law is observed in the interpretation and application of EU Treaties (EU 2016b). The EU Commission monitors the application of EU law and can launch infringement proceedings against an EU member that does not comply. Further, in fulfilling its interpretative role, the CJEU has developed the principles of direct effect and direct applicability. Through direct effect, nationals can enforce community laws in national courts, meaning nationals can challenge Member States that do not comply with community obligations at the national level (Bjorgvinsson 2015). Additionally, natural or legal persons can bring actions to the CJEU. This has created an opportunity to challenge national laws that contravene prohibitions at the REC level. Furthermore, the authority of the CJEU to impose a penalty

on Member States for non-compliance further strengthens the CJEU's enforcement powers.

Finances are integral to establishing a common market, as Member States require resources to implement the agreed upon measures. Over the years, the EU has established financing mechanisms for the community budget based on its 'own resources' system. This system was later developed to include a type of own resources based on the Gross National Product (GNP) of Member States. This financing enabled the further development of the internal market, as it provided financial support to Member States that would have experienced losses of revenue due to the removal of barriers.

Legal and Institutional Framework to Establish the Common African Market

While it is imperative to take lessons from global initiatives, the experiences thus far on the continent among RECs (particularly the EAC) can also inform a continental framework. Progress has been made in various areas, and frameworks exist for regional integration on the African continent. In many instances, establishing the common market will entail strengthening existing frameworks rather than establishing new ones.

This section will highlight various aspects of the African Union, considering how such organs can be leveraged to establish a common market. The framework of the EAC will also be comparatively considered due to the advanced stage of the REC in establishing a common market.

Integration through Legislative Organs

As seen in the EU case, legislative functions have contributed to developing the EU internal market. Through the creation of REC laws, the EU has been able to regulate areas that would otherwise be left unregulated due to the sovereignty of Member States. A regional parliament that represents the interests of citizens of Member States would create a pathway for the people's views to be considered in policymaking at the regional level. Under the Abuja Treaty, the organ with a similar role to represent the people is the Pan-African

Parliament (PAP) (OAU 1991). The PAP comprises nominated representatives from each Member State who are members of their respective national parliaments. Representation must reflect the diversity of political opinions in each national parliament (AU 2001). The PAP has a consultative and advisory role. As such, some of its functions include making recommendations on the African Community's budget to the Assembly, working towards the harmonization or coordination of the laws of Member States, and making recommendations aimed at contributing to the realization of the African Community's objectives (AU 2001). The PAP currently does not have a legislative function, which is instead vested in the Assembly (AU 2001). As a common market is established, there will be a need for laws to regulate it. The Assembly, the organ with ultimate legislative authority, may hinder integration because establishing laws supreme over national laws depends on Member States, political leaders, and the interests of Member States, rather than the interests of the people or the African Community.

Using Notifications, Monitoring and Evaluation to Deepen Integration

Member States' compliance and implementation of regional arrangements are key in promoting effective regional integration efforts. As such, it is important to keep track of Member States' progress in these aspects. This is the function of monitoring and evaluation. Through monitoring and evaluation mechanisms, Member States and other stakeholders can more accurately assess the current state of integration and identify areas that need improvement. In the case of establishing a common market, progress that has been made in achieving set objectives would be significant. In the continent, several monitoring and evaluating mechanisms exist, such as the African Peer Review Mechanism (APRM), the African Regional Integration Index (ARII) and the African Multidimensional Regional Integration Index (AMRII). The AMRII stands out for this chapter as it explicitly seeks to evaluate the progress of states and regional economic communities in implementing integration projects in line with the Abuja Treaty and Agenda 2063 (AU 2020b).

The AMRII uses eight dimensions to assess the progress made in achieving the four main objectives of the Abuja Treaty (AU 2020b). The first dimension is the free movement of persons, which refers to the right of a citizen of a

Member State of a REC to move freely from one Member State to another without hindrance. The second dimension is trade integration, which refers to the abolition of tariff and non-tariff barriers to economic transactions to enable production factors to circulate unhindered within the zone (AU 2019a). Trade integration also entails the harmonization of rules of origin. The third dimension is infrastructure integration, which refers to the establishment of a common infrastructure to facilitate the realization of activities of a group of states. The fourth dimension is social integration, which considers the structural, cultural, and identity aspects of integration. The fifth dimension is financial integration and the free movement of capital, which refers to the process by which the financial markets of states are integrated, and restrictions on the free movement of capital are either removed or minimized. The sixth dimension is monetary integration, a deeper form than financial integration. Monetary integration refers to establishing a common currency and a central bank by Member States, who give sovereignty over monetary and exchange rate policies to the central bank. The seventh dimension is institutional integration, which considers establishing community institutions relating to legislation, justice, defence, and currency. This dimension includes promulgating uniform laws, ensuring the REC treaty is interpreted in compliance with the law, and resolving conflicts. The eighth dimension is environmental integration, which aims to consider the progress made in addressing the environmental challenges to Africa's development, such as climate change. Each of the abovementioned dimensions has a set of indicators selected to assess the progress made by each REC in implementing the goals and aspirations set out in the Abuja Treaty and Agenda 2063. The selected indicators may either be quantitative or qualitative.

The AMRII, designed to monitor progress considering the Abuja Treaty, is a relevant tool to establish the common market. A notable difference compared to the EU Single Market Scoreboard is that the AMRII does not provide for monitoring transposition. This may be the case since, as it stands, regional law is not supreme in most of Africa's RECs. Additionally, the EU Single Market Scorecard monitors the EU Single Market, which is a level yet to be attained in Africa's economic integration. This may render such an indicator unnecessary at present in the African context. However, such monitoring would provide valuable information to policymakers.

Role of Judicial Bodies in Deepening Integration

As in the EU, judicial organs are important in enforcing community laws. As such, it is important to understand the framework of judicial organs in place to support the enforcement of the commitments Member States have undertaken. In the African context, the Court of Justice is among the institutions to be established (OAU 1991). The purpose of the Court of Justice would be to ensure adherence to the law in the interpretation and application of the Abuja Treaty. Furthermore, the Court of Justice would hear disputes brought before it under the treaty by Member States or the Assembly (OAU 1991). Thus, according to this provision, the Court of Justice would not be accessible to natural or legal persons. In establishing the AfCFTA, the AfCFTA Agreement provides a dispute settlement mechanism, which follows the steps of the Abuja Treaty provisions. The Protocol on Rules and Procedures on the Settlement of Disputes explicitly applies to disputes arising between State Parties concerning their rights and obligations under the AfCFTA Agreement (AU 2018b). The implication is that, should Member States fail to meet their obligations, natural and legal persons cannot directly institute proceedings to challenge the lack of compliance. Such a provision would be important to further the development of the common market, as has been the case in establishing and sustaining the EU internal market.

This is different to the position found in the East African Community. The EAC has established a common market enabling the free movement of persons, labour, goods, services, capital, and the right of establishment and residence among Member States (EAC 1999). The legal framework for the EAC common market is primarily set out in the EAC Treaty and the EAC Common Market Protocol. Under the EAC Common Market Protocol, disputes between partner states will be settled through the East African Community Court of Justice (EAC 2009). The East African Court of Justice (the EACJ) can hear cases from Member States and legal and natural persons (EAC 1999). Such jurisdiction has furthered the integration agenda, creating a pathway for the laws of Member States that do not comply with community obligations to be challenged. An example of this can be seen in the *Samuel Mukira Mohochi v The Attorney General of the Republic of Uganda* case, where the court determined that EAC law takes precedence if there is a conflict between REC and national law. Furthermore, the court held that sovereignty cannot be used as a defence or justification for non-compliance with Treaty obligations. Through such judgments, the EACJ has strengthened the position

of REC law. Like the CJEU, the EACJ does not have the authority to enforce judgements in Member States. Still, both courts are firmly institutionalized, having built a definitive identity and legitimacy through members' support and acceptance of their decisions over time.

A further limitation is notable in the framework of the AU judicial organs, should they be accessible to hear matters brought by natural or legal persons in matters relating to the common market. The African Court on Human and People's Rights (AfCHPR) is the only operational court at the continental level. The AfCHPR has jurisdiction to hear cases and disputes relating to interpreting and applying the African Charter on Human and Peoples' Rights, the AfCHPR Protocol, and any other human rights instrument ratified by the States concerned (AU 1998). Concerning these cases, the court's decisions are final and binding (AU 1998, AU 2020a). As one can imagine, such jurisdiction is limiting for a judicial organ intended to serve a community impacted by economic integration. The impact is that the AfCHPR would not have jurisdiction to hear disputes arising from a breach of common market rules unless there is a human rights violation. Furthermore, the AfCHPR is only accessible to individuals if the Member State of which they are a citizen has signed a declaration conferring the court competence (AU 1998).

The link between the AU's judicial organ and a Common African Market centres upon legal harmonization and implementation of common market rules. A successful common market requires consistency in existing rules on trade, competition and investment laws and policies, and other areas as they arise. In other words, for a single market to function effectively, all Member States must be governed by a consistent legal and regulatory framework. The only enabled continental court, the AfCHPR, presently lacks the authority to rule on issues concerning the common market. Its primary mission is limited to human rights issues. This is a constraint since the risk of contradictions, noncompliance, and conflicts among Member States grows without a continental-level judicial agency to interpret and enforce rules relating to the FTA that will arise in a common market. To develop a truly integrated common market in Africa, members must give effect to the Court of Justice, or judicial platforms like the AfCHPR, or the AfCFTA Dispute Settlement Mechanism (DSM) would need to have enlarged jurisdiction to handle trade disputes and competition law matters - including those from natural or legal persons. However, this would require the approval of all Member States, which might be challenging given the consequences for national sovereignty. Without such

regional authority, the interpretation of common market regulations would be left to national courts, potentially leading to diverse interpretations and implementation of the rules, compromising the common market's efficacy.

Policy Implications of Study Findings

As the AfCFTA has been established as a step towards deeper continental integration, it is imperative to understand the impact the AfCFTA framework may have on establishing the next step of a common market. The AfCFTA Agreement seeks to establish a free trade area through negative integration, i.e. by removing barriers. As has been seen with the EU's experience in establishing an internal market, removing barriers needs to be met with the introduction of complementary laws to regulate areas that are left unregulated. Thus, the decision-making and legislative process will be critical.

The AfCFTA under its current architecture is very comprehensive, comprising protocols focused on specific areas that serve as its foundational element - trade in goods, trade in services, dispute settlement mechanism, investment, intellectual property rights, competition, digital trade, and women and youth protocols. The speed with which the AfCFTA was established has been faster than other integration initiatives on the continent, reflecting a higher degree of political buy-in. Nonetheless, a move toward a common market will necessitate more regulatory measures and the introduction of new laws to ensure the free movement of several factors of production, and a common market will require greater harmonization of laws across State Parties.

Looking at the institutional architecture of the AfCFTA, the Assembly (composed of Heads of State and Governments), is the highest decision-making organ and can adopt legally binding instruments (AU 2018a, Art. 10). The Council of Ministers has the authority to make regulations, issue directives, and make recommendations (AU 2018a, Art. 11(3)(j)). It can make binding decisions in asserting its mandate. However, decisions with legal, structural, or financial implications shall be binding only upon adoption by the Assembly (AU 2018a, Art. 11(6)). These institutions can be leveraged to facilitate policy harmonization and coordination, which will be crucial for establishing and maintaining a common market.

However, the law-making and decision-making processes become imperative with no supranational structure and the heads of state holding definitive authority within the AfCFTA. In its current state, the AfCFTA institutions are primarily high-level political forums where decisions are made by consensus (AU 2018a, Art. 10(2)). This means that all State Parties' interests must be adequately considered. While such an approach can be inclusive, given the size of the continent, the diverse circumstances, and the interests of State Parties, such an approach to decision-making can present challenges in the evolution of the AfCFTA into a common market. This may impede the timely adoption and implementation of policies and decisions required for forming and operating a common market. Flexibility can be applied to curtail the impact of replacing the consensus approach of less-developed states. Flexibility and special and differential treatment are principles that underpin the implementation of the AfCFTA (AU 2018a, Art. 5).

A legislative organ alongside the Assembly and the Council of Ministers will be essential to curtail the effect of entrusting binding legislative authority to the Assembly. A legislative organ can ensure that the common market's rules and decisions reflect the interests and needs of Africans. The legislative organ can also propose new policy initiatives. While the Assembly oversees the AfCFTA, and the Council of Ministers can make regulations and directives, a legislative organ can play an active role in the governance and examination of the common market. A legislative arm, alongside the Assembly and Council of Ministers, can be a critical mechanism that ensures inclusive representation and affords specialized knowledge and expertise in law-making and policy evaluation in the common market. This organ can thoroughly assess proposed legislation, as well as its potential impacts and implications. The PAP, the current legislative instrument within the AU framework, might be a fundamental institution. It does, however, retain consultative and advisory powers. The AU Assembly has yet to confer binding legislative authority on it. Furthermore, if the 2014 Protocol is changed, PAP will only be allowed to create model, not binding, legislation.

A lesson learned in recent years has been the importance of having mechanisms to monitor the progress made towards integration goals. The development of the AfCFTA has taken this into account by making provisions for the monitoring of the elimination of non-tariff barriers. An online monitoring mechanism has been developed through which the public may register and submit complaints on the website or through SMS after

experiencing a trade obstacle. Complaints are then reviewed and validated by the AfCFTA NTBs Coordination Unit. If the complaint is accepted, the National Focal Point of the concerned Member State will be informed to begin the resolution process (AU 2019b). Creating such a mechanism accessible to the public is a positive step, and it, to some extent, provides the public with a form of recourse since they do not have access to the dispute settlement mechanism. However, for the purposes of establishing a common market, monitoring would need to be enhanced to accommodate monitoring of the adoption of national measures to comply with REC laws. The AMRII is a useful mechanism that can be utilized for this purpose.

The dispute settlement approach adopted by the AfCFTA, although suitable for the current objective of establishing a free trade area, would need to be revised to meet the needs of a common market. The AfCFTA dispute settlement mechanism limits access to Member States and does not make provisions for natural or legal persons. As seen in the EU and EAC cases, the Court of Justice played a key role in furthering the establishment of the internal market by overruling trade-inhibiting measures (Boin 2020). The existence of a judicial organ that natural or legal persons can access would create a platform for such persons to challenge national measures that are in contravention of REC laws.

Conclusion

A united Africa has been envisioned for decades by the leaders of Africa. The approach towards achieving this objective has been unique and has continually evolved to meet current needs. Thus, the continental organization has continued to evolve, and further steps have been taken towards the Africa we want. The creation of such a continent needs to be founded on a framework that can support the objectives. For this reason, the legal and institutional framework necessary for a common market to be established and operate must be considered. This chapter highlighted areas of consideration as steps are taken to establish a common market. The transition of the AfCFTA into a common market would significantly broaden the scope of integration. In addition to eliminating tariff and non-tariff barriers, it would also entail the free movement of goods, people, labour, capital and services, and harmonizing and coordinating common policies. Such a wide-ranging integration would

inevitably touch upon sensitive and complex issues, which would require political buy-in and commitment from participating States, which will be vital for robust decision-making and effective dispute resolution mechanisms.

Briefly, this chapter highlights the need to shift, to an extent, from an intergovernmental approach to a more supranational approach. Although the current framework has had positive outcomes, it needs to be adapted and strengthened to enable the formation of a common market. To achieve this, there would be a need for community institutions with the authority to make and enforce decisions. This is not to say that the decision-making authority of Member States would be removed from them entirely, but rather that there is a need for such authority to be shared among organs that represent the interests of various stakeholders. Within the context of a single market, the division of authority would entail entrusting the authority to make laws to more than one institution that would represent the various interests, and enabling a judicial organ the authority to enforce decisions, including the authority to impose appropriate measures. Additionally, decision-making by consensus would need to be reconsidered. This is recommended in light of the magnitude of the project to be undertaken. While a consensus approach has benefits, there are instances where decisions need to be made faster to enable progress. However, to counter the impact some decisions may have on states of varying development levels, flexibility may be introduced, such as using variable geometry.

Recognizing the track record of Member States failing to comply with community obligations, it is important to have measures to address such non-compliance. As done in the EU and the EAC, a court of justice can be one avenue created for this purpose. By establishing a court of justice that is accessible to natural and legal persons, non-compliance can be challenged. Using the online monitoring mechanism for non-tariff barriers established in the AfCFTA is another avenue that would need to be extended to enable reporting non-compliance with other commitments. Another method of monitoring could be the expansion of the APRM to include a review of the trade policy of Member States. Furthermore, a court of justice could serve as an extra measure when respective Member States do not address complaints.

However, it is also important to recognize that a failure to comply or implement may be due to a lack of human or financial resources. In the case of a common market, it may also be due to the fear of loss of revenue. As such,

there is a need to include measures that can support Member States to comply with REC obligations. Such measures can include the provision of finances, training, or human resources to achieve the tasks at hand.

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Chapter 21

REGIONAL ECONOMIC COMMUNITIES AS BUILDING AND GOVERNANCE BLOCS FOR CONTINENTAL INTEGRATION

Francis Mangeni and Andrew Mold

Abstract

By some accounts, Africa is said to have over 176 regional organizations, of which at least 19 deal with economic cooperation (Soderbaum 1996). Some countries belong to many – DRC belongs to 14 regional organizations and Rwanda to 11 (Byiers 2017). How did this come to be? And are the many regional economic communities that now exist still building blocs for continental integration? Is there a role for regional economic communities once continental structures have been built, say as governance blocs?

This chapter attempts to answer these quite complex questions. It argues that regional economic communities remain true building blocs for the AfCFTA for the following reasons. Firstly, on the basis of the progress a number of them have achieved so far. Secondly, the architecture for continental integration as set out in key instruments, and thirdly their recognition in the AfCFTA Agreement itself. In terms of pathways forward, it argues that the AfCFTA now provides continental frameworks that the RECs should implement. It is important also to consider RECs as governance blocs, beyond building blocs. The sheer size of the African continent, the complexity of development challenges and specificities of the regions – all require a system of local governance and subsidiarity that can be provided by the RECs.

This chapter first explores five fundamental options regarding the place of RECs, then explains the approach of RECs as building blocs and sets out the current approved ones. This is followed with an assessment of the strengths and failings of regional integration in Africa, setting out some successes and

good practices while highlighting setbacks. The chapter then provides the example of how the issue of addressing non-tariff barriers has been approached in the African Continental Free Trade Area Agreement to concretely demonstrate how regional economic communities could serve as building and governance blocs for continental integration. Some of the information in this chapter is first-hand testimony by the authors and will therefore not have citations.

Key Words: Building blocs, regional economic communities (RECs), continentalisation

Introduction: Five Fundamental Options

Here are five fundamental options or scenarios for contemplation on the place of the RECs in the continental integration architecture:

While formation of RECs was avidly encouraged in the 1980s to 1990s, with a number being formed across the continent, the 2000s saw a degree of hostility towards them. The hostility emanated mainly from the Economic Commission for Africa in concert with the African Union Commission's Department for Economic Affairs, through the programme for rationalization of regional economic communities which, then numbering 14, were considered far too many (ECA 2006). Rather than a focus on the substance of the programmes under implementation, as the Minimum Integration Programme later tried to do, the rationalization programme focused on the RECs as organizations, under the mottos of 'one country one REC', and 'one region one REC'.

This approach required countries to choose which REC to belong to and which to leave, provided each country ended up in only one REC. It required also the shutting down of some RECs such as the EAC, which, with only three countries then, was considered far too small, and COMESA which was considered amorphous in covering several regions all the way from the South to the East, Central and North. In the end, the proposals were found politically untenable, principally because countries join organizations for a host of reasons, ranging from economic, environmental, historical, cultural, and strategic to the political, and in some cases for no immediately apparent reason other than comity (Mingst 2023). The upshot was that in 2006 the African

Union recognized eight RECs, and adopted a moratorium on formation of new ones – more on this later.

Two Protocols on Relations between the African Union and the RECs – of 1998 and subsequently 2008 – aimed to put in place a clear mechanism, made up of institutions and enabling provisions for cooperation, including through attending each other's meetings. However, in practice, the Protocols were dead letters. Despite them, it has not been uncommon for Secretariats of RECs from time to time to complain of mistreatment at the hands of the African Union Commission.

Against this background, there is a choice to be made from at least five fundamental options in the orientation of relations among the AfCFTA and the RECs:

- Shut down all the RECs, so that there are only continental frameworks left in place;
- Leave the RECs alone, to exist and continue unhindered, independently of the African Union and other continental frameworks – or at least hands off the RECs with FTAs or Customs Unions;
- Engage the RECs but leave it at talk only – such as all the never-ending political pronouncements and legal provisions that are largely ignored;
- Tokenism and paternalism towards the RECs – for example, to be invited and seen at continental meetings and functions but not to be heard nor given any meaningful recognition or role; and
- Genuinely position the Secretariats of the RECs to provide joint secretariat services for continental integration with the AfCFTA Secretariat, and the REC Member States to implement and utilize REC programmes as exemplars for continental integration, and in a manner that is complementary and consistent with the AfCFTA.

Shut Down the RECs

A first option, the cleanest solution, would be to shut them down all together. This would be the total solution to challenges of multiple membership or the spaghetti bowl of African economic integration. The challenges include the financial and human resource cost of belonging to several organizations, the resulting complexity and contradictions in regimes that governments and economic operators have to daily navigate in trying to be compliant, and

general disunity (ECA 2006, Louw-Vaudran 2022). Arguments for continental integration and against the balkanization of Africa are similarly applied to the multiplicity of RECs – diminutive and unviable economies lacking scale, political weakness in international relations, the nature of cross-border challenges like climate change, crime and conflicts that require continental solutions.

In the initial drafts of the Protocol to establish the Continental Free Trade Area, as it was then called, the idea was to shut down the RECs, but this was subsequently toned down to render null and void those things in the RECs that were inconsistent with the Protocol.

During negotiations, this approach was rejected in a counter-move spearheaded by the current Secretary General Wamkele Mene, and the current Director of Trade in Goods and Competition, Mohamed Ali, then chief negotiators of their respective countries. Instead, a provision was made for maintenance of the regimes of RECs and regional trading arrangements and customs unions that are more profound levels of economic integration than the AfCFTA – Articles 19(2) of the Agreement and 8(2) of the Protocol on Trade in Goods.

It remains to be seen whether the several provisions on RECs in the AfCFTA Agreement will mean much in operational matters. The AfCFTA Secretariat would be better advised to be the champion of due implementation of, and compliance with, the AfCFTA Agreement in its entirety.

Leave the RECs Alone

Extreme proponents of RECs would argue that RECs should be left alone, in a live and let live or benign neglect approach. Their point is that RECs were established long before the Organisation of African Unity (and now the African Union), had frameworks for dealing with the sorts of existential issues that RECs were established to deal with, and RECs are ever ahead, moving into new areas before continental frameworks are developed. RECs address some quite specific regional challenges that affect groups of countries, arising from historical, cultural, political, geographical and other such contexts (Shinyekwa *et al.* 2019).

A more systemic argument is that global frameworks having to establish regional and country offices - such as the United Nations, the World Bank, the

African Development bank, or the African Union – and present the lived experience embodying the argument that regional solutions will forever present entry points and pragmatic pathways in pursuing overall goals. With a landmass of about 30 million square kilometres, Africa is too large to be run from a single city or headquarters. Eighty percent of intra-Africa trade is intra-REC trade. RECs on the whole score higher than the continental level on the African Regional Integration Index. Empirical analysis has shown that formation of an REC increases trade among its members by vast magnitudes, including by 208 percent for SADC (Mangeni and Mold 2023).

This abandonment of RECs as an option, though, is not in consonance with the overarching continental framework. Practically every continental instrument recognizes the important role of RECs as building blocs for continental programmes, including continental economic integration. Such frameworks include the Abuja Treaty, the Constitutive Act of the African Union, Agenda 2063, and the AfCFTA Agreement, as well as the African Peace and Security Architecture.

However, there are RECs and continental institutions that would leave RECs out of the picture in continental matters – on the part of the RECs because they can happily exist just as they have done when the continental frameworks were lacking, and in the case of some continental institutions, because RECs are seen as stumbling blocks that complicate the formation of seamless continental regimes and that perpetuate the spaghetti bowl.

Engage but It Is Talk Only – Political Pronouncements and Legal Provisions

The recognition of RECs as building blocs for continental programmes and for continental economic integration is rampant in political pronouncements and legal provisions. Many of these pronouncements and provisions remain cheap talk, without the walk. Examples of this include provisions in the Abuja Treaty that were never implemented, such as development of a continental trade liberalization programme which would have informed and regulated the formation of the REC Free Trade Areas and Customs Unions, the missed deadlines - notably to form the African Continental Customs Union by 2019, and of course the formation of 14 regional economic communities on the continent by the very Member States who adopted the Abuja Treaty in 1991 which called for only five regional economic communities, one for each

region. It should be a matter of keen interest whether the Common African Market can be in place by 2023, according to the timeframe in the Abuja Treaty. In operational matters on a daily basis, one hardly finds strict compliance with the idea of RECs as continental building blocs. There is a real possibility that this could continue to be the case.

Tokenism and Paternalism – Be Seen But Not Heard

What has happened in practice is that REC Secretariats have been invited to meetings of the Organisation of African Unity then - the African Union and the AfCFTA now – albeit with very limited roles. In most cases, REC secretariats leave meetings without saying a word, without assisting with secretariat services such as facilitating deliberations and report writing, and without making any contributions. This is perhaps because continental-level meetings are not considered to be their meetings. The tokenism in their participation, and the paternalism of continental level organs inviting them, must be considered baffling.

While countries have generally been supportive of the involvement of REC Secretariats in continental-level meetings and other activities, some staff of the African Union Commission (and now the AfCFTA Secretariat) have been rather hostile. Reasons for the hostility must be considered ethereal and certainly not founded on any principles at all, and would be contrary to the letter and spirit of the various instruments such as the AfCFTA Agreement itself, as well as the Abuja Treaty, the Constitutive Act of the African Union and Agenda 2063, all of which recognize RECs as building blocs for continental integration.

The Essence of Building Blocs

What would be in keeping with the spirit and letter of the various instruments on relations between continental and regional economic integration processes, is to duly recognize and fully operationalize the essence of RECs as useful building blocs for continental integration and frameworks, and adopt working methods whereby the Secretariats of the AfCFTA and the RECs provide joint secretariat services for continental integration, including joint programming and execution, as well as jointly servicing and facilitating continental

meetings, beginning with simple things such as introduction of agenda items and report writing.

It would miss the point to simply create a structure for occasional meetings of the Secretariats of the AfCFTA and the RECs, meant to be for coordination and planning, but where the AfCFTA Secretariat plays the subservient secretary and the representatives of the RECs turn into high and mighty delegates, making long speeches without concrete proposals, castigating the AfCFTA Secretariat, re-iterating the pre-eminence of RECs, or simply being cynical and obstructive.

At the level of the Member States, the essence of building blocs is that as initiatives done ahead of time, they provide important lessons, have made good progress in a number of areas beyond continental level processes, and serve as fast tracks and constitute achievements to be preserved and harvested for continentalization as appropriate, and provide systems akin to local governance in continental integration. Rather than being a mess or a spaghetti bowl, they provide the required complexity that is commensurate with the vast geographical scope of the continent, the regional specificities including their histories and cultures, and multidimensional development challenges.

Africa's Regional Economic Communities

In the early years of independence, the lack of practical progress of Pan-Africanism at the continental level meant governments increasingly resorted to the sub-regional option by entering into agreements with their neighbouring countries. This is one area of progress that is tremendously (and unfairly) denigrated in a lot of mainstream literature. On the contrary, it can be argued that i) early studies purporting to show no impact of the RECs on intra-regional trade were methodologically flawed; and ii) more reliable studies show considerable trade impacts from regional integration on the continent, with a meta-analysis of 14 previous studies finding that the average trade impact was between 28-32%. Another study, again using the correct methodology, showed that RECs had stimulated a lot of trade in manufactured goods – increasing on average by 78% within ten years after the agreements came into force (Mangeni and Mold 2023).

It is true that some of the earlier instances of regional economic integration on the continent, failed. One of the earliest examples was the West African

Customs Union (UDAO), established in June 1959 by Côte d'Ivoire, Dahomey (now Benin), Mali, Mauritania, Niger, Senegal and Upper Volta (now Burkina Faso), which ultimately did not thrive (ICAI 2013). Another example of the 'two steps forward, one step back' phenomenon that plagued early attempts at integration was the EAC, which was formed in 1967, but dissolved as animosity grew between members and resentment simmered over what was perceived as an unfair share of the economic benefits towards the most powerful country in the bloc, Kenya (Mshomba 2017).

The result of these failures was a period where, instead of coming closer together in line with Pan-African aspirations, a lot of African economies ended up parting company. Thus, in West Africa, on attaining independence, the former British dependencies established separate central banks and replaced their common West African Pound by national currencies (the Cedi in Ghana, the Nigerian pound in Nigeria, and the Leone in Sierra Leone,). At the time, there had even been a regional airline - West African Airways - which had operated in the four Anglophone countries, but this was also disbanded. Even research was affected - joint research programmes were affected, with national research institutions replacing those established by the British to cater for the four dependencies. In addition, as Adedeji lamented at the time "[o]ne striking feature of the past decade has been the inability of the anglophone and francophone West African countries to break the language and cultural barriers and to form effective economic groupings which cut across them" (1970, p.11).

However, in the darkest years of austerity, during the Structural Adjustment Programmes in the 1980s and 90s (World Bank 1981), there were moves among African countries to reinvigorate regional agreements (ICAI 2013). The spread of structural adjustment programmes had resulted in a severe weakening of the state as an agent of economic performance and management. It was almost as if, in the face of the onslaught against state institutions, African countries sought solace in regional solutions to their economic travails, establishing a number of new regional economic communities (Figure 54) (Weeks 1996, p.117).

Recognized RECs

Figure 54: Africa's Eight 'Approved' Regional Economic Communities

Name	Abbreviation	Year of formation	Current number of members	Intra-group trade (USD billions), 2021
Arab Maghreb Union	AMU	1989	5	3.2
The Community of Sahel-Saharan States	CEN-SAD	1998	29	18.1
Common Market for Eastern and Southern Africa	COMESA	1994	21	15.1
East African Community	EAC	1967/2000	7	4.3
Economic Community of Central African States	ECCAS	1983	11	1.5
Economic Community of West African States	ECOWAS	1975	15	10.7
Intergovernmental Authority on Development	IGAD	1986	8	5.7
Southern African Development Community	SADC	1992	16	24.5

Source: Authors, compiled from official sources and UNCTADStat (2023)

The multiplicity of regional economic communities in Africa was an issue the continent's political leadership addressed directly, and in July 2006 adopted a decision recognizing the eight in Figure 54, and a moratorium that in effect prohibited the formation of new ones (AUC 2006). However, that decision did not prohibit individual states from joining as many existing regional bodies as

they pleased. It continues to be a popular option, with the Democratic Republic of the Congo joining the EAC in 2022, and Tunisia joining COMESA in July 2018, which could be a sign of things to come. Ethiopia and Somalia are currently contemplating joining the EAC.

A number of factors determined the choice of the eight approved regional economic communities. SADC, COMESA and ECOWAS were by then already established and well-functioning regional economic communities. Though small – with only three countries at the time – the EAC was a revival of an earlier economic and monetary union that had collapsed in 1977 (ICAI 2013). In just four years, the revived EAC had become a customs union, in 2005, and was considered viable and a trailblazer. The AMU, though weak even then, was the only regional economic community existing in North Africa, as was ECCAS for Central Africa. IGAD was quite a surprise, but its vital importance derived from its climate change programmes, as well as its role in brokering peace and security in a troubled part of the continent. It began dealing with drought and desertification – hence its original name of the Intergovernmental Authority on Drought and Desertification (IGADD), then moved into conflict resolution and peace keeping in the troubled horn of Africa as well as other development programmes (ICAI 2013).

CENSAD was the brainchild of the late President Col. Gaddafi of Libya, then quite a powerful figure on the continent who tended to have his way, which is partly why this organization has been quite dormant since his demise in October 2011. A curious question has been why CEMAC, UEMOA and SACU were not recognized as RECs at the time. All CEMAC countries are in ECCAS, all UEMOA countries are in ECOWAS and all SACU countries are in SADC. At the time, rationalization of RECs – under the motto of ‘one country one REC’ – was an emotive issue on the continent, one on which progress had yet to be seen, given the gravity of the matter in terms of sheer numbers and complexities of multiple membership. It seemed an easy decision then, not to recognize regional organizations that were wholly subsets of others that could be recognized.

However, in due course, as negotiations for the COMESA-EAC-SADC Tripartite FTA and then for the AfCFTA unfolded in the period 2012 to 2022, CEMAC and SACU – as customs unions and therefore bound to negotiate as blocs – received de facto recognition as RECs (ICAI 2013). As customs territories, they produced common offers and tariff schedules. The AfCFTA Agreement explicitly recognizes the eight RECs, as well as other regional

trading arrangements and customs unions on the continent that have achieved higher levels of economic integration, which they are not to roll back but maintain (AUC 2018a, Articles 1(t) and 19(2)).

Building on the previous work of Mangeni and Juma (2018), we will now provide an overview of the historical record since independence of attempts at regional integration on the continent. Contrary to the dominant discourse, we stress the progress made, and highlight the reasons why we are where we are today. Without fully integrating the RECs into the implementation framework of the AfCFTA, it will struggle to succeed (Akinkugbe 2020, p.8).

Mangeni and Juma (2018) describe the trajectory of African economic integration. They first explain the socio-political trends in history, of order emerging out of disorder, through a self-organizing process that is not pre-determined, but that eventually requires agency; leaders matter. Societies pushed into disequilibrium, for instance into extreme poverty or ravaged by wars and oppression or colonialism, will fight back. This is innate. So it has been with Africa, during colonialism to struggle for freedom, and over the years to seek socio-economic transformation. Africa got down to business by defining a long-term vision for political freedom and development, by establishing continental institutions such as the Organisation of African Unity and subsequently the African Union, by mapping out its vision into concrete templates and programmes, and codifying them in instruments such as the Abuja Treaty. The template was for a long-term process that would start with the formation of regional economic communities as building blocs.

Regional economic integration in Africa started in earnest when RECs were established and started dealing with concrete challenges. The RECs aimed to achieve FTAs, customs unions, common markets and eventually economic unions in accordance with the Lagos Plan of Action of 1980, as subsequently codified by the Abuja Treaty in 1991. The REC instruments contain this template for progressive and incremental continental integration, as framed in the Abuja Treaty. However, the significance of RECs as regional bodies derived from their focus on existential challenges in the regions, which indeed formed entry points for economic integration. For ECOWAS, it was peace and security and eventually movement of persons that provided best practices for the continental African Peace and Security Architecture and the Protocol on Movement of Persons. For IGAD, the major challenge was drought and desertification, which contributed to the subsequent prioritization of action on climate change at the continental level. For SADC, it was political liberation

that completed the de-colonization struggle in Africa, which necessarily required prioritization of industrialization and infrastructure due to the political economy of the region – to beat the stranglehold of then-apartheid South Africa. For COMESA, the key challenge was trade facilitation and supportive institutions, given the expansive spread of its membership and the utter need for pragmatism in weaving together such a diverse region. The evolution of regional economic integration in Africa shows a progression from the RECs to continental frameworks and vice versa. REC good practices, programmes and experience have been consolidated at the continental level, as their logical conclusion – a process we refer to as continentalization.

The process of consolidation of the RECs got a boost with the formation of the COMESA-EAC-SADC Tripartite Free Trade Area, negotiated from 2012 to 2015, which inspired the AfCFTA as proof of concept (Mangeni 2019, Juma and Mangeni 2015, Mangeni 2012). The Tripartite FTA instruments served as a basis for working documents and draft instruments in the AfCFTA negotiations. Tripartite FTA negotiators brought along their experience and learning, and provided leadership in the AfCFTA negotiations. This process should continue. Building of capabilities will be a critical success factor, especially through sustainable training, industrialization and infrastructure development.

The Tripartite FTA nevertheless shows a curious development that may well shape the further evolution of continental economic integration. As of February 2023, the Agreement had been ratified by only 10 of its 26 signatories, having been opened for signature on 10 June 2015; 14 ratifications are required for the Agreement to enter into force. The alacrity with which the AfCFTA has been ratified, by 47 of its 54 signatories as of February 2023, having been opened for signature much later on 21 March 2018, shows a preference for continental regimes where they cover similar areas as the RECs. The RECs will therefore have value in areas not yet organically covered by continental regimes (such as monetary unions and federations), or where they offer better instruments such as rules of origin and trade facilitation, or better market access. For instance, some economic operators will still prefer to trade using COMESA rules of origin (considering them to be more flexible) or the COMESA duty-free quota-free market access regime over the AfCFTA tariff schedules that will still have positive duty rates up to 2030 and for sensitive products imported into LDCs up to 2033.

The RECs that do not have the programmes that the AfCFTA has, however, such as the free trade area regime and a number of trade facilitation instruments, would be better advised to implement the AfCFTA regimes rather than try to start their own from scratch.

RECs-AfCFTA Relations under the Abuja Treaty

According to the Africa Regional Integration Index produced by the UN Economic Commission for Africa in 2019, RECs have achieved deeper levels of economic integration than the continental averages, as Figure 55 shows. The assessment covers five important integration dimensions – trade, production, macroeconomic, infrastructure and movement of persons.

Figure 55: Africa Regional Integration Index, 2019

Area	Africa	CE NSA D	COM ESA	EAC	ECC AS	ECO WAS	IG AD	SADC	UMA
Overall/ average	0.32	0.38	0.37	0.54	0.44	0.43	0.44	0.34	0.44
Trade	0.38	0.38	0.45	0.44	0.36	0.44	0.44	0.34	0.48
Production	0.20	0.26	0.33	0.43	0.32	0.22	0.32	0.24	0.45
Macroeconomic	0.40	0.44	0.37	0.66	0.68	0.47	0.42	0.42	0.57
Infrastructure	0.22	0.30	0.32	0.56	0.37	0.30	0.48	0.21	0.51
Free Movement	0.44	0.51	0.39	0.66	0.47	0.73	0.54	0.49	0.44
Notes									
All RECs are more integrated than the overall Africa average									
All RECs are more integrated than the Africa average on Production integration									
Three RECs are less integrated than the Africa average on Trade integration – CENSAD, ECCAS and SADC									
One REC is less integrated than the Africa average on Macroeconomic integration – COMESA									
One REC is less integrated than the Africa average on Infrastructure integration – SADC									
One REC is less integrated than the Africa average on Free Movement of Persons – COMESA									

Two RECs are less integrated than the Africa average in 2 areas – COMESA (Macroeconomic and FMP) and SADC (Trade and Infrastructure)

Source: Compiled by Authors

Figure 56: Dimensions of the Africa Regional Integration Index

Trade integration	Average tariff on imports, share of intra-regional exports and imports over GDP, share of intra-regional trade, AfCFTA ratification (for continental level – the number of ratifications increased to 43 by August 2022)
Production integration	Share of intra-regional intermediate exports and imports, merchandise trade complementarity
Macroeconomic integration	Currency convertibility, no. of bilateral investment treaties, regional inflation differential
Infrastructure integration	AfDB composite – electricity, transport, ICT, water and sanitation; and proportion of intra-regional flight connections
Free movement of persons	No. of countries that obtain visa on arrival, no. of countries that require visa, Free Movement Protocol

The AfCFTA is not starting empty-handed. Many of Africa's RECs already have vibrant trade regimes and significant amounts of trade on which to build.

In the AfCFTA negotiations, RECs have indeed been building blocs for the AfCFTA and continental integration at large, in terms of customs unions that have produced common offers for both trade in goods and trade in services, namely, the CEMAC, EAC, ECOWAS and SACU. The services liberalization process in COMESA, EAC and SADC provided starting points for the AfCFTA schedules of specific commitments. By July 2022, the 15 services schedules adopted by the Ninth Council of AfCFTA Ministers were of State Parties from these RECs.

The same applies to the building of continental institutions. A common refrain has been that African integration does not have supranational institutions, and that this is its Achilles heel (Akinkugbe 2020, p.8). This could not be further from the truth, as facts on the ground show. Regional institutions like the East Africa Court of Justice or the COMESA competition authority do have significant amounts of supranational authority. These are very much

institutions on which the AfCFTA architecture will need to draw and build upon. Figure 57 shows some supranational institutions in some of Africa's regional economic communities. Figure 58 shows that the East African Court of Justice, as an example of a supranational body, has been active and played a significant role.

Figure 57: Supranational Institutions in Regional Economic Communities

	Dispute Settlement/Court	Legislative Functions / Parliament	Regional Bank and Financial Institution	Regional University	Regional Competition Authority	Regional Investment Authority	Regional Intellectual Property Authority	Regional Women's Authority	Private Sector
AfC FTA	(Panels and Appellate Body)	-	AFREXIM Bank	AfC FTA Academy	Pan African Competition Authority	Pan African Trade and Investment Agency	Africa Intellectual Property Office	Under negotiation	African Business Council
COMESA	COMESA Court of Justice	-	Trade and Development Bank, Africa Trade Insurance Agency, Clearing House	COMESA Virtual University	COMESA Competition Commission	COMESA Regional Investment Authority	-	Federation of National Associations of Women in Business (FEMCOM)	COMESA Business Council,

			COM ESA Re- Insura nce Agen cy						
EA C	East Afric an Cour t of Justi ce	East Afric an Legi slativ e Asse mbly	East Africa n Devel opme nt Bank	East Afri can Univ ersit y Cou ncil	EAC Com petiti on Auth ority	-	-	-	East Afri can Busi ness Cou ncil
EC OW AS	ECO WAS Com muni ty Cour t of Justi ce	ECO WAS Parli amen t	ECO WAS Bank for Invest ment and Devel opme nt, West Africa n Mone tary Agen cy, Ecoba nk		ECO WAS Com petiti on Auth ority	-	-	-	Fede ratio n of West Afri can Cha mbe rs of Com mer ce

Figure 58: The East African Court of Justice

The East African Court of Justice (EACJ) is active in interpreting and assisting enforcement of the East African Customs Union and Common Market under the Treaty and the Protocols. In a series of judgments, it has established its utility and relevance. Its judgments have set out some important jurisprudence, for instance: The EACJ can award remedies, to give it teeth (EACJ 2017). The EACJ can review domestic legislation to determine whether there is a breach of the Treaty (EACJ 2014). The EACJ has jurisdiction to entertain cases under the Treaty (EACJ 2015a). The EACJ has exclusive jurisdiction over interpretation of the Treaty (EACJ 2015b). Objectives and fundamental principles of the Treaty are justiciable (EACJ 2007). There is every likelihood that jurisprudence from the REC Courts on regional integration will be used under the AfCFTA Dispute Settlement System, as precedents, even persuasive or authoritative interpretations, but at least as input in the Panel and Appellate Body processes. Also, where regional courts are actively hearing matters, the AfCFTA Dispute Settlement Processes might defer to the regional processes, and vice-versa.

The architecture for continental integration duly recognizes RECs as building blocs, both in the AfCFTA Agreement and in the 34-year blueprint set out by the Abuja Treaty for building the African Economic Community from its commencement to completion and operationalization.

The last recital of the preamble to the Agreement establishing the African Continental Free Trade Area acknowledges “the Regional Economic Communities (RECs) Free Trade Areas as building blocks for the African Continental Free Trade Area” (ICAI 2013). The principles governing the AfCFTA also include the preservation of the *acquis*, and best practices in the RECs as well as Member States and international conventions (2018a, Arts. 5(b), (f) and (l)). They are enforceable provisions (EACJ 2007).

RECs are to be represented in meetings of Senior Trade Officials, in an advisory capacity (2018a, Art. 12(5)). This provision builds on and codifies the long-established practice of requesting representatives of REC Secretariats to share their experience on key matters that come up for deliberation. REC experiences have proved to be valuable for the AfCFTA, for instance in the structuring of negotiation modalities, the text of provisions on key issues,

institutions established, and negotiators that provided leadership, all of which assisted to expedite the AfCFTA negotiations. This same approach continues to apply to other African Union frameworks, such as the African Peace and Security Architecture, where regional diplomacy, engagement and post-conflict reconstruction continue to be key strategic pillars of the continental framework.

Member States or Partner States of RECs have concluded a number of trade Agreements with third parties across the world. The AfCFTA will provide a framework for reflecting such third-country trade Agreements in the Continental Trading System. State Parties to the AfCFTA are to give each other continental preferences in implementing the AfCFTA, that is, “preferences that are no less favourable than those given to third parties” (2018a, Art. 18(1)), and ‘third parties’ are States that are not party to the AfCFTA Agreement (2018a, Art.1(w)). This requires every State Party to give other State Parties the best treatment on the books. Every State Party is to treat the other as a most-favoured nation (MFN) – by according it MFN treatment. This treatment, though, is to be reciprocal in order to avoid free riding. While trade agreements in force before the AfCFTA will continue, a State Party to such Agreement is to afford other State Parties an opportunity to negotiate for such preferences. The full African Continental Trading System will thus include preferences given to third parties, and in addition, apart from keeping and disseminating the data base of such third-party preferences, the Secretariat may oversee negotiations for access by State Parties to such preferences on a reciprocal basis.

Should there, however, be any conflict or inconsistency between the AfCFTA Agreement and an REC Agreement, the AfCFTA Agreement prevails, which renders the conflicting or inconsistent regional provision inapplicable wherever it would have applied within the African Continental Trading System, among State Parties to the AfCFTA Agreement. This means that such a provision would no longer apply within the REC itself, insofar as the Member States of that REC are State Parties to the AfCFTA. It is this interpretation that propels REC regimes towards continental harmonization into a single continental trade and investment regime or one common market, which will continue to address the challenges of multiple membership in RECs and other trade arrangements and multiple regimes on the continent.

Given such drastic possible implications, an important question arises about the meaning of conflict or inconsistency. A distinction can be made between

an apparent conflict, which can be interpreted away, and a real conflict, which cannot, but can only be resolved by rules on conflict of laws (Chase 2012). Vranes (2006) proposes the following strict definition of conflict: “There is a conflict between norms, one of which may be permissive, if in obeying or applying one norm, the other norm is necessarily or potentially violated”, as opposed to the flexible one that a conflict exists when a Party to two treaties cannot simultaneously comply with its obligations under both treaties”.

In other words, conflict or inconsistency between two or several provisions means that complying with or implementing one provision, either as an obligation or as a right, constitutes a breach or a potential breach of the other provisions. If the two (or more) can be complied with or implemented without a breach of the other, they are not inconsistent. In particular, where one provision is incremental over the other, there is no conflict or breach between them. Rather, the provision that offers further and better market access, for instance, will be encouraged and used as a fast track and as contributing towards the objectives of the broader framework.

Other relevant instruments with principles and values for the establishment and sustainability of the AfCFTA will co-exist with the AfCFTA Agreement (AUC 2018a, Art. 21). This means that the corpus of complementary instruments and programmes, which embody supportive principles and values, will remain pertinent and will continue to be implemented in support of the AfCFTA interventions. These include overarching instruments such as the Treaty establishing the African Economic Community, Agenda 2063 and its 15 flagship projects including the Protocol on Free Movement of Persons and the Assembly Decision on the Single African Air Transport Market (SAATM), the Action Plan for Boosting Intra-Africa Trade (BIAT), the Accelerated Industrial Development of Africa programme (AIDA), the Programme for Infrastructure Development in Africa (PIDA), and the instruments and programmes of the RECs.

The Abuja Treaty is still operative, having entered force on 12 May 1994. Drawing on the 1980 Lagos Plan of Action and the Final Act of Lagos, it codified the vision for continental integration, namely, to form the African Economic Community as the ultimate aim of a politically and economically united Africa. It mapped out that vision into a 34-year programme. The Preamble of the Abuja Treaty notes “that the efforts already made in the sub-regional and regional sectoral economic co-operation are encouraging and

justify a larger and fuller economic integration”. Even back then, RECs provided the springboard for the great Abuja Treaty.

The Abuja Treaty establishes what is called the ‘African Economic Community’ (AEC) as an organic structure of the Organisation of African Unity established by the Charter on 25 May 1963 (OAU 1991, Art. 1(c)). The AEC is a legal entity made up of the Member States acting together through the inter-governmental structures established, such as the Assembly, the Council of Ministers and the Technical Committees (OAU 1991, Art. 8). The AEC has objectives and tasks assigned to it, including the objective to “coordinate and harmonize policies among existing and future economic communities in order to foster the gradual establishment of the Community” (AU 1991, Art. 4(1)(d)).

Furthermore, chapters IV and V of the Abuja Treaty, which elaborate the process of forming the AEC in more detail, provide that the Assembly, i.e. the organ made of the Heads of State and Government acting together in an inter-governmental format, shall take measures for the coordination and harmonization of the regional economic communities on elimination of customs duties (OAU 1991, Art. 30(3)). This means that the continental process remains active simultaneously with the REC level process, rather than that REC processes alone proceed at that level, nor that the continental processes alone proceed to the exclusion of RECs.

In this context, there are provisions in the Abuja Treaty for various continental Protocols that will govern the REC and continental processes apace. Examples include the protocols on non-tariff barriers, rules of origin, customs cooperation, simplification and harmonization of trade documents and procedures, trade promotion, food and agriculture, and free movement of persons (OAU 1991, Arts. 31-47). Then there are various provisions for sectoral cooperation. The Abuja Treaty thus provided for an overarching continental process under which the REC processes would proceed, though these provisions were not implemented before the AfCFTA Agreement, which has now addressed the need for such overarching continental provisions and institutions, which provide a framework for a single continental regime encompassing the RECs. In this regard, the AfCFTA has the Protocol on Trade in Goods with a comprehensive trade regime on trade in goods. The Protocol has Annexes that cover: tariff schedules for market access and trade liberalization, rules of origin, non-tariff barriers, trade facilitation, customs cooperation, transit, technical and SPS standards, and trade remedies. The

AfCFTA Agreement also has a Protocol on Trade in Services and a Protocol on Settlement of Disputes. There are additional protocols on competition, digital trade, intellectual property rights, investment, and women and youth in trade.

The Abuja Treaty provides the Assembly and the Council of Ministers with overarching powers to take Decisions and make Regulations, respectively, that are binding on the RECs (OAU 1991, Arts. 8(h), 10(2) and 13(2)). So, in addition to the Protocols, there can be and have been various Decisions taken towards achieving continental integration. These Decisions are binding on the RECs as Member States of the African Union, who are required to implement them at the REC level.

The Example of Non-Tariff Barriers

The AfCFTA Annex on Non-Tariff Barriers (AUC 2018b) underscores the role of RECs in the continental process for ensuring a functional AfCFTA. It provides that the NTB Coordination Unit at the AfCFTA Secretariat is to work closely with the Secretariats of the RECs, recognizes the REC mechanisms for addressing NTBs, and requires that intra-REC NTBs first be addressed using the REC mechanisms before resorting to the continental mechanism (AUC 2018b, Arts. 7, 10, 12(2) and Appendix 2). Existing REC mechanisms for addressing NTBs include the online system for reporting, monitoring and eliminating NTBs in the Tripartite COMESA-SADC-EAC region (2023), which was replicated and used as the prototype in designing the continental equivalent. REC mechanisms also include the REC committees on NTBs, instruments such as the COMESA Regulations on NTBs, and the EAC Elimination of Non-Tariff Barriers Act 2017, which is binding on and has the force of law in Partner States (EAC 2017).

The EAC Law provides a rigorous suite of tools for addressing NTBs, which may not be available in other RECs, nor under the AfCFTA, which could be considered a good practice for possible scaling to the continental level. The Act addresses the Partner States, and their public officers and institutions directly, prohibiting them from causing NTBs, and provides for the possibility of compensation by the Partner State in breach to the person adversely affected by the NTB. Article 17 of the EAC Act then provides for possible sanctions against a Partner State that does not take the measures necessary to address

the NTB following an outcome from the Council that holds that there is a non-tariff barrier that should be removed.

This example of how the AfCFTA and the RECs are to work together on addressing NTBs shows that RECs have evolved from being simply building blocs to being continental governance blocs. The RECs can serve the vast African continent as systems of local governance. This would be akin to the African Peace and Security Architecture, which also has an organic interface or continuum between the regional and continental forces and mechanisms.

Conclusions

The architecture for African continental integration aims for a complementary relation between the regional economic communities and continent-wide regimes and structures. Progress at the level of the RECs is to be replicated continent-wide. At the same time, continental regimes, where they exist, are to be put into operation in the RECs when they design and implement their programmes. The RECs are building blocs in that sense. This has been written into, that is, codified, by both continental instruments and constitutive instruments of the RECs.

We can now answer the questions we posed at the beginning as follows. The original design for continental economic integration, as set out in the Abuja Treaty, aimed for only five regional economic communities, one for each region of Africa. However, more than 14 RECs were formed, and eventually in 2006, eight of them were approved or recognized by the African Union as the building blocs for continental integration. The RECs were formed randomly and differed in regimes from each other because there were no detailed continental frameworks to guide their formation and formulation, which however have now been developed under the African Continental Free Trade Area by the various Protocols and Annexes. Furthermore, countries joined several RECs according to what each REC had to offer – for instance, peace and security, a large market, infrastructure programmes, or supportive institutions,

Nevertheless, the RECs that were formed have still proved to be building blocs for continental integration. They have fast-tracked continental initiatives such as the AfCFTA negotiations, provided good practices that have been consolidated at the continental level, and have implemented continental

programmes at the regional level. The AfCFTA Agreement has provisions that recognize their role as supportive of continental integration, for instance in the system for addressing non-tariff barriers, where the Secretariats of the AfCFTA and RECs are required to work closely together.

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Chapter 22

OUTLOOK

The Inevitability of a Sublime African Continental Free Trade Area: Mitigating the Pitfalls

Francis Mangeni

Abstract

A sublime African Continental Free Trade Area can be considered inevitable. It has been institutionalized into the economic geography of Africa, permanently if the momentous recent past is anything to go by. The AfCFTA moved from design, negotiation, signature, ratification and entry into force to commencement of trading in only about five and a half years (June 2015 to December 2020). Its longevity is nevertheless not to be taken for granted. A lot of hard work must consistently be done to maintain the momentum that now drives it, and to continuously improve its capabilities, its relevance to great questions of the day, and proactive evidence-based policy making. Implementation, compliance, utilization and enforcement will be key priorities. This requires systemic forces to drive it, such as can be provided by agile political leadership amidst existential crises, adequate financial and technical resources, inclusiveness, and ownership involving the private sector and civil society organizations in particular, knowledge networks that provide hands-on support to stakeholders in the public and private sectors, and a role for local and municipal governments. This chapter explores how these systemic forces could be harnessed and deployed.

Key words: sublimity, viability, leadership, private sector, civil society, stakeholders, ownership, resource mobilization, knowledge networks, local governments

Introduction

There is a certain inevitability to a sublime African Continental Free Trade Area, not just on the basis of the historical trajectory that has produced it, but also given the momentum generated that continues to drive it, and the ethos of learning that is at the heart of it all (AfCFTA 2020). The insight that the best way to predict the future is to create or invent it (Garbor 1964), found rigor in the work of the poet of thermodynamics Ilya Prigogine, the 1977 Nobel prize laureate for chemistry, who said, what we do is shaped by our vision of the future (Prigogine and Stengers 1984). Africa must create the sort of future it seeks.

Existential crises abound, and have marked turning points in the long trajectory of the continent (Mangeni and Juma 2018, Mangeni and Atta-Mensah 2022). In the face of colonialism, the pan-Africanist ethos was the *cri de coeur* in decolonization struggles waged in continental solidarity by arms and global diplomatic agency. They came from the East to die in the South for freedom, and from the North to die in the West for liberty. Africa formed the Organisation of African Unity on 25 May 1963 as the appropriate institutional framework then. When political instability and conflict threatened West Africa, the Economic Community of West African States was formed in 1975, and in the 1980s quickly prioritized peace keeping as its defining feature, going on to undertake the first ever regional cross-border peacekeeping mission in the world. Against drought and desertification, the Inter-Governmental Authority on Drought and Desertification was formed in 1986. With the end of the cold war and the achievement of decolonization in 1990 with the independence of Namibia and the release of the icon Nelson Mandela, Africa pivoted towards economic pan-Africanism, adopting the Treaty establishing the African Economic Community on 3 June 1991, which entered force on 12 May 1994, setting out a 34-year blueprint for forming the Africa Economic Community by the year 2028; and six years later, formed the African Union. While akin to the European Union and other regional organizations around the world, this wasn't mere mimicry (Luke and MacLeod 2019).

The African Union was an embodiment of the emergent Africa of the 1990s and 2010s (Roberson *et al.* 2012), impatient for socio-economic transformation away from the caricature of Africa as inherently and endlessly plagued by war, poverty, disease, hunger, illiteracy and gender inequality,

among others; a stereotype that may still inflame racism around the world (Collier 2008). And in 2013, to mark 50 years of the founding of the Organisation of African Unity, Africa prepared Agenda 2063 (adopted in 2015), another blueprint, this time for a 50-year period, with the solid vision of achieving ‘The Africa We Want’, one that is internally integrated, peaceful and prosperous, and internationally efficacious. This demonstrates that faced with existential crises, Africa has formulated a vision, innovated relevant institutional frameworks, and mapped out bold long-term roadmaps, codified into policy and legal instruments binding among Governments of Member States at the regional and continental levels. It has taken the agency of individuals, though, to provide leadership for these milestones – a dynamic and trajectory trenchantly set out in Mangeni and Juma (2018). The Africa We Want will require the Africans We Want to bring it about.

Political Agility and Leadership

It was against this backdrop of brave institutional engineering that Africa’s political leaders conceived the African Continental Free Trade Area as a holistic intervention to sustainably eradicate poverty, hunger and disease, and to achieve structural transformation on the continent. This is to be operationalized via boosting intra-Africa trade under a large seamless continental market that should be inclusive by ensuring women, youth and MSMEs also equitably benefit. Regional value chains and industrialization, and strengthening of infrastructure covering transportation as well as energy and ICT, together with democratic reforms are equally important if the AfCFTA is to be transformational as a development tool (Ismail 2021). To these pillars must be added in their own right the rule of law, policy space and flexibility, which are at the core of the AfCFTA as a rules-based and developmental institution (Akinkugbe 2020, Gathii 2011). But that is not all – integration of labour markets through free movement of persons, elimination of discriminatory treatment, and relaxation of entry and residence requirements are equally important for the AfCFTA to achieve its transformational aspirations (Kategekwa 2014, Sibanda 2021). Over a decade ago, UNCTAD underscored the importance of developmental regionalism which avoided a limited linear approach to economic integration in Africa, and propelled the private sector as a protagonist for economic development, while adopting enabling interventions such as science, technology and innovation.

Under the theme ‘Towards a Single Market’, the COMESA-EAC-SADC Tripartite Arrangement has, since 2008 in its communiques and programmes, adopted and emphasized the developmental approach to regional economic integration as its bedrock – made explicit in paragraph 1(d) of the Communique of the Third Tripartite Summit of 10 June 2015 (Tripartite 2008, Tripartite 2015).

This developmental approach to regional economic integration is received wisdom in Africa, for large markets alone without products to trade on them are no good. And without surface and air transportation, energy and ICT in the information- and technology-driven economies of the fourth industrial revolution, large markets and industrialization interventions would not be sufficiently effective. The African Continental Free Trade Area is therefore complemented by 14 other flagship programmes, together forming a robust policy and regulatory framework for reforms and development programmes that achieve socio-economic transformation (AUC 2013). The other 14 programmes are: the African Passport and Free Movement of People, African Commodities Strategy; Integrated High-Speed Train, Grand Inga Dam, the Single African Air Transport Market; Annual African Economic Forum, Pan African e-Network, African Virtual and e-University, Cyber Security; Great African Museum and Encyclopedia Africana; Silencing the Guns by 2020; resource mobilization and macroeconomic stability through African Financial Institutions; and Outer Space Strategy. And thus, the work of Africa is cut out, under this transformative Agenda. Africa is proudly famous for adopting programmes and blueprints, and equally noticeable for inadequate implementation, for not walking the talk (Kagame 2017). The high political momentum around the AfCFTA since 15 June 2015 when the African Union launched the negotiations, however, signals an impressive seriousness in government, industry, academia and non-governmental organizations; for the negotiations were concluded on 21 March 2018 and the Agreement signed, it entered force on 30 May 2019 and has since garnered 47 ratifications (March 2023), as well as having been signed by 54 countries with only the State of Eritrea outstanding; all in record time by any standards.

Still, Africa and the whole world wait with bated breath to see full implementation of the AfCFTA. Trade facilitation will greatly benefit from automation, re-engineering and digitalization of processes and documents for exportation, importation and transit in order to simplify and harmonize them. Elimination and reduction of tariffs will mean due application of the new Tariff

Books resulting from the AfCFTA negotiations for trade liberalization. And elimination of non-tariff barriers will be the bread and butter of the AfCFTA, requiring dedicated personnel at the Secretariat and within Member States. Further, online mechanisms will greatly assist for reporting, monitoring and addressing NTBs, as well as a dispute settlement system for resolving stubborn political economy trade disputes. Enablers for inclusive trade and economic growth, such as market intelligence, mobile payment systems and affordable patient capital, quality infrastructure, simplified trade regimes for small-scale cross-border traders, macroeconomic and political stability, and safety of human life, will also continue to be critical success factors.

What then will it take to keep the AfCFTA moving forward - to maintain or speed up the momentum? Moving forward means compliance with and implementation of the AfCFTA Agreement by Governments; beneficial utilization by economic operators of the AfCFTA regime for inclusive growth; an innovation eco-system that vibrantly produces new products and industries that assist exponential speeds of economic development; and interventions to assist women, youth and MSMEs so that no one is left behind. It means also completing any residual negotiations.

The designation of a Head of State as champion of AfCFTA, Mahamadou Issoufou - the former President of Niger - greatly helped to mobilize the political leadership at the highest level throughout Africa. He presented regular reports to the biannual summits, generating morale and binding decisions on actions to be taken with set timeframes. African ambassadors to the African Union took up AfCFTA matters on a standing basis and kept the ministries of foreign affairs regularly briefed. Technical and financial partners assisted evidence-based negotiations and facilitated this costly exercise. The RECs, with tested free trade areas, provided invaluable lessons and institutional and textual precedents that fast-tracked consensus and the overall negotiation process. This entire regimen could well be carried forward into implementation as strategic good practices, replicating and consolidating good regional programmes continent-wide, while ensuring that new continental programmes are worthwhile and add value.

Yet, this won't be the panacea to the whole host of challenges that have bedevilled the implementation of regional economic integration programmes over the years. Challenges at the secretariats and in governments have included budgetary constraints, limited skill sets and inadequate staffing, and

disconnects between key government departments amidst a lack of functional inter-ministerial coordination. Limited stakeholder involvement and ownership, and education curricula and systems that hardly build long-term sustainable capacity for regional integration in Government, industry, academia and civil society organizations, have not helped either. No less problematic is the fact that some secretariats, haunted by auditors, have resulted in valuable time and focus being taken away from substantive programme implementation. All such challenges need to be tackled definitively in order to ensure adequate financial and human resources, seamless all-government teams, continuous creation of awareness and capabilities, and well-managed secretariats and government departments (Mangeni and Juma 2018).

So, maintaining AfCFTA's momentum will require political leadership, mobilization of adequate resources and key stakeholders, and sustainable building of capabilities. We add that it will also require a knowledge- and mobilization-based network across the continent. Furthermore, the AfCFTA must show results quickly enough for an impatient and emergent continent that has historically reeled under existential threats one after another. Just since 2020, Africa was hit by the COVID-19 pandemic and the geopolitical crisis caused by the Russia-Ukraine war, together with a rapidly cataclysmic climate change crisis, macroeconomic instability and a debt crisis – all of which had catastrophic effects and therefore attracted obvious prioritization. A delineation of existential priorities is therefore always pertinent if Africa is to cope and focus on accelerating the implementation and utilization of the African Continental Free Trade Area.

Knowledge Networks

A continental network of regional and national advisors on the African Continental Free Trade Area can greatly assist implementation and utilization.

To achieve socio-economic transformation, and to contribute to achieving the Africa We Want under Agenda 2063 and Agenda 2030, the African Continental Free Trade Area and trade as a whole should be mainstreamed into development at the continental, regional and national levels. The African Continental Free Trade Area must be inclusive, by having interventions to

proactively support MSMEs, youth and women; small-scale cross-border traders, and rural infrastructure for sustainable livelihoods and better opportunities in life. To be inclusive also requires that active regional value chains and clusters be identified, created and operationalized. Clusters can straddle borders as geographical rather than political regions. Pharmaceuticals, medical facilities, agro-processing, automobiles, transport and logistics, as well as leather products, textiles and clothing, minerals, steel and iron, tourism and electronics are immediate examples of high growth and strategic regional value chains and clusters. In addition, trade governance and the rule of law will be a critical priority in ensuring implementation and compliance.

Government, industry, civil society and academia are to consultatively work closely and in partnership in designing and implementing policy, with the ethos of continuous learning, and built-in regular and dynamic reviews for continuous improvement and correction of what does not work. Local and urban administrations, including local communities, should be on board as active partners that provide valuable inputs into policy design and implementation, and as users and owners of interventions that seek to create decent jobs, raise incomes, improve living standards and achieve the sustainable development goals and the Africa We Want.

African continental integration is based on a robust political and legal basis, as set out in various instruments including the Agreement establishing the African Continental Free Trade Area of 2018, the Constitutive Act of the African Union of 2000 and the Treaty establishing the African Economic Community of 1991. The frontline of African continental integration now is due implementation of the African Continental Free Trade Area. This requires ownership by stakeholders in the public, private, and academic sectors, as well as effective participation by all relevant players.

African continental integration is progressive. The regional economic communities serve as building blocs and are therefore critical success factors for continental integration. Preserving and building on the acquis in the regional economic communities, the African Continental Free Trade Area has started off on a solid basis and is commercially meaningful, considering also the current market access offers with agreed rules of origin, which cover at least 88.3 percent of total tariff lines for intra-Africa trade as at March 2023. The regional economic communities include those with free trade areas that

have 100 percent product coverage on a duty-free and quota-free basis, such as the Common Market for Eastern and Southern Africa, common markets with the four freedoms such as the East African Community, customs unions such as the Economic Community of West African States, or free trade areas with a very limited number of exclusions such as the Southern Africa Development Community. These regional economic communities can be effectively mobilized to the task of jointly and tangibly implementing and utilizing the African Continental Free Trade Area as the overarching regime for a common continental market.

The face of Agenda 2063 is the African Continental Free Trade Area, which is a modern and comprehensive free trade area, covering trade in goods and services, as well as investment, competition, intellectual property, women and youth in trade, as well as digital trade. In turn, this will translate into marked progress towards the Common African Market, with free movement of goods, services, people and labour, and capital, as well as the rights of establishment and residence. The African Continental Free Trade Area is therefore a must-win and should be a people's movement to achieve holistic sustainable development.

Objectives and Tasks

Through a network of policy advisors at the level of the regional economic communities and State Parties, as far as mobilized resources will permit, the network of Regional and National AfCFTA Advisors can make the African Continental Free Trade Area a reality in an inclusive manner that has facilitative interventions for MSMEs and vulnerable groups, to ensure that no one and no country or region is left behind. The main objective of establishing the network would be to promote access to the African Continental Free Trade Area across Africa, especially at the grassroots level, by all relevant stakeholders and actors.

It is therefore expected that the network would:

- a. Enable the Secretariat of the African Continental Free Trade Area to have an efficacious presence across Africa, so that the Secretariat can better perform its functions as the technical arm

of the organization and in order to place it at the service of the people of Africa;

- b. Present and showcase the African Continental Free Trade Area as inclusive, transformational, functional, digital, rules-based, innovation and learning based, and globally networked;
- c. Promote awareness, ownership and utilization of the African Continental Free Trade Area by State Parties, RECs, private sector and civil society organizations, and by knowledge generation and management and capacity-building institutions, and of course economic operators including the logistics industry;
- d. In this regard, create and maintain partnerships, relating also to funding, equipment, advocacy and awareness creation, continuous capacity-building and knowledge products as well as peace and security; and
- e. Promote friendly relations on the part of actors in Africa and beyond towards the African Continental Free Trade Area characterized by support, goodwill and affection.

There is strength in partnerships. They turn disparate operators into family and, with common purpose, pool and deploy resources to achieve higher impacts. They bring niche and unique perspectives and contributions to the common effort. They are sources of good practices, benchmarking and continuous learning. Partnerships would therefore be considered and activated with the following entities (among others):

- a. Government and private sector regulatory agencies, trade and investment support institutions, authorities dealing with behind-border issues, and other competent or designated authorities;
- b. Bureaux, Secretariats and Commissions, and organs and institutions of African regional economic communities and their peer organizations around the world;
- c. Development organizations, particularly the country and regional offices of the Africa Export-Import Bank, African Development Bank, Africa Centres for Disease Control and Prevention, African Union Development Agency/NEPAD, the World Bank and development finance institutions including regional, continental and national development banks;

- d. Technical organizations including the United Nations Economic Commission for Africa and the United Nations Conference on Trade and Development, the Africa Regional Standards Organization, and networks and communities of practice in relevant areas;
- e. Private sector organizations and coalitions, particularly the AfroChampions, the African Business Council, the Pan African Chambers of Commerce and Industry, the East African Chamber of Commerce Industry and Agriculture, the Federation of West African Chambers of Commerce and Industry, the Great Lakes Region Private Sector Forum, the national chambers of commerce and other trade and investment support institutions, and those business councils established by RECs;
- f. Academic and technical institutions, opinion leaders and think tanks, and other knowledge generation and management institutions; and
- g. Curriculum and pedagogy reform departments, institutions and agencies to foster entrepreneurial education and training, and enhance leadership and entrepreneurship training.

Resource Mobilization

Resources to be mobilized by Secretariats for regional economic integration programmes will mainly be understood to be financial and human resources – funds and personnel (Chun and Evans 2013). However, technical partnerships for knowledge generation and management, such as those with the UN Economic Commission for Africa and the Trade Policy Centre for Africa, or the Africa Economic Research Consortium, will also be important (Neef 1997, de Castell 1990). Time is also a resource, in terms of scheduling of activities and change management theory. Without setting targets and timelines, and allocating time to doing given prioritized activities, not much will be achieved (Kumar and Aithal 2019). Public relations and good standing are also resources, intangible but decisive, and to be carefully mobilized (Berger 2016). Thus, there will be financial, technical, time and socio-political resources.

The Foundation – Sound Internal Systems and Ownership

The AfCFTA and REC's Secretariats should continuously strengthen their internal management and financial/accounting systems, for better confidence, for better value for money, and for better integrity as an inherent value. There is almost nothing that so destroys an organization as audit queries, which undermine its standing in the eyes of its stakeholders, both in the public and private sectors and around the world. An organization with weak systems may not garner adequate resources in the first place.

Financial autonomy is a pre-requisite for political and diplomatic agency, as envisaged in the Vision of Africa set out in Agenda 2063, if Secretariats are to be fit-for-purpose and effectively support the structural transformation of the continent (Kagame 2017). The vision of an integrated, peaceful, prosperous and internationally efficacious Africa can only come to be if underpinned by strong African institutions such as the Secretariats, with financial autonomy that enables and drives a focus on pertinent and self-determined priorities.

The old adage, that he who pays the piper calls the tune, in use at least since the 17th century, rings ever true, as the basic reason for dependence (or conversely, for financial autonomy). Power politics in a charged geopolitical environment is a reality never to be overlooked, for the original lust to control others - especially weak and poor countries - remains the human folly defining global reality (Machiavelli 2011; first published in 1532). Without putting too fine a point on it, help from without will ever fall short of the critical amounts required for impactful transformation, by design or sheer parsimony, or self-interest in international relations.

Financial autonomy is also a matter of African dignity, honour and ownership of its priorities (Brown 2020, Bayefsky 2013).

Resource Mobilization in African Regional Economic Integration

According to constitutive instruments and internal systems of regional integration bodies on the continent, there are broadly, budgetary and extra-budgetary resources, or resources contributed by Member States according to existing formulas and resources contributed by development partners or

donors. Invariably, partners or donors fund the overwhelming bulk of the overall budgets, anything from 60 to over 90 percent; a level of donor-dependence that has been widely considered unsustainable, leading to the impetus to strengthen the African Union through reforms, including financial reforms. The Kagame Report marked a turning point, when the proposals for restructuring the Commission and funding the Union were adopted, including the African Union Levy of 0.2 percent on customs duties paid on imports from outside the continent (Kagame 2017).

Responses by African Regional Bodies

The imperative of funding regional bodies, for them to survive at all, has elicited various approaches around the continent.

Practically all the regional integration bodies have responded, in practice (notwithstanding words to the contrary), by ever increasing their donor-dependence, and donors have gone along. This state of affairs is due to both circumstances and pragmatic reasons; notwithstanding the rhetoric, huge financial gaps stubbornly exist and have to be filled for the organizations to survive. Thus, the EAC, COMESA, SADC and indeed the African Union have mobilized huge amounts of funds from development partners for regional economic integration programmes, especially from the European Union. A positive emerging trend is that African financial institutions are increasingly coming on board, especially the African Development Bank, the Africa Export-Import Bank and the Trade and Development Bank, demonstrating African ownership.

Notably though - and what should be considered a much better approach - CEMAC, ECOWAS and UEMOA established levies which have served them well over the years, funding over 60 percent of their budgets for regional integration. This good practice on the continent has only timidly been replicated at the African Union level, but not in other regional economic communities. It can be hoped that the AU levy will be effectively operationalized to serve the continent well, just as the ECOWAS and CEMAC levies have done.

Establishment of Secretariat-Driven Resource Generating Institutions, Programmes, Documents

COMESA has famously established institutions that have turned out to be quite successful, growing into continental institutions – a process we call continentalization, providing the lesson that the AfCFTA and REC Secretariats could consider similarly in establishing such institutions that would provide programme resources.

Examples include the Trade and Development Bank, the Africa Trade Insurance Agency, and the Africa Leather and Leather Products Institute. Other institutions have also been financially successful, and can provide good practices for continental replication. The COMESA Competition Commission charges filing fees for approvals of mergers and acquisitions, which cumulatively amount to substantial figures, half of which are shared out among the Member States. The Commission has funded some COMESA integration programmes from its resources. The COMESA Federation of Women in Business has national chapters, which have developed some financing models that too are replicable. The Burundi chapter, for instance, has established a micro-finance institution.

Programmes such as the Yellow Card Scheme and the Regional Customs Transit Bond Guarantee Scheme have also generated significant amounts of resources; that is, regional third-party motor insurance, and regional bonds rather than national bonds for each country transited. Also, there is a small fee of up to USD\$1 levied at borders to support the Automated System for Customs Administration (ASYCUDA).

The lesson here is that the AfCFTA and RECs could devise modalities for small charges to be levied on some of their documentation and remitted to the Secretariats. This could cover not just some of the trade documents, but also institutions that will be established going forward, such as the Continental Competition Authority, Investment Authority, Intellectual Property Authority and Digital Authority. Establishment of such institutions should be done carefully in a manner that supports the financial autonomy of the AfCFTA and the RECs; for example, through golden shares and obligations to contribute funds from their incomes to the Secretariats towards supporting regional economic integration programmes.

Good Practices Provide Lessons

Good practices indicate certain financing models for regional economic integration bodies.

Community Levies

Community levies have successfully been used by CEMAC, ECOWAS, UEMOA and now the African Union as well as by the European Union. In the case of the African Union though, the AU levy is largely deployed towards the Peace Fund for Peace and Security, apparently ignoring the fact that the levies are trade taxes. It would only be fair that trade and investment programmes get their fair share as the goose that lays the golden egg. This would mean that a proportion of the AU levy, or the Peace Fund as it is called, be allocated to the AfCFTA Secretariat, commensurate with its wide scope of programmes and activities under the Agreement.

A Secretariat Capital Fund akin to a Sovereign Wealth Fund can Generate Interest to Fund Integration Programmes

The South Centre has used a capital fund as a source of great financial autonomy, funding its programmes from the interest generated. It can be added that such a capital fund could usefully be invested in low risk and secure facilities such as Government Bonds and short-term treasury bills, avoiding speculative ventures that could wipe it out in a flash. Such a fund could be established on the basis of a one-off contribution from stakeholders and partners of goodwill on the continent and around the world, to raise a set target of critical funds to support the operations of the AfCFTA. This initiative should never mean that other on-going sources of revenue should be shut down or considered to be in conflict.

This Fund should be complemented by a thorough programme for mainstreaming regional economic integration into government interventions and public policy, with the practical implication that programmes should normally be cross-border in nature, tap into economies of scale provided by the continent (or at least RECs), and pool the expertise and other resources of participating countries. The actors will be the usual stakeholders – government, private sector, civil society, academia, public relations and media.

This would mean, for instance, the functioning of the continental and regional markets, industrialization and regional value chains, surface and air transport, energy, information and communication technologies should be continental programmes, jointly implemented by governments in an inclusive manner and utilized by economic operators.

This will require an appropriate continental and regional mind-set. There will therefore be a need for an urgent complementary programme for executive courses for all these stakeholders, to assist in embedding a regional and development perspective in the design, implementation, utilization, monitoring and corrections of all key programmes and projects on the continent.

Special Purpose Vehicles can Ring-fence Some Critical Funds

Special Purpose Vehicles (SPVs) can be established to professionalize the mobilization, disbursement and governance of funds, and to ring-fence them from certain vagaries endemic to Secretariats. TradeMark East Africa (now TradeMark Africa), is a successful example of such approaches. It must be pointed out, though, that good governance of such SPVs is still critical, as excesses are possible as was the case with TradeMark Southern Africa, a £100 million facility that was dramatically shut down following a forensic audit, adversely affecting the integration programmes being funded by it (ICAI 2013).

Diplomatic Agency for Resource Mobilization and Africa+1

Old and new powers are avidly courting Africa, because Africa is a growth pole of the global economy, with its vast resources for the fourth industrial revolution, decisive numbers in international organizations (particularly the United Nations), large and young population, strategic sea routes, and its emergence as a global player that speaks from common positions. Africa is also the centre of development efforts, as one of the last bastions of financial poverty in the world.

Thus China, Europe, Japan, Turkey, UK, US and others have summits with Africa as centrepieces of their foreign policies. It turns out to be quite prestigious to host anywhere up to 40 heads of state in one place at one time; something only Africa can offer.

The recent Memorandum of Understanding signed by HE the AfCFTA Secretary General and the United States Trade Representative on 14 December 2022 in the margins of the US-Africa Summit (USTR 2022) show the vast possibilities for carving out a niche for the AfCFTA at these Africa+1 events with old and new powers.

In addition, major events on the continent in our times will not be worth their salt if they didn't touch on the AfCFTA or indeed if the AfCFTA were not their gist. At these events also, the AfCFTA Secretariat could seek to have a prominent presence, to showcase its priorities and strike up partnerships.

This would require a systematic way of knowing about events scheduled over the next year or two years, and being part of their design and planning. Secretariat staff could then moderate sessions and make presentations at such events, and the Secretariat could organize dedicated side-events in the margins. Such planning could be given adequate attention at the Secretariats.

Activism for Resource Mobilization

A resource mobilization mind-set, or dedicated resource mobilization officers, will live a professional lifestyle of resource mobilization, both in and outside office in their extra-curricular interactions. It has been famously said that social capital and other high-value networks are valuable assets for organizations. The implication is that resource mobilization should not be considered to be a one-off or occasional event, but rather a systemic part of the culture, structure, outreach and diplomacy of the Secretariats as institutions, and of the staff in what they do in and outside the office.

In their book appropriately titled 'Abundance – The Future is Better than you Think', Peter Diamandis and Steve Kotler (2012) set out three forces that are transforming the world as we know it, namely, large markets through globalization and economic integration, do-it-yourself technology, and non-governmental financing especially by philanthropists (Nsehe 2019). The point

is that, apart from governmental funds and official development assistance, there are vast resources available in the private and civil society sector that could be mobilized.

Crowd funding has noticeably contributed to seismic changes around the world, from funding political campaigns, supporting social development programmes, to tackling epidemics, pandemics and disasters (Tadamon 2022). For example, during the first Ebola outbreak in 2014, the African private sector raised \$39 million through crowd funding, which was deployed to alleviate the epidemic. Engagement with philanthropists, the private sector, crowd funding outfits, celebrities and personalities including presidents, who would fund regional economic integration programmes should be a key strand of resource mobilization.

Resource Mobilization and Coordination Conferences

An upshot of all this and an institutional framework would be Resource Mobilization and Coordination Conferences, which could be held biannually. They would be occasions for the Secretariat to undertake outreach to relevant key stakeholders, provide progress and status reports, receive inputs, receive offers of support, and conclude joint work programmes and partnerships. Partners would also be in a position to see what others are supporting, and in this manner work towards coordination and avoidance of duplication and waste. The conferences would also be a basis for setting up baskets or pots of joint funds overseen by the Secretariat in support of regional economic integration.

What to Do – Structural Matters

High-level policy decisions can be considered by senior management, in a consultative manner if possible, as financing models for the organization. For example, for the purposes of the AfCFTA Secretariat:

- a. Shouldn't the AU Levy have a budget line for the AfCFTA just like the Peace Fund does? And if so, the matter can be raised through the decision-making processes;
- b. Should a Capital Fund be established? If so, partners can be rigorously sounded out on the matter, and the Fund operationalized;
- c. Should SPVs be considered if some stakeholders would be more comfortable with this approach? If so, the stakeholders can be engaged via operationalizing the SPVs .

What to Do – Dynamic Mapping of Partners

A good practice is to maintain a template, in the form of a spreadsheet for instance, that shows at a glance the priority or focus areas of the organization in one column, and the promising stakeholders and partners in an adjacent column. A third column can be for status. Such a simple spreadsheet can provide important strategic information. The spreadsheet should be dynamic in terms of being updated from time to time.

What to Do – Area- and Issue-specific Mapping of Partners

Scorecards are helpful management tools. An annual score card indicates at the beginning of the year the focus areas and the targets to be achieved, such as stakeholder engagement, programme implementation, innovation and training, resource mobilization and absorption.

Under such an approach, it can be incumbent upon directors and heads of units, and staff as appropriate, to continuously operate in a resource mobilization mode when engaging stakeholders and appropriate partners. The scorecard provides a good basis for performance assessment, but it also guides officials and staff in their day-to-day activities, focusing them on priorities within the context of medium- to long-term strategies and goals.

Mapping of stakeholders and partners can usefully be undertaken at the area- or issue-level. This level of specificity provides a good working intimacy on the ground, beyond generalities. For example, there can be specific and precise mapping of stakeholders and partners in specialized areas such as customs,

services, access to medicine, traditional knowledge, competition policy, investment facilitation, gender and youth, and dispute settlement. Such mapping assists the concerned official or staff in their daily engagements.

What to Do – Proposal-Writing

It is important to be ready for the moment. A suite of proposals, based on the strategic priorities of the Secretariat, could be prepared.

While different partners will have different requirements, and indeed specify the information they require in proposals seeking funding, there are core elements that will have to appear and that could be prepared in advance. In particular, the justification, the objectives and planned activities, amounts, governance, and regular reporting – elements usually found in logical frameworks.

Furthermore, having mapped out potential partners, the Secretariat could additionally prepare targeted proposals for engaging given partners, taking their requirements and specifications into account; such information would be on their websites or could be provided by their relevant liaison officers.

What to Do – Engagement

Once everything is in place, it is time for engagement. Engagement is not passive. It is very proactive, persistent, adaptive, and above all, persuasive. Graham Greene's books on the Art of Seduction and the Laws of Power can come in handy, or even Dale Carnegie's old classic How to Win Friends. The finesse and diplomacy of 'getting to yes' is equally required in resource mobilization. Hospitality, generosity, courtesy and good manners, clear facts and figures, even charm, but always being pre-eminently pan-Africanist, should all form part of the arsenal for resource mobilization techniques.

Private Sector and Civil Society

There are three main categories of stakeholders, according to Prof Henry Etzkowitz (Iyer 2016), namely, the public sector, industry (or the private sector), and academia. These should always work together, in dynamic partnerships, as a pre-condition for optimal results and impact.

The private sector as an entity and concept is fairly well known and defined. It is made up of economic operators across all sectors of the economy. It tends to be well organized and represented by umbrella continental, regional and national level associations and chambers of commerce. These include AfroChampions, the Pan-Africa Chambers of Commerce and Industry (PACCI), and the African Business Council (AfBC), as well as REC Business Councils. The private sector, which includes big companies and SMEs, is considered the engine of economic development. It provides much-needed investment, jobs and incomes, goods services and assets, and transformational technologies and innovation (ECA 20120).

Civil Society is quite diverse and may not have umbrella continental and regional associations. It encompasses non-state actors doing charity and development work in the political, economic and social spheres. Typical areas for civil society work include trade negotiations and agreements, large corporations and SMEs, human rights, governance, justice, taxation, environmental protection, poverty eradication, gender empowerment, education, health, indigenous and local communities, and human welfare with respect to specific localities and specific emerging issues. Notable examples of civil society include Oxfam, ActionAid and Amnesty International. They include also academic institutions and professional associations, such as the AfCFTA Trade and Industrial Development Advisory Council, the African Union Economic and Social Council (ECOSOC), the Trade Policy Centre in Africa (TRAPCA), and the Africa Economic Research Council (AERC). But that's not all. They may come out in thousands at public demonstrations.

Private Sector and Civil Society are considered critically important in promoting inclusiveness in processes and outcomes, and raising pertinent issues for attention through policy reforms and immediate interventions. Their reach is extensive, working at the grass-roots level across Africa and the world at large, and therefore they supplement the public sector. They are sources of

vital data, which can assist policy formulation, as well as assessment of implementation and compliance, including positive impacts and adverse consequences. They also support the building of capabilities. It has therefore been prudent to embrace both the private sector and civil society as partners and critical actors in socio-economic transformation (Open Society Foundations 2016).

Good Practice

Good practice, that the Secretariats of the AfCFTA and RECs can take into account, has included, to:

- involve them in national consultations;
- include their representatives in national delegations to meetings and other events;
- grant them observer status on the basis of well-defined and agreed criteria;
- include them in stakeholder engagement and outreach as co-organizers or participants
- mention them and provide a role for them in legal and policy instruments, in both programming of activities and resources, and in monitoring and evaluation mechanisms
- include them in press and media briefings and outreach, include them in training and other capacity-building events, add them to mailing lists, and provide them non-confidential information;
- have a Public Relations Office, Communications Office, Research Department, and Private Sector and Civil Society Departments in the Secretariat structures;
- hold regular public forums that they co-organize, participate in and lead on various sessions; and
- provide for their funding in resources from partners and in the Secretariat budget lines, for building of their capabilities

Overarching Frameworks

Overarching frameworks governing the participation of the private sector and civil society include:

- constitutive instruments of the organization, such as the AfCFTA Agreement and the REC Treaties;
- Private Sector Strategies;
- Medium Term Strategic Plans; and
- Collaboration meetings such as the AfCFTA and RECs Coordination Meetings

The AfCFTA Secretariat has already put in place arrangements for engaging and collaborating with the private sector. These include:

- the Private Sector Strategy
- the Private Sector Senior Advisor, and
- the Industrialization and Regional Value Chains Senior Advisors

Recommendations

The following proposals are made:

- the AfCFTA Secretariat could recruit dedicated civil society Senior Advisors to work alongside the existing Senior Advisors on Private Sector, Industrialization, and Regional Value Chains;
- prepare and use data bases and mailing lists of chambers of commerce, other private sector institutions, and civil society organizations for outreach and mobilization – the AfCFTA Secretariat already has a comprehensive mailing list for chambers of commerce and partners, on which to build;
- AfCFTA-Civil Society Forums be established akin to the AfDB civil society forum⁶¹ and WTO Public Forum, or better still, they could be structured along the winter and summer Davos formats - these would supplement the current Business Forums and Intra-Africa Trade Fairs;
- knowledge products can be routinely shared with civil society and the private sector as channels of engagement;

⁶¹ <https://www.afdb.org/en/topics-and-sectors/topics/civil-society/civil-society-forum>

- hold Hearings akin to US Congressional Hearings to elicit inputs from civil society and the private sector
- establish a blog for bloggers, a Newsletter, a Journal, Annual Report, social media interactive engagement - to gather evidence for policy and feedback on Implementation and compliance
- hold Annual Research Forums along the triple Helix format, which will promote ever better evidence-based policy and assessment of impact;
- make provision for the private sector and civil society in MoUs, resource envelops and budgets;
- make provision for the private sector and civil society in programming of resources and activities and in monitoring and evaluation mechanisms;
- grant selected private sector associations and civil society operators Observer Status in accordance with clear Guidelines, which should be developed;
- Continue organizing intra-Africa trade exhibitions to expose Africans to trade and investment opportunities across the continent, and where possible hold them more regularly and on a larger scale;
- Introduce inter-universities exchange programmes for students and faculty to promote intertextual appreciation; and
- Curriculum and pedagogical reforms should introduce universal values that unite Africans, including the teaching of prominent African languages in institutions across the continent

Furthermore, the following framework can be considered for immediate operationalization

- give accreditation for permanent observer status to relevant UN Agencies, for example, WCO, WFP, UNDP, FAO, UNESCO;
- give accreditation also to the Pan Africa Chamber of Commerce and Industry (PACCI), Afrochampions, REC Business Councils, and the Africa Business Council (AfBC);
- give accreditation also to prominent civil society institutions such as the AfCFTA Trade and Industrial Development Advisory Council, African Economic Research Council, Trade Policy Centre in Africa (TRAPCA); Tony Elumelo Foundation, Mo Ibrahim Foundation, Oxfam, and ActionAid;

- give Committee level accreditation for selected professional and sector associations for the AfCFTA Committee on Trade in Services and Committee on Trade in Goods; and
- allow issue-specific or meeting accreditation according to agenda items and appropriate requests

State Parties are encouraged to include private sector and civil society representatives on their delegations to AfCFTA meetings and events. Furthermore, private sector and civil society institutions seeking accreditation to the AfCFTA in their own right, can be required to apply to the Government of a State Party, who may then recommend them for accreditation after undertaking due diligence to protect the public and integrity of the AfCFTA. Such requests can be considered by the Committee of Senior Trade Officials. The following criteria can be considered for accreditation of private sector and civil society institutions to the AfCFTA

- a motivated application by the private sector or civil society institution indicating reasons for seeking observer status, how such observer status benefits the AfCFTA State Parties and the Secretariat, and a work programme for collaboration with the AfCFTA State Parties, the AfCFTA Secretariat and relevant RECs;
- full consistency with and demonstrable support for the AfCFTA objectives in the objectives of the private sector and civil society institution;
- transparency and full disclosure of funding, operations and partnerships of the institution;
- absence of anti-African activities, racism, terrorism, discrimination, corruption, criminal conduct, bankruptcy, or violent behaviour nor association with violent institutions

In considering applications and partnerships, provision can be made for State Parties and the Secretariat to take into account the following factors relating to acceleration of socio-economic development and structural transformation:

- industrialization is a key priority, and in this regard the promotion of regional value chains, value-addition and diversification, and introduction of new products and industries into the economies; establishment of community incubation centres, entrepreneurial education, and partnerships with local government and municipal

councils to harness the potential at the grass-roots level in local communities, among youth and students, and in rural and urban areas;

- ensuring inclusiveness in process, outcomes and impact, including through support programmes for SMEs, youth, women, people with disabilities, rural areas, and marginalized communities; and
- building a sound technological base and innovation eco-system that is networked across the continent.

Involvement of Local Governments in the African Continental Free Trade Area

Local governments and municipalities, or sub-sovereigns as known in the lexicon of the Africa Export-Import Bank which has committed \$250 million as seed capital for this initiative (Afreximbank 2021), should be actively involved in the African Continental Free Trade Area, as key stakeholders and partners, through the Coordinating Ministries.

Inclusiveness is a key priority of the African Continental Free Trade Area. It means no country, no region and no one should be left behind. Across the world, disaffection originating from neglected areas, combined with odious levels of income inequality in society, has been a breeding ground for right-wing movements, especially in rural belts (Mamonova and Fraquesa 2020, Stiglitz 2012). This is why the AfCFTA is structured as a development tool for promoting structural transformation across the continent, and goes further to have a Protocol on Women and Youth, which seeks to ensure that they fully benefit from the AfCFTA. Also, the AfCFTA Secretary General has been tireless in calling for programmes that benefit the youth, women, small to medium enterprises, and small-scale cross border traders (AU/AfCFTA 2023).

It's well to remember these famous numbers:

- that according to the Food and Agriculture Organization (2020) Africa has 60 percent of the world's unused arable land, or 65 percent according to the African Development Bank (2019), but this is largely in the rural areas, and Africa's strength derives significantly

from rural areas, for food and nutrition and public health security, as well as political stability;

- that 70 percent of Africa's population lives in rural areas and derive their livelihood from agriculture, and therefore rural-based interventions will have significant welfare impacts across the continent (Juma 2015); and
- that the market of 1.4 billion Africans - often cited as a strength and attraction of the AfCFTA - is largely made up of people living in rural areas, and therefore improving their livelihoods and skills creates the required effective demand

In this regard, local governments and municipalities become key players, because

- they constitute an institutional infrastructure that spans across the whole continent, and effectively operates at community and grassroots levels in the rural areas and townships;
- local governments and municipalities across Africa are already organized into active associations that meet regularly and have ongoing activities for addressing development challenges; and
- the continental Association of Local Governments has shown interest in the AfCFTA, by inviting the Secretariat to its meetings⁶²

To this end, the following interventions can be considered

- inclusion of local and municipal governments in the Secretariat's outreach, awareness creation and capacity-building programmes;
- extension of the AfCFTA digital tools to Local and Municipal Governments, to facilitate access to and use of market information, addressing non-tariff barriers, making and receiving payments (pan-African payment and settlement system),
- conclusion of MoUs and work programmes for partnerships with regional, continental and global Associations of Local Governments and Municipalities

The following additional interventions are also proposed, to be undertaken with relevant partners through Coordinating Ministries:

⁶² See, for instance <https://www.uclg.org/en/organisation/about> and <https://www.uclga.org/>

- creation, ownership and management of cooperative societies or similar arrangements by local communities;
- establishment of warehousing and cold storage at the community level;
- establishment of collection centres at the community level;
- provision of rural transportation facilities including feeder roads, and trucks; as well as banking, insurance, communication, distribution and professional services;
- provision of damming, irrigation, fertilizers, tractors and extension services;
- establishment of community innovation and incubation centres;
- training in entrepreneurship and business management skills; and
- establishment of facilities for community welfare and resilience such as education and health facilities, housing, zoning and other planning programmes

It's expected that these interventions would:

- create employment opportunities;
- contribute to poverty eradication
- improve food and nutrition security;
- promote diversification and resilience;
- assist towards women empowerment and gender equality; and
- help to protect the environment

Conclusion – the Sublimity Tests

There are tests that can be applied to assess the sublimity, and viability, of an economic integration agreement or organization. The AfCFTA passes these tests.

Inclusivity and Stakeholder test – the Agreement is bottom-up in its operations; it establishes mechanisms for wide participation by stakeholders, for instance through public-private-academic partnerships. It prioritizes youth, women and MSMEs and other marginalized groups, and seeks to achieve public policy objectives of poverty eradication and structural transformation, that is, it is relevant and will it be owned;

Adaptive or Learning Test – the AfCFTA is positioned as a learning institution – ever improving on the basis of lessons learned. There are provisions for periodic reviews, that is, it can rise above its mistakes;

Autopoiesis test – the Agreement is a living instrument and a complex adaptive system, positioned to manage a dynamic future, to cope with challenges, that is, it will survive;

Convoy test – the Agreement provides for variable geometry and voting as pathways forward in difficult situations, that is, will it not be held back by entities that for the time being are not ready to make progress;

Bicycle test – the Agreement provides for continuous progress through a standing forum for implementation, negotiations, and resolution of issues, namely it has an active Council of Ministers and Committees, that is, will it not fall down or just fizzle out;

Smart test – it is modern in terms of technology and digitalization, and does it harness the best knowledge through partnerships with knowledge generation and management institutions, that is, will it cope in the fourth industrial revolution;

Secretariat test – it has a secretariat that is fit-for-purpose, which enables it to have robust analytical working documents for evidence-based policy, to make facilitative logistical arrangements, to support enforcement and advocacy, to be a knowledge and information hub, a go-to place for problem solving; meaning, the AfCFTA is credible, visible, evidence-based and will it make progress;

Existential test – through its provisions and programmes, the Agreement is relevant to tackling existential threats and priorities of the time, namely, climate change, artificial intelligence, public health, food and energy security, and geopolitical crises;

Emergent properties test – overall, in the principles, objectives, programmes and institutional arrangement, the Agreement and the organization harness the best from the constituent countries and project better emergent properties;

Architectural test – the Agreement covers the following areas: the problem to be addressed (preamble), vision (objectives and principles), institutions,

capabilities (resources, technical cooperation), policy space (development and welfare), dispute settlement, final provisions, testimonia, that is, the Agreement covers all the essential elements;

Efficacy test – the obligations are in implementable language, the dispute settlement system is robust, oversight institutions have been provided for and established, its administration is results-based, i.e. it is poised to function well; and

Developmental integration test – the AfCFTA is a tool for development and covers large markets, industrialization, infrastructure, macroeconomic stability, flexibility and policy space.

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