

## Will the RECs disappear once the AfCFTA is up and running?

There is a view that the Regional Economic Communities (RECs) will disappear or become redundant once the African Continental Free Trade Area (AfCFTA) is operational. In this Background Note we want to contribute to the discussion about the future of the REC Free Trade Areas (FTAs) under the AfCFTA design. Questions about their place in the scheme of things established by the AfCFTA are legitimate and need to be answered. This will help to clarify the optimal choices for boosting intra-African trade and integration. As is the case with other intra-African integration arrangements, the RECs are not an end in themselves. They are a means towards an end. The same applies to the AfCFTA. If there are better devices for promoting economic integration and trade facilitation on the continent, they should be discussed and explained.

The role of the RECs in African economic integration is a well-established and historically legitimate one, albeit not always clearly articulated.<sup>1</sup> Since they have been around for decades, the reasons why they should cease to exist should be clarified. The same applies to the consequences of their disappearance. The REC FTAs of SADC, COMESA, the EAC and ECOWAS are regional integration agents in their own right and conduits for commerce across African borders. (More than half of all-intra African trade in goods takes place in SADC alone. The AfCFTA Agreement says they must continue.<sup>2</sup>)

There will be serious governance lacunae if the RECs suddenly disappear. It should be made clear what will replace them. They are well-established, function in terms of international agreements negotiated, adopted, and ratified by sovereign states, and have their own institutions and secretariats. Their legal instruments contain provisions on amendment, re-

<sup>1</sup> The African Economic Community (AEC) foreseen under the Abuja Treaty also employs the RECs as building blocks, albeit in terms of a different formula.

<sup>2</sup> See Art 19(2) AfCFTA Agreement and art 8(2) AfCFTA Protocol on Trade in Goods.

view, and the withdrawal of members. If the RECs have to disappear, it will have to be in accordance with their own legal procedures. The AfCFTA does not have jurisdiction over the REC FTAs.

The RECs pre-date the AfCFTA and have many unique functions, in addition to liberalizing trade in goods and services. To provide an example: the Southern African Development Community (SADC) counts about 30 Protocols. Some of them deal with very important regional matters such as the sharing of regional water courses and energy. These are vital issues and impact directly on trade and integration, industrialisation, and regional infrastructures. However, they do not fall under the areas covered by the AfCFTA Agreement.

If the AfCFTA is to replace the RECs, it would only make sense after the scope and powers of the AfCFTA have been expanded quite dramatically and successfully. Such a development should be based on compelling evidence. Decisions (taken on the basis of consensus) by the AfCFTA Council of Ministers as well as the Councils of the REC FTAs will be necessary.

Why would these States want to sacrifice well-established regional entities and secretariats that cater for specific regional needs and developments, and which are compatible with multilateral rules on regional trade arrangements? The RECs do provide important legal and procedural regimes for governmental and private sector involvement in economic integration in specific African regions. They have established their own *acquis*, which Article 5 of the AfCFTA Agreement says shall **be preserved**. The AfCFTA Agreement will have to be amended in order to get rid of the REC FTAs. The fate of the RECs is in the hands of their Member/Partner States, not of the institutions of the AfCFTA.

Under the AfCFTA Agreement the REC FTAs and the AfCFTA instruments co-exist. That is the formula which has been opted for. As is stated in Article 19(2) of the AfCFTA Agreement:

*State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.*

It seems as if there is a belief that the AfCFTA will take over the REC FTA functions in respect of liberalizing trade in goods and services on the African continent and doing **all the additional things** that the RECs provide for. This is not the case. To mention one example of different approaches to integration followed in the RECs and the AfCFTA: The AfCFTA dispute settlement system is based on the WTO model and only State Parties have standing to bring applications to settle disputes. The REC Courts in COMESA, the EAC and in ECOWAS can hear applications by private parties and can issue orders against the Member/Partner States.

It is too early to make bold predictions about the extent to which the AfCFTA will boost intra-African trade in goods and services and secure effective regimes for all the additional disciplines that will be associated with this process. Private sector commercial and investment decisions will determine the level of commerce in the different streams of preferential trade and governance. We do not yet know exactly how the AfCFTA Protocols on trade in goods and services will function because the negotiations are not yet concluded. We therefore do not, for example, know what goods will be excluded from liberalisation, as agreed in the negotiating modalities which specify that 3% of tariff lines that may be excluded from liberalisation. If sugar, textiles and automobiles are excluded by some State Parties, it will mean these important goods are not governed by their AfCFTA tariff schedules of commitments.

Only REC FTAs are building blocks of the AfCFTA.<sup>3</sup> They are part of the bigger scheme of things as contemplated by the AfCFTA Agreement, not an interim state of affairs. Their continued existence is part of the AfCFTA design for African integration: *“State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves.”*<sup>4</sup>

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<sup>3</sup> Art 5(b) AfCFTA Agreement refers to the RECs' Free Trade Areas (FTAs) as building blocs for the AfCFTA.

<sup>4</sup> Art 8(2) AfCFTA Protocol on Trade in Goods.