



The RECs as anchors of African integration: Why are there expectations that they should disappear?

Since the African Continental Free Trade Area (AfCFTA) has been launched and its Agreement entered into force on 30 May 2019, several commentators have argued that the Regional Economic Communities (RECs) must disappear or be dissolved into the AfCFTA regime. This position is held despite the fact that trade under AfCFTA rules has not yet started. (Rules of origin for some products, tariff schedules for specific countries, and services commitments are still to be finalised.) It means there is no trade data yet to measure the impact of the AfCFTA as a preferential trade regime and to compare AfCFTA and REC Free Trade Area (FTA) trade flows and practices.

Why then should the RECs disappear and what should replace them? There seems to be at least three reasons why some want them to disappear: (i) They will add to the complications of overlapping membership of African trade arrangements and will thus hamper the implementation of the AfCFTA. (ii) The RECs will become redundant and lose their value. (iii) Their continued existence undermines the pursuit of the goal to establish the African Economic Community (AEC).

Africa's economic integration strategy merits a well-prepared debate by all relevant stakeholders, including senior government officials. There have been previous grand integration schemes (e.g., the Abuja Treaty of 1991) and the reasons why they did not materialise, should also be analysed. This Note offers arguments why the REC FTAs do not face a threat of imminent demise. They have deliberately been made part of the AfCFTA design.

The first fact to be noted is that not all RECs are the same and that the REC FTAs are central to the design of the AfCFTA. There are eight RECs but only four (COMESA, EAC, ECOWAS and SADC) have attained the status of FTAs or deeper integration arrangements. Overlapping

membership patterns compensate for the dissimilar features of the RECs and practically all AU Member States belong to an FTA in the form of an FTA.

The REC FTAs are explicitly recognised as “building blocs for the AfCFTA”.¹ Another AfCFTA Principle, the “preservation of the *acquis*”² further signifies that:

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.³

The AfCFTA has made, on this score, an unambiguous choice; existing preferential trade regimes are valuable, will not be abolished, and should advance their own integration agendas. The AfCFTA regime has additional roles carved out for the RECs regarding the implementation of the AfCFTA legal instruments, in terms of border management, liberalising trade in services and the removal of Non-Tariff Barriers.⁴

Since the REC FTAs are part of the AfCFTA design, it is difficult to understand why the AfCFTA Council of Ministers, or the Assembly of the AU will now dissolve them. As a matter of fact, they are international organisations in their own right and exist under separate legal instruments. Their own Member/Partner States will decide their fate. Debates about their future will also consider that they are more than trade arrangements in the traditional sense of the word. They have Protocols on matters such as energy, sharing of water resources, environmental protection, law enforcement, peace and security, etc. SADC has about 30 different Protocols.

This does not mean that these RECs are all well-functioning and rules-based arrangements. They can certainly be improved. However, the AfCFTA is very much of the same design; a member-driven arrangement with no supra-national institutions. In some respects, the RECs have institutions of a more accommodating nature. The Regional Courts of Justice may, for example, hear complaints by private entities (which is not possible under the AfCFTA dispute settlement mechanism) and are deciding disputes on trade issues such as tariffs and levies brought by private parties. In the AfCFTA disputes can only be filed by the State Parties. And the record shows that they never do so.

¹ Art 5(b) AfCFTA Agreement.

² Art 5(f) AfCFTA Agreement.

³ Art 8(2) AfCFTA Protocol on Trade in Goods.

⁴ The AfCFTA NTB monitoring mechanism provides for the referral of NTB complaints to REC structures when REC jurisdiction applies.

The choices of the private sector when both the AfCFTA and the REC FTAs are operational will be important evidence regarding the actual implementation of Africa’s trade arrangements. Private firms have been trading under overlapping membership arrangements for decades. They will obviously opt for the most beneficial and practical preferential dispensations and for rules-based regimes where legal certainty and effective remedies are available. Much more needs to be known before the specific needs of importers/exporters and investors can be determined and specific answers be worked out in order to promote trade facilitation and regulatory harmonisation in particular. This is what private sector stakeholders want, not promises about deeper integration schemes. They want the existing ones to function more transparently and more efficiently. The AfCFTA’s main challenge is to secure effective trade governance and rules-based trade among all the State Parties.

Do the RECs prevent the establishment of an African Customs Union (CU), as some seem to suggest? It is difficult to understand why this would be the case. Any form of deeper continental integration beyond the AfCFTA will require member-driven consensus. An African CU will have to be based on a new agreement adopted in very much the same manner as the AfCFTA Agreement, but with much more serious matters (e.g. how to manage a Common External Tariff for 55 sovereign states) on the agenda. One of the general (long-term) objectives in Article 3 of the AfCFTA Agreement is “to lay the foundation of a continental Customs Union at a later stage”. How and when that moment arrives the Governments of the State Parties will decide. There are no indications yet of any serious desire to sacrifice national policy space over trade issues as required by the logic and legal requirements of a WTO compatible CU for Africa.

tralac gratefully acknowledges the support of its Development Partners

