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# **BUILDING THE AFRICAN CONTINENTAL FREE TRADE AREA: SOME SUGGESTIONS ON THE WAY FORWARD**





# **BUILDING THE AFRICAN CONTINENTAL FREE TRADE AREA: SOME SUGGESTIONS ON THE WAY FORWARD**

A policy paper by UNCTAD



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### Executive summary

African Union trade ministers will soon be confronted with a number of decisions regarding the formation of the African Continental Free Trade Area (CFTA), and make the appropriate recommendations in this regard to the African Heads of State and Government at their summit meeting in June 2015. This paper refers first to the challenges and opportunities of the CFTA; it then addresses issues such as the pacing of the various trade initiatives, in particular the strategic relationship between the Tripartite Free Trade Agreement (TFTA) and the CFTA; the specific content of the proposed CFTA; and the need for an effective and efficient mechanism to support the negotiating process and the implementation of the agreement once it enters into force. The paper concludes with some policy recommendations on these issues with the underlying premise that to multiply the benefits of the CFTA in the form of expanded markets for African goods and services, unobstructed factor movement, new investment opportunities and industrialization, and an ample vision of trade, investment, finance and business facilitation needs to prevail.

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This publication has not been formally edited.

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## 1. INTRODUCTION

African Union (AU) trade ministers will soon be confronted with a number of decisions regarding the formation of the African Continental Free Trade Area (CFTA). They have to address, among others, the modalities of the negotiations, including their content and pacing, the trade and trade-related issues to be included in the future CFTA agreement, the harmonization and coordination of the various trade agreements and negotiations to which African countries are parties, and the technical and financial support needed to move the CFTA forward.

In line with the 2012 African Union Summit Declaration on Boosting Intra-African Trade and the Establishment of a Continental Free Trade Area (see box 1), UNCTAD, UNECA and the AU Commission (AUC) have undertaken a series of studies to analyze the various aspects of the CFTA negotiations. The main purpose of these studies is to provide African trade ministers, the High-Level African Trade Committee charged with CFTA issues and trade negotiators with key insights and analyses on some of the most critical CFTA-related issues, thus assisting them in moving the CFTA negotiations forward in a meaningful manner.

Based on these studies<sup>1</sup>, as well as discussions among a group of experts (UNCTAD, UNECA, AUC and consultants) on 2 April 2015 (Geneva),

and other available analyses, this policy paper – with suggestions on the way forward in building the CFTA – was prepared with the aim of submitting it for the consideration of the AU trade ministers at their meetings on the CFTA, including the meeting scheduled to take place in Addis Ababa (Ethiopia) from 8 to 15 May 2015. It would also feed into the subsequent policy process at the highest level, namely the AU Summit of Heads of State and Government in June 2015, where a decision on the way forward in the CFTA process is expected to be made.

## 2. CHALLENGES AND OPPORTUNITIES OF THE CONTINENTAL FREE TRADE AREA

### a) The vision

Continental integration has figured high on the African agenda ever since African countries gained political independence and started deliberations on a united Africa in all spheres of society. In fact, the dream of pan-African integration predates the creation of nation States on the continent; it even predates the independence movements that galvanized these States. Trade had been the motor of economic, social and political integration for many centuries prior to the establishment of Africa's first

#### Box 1. Excerpts from the African Union Summit Declaration on Boosting Intra-African Trade and the Establishment of a Continental Free Trade Area

6. *Decide* that the CFTA should be operationalized by the indicative date of 2017, based on the framework, road map and architecture, with the following appropriate milestones:

- Finalization of the East African Community (EAC)–Common Market for Eastern and Southern Africa (COMESA)–Southern African Development Community (SADC) TFTA initiative by 2014;
- Completion of FTA(s) by non-tripartite regional economic communities (RECs), through parallel arrangement(s) similar to the EAC–COMESA–SADC tripartite initiative or reflecting the preferences of their member States, between 2012 and 2014;
- Consolidation of the tripartite and other regional FTAs into a Continental Free Trade Area initiative between 2015 and 2016;
- Establishment of the Continental Free Trade Area by 2017 with the option to review the target date according to progress made.

7. *Request* the Commission, in collaboration with the African Development Bank (AfDB), UNECA and other relevant agencies, to take appropriate measures, including studies, technical support to RECs and sensitization of member States and partners, for the effective implementation of the CFTA road map;



regional body – the OAU – in 1963.

After much effort, an important step forward on the economic unity of Africa was taken when the trade ministers agreed in a meeting in Kigali, (Rwanda) in December 2010 to move towards an Africa-wide free trade agreement by eliminating tariffs and quotas on goods and services traded among them. The eighteenth African Union Summit of Heads of State and Government (January 2012) endorsed this objective and set some key agreed guidelines to enhance greater regional cooperation, trade and stability in Africa. The formulation of the AU Vision 2063 places African integration, including the formation of the African Economic Community as foreseen in the Abuja Treaty that was signed in 1991 and entered into force in 1994, as a key pillar of a vibrant and prosperous continent.

The formation of the CFTA will be a timely initiative. It will provide a framework for national and regional coordination in the trade and economic sphere to spearhead Africa's implementation of the new development agenda in the post-2015 period. As pointed out by UNCTAD, achieving an economic integration process in Africa that is people-centred and development-oriented is key to building up the continent's resilience in addressing and recovering from global financial and economic crises, such as that in 2008.<sup>2</sup> Such developmental regionalism<sup>3</sup> brings added benefits of peace, security and political stability on the continent.

### **b) The potential benefits**

Once fully implemented, the CFTA would offer African countries considerable benefits, and gains would be even higher if trade liberalization were complemented by trade facilitation measures, elimination or reduction of non-tariff barriers, strengthening of regulatory frameworks and improved infrastructure. A recent statement by the AUC articulates succinctly the expected gains while pointing out that "Africa's integration is not a matter of choice. It is rather imperative".<sup>4</sup>

According to most estimates, the opening of the regional market to African goods and services will increase intra-African trade significantly. It has been estimated, for instance, that the removal of tariffs on intra-African trade could raise their share in total African trade from about 10.2 per cent to 15.5 per cent from 2010 to 2022.<sup>5</sup> With enhanced trade facilitation measures

the gains would double, to reach 21.9 per cent. Moreover, most of the increase in trade from the removal of tariffs would be felt in the manufacturing sector, as intra-African trade has a relatively higher industrial content than the trade of African countries with the rest of the world.<sup>6</sup> A further boost to intra-African trade would arise from the removal of non-tariff barriers, and gains would be augmented if informal traders were better integrated into formal trade channels.<sup>7</sup>

The elimination of tariff and non-tariff barriers called for by the CFTA initiative offers African countries a great long-term opportunity – and greater challenge – to improve industrial capacity to provide the goods for which regional trade typically increases demand. UNCTAD notes that the low level of manufacturing in Africa means that manufactured goods – such as cars, machines and electronic gadgets – must be imported from overseas, a problem that is also an opportunity.<sup>8</sup> If various national markets can be effectively integrated into a larger regional market, there should be sufficient numbers of customers to support the expansion of industry within the region.

A number of RECs have a regional industrial development policy, including in the TFTA. Fostering rapid industrialization involves many challenges, among which a key factor is the supply of energy, especially clean and renewable energy to avoid adverse climate-related and environmental damage, to fuel industrial growth and to meet the energy needs of consumers.

On the other hand, African countries cannot realistically hope to reduce widespread poverty if they do not at the same time take effective measures to also strengthen agricultural development. Agriculture has been and will continue to be a major source of revenue, employment and foreign exchange earnings in the short to medium term, and African countries should create mutually reinforcing linkages between the agricultural and non-agricultural sectors of their economies.

Indeed, short-term unexploited opportunities for regional trade in Africa are to be found particularly in agriculture. Africa has almost two thirds of the world's uncultivated/unused arable land, and this can be used to expand agricultural production. Yet many countries on the continent import food and agricultural products from outside Africa. For the 2007–2011 period, 37



African countries were net food importers, and 22 were net importers of agricultural raw materials, while about 17 per cent of the continent's world trade in food and live animals took place within Africa.<sup>9</sup>

A key challenge for African policymakers is thus how to exploit these opportunities for regional agricultural trade, and ensure that the gains accrue predominantly to Africa. Eliminating tariffs to intra-African trade in agriculture through the CFTA would be a key factor, as trade in agriculture faces a higher rate of protection than in non-agricultural sectors. Average tariffs on agricultural products applied by the first 10 African importers of agricultural products vary between 0 and 28 per cent (Darion, forthcoming).

### c) Major challenges

The path towards accelerated pan-African economic integration, however, presents formidable political, economic, legal and functional challenges. These need to be tackled efficiently, using scarce resources efficiently. To multiply the benefits of the CFTA – expanded markets for goods and services, unobstructed factor movement, new investment opportunities, and the like – an ample vision of trade, investment and business facilitation needs to prevail.

Raising intra-African trade will be a formidable challenge. Two factors underlie this challenge. First, the share of intra-African trade in total African trade is very small: it was around 11.3 per cent in 2011 and increased to only 14 per cent in 2013 (see Figure 1), while its value (both exports and imports) totalled \$130.1 billion in 2011 and rose to \$174.4 billion in 2013. These statistics show that intra-African aggregate trade and share in total African trade is low when compared to other parts of the world and relative to Africa's trade potential. For example, over the 2007–2011 period, the average share of intraregional exports in total exports was 50 per cent in Asia and 70 per cent in Europe. Trade among Latin American countries is estimated to be about 20 per cent of total regional trade.

Figure 1. Intra-African goods exports as a percentage of total exports of Africa



Source: UNCTADstat.

Second, as pointed out by Jensen and Sandrey, trade growth and welfare benefits from the CFTA would likely accrue unevenly, with a larger portion captured by a few countries with stronger supply capacity and competitiveness; this is reinforced by the fact that, presently seven African countries account for about 60 per cent of total intra-merchandise exports while the majority account for the remaining 40 per cent.<sup>10</sup>

Further, as pointed out in a recent report for UNCTAD (Agatiello, forthcoming), the solution to Africa's challenges, including accelerated integration, is less economic than political in nature. A bottom-up approach would help to identify at the disaggregate level what is working now, has worked in the past or has worked somewhere else and could work in Africa without inordinate effort, with Governments helping to address the impediments, great and small, that they themselves identify as crucial to the success of the CFTA. This would involve Governments, the private sector, civil society and the international community in a reciprocal, incremental exchange of ideas, information, resources and trust that can build lasting, market-friendly and development-oriented collaboration.

Relinquishing national priorities in favour of regional ones requires firm determination and coordination from political leaders, in order to align long-term national interests with regional interests. At the same time, the commercial and development interests of especially weaker countries need to be addressed by the CFTA in an inclusive manner. To succeed, advanced regional integration necessitates, as emphasized by UNECA, an appropriate "rules-based governance system and institutional



architecture” to foster harmonization, consistency and predictability.

High on the list of challenges in relation to the CFTA is the conflicting disciplines and benefits of the different RECs already in place. Most African countries are parties to more than one REC and convergence between different RECs, as agreed upon in the Minimum Integration Programme (MIP) of 2009,<sup>11</sup> should be made compatible with the goals and timelines set for the CFTA.

The MIP is a mechanism set to support more effective implementation of REC-level decisions at the national level in light of the low or slow implementation that has affected progress towards free trade and economic integration within RECs. Although it is expected that the soon-to-be-concluded negotiations of the TFTA (which nevertheless still faces difficulties with regard to some issues) will help clarify many of the procedural issues, African countries need to set a clear path to make RECs converge into the CFTA.

CFTA timelines, on the other hand, need to be kept flexible. The timeline of 2017 to establish the CFTA should continue to be the target. However, alternative timelines could be put in place in the event of delays in accomplishing the agreed objectives and/or insufficient progress made, as has been the experience of many trade negotiations. Also, consideration should be given to the fact that most RECs have missed the 2014 deadline to establish FTAs (see box 1) and this in itself calls for an adjustment in their calendars and plans of action with the consequent impact on the CFTA calendar itself.

The experience of many RTAs has been that progress towards the formation of FTAs and customs unions has not always been uniform. In the context of the CFTA, some consideration could be given to a variable geometry approach in which countries that are in a position to move forward should be allowed to do so, while those that need more time to comply should be afforded adequate flexibilities. Either way, a basic or core agreement that constitutes the CFTA should be striven for adoption come 2017.

Moving decidedly towards the CFTA would also require harmonizing the multitude of and varied trade commitments undertaken by practically all African countries at the multilateral, regional and bilateral levels. Most African countries are bound by their WTO commitments, and many have

entered into or are negotiating comprehensive trade agreements with non-African countries, such as the economic partnership agreements (EPAs) with the European Union. In addition, most African countries are beneficiaries of unilateral trade preferences granted by developed countries and emerging economies. Thus, a strategic consideration for African countries would be to ensure that existing trade pacts act as building blocks, and do not impede progress towards the CFTA or make it more difficult.

In this context, leadership by relatively economically large African countries (such as Algeria, Egypt, Kenya, Nigeria and South Africa) is important. They can facilitate and serve as the locomotives for the integration process by supporting relatively economically weaker African countries in integrating into regional value chains and developing upgraded production capabilities.

Another important consideration would be to design a CFTA that is comprehensive enough to cover all key issues that make modern trade agreements economically meaningful, while keeping the scope of the agreement within the boundaries of African needs and concerns. The CFTA framework needs to include disciplines in a number of areas, from market access for goods and services to investment disciplines, intellectual property, unfair trade practices, dispute settlement and institutional issues. Building up cooperation and/or regulation in these complementary disciplines would require an adequate knowledge of existing rules and practices in these areas and of the commitments undertaken by African countries at the national, regional and international levels.

Last but not least, serious consideration should be given to the organization of the negotiating process itself. There can be no doubt about the complexities associated with negotiating an agreement among 54 participating countries with unequal negotiating capabilities, unequal human resources and unequal know-how on the issues to be included in the CFTA, as well as differences in productive and competitive strengths. Regional and international organizations, working closely with the AUC, could play an important role in assisting African negotiators and policymakers to move the CFTA process forward, and they can do so efficiently by cooperating among themselves and



coordinating their different contributions to the CFTA negotiations.

#### **d) Right mix of ambition and realism**

A regional understanding on any of the CFTA-related issues when considered individually would represent a major challenge to African negotiators and policymakers; taken together these may look almost insurmountable. The fact remains, however, that an ambitious CFTA agreement requires a carefully modelled negotiating process, based on the right mix of ambition and realism in order to result in a practical and meaningful agreement: ambition in the sense of going beyond what African countries have negotiated at the multilateral and bilateral levels as well as going beyond what they have achieved in the African context so far; and realism in the sense of what is possible given the shortcomings and progress made so far among African countries as well as what they are plausibly willing to give up in return for the potential benefits. To be effective and important in its impact, therefore, the CFTA negotiations need to be ambitious in their agenda, follow the right and realistic pacing of commitments, and be conducted in a highly synchronized and transparent manner.

Time is of the essence, though. The CFTA is critical not only for its potential benefits, but also to mitigate the costs associated with inaction. The international trading system may change drastically if the ongoing negotiations on mega-regional agreements – the Trans-Pacific Partnership (TPP) agreement, the Transatlantic Trade and Investment Partnership (TTIP) and the Regional Comprehensive Economic Partnership (RECEP) – come to fruition, as African countries may see diluted many of their existing trade preferences and trade relations. To counter this possibility, it is imperative for Africa not to be left behind and to move ahead with its own continent-wide trade agreement, the CFTA.

### **3. SEQUENCING AND PACING TRADE INITIATIVES**

#### **a) Foundations for the Continental Free Trade Area: Regional economic communities and the Tripartite Free Trade Area**

Fostered by regional integration initiatives, in the last decade intra-African trade has almost quintupled in absolute terms, while intra-African foreign direct investment (FDI) has spectacularly picked up pace in some regions, with large African firms investing across countries and becoming a driving force for regional integration. Growing intra-African trade (although still at low levels) and existing regional trade agreements are the foundations on which the CFTA should/will be built.

It is not easy to establish a clear picture of the spaghetti bowl of regional economic, monetary and sectoral cooperation arrangements among African countries. Of the 18 extant preferential trade agreements (PTAs) on the continent, the African Union recognizes eight RECs as building blocks for the African Economic Community (AEC), namely the Arab Maghreb Union (AMU), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahara-Sahel States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Intergovernmental Authority on Development (IGAD), the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC).<sup>12</sup> There is considerable overlap in the membership of African countries in RECs, other regional groupings, monetary zones and sectoral cooperation organizations. Most African countries are members of two or more groupings. The overlap scenario in 2009 is depicted in the Annex.

The very existence of RECs signals a genuine interest among African countries to promote regional integration as a development strategy, and RECs have been designated in the Abuja Treaty as the pillars of the continental integration process in Africa. However, problems abound,



from low compliance with REC obligations and divergent degrees of institutional development to poor policy implementation; there is also a lack of regional management of practical problems that affect competitiveness, such as burdensome procedures for immigration, business licensing or professional equivalencies.

Most RECs have followed diverse, largely uncoordinated paths, and deadlines to liberalize trade among their members have not been met. They have tried to follow a sequence mostly based on standard customs union theory, i.e. started as preferential trade agreements, moving on to free trade, then customs unions and economic communities. However, such sequencing and pacing has been difficult to follow in many RECs. Also, some started out as cooperation agreements which evolved to incorporate trade issues and have yet to really implement their FTAs.

Of great significance to the CFTA are the dedicated efforts of the COMESA-EAC-SADC member countries to establish the Tripartite Free Trade Area (TFTA). The TFTA is a collective representing nearly three fifths of Africa's population and aggregate output, and although negotiators missed the deadline to conclude the negotiations on the removal of tariffs and non-tariff barriers by early 2015, agreements have been reached on preferential rules of origin (RoO), technical barriers to trade (TBTs), sanitary and phytosanitary (SPS) measures and customs cooperation.

Also, while tariff concessions have already been exchanged among most TFTA parties, and non-tariff barriers (NTBs) negotiations have nearly concluded, differences remain on trade remedies and dispute resolution. Following the completion of the liberalization of trade in goods, the gradual liberalization of trade in services will be undertaken in a second phase.

Progress has also been made in the TFTA negotiations on a separate agreement on the movement of business persons, and private sector demands, mostly trade facilitation and NTB-related, are processed by each of the three RECs, and their decisions would eventually be ratified by the TFTA process. The TFTA summit decisions are binding for all parties through their incorporation in internal domestic legislation or domestication.<sup>13</sup> The institutional framework for the negotiations allows for the participation of stakeholders from the private sector and civil society, national as well as foreign.

The CFTA agreement is to build on progress in the TFTA negotiations and other RECs. However, as many RECs are lagging behind their own schedules, consideration could be given to a more realistic approach regarding the building block function that they are called to perform. A possibility would be for RECs to focus on issues that do not belong strictly to a CFTA agreement – such as macroeconomic stability and supporting the establishment of regional value chains, i.e. productive capacity development – and permit the dismantling of trade barriers to goods and services be dealt with at the CFTA level.

Indeed, to fulfil the ambitious deadlines set for the CFTA, consideration should be given to immediately undertaking some continent-wide negotiations on a number of areas, building on progress (or lack thereof) achieved at the REC level, but not waiting until they complete their own objectives in these areas.

As the TFTA is about to come into being – with important achievements in the liberalization of trade in goods among the participating countries – negotiations on trade in services and a number of other key issues should not wait for an undefined number of years until progress on those issues is achieved at the level of the TFTA and other RECs. They should be undertaken immediately at the continental level. Indeed, Africa-wide negotiations on selected areas – mainly those core areas selected to be part of the CFTA, as discussed below – will be a major stimulus to achieving the as yet unfinished goals of most RECs.

## **b) Trade agreements with external partners**

Consideration should also be given to making trade agreements with outside partners compatible with the CFTA. As regional trade agreements among African countries support the growth of intra-African trade, the preferential treatment granted to Africa by many developed countries and emerging economies support African export growth to the outside world. The trade preferences granted by China, India, Japan, the United States of America and the European Union benefit the bulk of African exports. Their impact on the exports of the least developed countries is undeniable: more than 70 per cent of their exports go to these five destinations.



A way to make these trade preferences more attuned with the goals of the CFTA is to revise the existing requirements on SPS regulations, technical standards and RoO that render it difficult for African exporters to make better use of preferences. Of particular significance would be the simplification of RoO, attuning them to the production structure of African countries, and seeking uniformity of RoO between different preferential schemes, following perhaps the AGOA model<sup>14</sup> or the new rules recently introduced by the European Union.<sup>15</sup>

In addition to unilateral preferences, most African countries are members of the WTO and those that are not as yet are in the process of acceding to the organization. Also, African countries are negotiating reciprocal, although asymmetrical, trade agreements with the EU. With regard to these reciprocal agreements, CFTA compatibility is to be sought by making current rights and/or obligations under these agreements the starting point of CFTA market access and rule-making negotiations.

This is not only a logical approach, it is also a way to redress the existing imbalance in protection between African countries and those outside the region. It is today cheaper for African countries to export to the rest of the world than to other African countries due to the higher level of protection they face in regional markets.<sup>16</sup> Thus, African traders stand to gain the most if the CFTA helps in correcting the imbalance in Africa's global level of protection, today biased in favour of trade with the rest of the world, by eliminating or significantly reducing tariffs and non-tariff barriers to trade within the region.

#### **c) A clearer division of labour between regional economic communities and the Continental Free Trade Area**

To sum up, African countries may need to rethink the relationship between RECs – designated pillars of regional integration – and the CFTA and move towards a clearer division of labour between them. RECs could instead concentrate on issues such as measures to ensure macroeconomic stability and participation in regional and subregional value chains. RECs could also be given a monitoring and coordination function in the implementation of the CFTA agreement in their respective regions.

As for the existing agreements outside Africa, an important consideration is to make them compatible with CFTA goals by granting – as the starting point of the CFTA negotiations – to intra-African trade the degree of market opening currently granted to partners outside of Africa.

## **4. THE CONTENT OF THE CONTINENTAL FREE TRADE AREA**

### **a) A comprehensive Continental Free Trade Area**

As a modern trade agreement, the content of the CFTA will unavoidably be very comprehensive. African leaders have already decided that the CFTA will have to lead to the elimination of tariff and non-tariff barriers to their trade in goods and services, so that an African free trade area is to be established as a stepping stone to an African customs union and, later, a fully-fledged African economic community.

For African countries, the economic gains from further liberalizing merchandise trade are potentially high. Such gains are enhanced when addressing TBT and SPS regulations as well as preferential RoO, as these are expected to maximize the positive impact on intra-African exports of agriculture, food and industrial products. However, the gains from liberalizing cross-border labour flows are expected to be even higher, and those from boosting services trade and information flows have multiplier effects that would be very significant. In addition, the setting up of complementary support systems for trade creation and economic growth would be essential.<sup>17</sup> For instance UNCTAD notes that Africa's poor intraregional trade performance hides the fact that such trade could increase substantially if some key constraints, particularly infrastructure-related, were addressed.<sup>18</sup>

Key drivers and tools of regional integration for the CFTA may include the formulation of development corridors in Africa. The Maputo Development Corridor provides an important case study of a successful development corridor. It was the first spatial development initiative to be implemented at the regional level and has been one of the most successful



initiatives to date. Another tool involves special economic zones. Such zones can take different forms, depending on their intended purpose, including export processing zones, free trade zones, enterprise zones and free ports. Mauritius is an example of a successful export processing zone.

Also, it is important to remember that the gains that flow from openness are not only economic in nature. Cross-border exchanges also offer, among other things, cultural, political and security benefits, not to mention confidence building among nations and economic actors.

### **b) Eliminating tariffs and non-tariff barriers on trade between African countries**

Eliminating tariffs on trade between African countries is a major goal of the CFTA. Such tariff dismantling on a continental scale would build on progress in the TFTA negotiations and other RECs. As the expected economic gains from further liberalizing merchandise trade are potentially high, the CFTA negotiations should include key WTO and WTO-plus elements in terms of tariffs and non-tariff barriers to trade in goods (and services).<sup>19</sup>

A recent study for UNCTAD (Farahat, forthcoming) argues that at the outset of any tariff-reduction negotiations it is essential to agree on the base from which tariffs are to be removed. In order for the CFTA to have a real impact on trade, tariff-reduction discussions should use currently applied tariffs as their starting point. Similarly, the latest Harmonized System coding system applicable must be agreed upon in order to integrate the largest number of new products into the tariff reduction mix. It would be useful to adopt a formula approach which may include the following:

- To agree that all tariffs bound at zero will stay that way, and that they will not be considered further in the negotiations;
- To agree that all tariffs bound above zero, but with an applied rate of zero, will be eliminated from the entry into force of the agreement;
- To agree that all tariff lines for goods entering at zero under temporary concession schemes, autonomous tariff quotas and the like will also be eliminated from the entry into force of the agreement; and

- To agree that all applied tariff rates of 5 per cent or less will be eliminated on entry into force of the agreement.

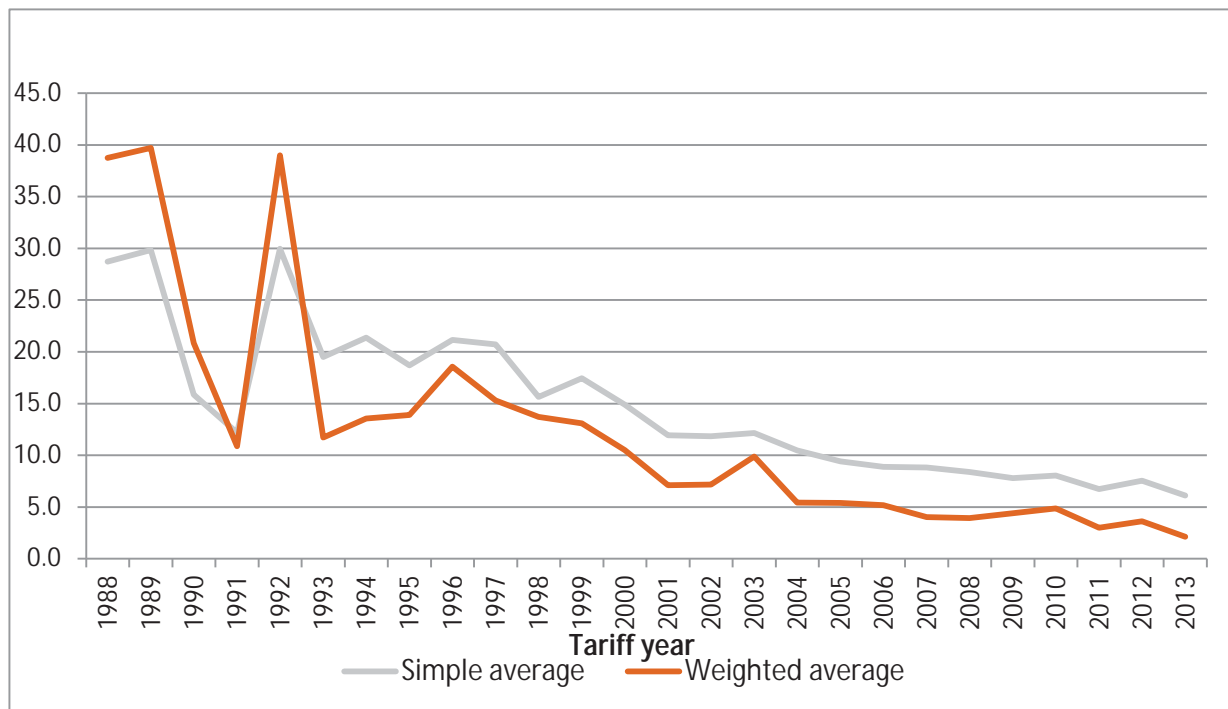
This approach is not a panacea. Economies differ in their outlooks and capacities. However, such an approach will in many cases remove a significant number of tariff lines from further consideration. The negotiators can then direct their attention to the remaining tariffs, many of which usually turn out not to be controversial at all. In an ambitious initiative, ambitious liberalization is needed, with appropriate complementary measures to adjust economies to benefit from market opening.

Tariff cuts will have negative repercussions on the trade tax earnings of countries and possibly lead to the demise of uncompetitive industries and services. The losses, however, may be compensated by the expected strong expansion in intra-African trade from the formation of the CFTA. UNCTAD estimates show, for example that, in general despite cuts in applied tariffs by sub-Saharan African countries between 1998 and 2013, an increase in trade tax revenues took place over the same period due to the increase of trade, except in 2012–2013 when declines were experienced (see figures 2 and 3).

The burden of adjustment by African countries to cushion the impact and build up new industries could also be less painful as such realignments of production and competitiveness have already been taking place. In fact, with the CFTA, an opportunity is presented to adjust economies by way of formation and/or integration into regional value chains in manufactures, agriculture and services. This strategy offers better prospects for longer term adjustment. A particular focus could be placed on supporting the involvement of economically weaker African countries in building supply capacity.

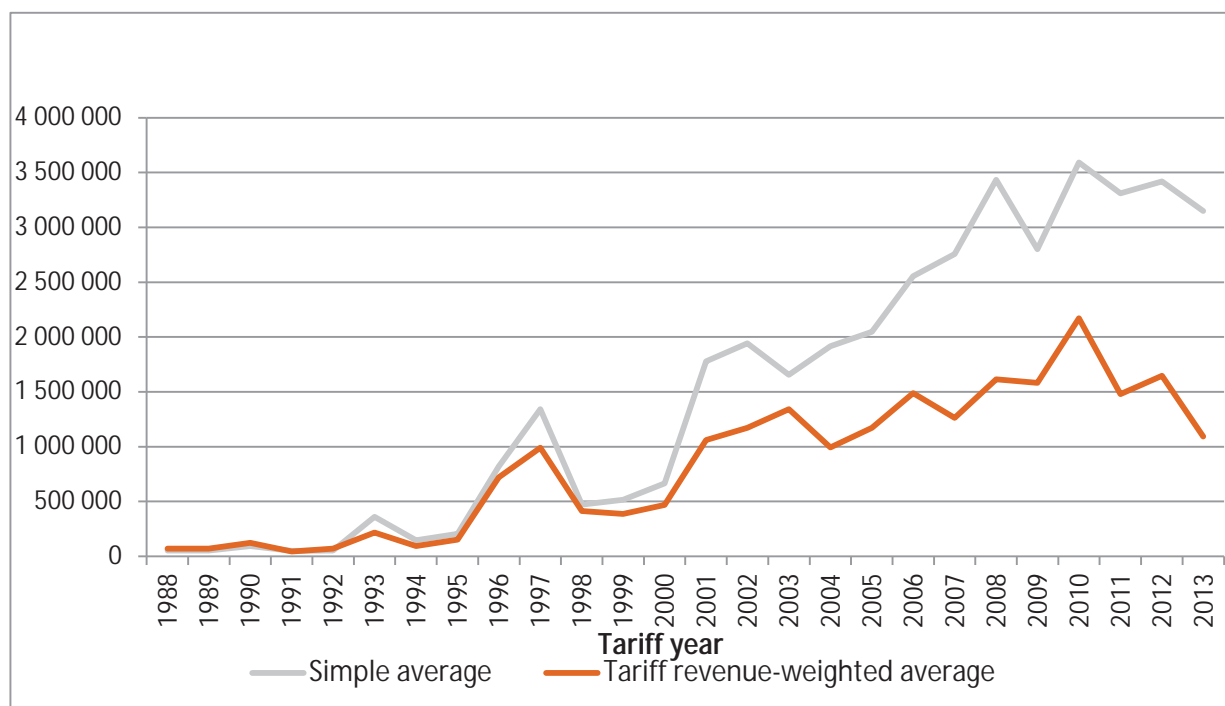


Figure 2. Applied tariffs of African countries, 1988–2013  
(Percentage)



Source: UNCTAD secretariat.

Figure 3. Trade tax revenue of African countries, 1988–2013  
(Thousands of United States dollars)



Source: UNCTAD secretariat.

### Box 2. Biodiversity-based value added products

African entrepreneurs have been using the continent's rich biodiversity resources to boost the development of value added products such as prunus Africana, devil's claw, *Allanblackia* spp., Arabic gum, marula, baobab and been, which are traded in national, regional and international markets. Intra-African trade in such products is also increasing as, for instance the trade of plants and parts of plants used in perfumery and pharmaceuticals or for insecticides, fungicides or similar purposes reached \$6.1 million in 2013, with an increase of 20 per cent from 2011 (data from the United Nations Comtrade database).

Also, the increased interest of consumers in natural, healthy, environmentally-friendly and fair trade products has the potential to offer an innovative avenue to strengthening the sustainable production, trade and consumption of biodiversity-based goods and services. Africa is endowed with rich biodiversity resources (see box 2). The CFTA could foster intra-African trade in biological resources while conserving biodiversity, mitigating climate change and improving the livelihoods of especially rural populations directly dependant on the harvest and development of these resources.

With regard to NTMs, African countries would be confronted with a number of challenges. The main challenge would be to improve the quality of regulation to remove non-tariff barriers to trade in goods, and to deliver competitive markets, while achieving essential public policy objectives relating to issues such as health and safety and the protection of agriculture from pests and disease (Farahat, forthcoming). UNCTAD's work and its recent methodological

approach to dealing with NTMs offer important tools to African countries in dealing with this important issue.<sup>20</sup> Similar tools available include the online TFTA mechanism for reporting, monitoring and eliminating non-tariff barriers, and the efforts by AUC to establish an African trade observatory.

Indeed, NTMs are still prevalent across Africa's regional groupings, despite positive efforts made in reporting and monitoring mechanisms. Efforts towards the harmonization and equivalence of pan-African standards are essential, but not easy to achieve. This is particularly important in health and safety standards in foodstuffs, a potential major item in the CFTA's trade volume. Long-term policy reform and institutional and capacity-building programmes across the continent are needed.

UNCTAD analyses have shown that the impact of NTMs is significant and exceeds that of ordinary customs tariffs. Estimated ad valorem equivalents for Africa average between 10 and 25 per cent, and some particular cases may raise prices by substantially higher margins.

### Box 3. Rules of origin

In a free trade agreement, RoO define the goods that will be considered as originating in the parties to the agreement and therefore eligible for preferential tariff treatment. They define when goods are wholly obtained, wholly produced or substantially transformed; establish the method to be used for assessing whether substantial transformation has occurred; and define the conditions under which goods will not be considered for preferential tariff treatment, usually because they have undergone insufficient processing or insufficient operations in the exporting economy, or have merely been trans-shipped from another economy.<sup>a</sup> RoO also describe the method needed for claiming preferential status, i.e. through the presentation of a certificate of origin, through self-certification or through other agreed means; and define the options available to an importing economy if it suspects, or has established, that goods were falsely claimed to have originated within the free trade area including through a suspension or denial of preferential tariff treatment (Farahat, forthcoming).

<sup>a</sup> UNECA, 2013, *Assessing Regional Integration in Africa VI: Harmonizing Policies to Transform the Trading Environment*.



Price effects in agricultural sectors tend to be particularly high. Harmonization and/or mutual recognition of SPS measures and TBTs would go a long way to addressing the cost of NTMs.

The CFTA should also aim to develop criteria for preferential pan-African RoO (see box 3). Their function is to prevent trade deflection whereby non-originating goods are shipped to the party to a free trade agreement with the lowest external tariffs and then re-exported to the party with higher tariffs in order to avoid paying these higher tariffs. Even more important, RoO should be designed to “favour regional value chains and to promote made-in-Africa branding as well as the promotion of trade among African countries”.<sup>21</sup> RoO are thus important in facilitating preferential and/or free trade in originating goods, i.e. made or substantially transformed in Africa.

### c) Services trade agreement

Services trade integration deserves to be included from the start in the CFTA negotiations.<sup>22</sup> The rationale for services negotiations is that the composition of many African economies is based on services, contrary to what is often believed. The sector is an important employer and income generator. It is thus vital that it should be part and parcel of the CFTA liberalization process from the beginning, especially as services are inputs to the production and trade of goods.

Although services negotiations are supposed to be part of the second phase of TFTA negotiations – once an agreement to liberalize trade in goods among TFTA countries is put in place – negotiations on services at the continental level could begin immediately and not wait until after a services agreement is concluded among TFTA countries and/or other RECs. This would allow for potential trade-offs in market access between all parties in agriculture and industry, and for a more efficient use of the continent’s resources in critical areas such as road building, financial services, transport and logistics and ICT and telecommunications. In the CFTA negotiations, therefore, goods and services liberalization should be treated concurrently.

Developing services trade is a key component of successful regional integration in Africa. Services represent, or have the potential to become, significant sources of export earnings for a large

number of African economies, although such potential remains largely untapped.<sup>23</sup> Tourism, construction, ports and logistics services relating to road and rail transport offer important export potential for many countries. Also, considering that professional and transport services, telecommunications, banking and insurance – the producer services – are inputs into other economic activities, they can either facilitate or hinder trade and production in other economic sectors, depending on the efficiency with which they are made available to users.

A CFTA services agreement (see box 4) would focus on key services sectors. Studies by UNCTAD indicate that services sectors and subsectors that are important to facilitating intra-African trade and to boosting services production and supply include infrastructural services, distribution services, telecommunications, finance (mobile money), BPOs (front and back offices services), tourism, ICT sectors with pro-development applications such as e-government or e-trade, financial services and the movement of natural persons supplying services.<sup>24</sup> Most of these services are enablers of effective value chains in the agricultural, non-agricultural and other services sectors.

Regarding migration issues, most regional integration agreements in Africa include provisions on the free movement of persons and the right of residence. In certain regions, important progress has been achieved in migration issues, including single passports, the dismantling of visas and the recognition and accreditation of qualifications. Yet in many other regions, the implementation of migration provisions has been weak. A more positive approach to intra-African migration should be taken in the CFTA. This would be an important part of enhancing the social impact of the CFTA, as it would benefit freer mobility across Africa of its peoples, both entrepreneurs and ordinary citizens.

Forging ahead with this agenda may also imply amending and harmonizing national laws and investment codes, particularly their provisions barring foreigners from participating in certain categories of economic activity.<sup>25</sup> In 2006, African countries adopted the Migration Policy Framework for Africa and the Common African Position on Migration and Development. These statements, as pan-African decisions, can serve



as a starting point to what could be done on migration in the CFTA context.

A particular aspect of the services economy that is highly relevant for Africa is its creative economy. Harnessing the creative and cultural talents of Africa, and the protection of regional ethnic intellectual property rights, should constitute an important aspect of African continental economic integration. It would build on the African Union Plan of Action on Cultural and Creative Industries (2008), and encourage the development of new approaches to enhance the contribution of creative industries to the economic and social development of Africa, especially as a source of jobs for youth.

#### d) Investment and competition

In order for the CFTA to play a deep economic integration role, African countries should look into incorporating therein chapters on investment and competition. These two

elements are important to supporting interlinkages with developing intra-African trade. Having an investment chapter that promotes intra-African investment and other forms of FDI to support and build the necessary trade-related infrastructure and to ensure forward and backward linkages to the economies of member States is key. A competition chapter will provide not only clarity for the relevant national business communities, but also a safety net against potential negative abuses of the CFTA by transnational corporations. A form of RoO in services and investment may be required to ensure that the benefits arising from the CFTA are realized on the continent.

Africa has a long tradition of cross-border investments but the lack of reliable data has constrained detailed analysis. The scant data available indicates that intra-African investment represents 13 per cent of total inward FDI. This level is less than half the figure for the Association of Southeast Asian Nations

#### Box 4. African Trade in Services Agreement (ATISA): Negotiating modalities and approaches<sup>a</sup>

All the existing RECs have some form of services agreements ranging from cooperation in some sectors to comprehensive trade liberalization. The cooperation agreements tend to focus on the harmonization of regulations, technical standards and development issues in specific sectors, whereas the comprehensive trade liberalization agreements (mostly modelled on the General Agreement on Trade in Services (GATS)) focus on trade rules in terms of market access and national treatment aspects covering all services sectors, and sector specific liberalization commitments as inscribed in the schedules of specific commitments. In addition, all African WTO countries undertook GATS commitments, including those that are currently negotiating their accession to the WTO. A couple of countries have signed and/or are negotiating trade agreements, which include services liberalization at the bilateral level including among others the United States Trade and Investment Agreement and the EPAs with the European Union. All the concluded/initialled European Union EPAs with African countries have yet to include a negotiated services chapter/protocol, hence no specific liberalization commitments exist.

In the case of the CFTA, African countries would gain by deciding on the approach that would provide more liberalization, more transparency and more credibility for a future intra-African Trade in Services Agreement. The negotiating approach that is adopted needs to take into account the work that has already been undertaken in the different RECs. Generally there have been various approaches to regional trade in services negotiations, mostly determined by the objective and the complexities involved in both the negotiations and membership. These approaches may be clustered into four groups, namely request-offer, formula, sectoral and hybrid, i.e. eclectic approach. The choice of appropriate modalities is key to effective and successful negotiations. There are two approaches for scheduling liberalization commitments: (a) positive list or bottom-up approach; and (b) negative list or top-down approach. Another consideration would be whether or not to have schedules of commitments. The different approaches have their pros and cons, but whichever is adopted, formulating liberalization commitments will be a complex and lengthy process as many stakeholders are involved and this requires political and socioeconomic decisions.

<sup>a</sup> Based on an UNCTAD study on a framework for trade in services by Emily Mburu-Ndoria (forthcoming).



(ASEAN), where intraregional FDI is estimated at 30 per cent of total FDI. The low level of intraregional FDI in Africa can be attributed to several factors, including low income, which limits domestic and outward foreign investment, the lack of adequate transport and communications infrastructure, limited skilled labour and weak economic links and contacts among investors within the region, which the CFTA would help to overcome.<sup>26</sup>

Consideration should be given to complementing the CFTA with a competition framework. A continental competition framework would enable African countries to deal with anti-competitive practices across the entire continent. It would also assist in addressing competition-related provisions in trade agreements with extraregional partners. To this end, African competition authorities and/or ministries in charge of competition and consumer policies need to garner the necessary political support to speed up the process of developing and implementing competition laws and policies, building the necessary capacities, including the establishment of independent competition authorities where they do not exist, and harmonizing existing competition policies.<sup>27</sup>

### e) Trade facilitation

Special attention is needed with regard to trade facilitation measures. As indicated by UNECA, if progress is made in reducing the cost to trade across borders, in addition to eliminating intra-African trade barriers, the share of regional trade would more than double by 2022,<sup>28</sup> with a particularly positive impact in the trade of industrial products. Even more important, the trade opportunities brought by trade facilitation measures on top of the CFTA would more than offset the costs from declines in tariff revenue experienced by African countries.

To boost regional integration, countries need to strengthen their regional physical infrastructure such as roads, railways, telecommunications and regional airlines. Considering the high cost of infrastructure projects and in view of the limited financial capacities of individual African countries, planning at the supranational level and pooling resources to fund priority regional projects is the most realistic strategy. Physical infrastructure will need to be complemented by improvements in soft infrastructure, including policy harmonization at the regional level, trade facilitation, efficiency in border procedures and

the adoption of national policies that help rather than hamper the process of integration.

### f) Regional value chains, especially in the agricultural sector

The CFTA can also help in creating the conditions for African countries to take advantage of existing and new regional value chains (RVCs). An integrated African market would facilitate the integration of different countries in the various stages of production according to their competitive advantages, thus also fomenting the creation of new regional value chains that could eventually become part of global ones. Developing regionally integrated value chains and markets is both feasible and important for Africa.

A recent analysis for UNCTAD on prospective RVCs in the agricultural sector (Dairon, forthcoming) provides policymakers with tools to better understand the prioritization of value chains, a process that has to mix research, participatory assessment, field investigation and political will. The study also illustrates the benefits that the CFTA could bring in this area.

In 2006, during the AU Food Security Summit in Abuja, 12 commodities were recognized as vital for enhancing food production at continental and regional levels. Nine of them were considered continental, namely rice, legumes, maize, cotton, palm oil, beef, dairy, poultry and fisheries. Three of them were considered regional, namely cassava, sorghum and millet. Up-to-date figures on trade (exports and imports) in the nine continental commodities at the intra-African and global levels show the existence of exchanges and the potential for growth in intra-African trade. There is continental demand in all of these sectors, and a continental supply base exists. Thus, it is logical that these sectors should be developed as regional and continental value chains.

The study for UNCTAD (Dairon, forthcoming) also examines the tea and potato sectors and focuses on the gains to be expected from developing regional value chains in these two sectors. In the tea sector, the main gain could be the elimination of tariff barriers at the continental level, allowing Eastern African countries to freely sell to expanding markets outside their RECs. In the potato sector, one of the principal advantages arises from the fact that policy



coordination and dialogue will be enhanced through the CFTA, providing for a better strategy towards trade development and food security. In a nutshell, chains as different as tea and potato will equally benefit from the implementation of the CFTA. Supporting continental development of viable and sustainable RVCs in the agricultural sector would thus be an important feature of the CFTA.

The emergence of global and regional value chains and the possibility of activities being separated into tradable tasks offer new opportunities for African countries to specialize in individual tasks for which they are best suited, and thereby facilitate their entry into a value chain without the necessity of capturing the entire set of value chain operations. Regional markets can serve as the basis for providing competitive inputs into a regional production process, which are then exported to global markets for consumption or further processing. In this way, regional chains have links with global chains. Africa needs to enter into new value chains and upgrade existing ones. This necessitates involvement in both downstream and upstream production processes. Africa provides inputs into a number of GVCs, but usually only at the very beginning of the chain as a producer of raw materials. The CFTA would offer the opportunity to modify this situation.

### **g) Dispute settlement/avoidance**

Of particular importance in the CFTA framework will be the inclusion of a dispute settlement or conflict avoidance mechanism. It needs to be integrated into the road map and architecture for the CFTA. It should also recognize and build upon pan-African institutions with jurisprudence that already exist, such as the African Court of Justice, the AU Commission on International Law and the African Institute of International Law. The dimension of whether an adequate dispute settlement mechanism should be permanent (for example if it is housed in one of these pan-African institutions) or whether it should be on an ad hoc basis requires the attention of the negotiators.

As underlined in a recent report (Farahat, forthcoming), simple, clear and rules-based mechanisms could be set up under the CFTA to allow for reasonable discussions and speedy resolutions or avoidance of any potential disputes arising from the implementation of the agreement. The CFTA dispute resolution

mechanisms should help to prevent and resolve disagreements among member countries in an expeditious manner, such as through consultation, mediation or arbitration, avoiding duplication with the WTO dispute settlement mechanism where appropriate. These mechanisms should be easy to use, inexpensive, and quick in their response to the parties.

Many precedents exist within and outside Africa of REC mechanisms dedicated to trade dispute adjudication, but they are not generally used and recourse is usually made to international bodies. However, the COMESA Court of Justice hears private stakeholders' claims, and offers a window of opportunity to challenge the non-implementation of agreements. The ECOWAS Community Court of Justice goes a notch further, examining member States' non-compliance with REC norms, while not requiring from private plaintiffs their prior exhaustion of domestic judicial remedies.

These and the WTO dispute settlement system – settling disputes through Government-to-Government consultations rather than through court procedures – are being discussed in the TFTA negotiations for eventual adoption. These may guide discussions on an effective mechanism to settle and avoid disputes in the context of the CFTA.

### **h) World Trade Organization compatibility**

Finally, since practically all African countries are members of – or observers to – the WTO, special attention must be given to the compatibility of the CFTA negotiated outcomes with the obligations/commitments undertaken under the WTO. In this context, consideration should be given to the modalities for notifying the agreement to the WTO once it is concluded, both in terms of goods and services. These include the enabling clause, GATT article XXIV and GATS article V, bearing in mind the WTO Doha agenda negotiations to clarify such rules to improve their development dimension.

## **5. INSTITUTIONAL ISSUES**

In preparation for the CFTA negotiations, it is necessary that African leaders approve a clear



and detailed negotiating mandate to guide the negotiations. This mandate should specify what must be covered in the negotiations – i.e., the content of the future CFTA – a timetable to complete them, and a negotiating structure – with trade ministers meeting regularly to assess the negotiating process, and to take the decisions they deem necessary to ensure the appropriate outcomes of the negotiations.

The CFTA negotiations, as do similarly complex trade negotiation processes, usually start by developing a reasonable timetable for the negotiating sessions and a set of principles which will broadly govern the conduct and content of the negotiations. These principles have to be detailed enough to offer genuine guidance. At the same time, they have to be flexible to be able to accommodate any changes that would be deemed desirable to move the process forward.

Since the CFTA is to be an innovative and ground-breaking supranational and supraregional arrangement, it is appropriate that a direct approach should be applied to the negotiations, an approach that would – in some ways – start from scratch, with a clear directive as to the level of ambition. Where there is disagreement over including an issue in the negotiations, it is almost invariably better to start by agreeing that everything is on the table and that all available options to resolve deadlocks have been explored thoroughly, including seeking resolution at a higher (political) level.

A particular concern that would be important in the implementation of the CFTA once concluded is the experience of low compliance of member States with protocols, treaties and agreements. Compliance varies between member countries, and different RECs are at different stages of the integration process. This mismatch between high ambitions and low implementation in practice must be a factor for consideration in the CFTA institutional process.

To support the CFTA process, a number of key regional and international organizations have already undertaken a series of analyses on the political rationale and the economic implications of African integration, which have helped in clarifying many of the negotiating issues. As the CFTA process moves into its negotiating phase, though, the support and involvement of the interested organizations should be adapted to this new stage.

What is required is a combination of analysis, capacity-building and the provision in an orderly and systematic manner of information on the national and/or regional rules that the African countries are bound by via their national laws and regulations or their regional and international commitments in the areas included in the negotiations. This would enable the negotiators in their respective sectors: 1) to identify the best practices/rules available at the national and regional levels; 2) to know the various countries' commitments; and 3) to conduct the drafting of the various chapters and articles taking into account the best practices/rules available.

The AUC has played, and will continue to play, a major role in the inception, organization and implementation of the CFTA. It is therefore clear that the AUC, as the top pan-African IGO body, must continue to play its part in the creation of the CFTA and the follow up to and implementation of the agreement. It is equally important that further support is sought from other Africa-attuned IGOs, such as the African Development Bank, UNCTAD and UNECA. These institutions should work together towards the establishment of a joint technical mechanism to support the CFTA negotiations and follow up on its implementation.

The technical support mechanism would carry on the analyses required on all the subjects that are likely to be included in the future CFTA, and should be open to the participation of other regional and international organizations interested in contributing to the CFTA negotiating process and, eventually, to the implementation of the agreement.

The implementation of this initiative would imply a significant undertaking by the participating institutions to pull together resources and technical capabilities. It would also require establishing among them an effective and clear division of labour to avoid overlap and ensure the optimal use of scarce resources. Also, if this mechanism is to play a useful role in the process, it should be integrated into the CFTA mandate in a more precise and quantifiable way.

In line with the above suggestions on institutional issues, the AUC has prepared and submitted for consideration by the AU policy organs the draft objectives and principles guiding the negotiation of the CFTA, the draft terms of reference for the CFTA Negotiating Forum, the road map and draft schedule for the CFTA negotiations, as well as a draft declaration



and a draft decision. Once reviewed and approved, these would form the guidelines for the launching of the CFTA negotiations, expected in June 2015.

## 6. RECOMMENDATIONS

Based on the above considerations, some suggestions on addressing the challenges and strategic issues that need to be examined and eventually decided by African trade ministers and the High-Level African Trade Committee at their next meetings are outlined below.

1. Set a clear path to make regional agreements converge into the CFTA. High on the list of challenges to the CFTA is the conflicting disciplines and benefits of the different RECs already in place. Most African countries are parties to more than one REC and convergence between different RECs, as agreed upon in the MIP (2009), should be made compatible with the goals and timelines set for the CFTA. This is particularly important in light of the soon-to-be-concluded negotiations of the TFTA.
2. Revise the relationship between RECs and the CFTA to move towards a clearer division of labour between them. Rather than waiting to complete the integration goals of RECs to consolidate them into the CFTA, African countries may consider launching continent-wide negotiations on the issues to be included in the CFTA agreement, building on progress achieved so far in some RECs and, particularly on the achievements of the TFTA. RECs, for their part, may concentrate on issues such as measures to ensure macroeconomic stability and participation in regional and subregional value chains. RECs could also be given a monitoring and coordination function in the implementation of the CFTA agreement in their respective regions.
3. Undertake immediately some continent-wide negotiations on a number of key issues. As the TFTA is about to come into being – with important achievements in the liberalization of trade in goods among the participating countries – negotiations on services and other key issues should be undertaken at the continental level, and not wait for an undefined number of years until progress on those issues is achieved at the level of the TFTA and other RECs. Indeed, Africa-wide negotiations on selected areas – mainly those core areas selected to be part of the CFTA – will be a major stimulus to complete the as yet unfinished goals of most RECs.
4. Keep the CFTA timeline flexible. The timeline of 2017 to establish the CFTA should continue to be the target. However, alternative timelines could be put in place in the event of delays in accomplishing the agreed objectives and/or insufficient progress made. Also, consideration should be given to the fact that most RECs have missed the 2014 deadline to establish FTAs and this in itself calls for an adjustment in their calendars and plans of action with the consequent impact on the CFTA calendar itself. However, this should not lead to delays in initiating the CFTA.
5. Make all African trade commitments compatible with the CFTA objectives. Most African countries are bound by their WTO commitments, and many have entered into or are negotiating comprehensive trade agreements with non-African countries, such as the EPAs with the European Union. In addition, most African countries are beneficiaries of unilateral trade preferences granted by developed countries and emerging economies. Thus, a strategic consideration for African countries would be to ensure that existing trade pacts act as building blocks, and do not impede progress towards the CFTA or make it more difficult.
6. Start CFTA negotiations with the existing degree of market opening in Africa. A way to make existing trade agreements concluded by African countries at the multilateral, regional and bilateral levels outside Africa compatible with CFTA goals is by granting – as the starting point of the CFTA negotiations – to intra-African trade the degree of market opening currently granted to outside partners. An analysis or mapping of the existing bilateral, regional or multilateral agreements and the level of commitments of African countries in these agreements would be important to kick-start the process.
7. Design the CFTA as a modern and comprehensive trade agreement. It should be designed in a way that is comprehensive enough to cover all key issues that make modern trade agreements economically meaningful, while keeping the scope of the



agreement within the boundaries of African needs and concerns. The CFTA framework could include disciplines in a large number of areas, WTO and WTO-plus, from market access for goods and services to investment disciplines, intellectual property, unfair trade practices and dispute settlement and institutional issues, among others. It should address specifically TBT and SPS regulations which can help maximize the positive impact on intra-African exports of agriculture, food and industrial products. It should also contemplate the harmonization of RoO across the various African trade agreements, as this would also help in consolidating a CFTA market. It should be complemented by a continental competition agreement to underpin fair competition in the liberalized African market.

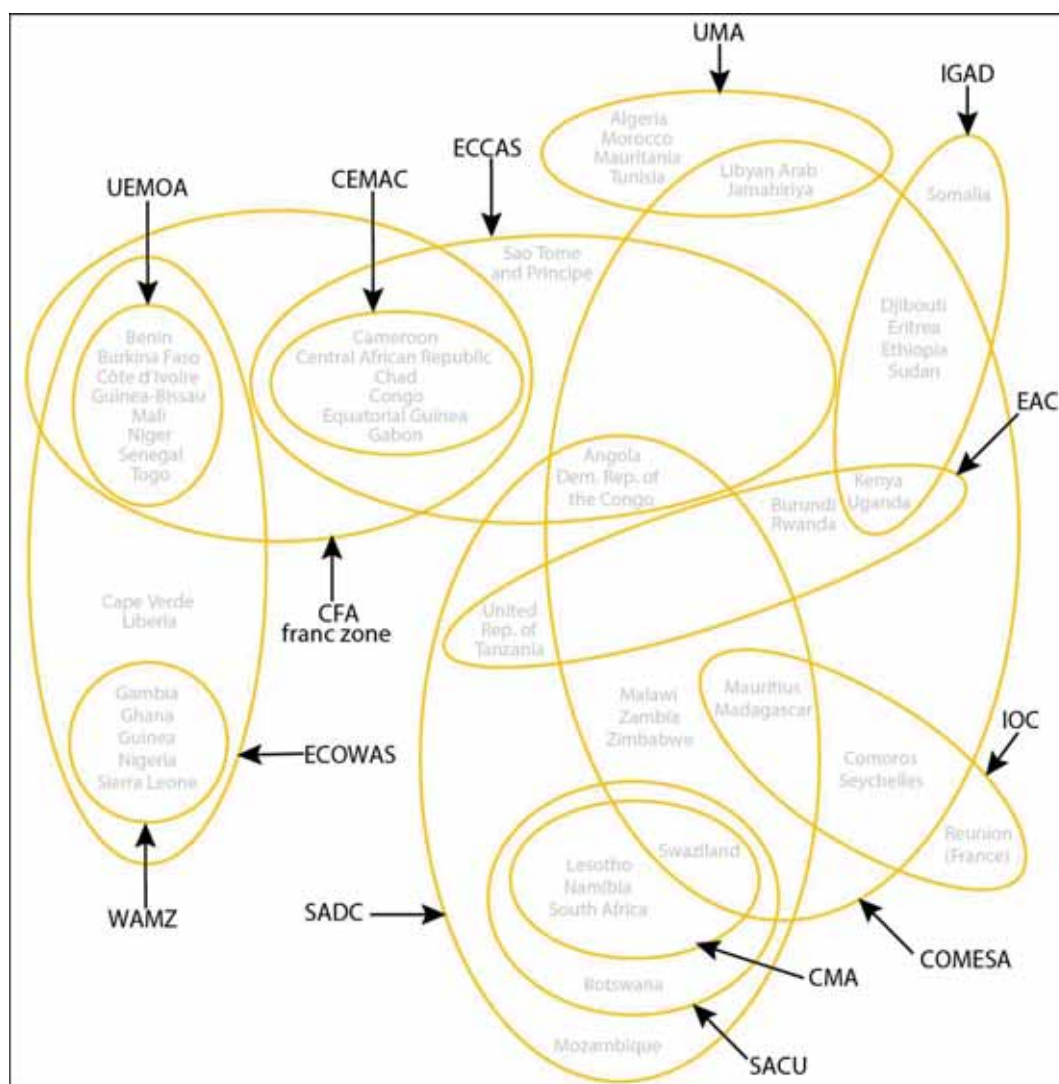
8. Include a dispute settlement/avoidance mechanism in the CFTA framework. A simple, clear and rules-based mechanism could be set up under the CFTA, to allow for reasonable discussions and speedy resolutions of any potential disputes arising from the implementation of the agreement. African countries could assess the various models that exist, including in Africa, and the experience of existing mechanisms, to choose the one best fitted to their needs.
9. Place trade facilitation and regional value chains high on the CFTA agenda. Market access is not only about tariffs, it is also about trade facilitation and customs procedures that will not be automatically abolished by the establishment of the CFTA. Important efforts should be made at the continental level to harmonize procedures and to reduce delays, by standardizing the nature of the required documents or promoting the use of ICT with online hubs about trade procedures, transportation and customs documentation. The fight against illegal practices, such as road blockages or illegal fees at customs offices, could be strengthened. Efforts to implement the WTO Agreement on Trade Facilitation need to be taken into account. Also, an approach that will facilitate trade and ensure that African countries develop new regional value chains and/or join existing ones can be prioritized.
10. Consider seriously the organization of the negotiating process itself. There can be no doubt about the complexities associated with negotiating an agreement among 54 participating countries with unequal negotiating capabilities, unequal human resources and unequal know-how on the issues to be included in the CFTA agreement, as well as differences in productive and competitive strengths. A regional understanding on any of the issues to be included in the CFTA framework when considered individually would represent a major challenge to African negotiators; taken together these may look almost insurmountable. Thus, putting together an ambitious CFTA agreement requires a carefully modelled negotiating process, and one that is based on the right mix of ambition and realism so as to result in a practical and meaningful agreement. To be effective and important in its impact, the CFTA negotiations need to be ambitious in their agenda, follow the right pacing of commitments and be conducted in a highly synchronized and transparent manner.
11. Proceed expeditiously with the CFTA as it is critical not only for its potential benefits, but also to mitigate the costs associated with inaction. Thus, time is of the essence. The international trading arrangement may change drastically if the ongoing negotiations on mega-regional agreements such as TPP, TTIP and RECEP come to fruition. African countries may see diluted many of their existing trade preferences and trade relations. To counter this possibility, it is imperative for Africa not to be left behind and to move ahead with its own continent-wide trade agreement, the CFTA.
12. Establish a technical support mechanism to assist negotiators during the CFTA process. Under the direction of and working closely with the AUC, regional and international organizations will be important in assisting African negotiators to move the CFTA process forward, and they can do it efficiently by cooperating among themselves, and coordinating their different contributions to the CFTA negotiations. Africa-attuned IGOs such as the African Development Bank, UNCTAD and UNECA can help. It is therefore suggested that to support the CFTA negotiating process, African countries should consider establishing a joint technical mechanism to support the CFTA negotiations, open to the participation of other regional and international organizations interested in contributing to the negotiating process.

13. Integrate a system for monitoring the implementation of commitments. Monitoring and assessing progress towards the implementation of CFTA commitments is critical. A stronger monitoring system is required in view of past weak performances. The use of a monitoring tool, such as the internal market scorecard of the European Union which measures the extent to which members have transposed regional trade rules into national law by an agreed deadline, can put peer pressure on members to expedite implementation.
  14. Develop mechanisms to foster balancing the distribution of gains among African countries, which would be appropriate especially between the relatively economically stronger economies and relatively economically weaker ones. Most assessments on the CFTA indicate that it would generate substantial trade and welfare gains for all African countries. However, they also indicate that some countries would benefit more than others, and some of the economically weaker countries may not benefit at all or may even suffer losses. Experiences of integration schemes have shown that unbalanced gains from trade liberalization have militated against more effective and deeper integration. Hence, parallel to the formation of the CFTA, measures need to be launched to ensure that the economically weaker countries are sufficiently integrated into and benefit equitably from the CFTA.
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## ANNEX: Main African regional integration arrangements

Figure 4. Africa: Overlapping membership in regional integration groups



Source: Adapted from UNCTAD, *Economic Development in Africa Report 2009* (UNCTAD/ALDC/AFRICA/2009), pg. 12.

Note: Comoros is also a member of the Communauté financière africaine (CFA) franc zone; The EAC is the regional intergovernmental organization of Kenya, Uganda, the United Republic of Tanzania, Burundi and Rwanda. Rwanda and Burundi acceded to the EAC Treaty on 18 June 2007 and became full members of the community 1 July 2007.

## NOTES

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- <sup>1</sup> For example, UNCTAD has commissioned four forthcoming studies: (I) CFTA: Institutional Arrangements, 2015, by O Agatiello; (II) CFTA: Framework for the Treatment of Trade in Services, 2015, by E Mburu-Ndoria; (III) CFTA: Framework for the Treatment of Trade in Goods, 2015, by M Farahat; and (IV) CFTA: Regional Value Chains in Agriculture, 2015, by E Dairon.
- <sup>2</sup> See UNCTAD, 2012, "Trade liberalization, investment and economic integration in African regional economic communities towards the African common market" (UNCTAD/DITC/TNCD/2011/2).
- <sup>3</sup> The concept of developmental regionalism was coined and explained in UNCTAD, *Economic Development in Africa Report 2013 – Intra-African Trade: Unlocking Private Sector Dynamism* (UNCTAD/ALDC/AFRICA/2013).
- <sup>4</sup> See keynote address by Treasure Thembisile Maphanga, Director of Trade and Industry, African Union Commission to Tralac Annual Conference, 17 April 2015.
- <sup>5</sup> S Mevel and S Karingi, 2012, *Deepening regional integration in Africa: A computer general equilibrium assessment of the establishment of a continental free trade area followed by a continental customs union*.
- <sup>6</sup> UNCTAD, *Economic Development in Africa Report 2011: Fostering Industrial Development in Africa in the New Global Environment* (UNCTAD/ALDC/AFRICA/2011).
- <sup>7</sup> A recent study by Jensen and Sandrey confirms such gains in that the complete elimination of tariffs to intra-African trade would bring substantial benefits to African countries. The study also shows, however, that the trade and welfare gains would vary among countries. See HG Jensen and R Sandrey, 2015, *The Continental Free Trade Area: A GTAP Assessment* (ISBN: 978-0-99-221925-3).
- <sup>8</sup> UNCTAD, 2011, op. cit.
- <sup>9</sup> UNCTAD, 2013, op. cit.
- <sup>10</sup> UNCTAD calculation based on UNCTADstat.
- <sup>11</sup> Adopted by the African Ministers of Integration at their Fourth Ordinary Session, held in Yaoundé, Cameroon, from 7 to 8 May 2009.
- <sup>12</sup> There are six other economic groupings similar to RECs, namely Economic and Monetary Community of Central African States (CEMAC), Economic Community of the Great Lakes Countries (CEPGL), Indian Ocean Commission (IOC), Mano River Union (MRU), Southern African Customs Union (SACU) and West African Economic and Monetary Union (WAEMU). There are also three monetary zones, namely the CFA Franc Zone in West and Central Africa, the Common Monetary Area (CMA) in Southern Africa, and the West African Monetary Zone (WAMZ). Sectoral cooperation groupings include the Permanent Inter-State Committee for Drought Control in the Sahel (CILSS) and the International Conference on Great Lakes Region (ICGLR).
- <sup>13</sup> Domestication refers to the process by which the international law obligations of a party to an agreement are incorporated into the domestic legislation and policy in order that they may become fully enforceable.
- <sup>14</sup> AGOA's third-country fabric provision allows 24 of the 38 AGOA-eligible countries to source fabric from third countries for making clothing that can be exported duty free to the United States market (UNECA, 2015, p. 147).
- <sup>15</sup> The European Union recently modified the rules for the least developed countries to qualify for preferential rates under the European Union GSP and EPAs, by requiring a one-stage rather than a two-stage transformation process for textile and clothing products (UNECA 2015, p. 149).
- <sup>16</sup> UNECA, 2015, *Economic Report on Africa: Industrializing through Trade* (ISBN: 978-92-1-125123-4).
- <sup>17</sup> Other trade-related issues to be considered in building the CFTA include trade facilitation, RoO, a possible trade and investment repository platform, an inventory of trade restrictions, standards on transparency and integrity in governance, regional migration rules, security on maritime, land and aerial trade routes, and energy cooperation, taking into consideration existing initiatives and programmes in these areas.
- <sup>18</sup> UNCTAD, 2009, op. cit.
- <sup>19</sup> When discussing non-tariff barriers, it is worth considering the online TFTA mechanism for reporting, monitoring and eliminating such barriers, and how it might be adapted to the CFTA.
- <sup>20</sup> UNCTAD, 2015, *Deep Regional Integration and Non-tariff Barriers: A Methodology for Data Analysis*; and UNCTAD, 2015, *Non-tariff Measures and Regional Integration in the Southern African Development Community*.
- <sup>21</sup> Treasure Thembisile Maphanga, op. cit.
- <sup>22</sup> As also argued in UNECA, 2015, op. cit.
- <sup>23</sup> This has been the finding of African country services policy reviews by UNCTAD. See UNCTAD *Services Policy Review: Uganda (II)*, 2014 (UNCTAD/DITC/TNCD/2013/12); UNCTAD *Services Policy Review: Rwanda*, 2014 (UNCTAD/DITC/TNCD/2013/6); and UNCTAD *Services Policy Review: Lesotho*, 2013 (UNCTAD/DITC/TNCD/2012/1).
- <sup>24</sup> Ibid.
- <sup>25</sup> UNCTAD, 2009, op. cit.
- <sup>26</sup> UNCTAD, 2009, op. cit.
- <sup>27</sup> This idea was articulated in UNCTAD, 2012, op. cit.
- <sup>28</sup> Mevel and Karingi, op. cit.
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