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REPORT

Regional Integration in Southern Africa – Accelerating the implementation of the AfCFTA in Southern Africa building on the *acquis* of the RECs FTA

Prepared for the Economic Commission for Africa
Southern Africa Office

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Executive Summary

Regional integration and trade are considered key pathways to building peace and stability through mutual dependence, enabling economic growth through increased trade, and accomplishing broad development aspirations through coordinated actions and pooling of resources. Regional integration is a pathway to increased trade, as it helps countries overcome divisions that impede the flow of goods, services, capital and people. In Africa, regional integration and trade agendas have been pursued through a number of interrelated framework agreements and milestones over the years. For example, the Lagos Plan of Action (LPA) and Final Act of Lagos of 1980 have contributed to building momentum in terms of regional integration and trade. Indeed, the LPA envisaged that “all customs duties applied by member countries to intra-African countries (cereals, coffee, pulses, sugar, meat, maize, fish, oilseeds, rice, wheat, sorghum, tea, vegetable oils, etc.) should be substantially reduced not later than December 1984”. Furthermore, while the LPA contained measures to facilitate intra-regional trade within Africa and subsequently culminate in the establishment of an African Common Market, implementation of the Plan has not progressed as envisaged.

One of the fundamental pillars defining regional integration is the Abuja Treaty of 1991 which pushes for the establishing the African Economic Community (AEC) by bringing together the eight Regional Economic Communities (RECs) recognized as its building blocks. The Abuja Treaty features a detailed plan of action in terms of trade liberalization, harmonization of rules and further integration of economies, within a strengthened institutional framework. The Treaty featured an ambitious six-stage roadmap to full economic integration, including the establishment of a customs union, a single market and an economic and monetary union. In the Southern Africa region, the pursuit of regional integration is underpinned by the same rationale, which is the desire to move towards a more united, stronger, more resilient social, political and economic entity. The main RECs driving the regional integration agenda in Southern Africa are SADC and COMESA. Moreover, while not among the eight RECs recognized by the AU, the Southern African Customs Union¹ (SACU) has played an important role in driving regional integration and intra-regional trade. Moreover, the Tripartite FTA spans across Southern, Eastern and North Africa. Both the RECs share almost similar objectives i.e., 1) creating and maintaining full free trade that guarantees the free movement of goods and services produced within the COMESA region; 2) free movement of capital and investment supported by a more favourable investment climate in the region; 3) removal of all tariffs and non-tariff barriers, 4) attain sustainable growth and development of the members; and 5) promote cooperation in all fields of economic activity, among others.

In a bid to bolster the continent’s economic integration agenda, the eighteenth AU Session also adopted a decision to establish a Continental Free Trade Area. The resultant African Continental Free Trade Area (AfCFTA) considered one of the flagships of Agenda 2063 seeks, inter alia, to “create a single market” and to “lay the foundations for the establishment of a Continental Customs Union”. The Agreement establishing the AfCFTA, including protocols on trade in goods and services and dispute settlement was adopted in March 2018 and entered into force on 30th May 2019 for the 24

¹ SACU member States are Botswana, Lesotho, Namibia, South Africa, and Eswatini

countries that had deposited their instruments of ratification by that date. It was launched at the twelfth Extraordinary Session of the AU Assembly of Heads of State and Government in Niamey, Niger, in July 2019. Commencement of trading under the AfCFTA was 1st January 2021. As of 1st September 2023, 54 countries had signed the AfCFTA while 47 had ratified it, the latest being Mozambique. Some cases of trade quoting AfCFTA regime have already been reported, and eight pilot countries, namely, Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia have been selected as participating countries to start trading under the AfCFTA Initiative on Guided Trade. There are also high prospects of GTI participating countries expanding to 27, and the launch of the second phase of the GTI (trade in services) is scheduled for October 2023. Furthermore, Phase II negotiations entailing Protocols on Intellectual Property Rights, Investment, Competition Policy and Digital Trade have been finalized and are awaiting legal scrubbing and subsequent ratification, while the Protocol on Women and Youth in Trade is at advanced stages of negotiations.

One critical thing to note is that the AfCFTA principles include among others those that refer to “RECs’ Free Trade Areas (FTAs) as building blocs for the AfCFTA” and “*preservation of the acquis*”. Therefore, the role of the RECs is critical for the implementation of the AfCFTA. According to Tralac (2021), the notion of the *acquis* became part of the African integration vocabulary during the negotiations to establish the Tripartite Free Trade Area (TFTA) and was adopted as a Guiding Principle for those negotiations. Applied in all the AfCFTA negotiations, the *acquis* compels AfCFTA State Parties to negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors while taking account of the best practices and *acquis* from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. Building on the *acquis* of the existing REC FTAs in terms of consolidating tariff liberalisation in each REC FTA requires a comprehensive understanding of the coherence or lack thereof in terms of trade liberalization approaches encoded in the *acquis*. However, preserving the *acquis* is no easy feat for the AfCFTA. Signe and Van der Ven point out that the AfCFTA agreement lacks a traditional (automatically reciprocal) Most Favoured Nation (MFN) clause. They explain that such approach may support the preservation of the *acquis*, at the expense of simplicity and streamlining of the rules. In fact, they claim that “while consistent with the principle of preserving the *acquis*, the lack of a traditional MFN clause in the AfCFTA also risks the creation of a patchwork of rights and obligations that differ across each of the State Parties.”

In a bid to highlight the complex interplay between AfCFTA and the RECs, UNECA commissioned this study to flesh out, for better understanding and effective implementation of the AfCFTA as it relates to the RECs’ FTAs. The study builds on the findings of the continental level study, ECA (2021), on “Governing the African Continental Free Trade Area–Regional Economic Communities Interface”, which among other key questions, aimed to understand the feasibility of leveraging the implementation mechanisms of various REC-FTAs in implementing the AfCFTA. The study provides an in-depth analysis of the issues as they pertain to the application of the *acquis* principle with a focus on the Southern Africa region.

In undertaking this study, primary and secondary data were applied and information relevant to regional economic integration, market integration and intraregional trade, including those pertaining to the AEC, RECs FTAs and AfCFTA. Primary data and information sources included a questionnaire survey and interviews, while secondary data and information was obtained mainly

from a desk review of reports, publications, academic journals and other sources relevant to the study. In terms of scope, the study generally focused on two RECs officially recognized by the African Union i.e., SADC and COMESA, while specifically, it focused on five countries i.e., Eswatini, Malawi, Namibia, Mauritius and Zambia. These RECs and countries were assessed with respect to the opportunities arising from implementation of the AfCFTA based on the *acquis* of the RECs they belong to. Finally, data and information gathered were analysed using appropriate tools to inform the drafting of the report.

In terms of findings, it is quite apparent that the AfCFTA benefited greatly from the progress made by the RECs of Africa inclusive of the Southern African RECs of COMESA and SADC as well as the SACU arrangement. It is no wonder that at the onset, the AfCFTA envisages using the RECs as its anchor, as was also foreseen under the instruments that set up the AU and the Treaty establishing the AEC. The study highlights in the conclusion the following lessons from the implementation of the RECs *acquis* that can be used as the basis for implementing the AfCFTA by Southern African States:

- 1) It is important that States incorporate their regional integration commitments into national laws for easier access and understanding by particularly the private sector.
- 2) Regional integration in southern Africa has already contributed to gradual structural change and economic development and to market integration however progress can only be intensified if existing policies (such as monitoring and eliminating NTBs) are fully implemented.
- 3) Full implementation of regional integration has the potential to unleash opportunities for regional value chains.
- 4) Trade Facilitation measures already in existence under the RECs, if fully implemented have the potential to enhance regional integration.
- 5) Policy harmonisation efforts between the different RECs operating in the SADC region such as under the Tripartite greatly enhance the implementation of the AfCFTA building on the RECs *acquis* and should be accelerated.
- 6) There should be consideration to simplify RoO to encourage regional value chains.
- 7) Adequate resources should be generated by the Member States themselves to support regional integration efforts.
- 8) RECs and countries need to continue investing more in infrastructure to enhance trade and reduce the cost of trading across the region.

It was noted that considering the speed at which integration within the RECs is taking place e.g., varying levels and depths implementation of FTA provisions by all members of a REC, and persistence of NTBs despite being outlawed in the REC Protocols, there are serious lessons that ought to be picked regarding anticipated accelerated implementation of the AfCFTA building on the *acquis* of the RECs. Furthermore, given the reality that implementation within the RECs has been rather slow, there is a need for deep strategizing on what can be made to make it faster under the AfCFTA within these same RECs, as the implementation of the AfCFTA depends on the functioning of these RECs. From interviews conducted, one point of convergence was that consideration should be made for a minimum package of functionality within the RECs to be in place first before full blast implementation of the AfCFTA. This is because whereas the AfCFTA has made great promises to, especially the private sector with regard market and investment opportunities that accrue to it, and

care should be taken to ensure that their expectations are met to a great degree, this will require making the RECs more functional first through expediting a trade facilitating environment.

It is expected that the findings of the study will lead to enhanced understanding and awareness of the relationship between the AfCFTA and the RECs FTAs and approaches for the effective application of the *acquis* principle to foster the implementation of the AfCFTA Agreement and related Protocols in Southern Africa. Furthermore, through flagging the challenges to, and opportunities for realizing the regional economic integration aspirations for Southern Africa, the study is also expected to enhance appreciation of progress in the implementation of the RECs FTAs and modalities for the complementary implementation of the continental and regional FTAs for the accelerated realization of the AEC objectives. Finally, the study is expected to enhance appreciation of the policy responses and measures required to accelerate market integration and intraregional trade in Southern Africa with particular regard to the AfCFTA and the RECs FTAs, and the capacity to implement the AfCFTA and RECs FTAs in Southern Africa.

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Acronyms and Abbreviations

AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
ASEAN	Association of Southeast Asian Nations
AU	African Union
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EU	European Union
GMO	Genetically Modified Organism
MERCOSUR	Mercado Común del Sur (South America)
MSME	Micro, Small and Medium Enterprises
NTB	Non Tariff Barrier
NTM	Non Tariff Measure
OAU	Organization of African Unity
RoO	Rules of Origin
PTA	Preferential Trade Agreement/Area
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Community
SME	Small and Medium Enterprises
STR	Simplified Trade Regime
RECs	Regional Economic Communities
RVCs	Regional Value Chains
TFTA	Tripartite Free Trade Area (of COMESA-EAC-SADC)
UNECA	United Nations Economic Commission for Africa

1. Introduction and Background

1.1. Introduction

1. The objective of this study is to inform and assess how implementation of the African Continental Free Trade Area (AfCFTA) in Southern Africa can be accelerated, building on the *acquis* of the Regional Economic Communities (RECs) Free Trade Agreements/Areas (FTA). This study builds on the findings of the continental-level report on “Governing the African Continental Free Trade Area–Regional Economic Communities Interface,” which among other key questions, aimed to understand the feasibility of leveraging the implementation mechanisms of various REC-FTAs in implementing the AfCFTA (UNECA, 2021).

2. The report (UNECA, 2021) found out that while priorities differ from one REC to another, with a majority of them going beyond the scope of the AfCFTA, they could all contribute to the AfCFTA’s goals, with some RECs yet to mainstream the Abuja Treaty into their work programmes, and so do not consider its provisions legally binding on them. Nevertheless, the report recognizes the fact that the RECs’ contribution to the AfCFTA starts with their shared and aligned mandates of increasing intra-regional trade and providing enabling environments for enterprise development and the emergence of Regional Value Chains (RVCs). Another key finding of the report which is of relevance to this study is that although the scale and scope of RECs’ contributions to intra-African trade vary, they face common challenges, such as shortcomings in boosting domestic production and economic diversification and implementing complex free trade area provisions.

3. Furthermore, the report offered high-level recommendations on how to make the interface between these two levels most productive. For example, it recommends that for trade promotion and development to be meaningful, RECs need to back their elimination of import tariffs by totally eliminating Non-Tariff Barriers (NTBs) as these steps would provide a basis for implementing the provisions of the AfCFTA and could be a stage towards realizing the African Economic Community (AEC) – the same ideology contained in the Treaty Establishing the African Economic Community².

4. Taking the UNECA (2021) report’s recommendations into consideration, this study aims at contributing to deeper understanding and appreciation of the *acquis* within the existing Southern African RECs and how Southern African countries can build on thereon to accelerate implementation of the AfCFTA. In summary, the study seeks to identify the Southern Africa-AfCFTA *acquis*, and guide on how the Southern African countries can leverage the existing successes in higher levels of integration and trade and investment performance within their RECs to accelerate implementation of the AfCFTA. It is envisaged that, from a broader view, the study will also help inform other RECs that the AfCFTA identifies as its building blocs on how they can leverage the accomplishments within their respective RECs to accelerate implementation of the AfCFTA.

² See Article 4.2(d) of the Treaty Establishing the African Economic Community

1.2 Contextual Background

5. The regional integration and trade agendas in Africa have been pursued through a number of interrelated and successive frameworks over the years. African integration was one of the main goals of the Organization of African Unity (OAU) when it was established in 1963³, as well as of its successor, the African Union (AU⁴), established in 2002. The Lagos Plan of Action and Final Act of Lagos of 1980 have also contributed to building momentum in terms of African integration and brought trade as a core element and driver of African integration. Chapter VII of the Lagos Plan of Action covers Trade and Finance. The Plan envisaged a step-wise approach to trade liberalization, with several milestones (see Box 1).

6. It is recalled that The Treaty Establishing the African Economic Community (AEC) adopted in 1991 already envisaged the establishment of the African Free Trade Area, and ultimately Customs Union, and that the African Free Trade Area would use the RECs as building blocs. The Treaty, *inter alia*, highlights the following as its Objectives⁵: “*To coordinate and harmonize policies among existing and future economic communities in order to foster the gradual establishment of the Community*” ... ensuring “*The strengthening of existing regional economic communities and the establishment of other communities where they do not exist*”. In addition, the Treaty features a detailed plan of action, spelt out in an ambitious six-stage roadmap, in terms of trade liberalization, harmonization of rules and further integration of economies, within a strengthened institutional framework. An examination of the activities to be undertaken during each of the six designated stages indicates that the idea was to achieve the African Economic Community using the RECs as its building blocs, and to fast-track implementation of African integration building on the *acquis* of RECs, some of which were to be set up under the auspices of the Treaty. Box 1⁶ presents in detail the envisaged actions by stage.

³ See Article 2 of the OAU Charter

⁴ See Article 3 of the Constitutive Act of the African Union

⁵ Articles 4.1(d) and 4.2(a)

⁶ Drawn from Article 6 of the Treaty Establishing the African Economic Community

First Stage: Strengthening of existing regional economic communities and, within a period not exceeding five (5) years from the date of entry into force of this Treaty, establishing economic communities in regions where they do not exist;

Second Stage: (i) At the level of each regional economic community and within a period not exceeding eight years, stabilizing Tariff Barriers and Non-Tariff Barriers, Customs Duties and internal taxes existing at the date of entry into force of this Treaty; preparation and adoption of studies to determine the time-table for the gradual removal of Tariff Barriers and Non-Tariff Barriers to regional and intra-Community trade and for the gradual harmonization of Customs Duties in relation to third States; (ii) Strengthening of sectoral integration at the regional and continental levels in all areas of activity particularly in the fields of trade, agriculture, money and finance, transport and communications, industry and energy; and (iii) Co-ordination and harmonization of activities among the existing and future economic communities.

Third Stage: At the level of each regional economic community and within a period not exceeding ten (10) years, establishment of a Free Trade Area through the observance of the time-table for the gradual removal of Tariff Barriers and Non-Tariff Barriers to intra-community trade and the establishment of a Customs Union by means of adopting a Common External Tariff.

Fourth Stage: Within a period not exceeding two (2) years, co-ordination and harmonization of tariff and non-tariff systems among the various regional economic communities with a view to establishing a Customs Union at the continental level by means of adopting a Common External Tariff.

Fifth Stage: Within a period not exceeding four (4) years, establishment of an African Common Market through: (i) The adoption of a common policy in several areas such as Agriculture, Transport and Communications, Industry, Energy and Scientific Research; (ii) The harmonization of monetary, financial and fiscal policies; (iii) The application of the principle of free movement of persons as well as the provisions herein regarding the rights of residence and establishment; and (iv) Constituting the proper resources of the Community as provided for in paragraph 2 of Article 82 of this Treaty.

Sixth Stage: Within a period not exceeding five (5) years:

(i) Consolidation and strengthening of the structure of the African Common Market, through including the free movement of people, goods, capital and services, as well as, the provisions herein regarding the rights of residence and establishment; (ii) Integration of all the sectors namely economic, political, social and cultural; establishment of a single domestic market and a Pan-African Economic and Monetary Union; (iii) Implementation of the final stage for the setting up of an African Monetary Union, the establishment of a single African Central Bank and the creation of a single African Currency; (iv) Implementation of the final stage for the setting up of the structure of the Pan-African Parliament and election of its members by continental universal suffrage; (v) Implementation of the final stage for the harmonization and co-ordination process of the activities of regional economic communities; (vi) Implementation of the final stage for the setting up of the structures of African multi-national enterprises in all sectors; and (vii) Implementation of

Figure 1. Box1: Stages and Actions for Realization of the African Economic Community: setting the *acquis* principle. (Article 6 of AEC Treaty) Source: Author

7. Overall, some of the key action points embedded in the Treaty are to pursue: liberalization of trade through the abolition, among Member States, of Customs Duties levied on imports and exports and the abolition, among Member States, of Non-Tariff Barriers, in order to establish a free trade area at the level of each regional economic community; adoption of a common trade policy vis-à-vis third States; and establishment and maintenance of a Common External Tariff, as well as a number of provisions pertaining to the removal of barriers in the movement of persons and goods. According to the timeline featured in the Abuja Treaty, Africa should have created a Continental Customs Union by 2019, and by 2023, establish a Continental Common Market. Notwithstanding, progress towards achieving the milestones outlined in the Treaty has not proceeded as planned. For example, high tariff barriers (average of 8.7%) and persistent nontariff barriers e.g., cumbersome customs procedures (thick borders), limited free movement of persons across Africa (38 African Countries still require Africans to apply for a visa before travelling there) all which goes against the Treaty spirit of creation of an African Economic Community (Olu, 2019). The table below shows the varying levels among RECs in implementing the Abuja Treaty. Other challenges include limited physical integration of Africa in terms of infrastructure, pockets of insecurity on the continent thwarting efforts towards free movement of goods and persons, different levels of integration by the different RECs upon which the African Economic Community was to build, and unwillingness by State Parties to cede power (national sovereignty) to a supra-national body.

REC	1994-1999	2000-2007	2008-2017		2018-2019	2020-2023	2024-2028
	Establishment and Strengthening	Tariff and Non-Tariff Barrier	Regional Free Trade Area (FTA)	Regional Customs Union (CU)	Continental Customs Union	African Common Market	Pan-African Monetary & Economic Union
EAC	REALISED	REALISED	REALISED	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
ECOWAS	REALISED	REALISED	REALISED	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
COMESA	REALISED	REALISED	REALISED	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
SADC	REALISED	REALISED	ONGOING	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
ECCAS	REALISED	REALISED	ONGOING	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
IGAD	REALISED	REALISED	ONGOING	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
CEN-SAD	REALISED	ONGOING	ONGOING	REALISED	NOT REALISED	NOT REALISED	NOT REALISED
AMU	REALISED	REALISED	ONGOING	REALISED	NOT REALISED	NOT REALISED	NOT REALISED

REALISED
 NOT REALISED
 ONGOING

Table 1. Achievements of RECs in implementation of Abuja Treaty. Source: AUC, 2019

8. The table above shows that all the RECs are yet to realize the goals of achieving the Continental Customs Union, African Common Market, and the Pan-African Monetary & Economic Union, while 6 RECs are yet to achieve a Regional Customs Union. Furthermore, 5 RECs are in the process of accomplishing FTAs while 1 REC (CEN-SAD) is in the process of establishing measures to eliminate tariffs and NTBs. These realities show that progress towards achieving the milestones outlined in the Abuja Treaty has not proceeded as planned.

9. In line with the Lagos Plan of Action and the Treaty Establishing the African Economic Community, the 18th Ordinary Session of the Assembly of the African Union held in January 2012 recognized the importance of promoting intra-African trade as a fundamental factor for sustainable

economic development, employment generation and effective integration of Africa into the global economy. In this regard, the Summit adopted a “*Decision on Boosting Intra-African Trade and Fast Tracking the Continental Free Trade Area*”, in which the African Heads of State and Government endorsed the Framework, Roadmap and Architecture for Fast-tracking the Establishment of the African Continental Free Trade Area (AfCFTA), and the Action Plan for Boosting Intra-African Trade (BAIT). Subsequently, in June 2015 negotiations to establish the African Continental Free Trade Area were launched.

10. In March 2018, after ten (10) negotiating rounds, forty-four (44) of the fifty five (55) African Union Member States signed the Agreement Establishing the AfCFTA, its Protocols on Trade in Goods and Services, Dispute Settlement Procedures, and their Annexes, covering inter alia, Customs Cooperation, Trade Facilitation, Sanitary and Phyto-sanitary (SPS) Measures, and Rules of Origin. These negotiations took place under Phase 1 of the AfCFTA.

11. Geographically, the AfCFTA is the world’s largest free trade area bringing together fifty-four (54) of the fifty-five (55) countries of the African Union (AU) and eight (8) Regional Economic Communities (RECs). The overall mandate of the AfCFTA is to create a single continental market with a population of about 1.3 billion people and a combined GDP of approximately US\$ 3.4 trillion. The AfCFTA is one of the flagship projects of *Agenda 2063: The Africa We Want*, the African Union’s long-term development strategy for transforming the continent into a global powerhouse. As part of its mandate, the AfCFTA aims at eliminating trade barriers and boosting intra-Africa trade. It aims at advancing trade in value-added production across all service sectors of the African Economy. The AfCFTA will contribute to establishing regional value chains in Africa, stimulating investment, industrialization, and job creation.

12. The general objectives⁷ of the AfCFTA are to:

- i. Create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of “*An integrated, prosperous and peaceful Africa*” enshrined in Agenda 2063.
- ii. Create a liberalized market for goods and services through successive rounds of negotiations.
- iii. Contribute to the movement of capital and natural persons and facilitate investments, building on the initiatives and developments in the State Parties and RECs.
- iv. Lay the foundation for the establishment of a Continental Customs Union at a later stage.
- v. Promote and attain sustainable and inclusive socio-economic development, gender equality, and structural transformation of the State Parties.
- vi. Enhance the competitiveness of the economies of State Parties within the continent and the global market.
- vii. Promote industrial development through diversification and regional value chain development, agricultural development, and food security; and
- viii. Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

⁷ Article 3 of the Agreement Establishing the African Continental Free Trade Area

13. The Agreement Establishing the African Continental Free Trade Area, in its Preamble, acknowledges the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the AfCFTA. This, in itself, points to the desire to build on the *acquis* of the existing RECs to implement the AfCFTA; and is very much in line with the ideology enshrined in the OAU Charter, the Constitutive Act of the African Union, and the Treaty Establishing the African Economic Community.

14. The AfCFTA entered into force on May 30, 2019, after twenty-four (24) Member States deposited their Instruments of Ratification in line with the Agreement and was launched at the 12th Extraordinary Session of the AU Assembly of Heads of State and Government in Niamey – Niger, in July 2019. The commencement of trading under the AfCFTA was on January 1, 2021. In October 2022, the AfCFTA Secretariat launched the Guided Trade Initiative.

15. From the foregoing, it is clear that the vision for the African Economic Community was before most RECs, and that after clear articulation of the AEC Vision, RECs have continued to deepen and consolidate their respective integration agenda through promulgation of new Instruments. On its part, the AfCFTA has duly taken this vision into account through the recognition of eight RECs (including SADC and COMESA) and the designation of such RECs as its building blocs⁸.

16. One pertinent question that this study answers, *among others*, is: have the RECs in their integration agenda carried forward the Vision of the AEC, and particularly that of the RECs being building blocs of the AEC? In other words, have the RECs configured themselves in such a manner that they provide strong *acquis* on which accelerated implementation of the AfCFTA can be based? Further still, the AfCFTA specifically mentions RECs and seeks to rely on them; do the RECs also mention the AfCFTA? Do they envisage themselves contributing to the AEC and AfCFTA agenda, and are they acting as such? Answers to these questions will clearly bring out the *acquis* on which Southern African countries can build for accelerated implementation of the AfCFTA.

1.3. Objectives of the Study

17. The objective of the Study is to assess the existing Southern Africa FTA (SA-FTAs) regimes to which the Southern African countries subscribe (i.e., the *acquis*) and provide ways in which they can build on them to accelerate implementation of the AfCFTA. The study assesses the progress (or non-progress) that has been made in the implementation of the Southern Africa RECs' FTAs with respect to key policies and activities that have contributed to regional integration in Southern Africa, and the best practices and lessons that can be drawn therefrom, for accelerated and complementary implementation of the AfCFTA.

18. The study also seeks to provide an understanding of the term "*acquis*" in the context of process of actualizing the AfCFTA and analyze how the objective of that *acquis* can be attained. Specifically, the study aims at: (a) Identifying areas of convergence and divergence in the Instruments of the AfCFTA and the subject RECs with a view to documenting the *acquis* on which the Southern Africa countries can build to accelerate implementation of the AfCFTA; (b) Identifying

⁸ See Article 5(b) of the Agreement Establishing the AfCFTA

the extent of implementation of the AfCFTA Instruments that are mirrored in the subject RECs for purposes of informing complementary and accelerated implementation of the RECs and AfCFTA; and (c) Advising Southern African countries and RECs as well as the wider AfCFTA on mechanisms and modalities of hastening implementation of the AfCFTA building on the *acquis* in the RECs.

2. Understanding the *acquis* and an analysis of the progress made under Regional Integration in Southern Africa FTA *acquis* juxtaposed against the AfCFTA

2.1. Understanding the *acquis*

19. There are three concepts that the study analyzes. Firstly, the term “*acquis*” and related terms such as “best practices in regional integration” have not been defined under the AfCFTA Agreement or its anchor documents such as the Treaty Establishing the African Economic Community, and it is important to have clarity on the terms and how they would influence the related implementation of the AfCFTA. Secondly, there is an assumption that implementation of the “*acquis*” and best practices of the RECs will lead to accelerated attainment of commercially viable and operational trade regimes at the continental level as envisaged under the Treaty for the Establishment of the African Economic Community, the Constitutive Act of the African Union, and the Agreement Establishing the AfCFTA itself.

20. The use of the *acquis* principle in FTAs and regional integration schemes has been a key issue over the years. The principle of the *acquis*, also known as the *acquis communautaire*, originated in the context of the European Union (EU), and was applied to refer to the body of EU laws, rules, and regulations that member states must adopt and implement as part of their domestic legislation (Hans & Lovro, 2011). The principle ensures that new member states align their laws with those of the EU to promote harmonization and facilitate the functioning of the single market (Hans & Lovro, 2011).

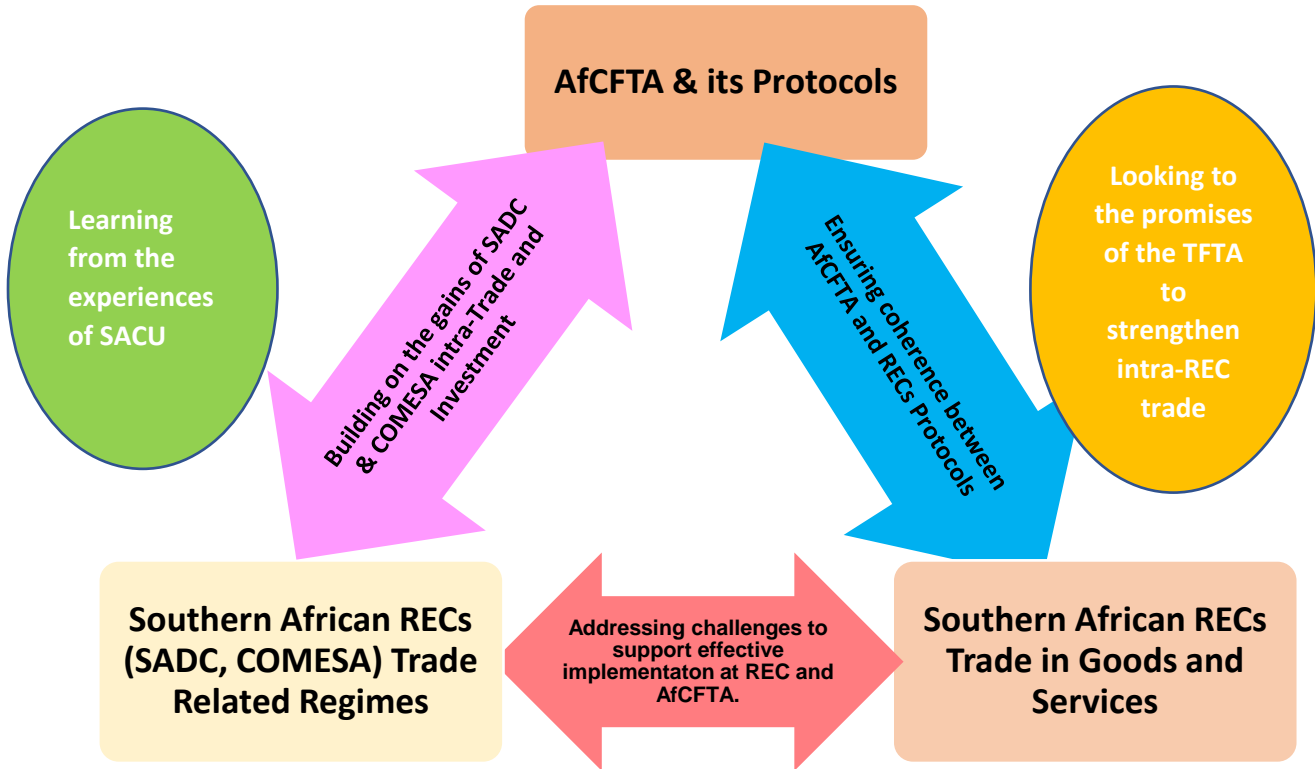
21. While the principle of *acquis* originated within the EU, its inclusion in trade agreements has gained prominence over the years in a number of FTAs, one of them being the AfCFTA. Under Article 5 of the AfCFTA, some of the key principles governing the AfCFTA include: (a) *RECs’ Free Trade Areas (FTAs) as building blocs for the AfCFTA*; (b) *preservation of the acquis*; and (c) *best practices in the RECs, in the State Parties and International Conventions binding the African Union.*” The AfCFTA Agreement further provides that: “... *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.*”

22. The third and most important provision relating to the “*acquis*” is found in sub-Article 8 (2) of the Protocol on Trade in Goods which, in relation to tariff concessions which constitutes the most important part of trade liberalization towards an FTA, provides 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 liberalization among themselves*”. In addition, the State

Parties also agreed under Article 18 (2) of the Protocol on Trade in Services to adopt the “*acquis*” principle with respect to existing REC attainments in Trade in Services by providing that: “*State Parties shall negotiate sector-specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the **best practices and acquis from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation.** State Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services*”. In the case of Trade in Services, would the States be obliged to make the same commitments they have made under the RECs regime under the AfCFTA?

23. The *acquis* principle is also recognized under the principles (Article 6) governing the EAC-SADC-COMESA Tripartite FTA. Under this context, it means that the negotiations should start from a point at which of the EAC, SADC and COMESA trade agreements have reached (Tralac, 2021). Applied to the AfCFTA, the *acquis* principle would mean that (tariff) concessions in both goods and services extended as part of the AfCFTA negotiations, would only be among those State Parties that have no preferential arrangements in place between them (Tralac, 2021). In terms of intra-REC Trade and Investment, this principle can be interpreted to mean that RECs with their own regional integration agendas will pursue their specific strategies on deeper integration, as well as other disciplines considered to be necessary for local needs (Tralac, 2021). In other words, this principle is meant to consolidate gains of deeper integration at REC level while providing mechanisms for RECs to harmonize their concessions with other RECs or State Parties in the context of implementing the AfCFTA.

Box 2: Visualization of the *Acquis* Concept in Accelerating Implementation of the AfCFTA in Southern Africa



24. The figure in Box 2 above visualizes the *acquis* of the RECs which the AfCFTA can leverage for effective and accelerated implementation. While the AfCFTA and the Southern African RECs complement each other, the AfCFTA is more vulnerable to the RECs as the performance and degree of implementation of their policies and frameworks, and readiness of their respective trade facilitating institutions and ecosystems determine the pace and depth of AfCFTA implementation among the RECs. The *acquis* works on the basis that the AfCFTA will build upon and strengthen the SADC and COMESA Trade in goods, Services and other trade-related regimes while ensuring coherence with their higher levels of cooperation. This will also require SADC and COMESA to ensure that they address the long-standing implementation challenges which impede intra-SADC, intra-COMESA, and SADC-COMESA trade and investment. This will require complementarity among national and REC-level taskforces on the different trading regimes to ensure the non-duplication of tasks and fostering cooperation instead of competition.

25. However, the *acquis* can be threatened in circumstances of relationships with third parties i.e., external trade partners. For example, it is worth noting that both SADC and COMESA member states have trading arrangements with third parties like the EU (Economic Partnership Agreement), and with the UK (Economic Partnership Agreement). The study analyses the extent to which these agreements undermine the applicability of the *acquis* in the implementation of the AfCFTA in Southern Africa. It is important to understand the key factors at play with regards to the *acquis* of the RECs and AfCFTA implementation. Indeed, there is expectation that the adoption of the *acquis* provisions by the AfCFTA would lead to the accelerated attainment of the objective of full continental integration. This would include the assumption that intra-continental trade would increase from the current low levels. However, several variables come into mind for the *acquis* to result in obtaining full continental integration and “commercially meaningful trade”. There is also

expectation that the REC FTAs will continue to exist and fulfill complete implementation of their FTAs. It is expected that State Parties that do not have FTAs will establish them and catch up with other RECs that have accelerated the implementation of their RECs. The issue relating to external trade relations of the RECs and those envisaged under the AfCFTA is an area that could lead to divergence and needs more analysis.

Description of Trade Area	Key Provisions under SADC	Key Provisions under COMESA	Key Provisions under AfCFTA	Areas of Convergence – the <i>acquis</i>
Trade in Goods				
Removal of Internal Tariffs	Elimination of tariffs on 85% of tariff lines	Reciprocal elimination of tariffs on all products traded by members participating in the COMESA FTA. However, due to overlapping membership, some countries acceded to the FTA with reservations	Differentiated and gradual elimination of tariffs on 97% of tariff lines, with 3% excluded from liberalization	Gradual elimination of tariffs guided by the principle of reciprocity
Common External Tariffs	No Common External Tariff (CET) in place, though envisaged (With exception of the CET of the SACU states – that are all in SADC)	No Common External Tariff in place, though envisaged	No Common External Tariff in place, though envisaged	RECs and AfCFTA all aspire to transform into Custom Union with a Common External Tariff
Rules of Origin	Foster regional cumulation and aim at developing regional value chains. The threshold for value of non-originating material set	Foster regional cumulation and aim at developing regional value chains. Threshold for value of non-originating material set	Foster regional cumulation and aim at developing regional value chains. Threshold for value of non-originating material set	The ultimate objective and vision of driving RECs and Africa's industrialization is shared

SPS	Balancing of rights and obligations in application of SPS measures, draws from international agreements and instruments. Specific SPS Protocol in Place	No specific SPS Protocol, but SPS Programmes implemented	Specific SPS Protocol in place, drawing from international agreements. Aims at balancing rights and obligations, and building capacity.	Shared vision of not using SPS measures as disguised barriers to trade, and balancing of rights and obligations.
NTBs	Best endeavour to eliminate NTBs. Online regional reporting and elimination mechanism in place.	Regulations on removal of NTBs in place. Online regional Reporting and elimination mechanism in place, drawing from National Monitoring Committees.	Specific NTB Protocol in place, with an institutional set up. Draws from REC and National Committees.	All agree in principle to remove NTBs, and create reporting and elimination mechanisms. Depth of commitment differs, though.
Trade in Services				
Services sectors covered	Six priority sectors, namely: Communication, Construction, Energy-Related, Financial, Tourism, and Transport services	Four priority sectors namely, Communication, Financial, Tourism, and Transport	Five priority sectors, namely: Business Services, Communication Services, Financial Services, Tourism Services, and Transport Services	All the Services Sectors prioritized under AfCFTA are also prioritised under the RECs, providing a good basis for convergence. Need to assess Mutual recognition Agreements between SADC and COMESA.
Institutional Arrangements				
Decision/Policy making	Interface of experts, senior technical and political leadership.	Interface of experts, senior technical and political leadership.	Interface of experts, senior technical and political leadership.	RECs and AfCFTA follow the same path in decision making

	Consensus based.	Consensus based	Consensus based	
Dispute Settlement	A Tribunal in place for handling disputes.	No FTA specific dispute settlement mechanism in place, though there is the COMESA Court of Justice	An elaborate dispute settlement mechanism put in place	AfCFTA promises deeper coverage of mechanisms to handle disputes, which RECs could make leverage of.

Table 2. Tabular Presentation of the *Acquis* Between RECs and AfCFTA. Source: Author

2.2. Analysis of the progress made under Regional Integration in Southern Africa FTA *acquis* juxtaposed against the AfCFTA

26. Southern African countries have membership in four principal Regional Economic Communities: the Southern African Development Community (SADC), Southern African Customs Union (SACU), Common Market for Eastern and Southern Africa (COMESA), and the Tripartite Free Trade Area encompassing SADC-COMESA- East African Community (EAC). Of the four RECs to which Southern African countries subscribe, two are explicitly recognized by the AfCFTA – SADC and COMESA. However, the third partner in the Tripartite FTA, the EAC, is also explicitly recognized by the AfCFTA; implicitly making the Tripartite FTA an acknowledged REC since all its members are explicitly recognized.

27. On its part, the SADC is constituted of sixteen member states: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia, and Zimbabwe. Out of the sixteen SADC countries, five make up the SACU - Botswana, Eswatini, Lesotho, Namibia, and South Africa. Further still, the COMESA has a membership of twenty one countries, spanning from Southern Africa to Northern Africa: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

28. From the above, it is clear that Southern African countries have multiple memberships in different RECs. The AfCFTA has projected itself as a solution to challenges that arise out of multiple memberships in RECs⁹, most probably the main reason it seeks to build on the *acquis*. Identification of this *acquis* essentially begins with understanding the broader framework within which Southern African countries are currently pursuing their regional integration agenda, that is, their membership in RECs and what their commitments, obligations and vision are therein. Box 3 below presents the membership in RECs by Southern African countries, including their other partners within the RECs who are not Southern African.

⁹ See Article 3(h) of the Agreement Establishing the AfCFTA

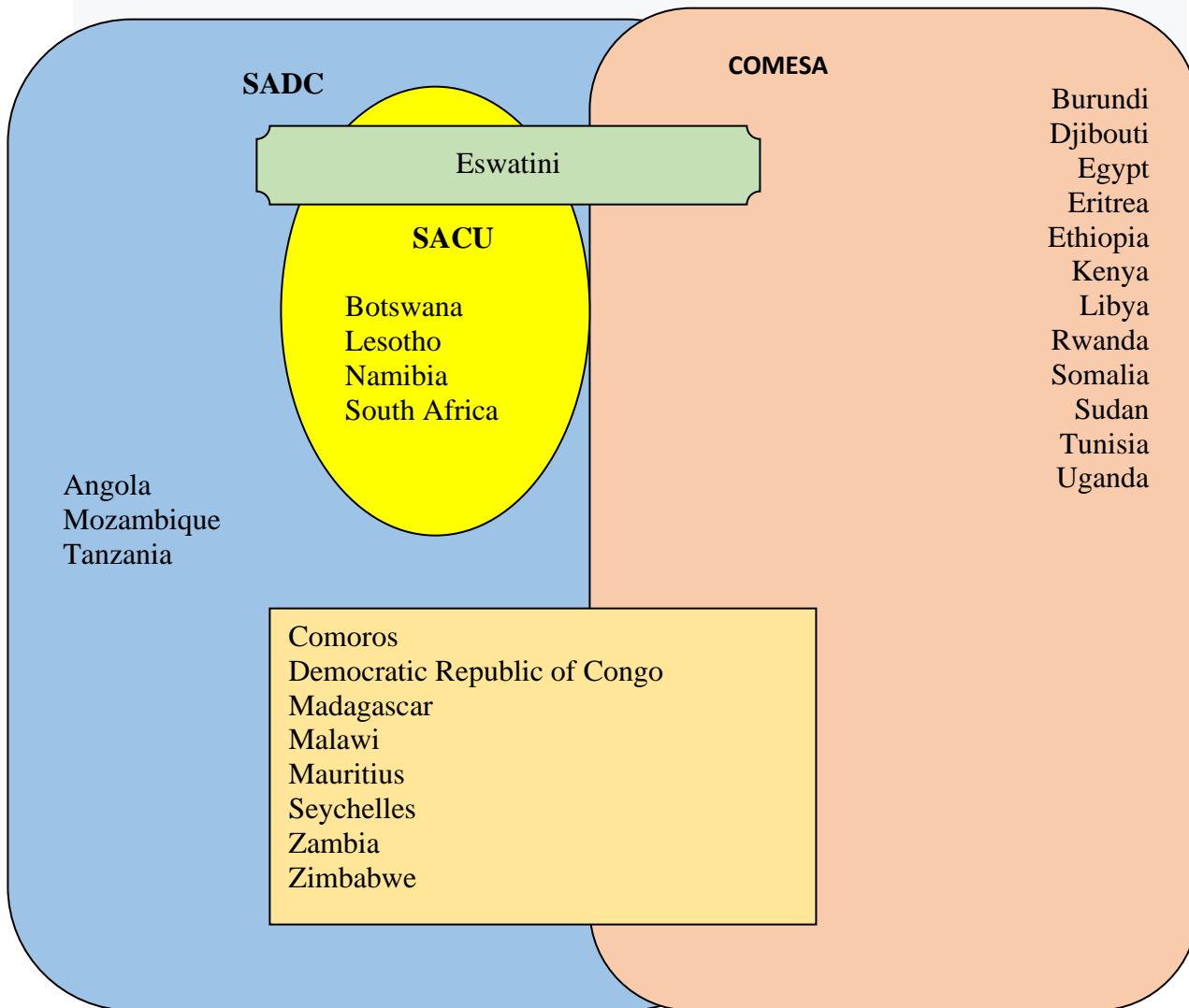


Figure 2. Box 3: Membership in RECs by Southern Africa Countries. Source: Author

2.2.1. Trade in Goods – Existing Tariff Reductions and NTBs

29. The AfCFTA has been negotiated in two phases, with Trade in Goods, Trade in Services, and Dispute Settlement Mechanism being negotiated in Phase 1 while Phase II negotiations focus on Investment, Competition Policy, Intellectual Property Rights (IPRs), Digital Trade, and Women and Youth in Trade. Therefore, the scope of the AfCFTA can be summarised as: Trade in Goods; Trade in Services; Dispute Settlement Mechanism; Investment; Intellectual Property Rights; Competition Policy; Digital Trade; and Women and Youth in Trade. The Phase II Protocols on Investment, Competition, and Intellectual Property Rights have been concluded and were approved

by the 36th Ordinary Session of the Assembly of Heads of State and Government of the African Union held in February 2023.

30. All Southern African countries have signed and ratified the Agreement establishing the AfCFTA. The AfCFTA follows a “framework agreement” model, with a core agreement forming a foundation that has been built through the two phases of negotiations.

2.2.2. Trade Liberalisation in Southern African FTAs

31. Both SADC and COMESA have in place intra-REC trade regimes which aim at liberalizing trade within the REC and governing trade with third parties. The Protocol on Trade in Goods in the SADC Region as signed in 1996 and amended in 2010 is the major legal and policy instrument governing trade in the SADC. The Protocol is essentially an agreement between SADC Member States to reduce customs duties and other barriers to trade on imported products among SADC Member States. The Protocol provides for gradual elimination of import duties on goods traded within SADC, elimination of export taxes and quantitative restrictions. The Protocol, which came into force in 2001, aims to liberalise intra-regional trade by creating mutually beneficial trade arrangements, thereby improving investment and productivity in the region, as well as eliminating barriers to trade, and easing customs procedures.

32. Article 27 of the SADC Trade Protocol provides for the continuation of existing preferential trade arrangements between the States and between them and third states. This was in effect recognising the “*acquis*” and allowing continued arrangements and commitment such as under COMESA and SADC to continue. South Africa was also actively entering bilateral arrangements with SADC states. At the time of the signing of the SADC Trade Protocol, which provides for the gradual liberalization of intraregional trade, ten (10) of its members (excluding only Botswana and South Africa) had already effected 70 percent tariff reductions under the COMESA Trade Liberalization Program. The overlap in membership of the various arrangements in the region could hamper implementation of the SADC Trade Protocol.

33. Under the auspices of the SADC Protocol on Trade, the SADC Free Trade Area (FTA) was launched in August 2008. A total of thirteen (13) Member States (Botswana, Eswatini, Lesotho, Malawi, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe) are implementing obligations under the FTA. The remaining three countries (Angola, Comoros, and Democratic Republic of Congo) are yet to join the FTA and have indicated interest to do so¹⁰. The Minimum conditions for implementation of the FTA were achieved in 2008, with 85 percent of tariffs on goods zero-rated by all participating countries. Implementation is on a reciprocal basis. Since 2013, intra-regional trade in SADC has been consistently above 20% and growing, which can be considered to be a relatively good achievement compared to the pre-FTA era high of around 16%. Indeed, in 2019, intra-SADC FTA trade was 23% of its total world trade, and 81% of its Africa trade (Tralac,2020), with intra SADC trade to 23% in 2021 (AUC, 2021). Main products (at HS2 level) traded intra-SADC FTA were light oils, electrical energy, diamonds, tobacco,

¹⁰ SADC Annual Report, Financial Year 2021/22

chromium ores, nickel ores, food and beverage industry additives, gold, goods vehicles, iron ores, ferro-chromium, chemical products and preparations, medicaments, maize, refined sugar and copper ores (ibid). In brief, intra-SADC trade is concentrated in Minerals, precious stones and metals; Manufactured products; and Vegetable and animal products.

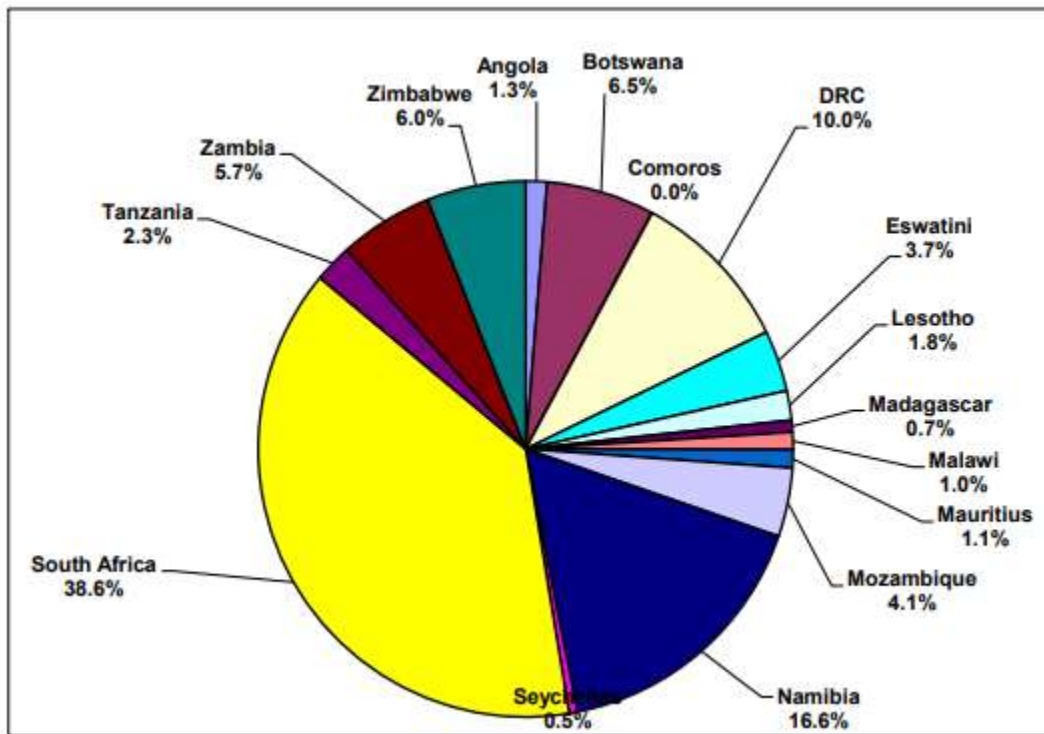


Figure 3. Share of Intra-SADC Trade, 2019 (%). Source: SADC, 2021

34. From the above figure, South Africa has 38.6% share of Trade within SADC Member States. Namibia stands at the second position (16.6%), followed by Botswana (6.5%). Furthermore, in 2019, SADC FTA exports to and imports from the rest of Africa were valued at US\$6.9 billion and US\$6.5 billion, respectively, with key destinations being Nigeria, DRC, Kenya, Angola and Ghana (ibid). It is key to note that the main products exported by the SADC FTA countries to other African countries were raw sugar cane, goods vehicles, sulphuric acid, bituminous coal, food and beverage industry additives, polypropylene, flat-rolled iron/steel products, light oils, portland cement as well as chemical products and preparations (ibid). On the other hand, top products sourced by SADC FTA countries from other African countries include crude petroleum oil, copper, frozen sardines, cobalt oxides, light oils, wheat flour, medicaments, cigarettes, medium oils, and soap and organic surface-active products (ibid). To facilitate implementation of the SADC FTA, the Community has put in place several instruments and programmes, such as Rules of Origin, Simplified Trade Regime targeting small cross border traders – particularly women and youth.

35. With respect to the COMESA, Member States have agreed on the following, *inter alia*: creating and maintaining a Free Trade Area guaranteeing the free movement of goods and services produced within COMESA and the removal of all tariffs and non-tariff barriers, and a Customs Union under which goods and services imported from non-COMESA countries will attract an agreed single tariff (Common External Tariff) in all COMESA Member States. In line with this, COMESA

Member States established a Free Trade Area (FTA) on 31 October 2000 after a sixteen-year period of progressive trade liberalization through the reduction of intra-COMESA tariffs, on a reciprocal basis for the participating countries. Currently, sixteen countries are participating in the Free Trade Area. In 2019, intra-COMESA total exports grew by 8% to US\$ 4.7 billion from US\$ 4.3 billion in 2018, with major exports including Portland cement, cobalt oxides and hydroxides, ceramic tiles, urea, quicklime, cane sugar, sesame, flour of wheat, medicaments, sanitary towels, sacks and bags and mixtures of odoriferous substances used in the food and drink industries (COMESA, 2020).

Sector	2013	2014	2015	2016	2017	2018	2019	% Change 2018 - 2019
Manufactures	5,619.81	5,114.04	4,388.39	3,638.37	3,944.52	4,284.24	4,664.03	9
Food	3,770.73	3,692.74	3,404.19	3,672.94	3,657.98	3,695.93	3,736.64	1
Fuels	820.27	450.71	1,396.09	564.03	749.91	830.70	1,330.40	60
Ores and metals	1,741.86	1,358.76	1,391.19	773.98	810.77	1,156.30	998.95	-14
Agric raw materials	183.42	173.59	153.41	180.01	133.44	123.47	139.41	13
Other products n.e.s.	11.40	5.53	3.67	2.76	2.63	20.42	4.96	-76
Total	12,147.50	10,795.36	10,736.94	8,832.09	9,299.25	10,111.06	10,874.40	8

Table 3. Intra-COMESA Total Exports by Sector, values in US\$ million. Source: COMSTAT Database

36. Apart from intra-COMESA Trade, the region’s trade with the rest of Africa is on a rise, with key trading partners including South Africa (30.6%), Tanzania (8.8%), Algeria (4%), Mozambique (3.9%), Morocco (3.4%), South Sudan (1.17%) and Nigeria (1.09%) among others (COMESA, 2020). The above products can be leveraged to promote COMESA’s trade with the rest of Africa under AfCFTA regime.

37. The removal of tariffs under the COMESA FTA is deeper than under SADC, as countries are required to completely remove tariffs on COMESA-originating products as defined by the COMESA Rules of Origin (RoO). Under the agreed rules, individual COMESA Member States are at liberty to determine the tariff rates applied to goods originating from non-COMESA member states. However, some countries have acceded to the COMESA FTA with reservations on some products as a result of their membership in other RECs – in this case, Uganda which has maintained reservation on products classified as Sensitive under the East African Community. The approach by Uganda remains a matter of serious contention under COMESA Organs and could be a pointer of what is yet to come under the AfCFTA given the multiplicity of RECs on the continent – some with deeper levels of integration than that envisaged under the AfCFTA.

38. The *acquis* is also explored under the respective SADC-COMESA regimes trading relationship. Indeed, since the SADC tariffs were expected to be higher than the COMESA’s tariffs until at least 2006, trade between SADC members that are also COMESA members was conducted

under the COMESA arrangement. The SADC Trade Protocol only effectively covered non-COMESA SADC members, since importers will clearly choose to pay the lower rates of customs duties under the COMESA umbrella (Gerhard, 2021). With regards to AfCFTA, trade under this regime can happen within the RECs basing on the already existing levels of tariffs which members prefer to trade under. Since COMESA tariff regime is the most utilised by members, the AfCFTA can leverage this to achieve trading calibrated by the COMESA tariff regime. Moreover, this will help address challenges of tariff implementation complexities which often arise as a result of multiple memberships, which have been noted as impediments to countries' capacity to implement trade facilitating decisions in the different RECs where they belong.

39. Under the SADC Trade Protocol, SADC-member states agree to accord one another MFN treatment, so as to ensure equal preferences. Currently, SADC member states are still trading under the SADC trade regime as the implementation of the AfCFTA by member states has not yet taken root. An element of contradiction appears in the inclusion of a provision that allows member states exemption from the obligation to extend preferences of another trading bloc of which they were a member at the time of the signing of the Trade Protocol. While this may be construed as a contradiction, it can actually support the AfCFTA implementation as MFN is one of the principles guiding the pact. Whereas the Article provides for exceptions to MFN, these can only apply provided that (a) they do not impede or frustrate the objectives of the AfCFTA Protocol; and (b) they extend preferential treatment to all State Parties on a reciprocal and non-discriminatory basis. Moreover, the *acquis* on MFN is provided for by the AfCFTA under Article 4.4 by stating that “*a State Party shall not be obliged to extend preferences agreed with any Third Party prior to the entry into force of this Protocol, of which that State Party was a member or a beneficiary..... State Party may afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis*”. Therefore, the flexibility of the SADC in respecting the *acquis* under MFN provides a soft-landing zone for the AfCFTA implementation.

40. With regard National Treatment, provisions are included to allow SADC member states not to accord preferential treatment to intra-SADC trade for reasons such as national security, cause of serious injury to a domestic industry that produces similar or directly competitive products, and protection of infant industries. A clear reading of Article 5 of the AfCFTA reveals the possibility of contradiction between the SADC and AfCFTA trading regimes. The AfCFTA Agreement under Article 5 provides that: “*A State Party shall accord to products imported from other State Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs. This treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994*”. Article 24 and Article 15(e) of the AfCFTA Protocol on Trade in Services also grant exceptions to the National Treatment principle. It is therefore important that the SADC harmonizes its National Treatment exceptions with the AfCFTA if a seamless trading under the AfCFTA regime is to be attained.

41. The AfCFTA provides for the removal of tariffs on 90% of tariff lines; designation of 7% of tariff lines as Sensitive and thus eligible for longer liberalization schedules; and 3% of the tariff lines can be excluded from liberalization. For Least Developed Countries (LDCs) – as per United Nations (UN) classification, the 90% non-Sensitive tariff lines will be liberalized over a ten (10) year period, and the Sensitive tariff lines over a thirteen (13) year period. For Non-LDCs, i.e. developing

countries, the time period for liberalization of Non-Sensitive tariff lines will be five (5) years and ten (10) years for Sensitive tariff lines. The base for such tariff liberalization is the respective applied Most Favoured Nation (MFN) rates, which in the case of Customs Unions such as the SACU, are the Common External Tariff (Luke, 2019). This is an area where the AfCFTA implementation and the *acquis* within TFTA is to be tested, given the differing ambitions of liberalisation. Indeed, under the market integration pillar, the Tripartite has a more ambitious tariff liberalization schedule compared to the AfCFTA. Whereas the latter's level of tariff liberalization ambition is 90 percent for non-sensitive products, 7 percent for sensitive products and 3 percent exclusion list, the Tripartite level of ambition is 100 percent tariff liberalisation (except for general and specific security exemptions), of which 60 percent to 85 percent tariff lines are to be liberalized upon entry into force of the agreement and 15 - 40 percent of the remaining tariff lines are to be negotiated within a period of 5-8 years.¹¹ The question that remains is how a balance will be struck between these different levels of liberalisation and how this will be implemented under the AfCFTA. Nonetheless, this higher level of liberalisation under the TFTA gives a boost to AfCFTA trading as it builds onto the successes already made by State Parties in making their tariff offers under the TFTA.

42. The Tripartite FTA tariff liberalization schedule is to be achieved by consolidating the tariff regimes of EAC, which as noted above, is a customs union and SACU subset of SADC member States, into TFTA in line with the principle of building on the *acquis* and subject to reciprocity. Besides the EAC and SACU countries, several COMESA countries participating in the COMESA FTA made TFTA tariff offers based on the COMESA *acquis* of 100 per cent tariff liberalization on a reciprocal basis. It should be noted, though, that the modalities for tariff negotiations agreed among Tripartite countries in 2013 were not too ambitious. It was agreed that 60-85 per cent of tariff lines would be liberalized upon entry into force of the Agreement and the remaining 15-40 per cent would be negotiated over a period of 5 to 8 years. This presents a challenge for countries that have fairly liberalized trade regimes (with more than 80 per cent of their tariff lines at 0 per cent Most Favoured Nation (MFN) vis-a-vis the principle of building on the *acquis*. Bilateral meetings on tariff exchanges have taken place between Egypt and EAC, EAC and SACU and Egypt and SACU between 2015 and 2018. The EAC/Egypt negotiations have been concluded while those between EAC/SACU and Egypt/SACU are at an advanced stage. The process of negotiating tariff offers took longer than anticipated.¹²

43. It is also important to note that Southern African Customs Union (SACU) and EAC, both of which are Customs Unions, have exchanged tariff offers that average 90 percent of their tariff books to be liberalized immediately on commencement of implementation of the Tripartite Agreement. Several other Tripartite Member/Partner States have based their tariff offers on the *acquis*, indicating that they have carried over the level of tariff liberalization they have attained under the various FTAs in the specific RECs to which they belong. For example, those in COMESA and SADC such as Madagascar, Mauritius, Malawi, Seychelles, Zimbabwe, and Zambia that have attained highest level

¹¹ Dr. Christopher Onyango: "Why the COMESA-EAC-SADC Tripartite Free Trade Area is Ideal for Strengthening African Continental Integration" <https://www.comesa.int/wp-content/uploads/2020/09/Tripartite-FTA-is-ideal-for-strengthening-AfCFTA.pdf>

¹² David Luke and Zodwa: The Tripartite Free Trade Area and the African Continental Free Trade Area: The Case for Consolidation" 2018. <https://repository.uneca.org/bitstream/handle/10855/41841/b11929236.pdf>

of tariff liberalization would extend similar level of ambition in the Tripartite FTA. Therefore, in Southern Africa, it is only the five SACU Members who have a common *acquis* on which to base for implementation of the AfCFTA. Indeed, in Southern Africa, it is only SACU which has submitted a common market access offer, with other countries such as Mauritius, Malawi, Zimbabwe, and Madagascar submitting individual offers. The other countries are yet to make their submissions. From the above state of play, it can be said that the AfCFTA is already leveraging the *acquis* on tariff exchanges under the SADC and COMESA member states to accelerate its implementation agenda and consolidate its negotiations on tariff offers and RoO. However, the varied speed, and from different bases, makes reliance on the *acquis* to accelerate implementation of the AfCFTA, a bit of a difficult task. Notably, 90 percent of the TFTA list of Rules of Origin have been agreed and already contained in Annex IV of the TFTA Agreement. So far, only two issues regarding the Rules of Origin of some products of the textiles and automobiles sectors remain outstanding. In addition, a manual and regulations on Rules of Origin have been developed to facilitate implementation of Annex IV of the TFTA Agreement.¹³

REC	Tariff Reduction Programme	Progress in Implementation	Offer to AfCFTA
COMESA	100 percent	By 2023 – 16 countries had reduced by 100% 3 countries by 90% Exemptions available only on request.	Individual countries (except those which are also EAC Partner States) have extended different offers
SADC	85% tariff drawdown by 2008 and liberalise sensitive goods by 2012. -With many exclusions listed for exemption (negative list)	Limited implementation of the tariff offers by member states	Individual countries have made country specific offers, but generally drawing from one of the RECs they are members of
SACU	100 percent	Fully liberalised	-90% tariff lines – 100 % removal; -7 % tariff lines designated as sensitive. -3% - excluded. Offer based on the

¹³ Dr. Christopher Onyango: “Why the COMESA-EAC-SADC Tripartite Free Trade Area is Ideal for Strengthening African Continental Integration” <https://www.comesa.int/wp-content/uploads/2020/09/Tripartite-FTA-is-ideal-for-strengthening-AfCFTA.pdf>

			SACU	Common
			External Tariff	Tariff
TRIPARTITE EAC-COMESA- SADC	100 percent over a long period	Ongoing Agreement not yet in force	–	
AfCFTA	90 percent: LDCs – 13 years for sensitive goods. Non-LDC – 10 years for sensitive goods	Partial implementation		Not applicable

Table 4. Illustrating RECs *acquis* and AfCFTA trade liberalization programme. Source: Author

44. The incoherences between commitments under AfCFTA and other regional integration schemes need to be examined. During interviews, respondents argued that in order to use the *acquis* as a basis for accelerating implementation of the AfCFTA, it is important to first define where they are in terms of regional trade arrangements and then integrate further from there. For example, most RECs do not have Exclusion Lists as is the case under the AfCFTA, implying deeper liberalization under the RECs as compared to the AfCFTA. In this case, the AfCFTA would be less than the existing *acquis* at RECs level. Indeed, SADC countries focused on opening amongst themselves (except South Africa which has a lower than 100% threshold, yet they offer 100% for all the other countries), though now within SADC, they have moved to 100% amongst themselves after the transitional period. This was the same under the Tripartite FTA. These divergent tariff regimes mean that if you have 100% tariff liberalisation at Tripartite FTA level, there would be no threat at AfCFTA level. It also brings more questions on the implication of such different tariff regimes on using the *acquis* to accelerate implementation of the AfCFTA. Besides the trade liberalization regime, the Trade in Goods regime is largely governed through the respective Annexes to the Protocol, such as those on Rules of Origin, Trade Facilitation, SPS and others.

45. One innovation the AfCFTA introduced in 2021 was the Guided Trade Initiative (GTI). The AfCFTA Guided Trade Initiative intends to achieve its goal through matchmaking businesses and products for export and import between these interested State Parties in coordination with their national AfCFTA implementation committees. The initiative attracted participation of eight (8) State Parties – Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia. The products earmarked to trade under the AfCFTA Guided Trade Initiative include Ceramic Tiles; batteries, tea, coffee, processed meat products, corn starch, sugar, pasta, glucose syrup, dried fruits, and sisal fibre, amongst others, in line with the AfCFTA focus on value chain development¹⁴. It is anticipated that in 2023, the GTI will be expanded to cover more countries and Trade in Services as well. From the choice of products covered under the Guided Trade Initiative, it is clear that implementation of the AfCFTA is building on the *acquis*. For example, SADC’s average annual exports of sugar (HS Code 1701) for 2018-22 were USD 682.758 Million against Africa’s average annual global imports of USD 6.081 Billion – giving SADC a market share of 11.2% in Africa’s sugar market. Similarly, over the same period, SADC’s average annual global exports of sugar were USD 1.203 Billion; implying that 56.8% of SADC’s sugar exports were to the AfCFTA countries.

¹⁴ <https://au-afcfta.org/>

46. From the above section, we can note that while there has been increased trade under COMESA and SADC following their adoption of liberalisation regimes, there is still limited trading among partner states, in few products. The existing incoherences between commitments under AfCFTA and COMESA and SADC schemes, e.g., on exclusion lists where while the AfCFTA provides for the list, schemes like COMESA are not explicit on this creates a big challenge on how trading in such products will occur. Furthermore, the slow adoption of the GTI by SADC member states, with only Mauritius participating creates a major concern on the readiness of the countries to roll out trading under the AfCFTA regime.

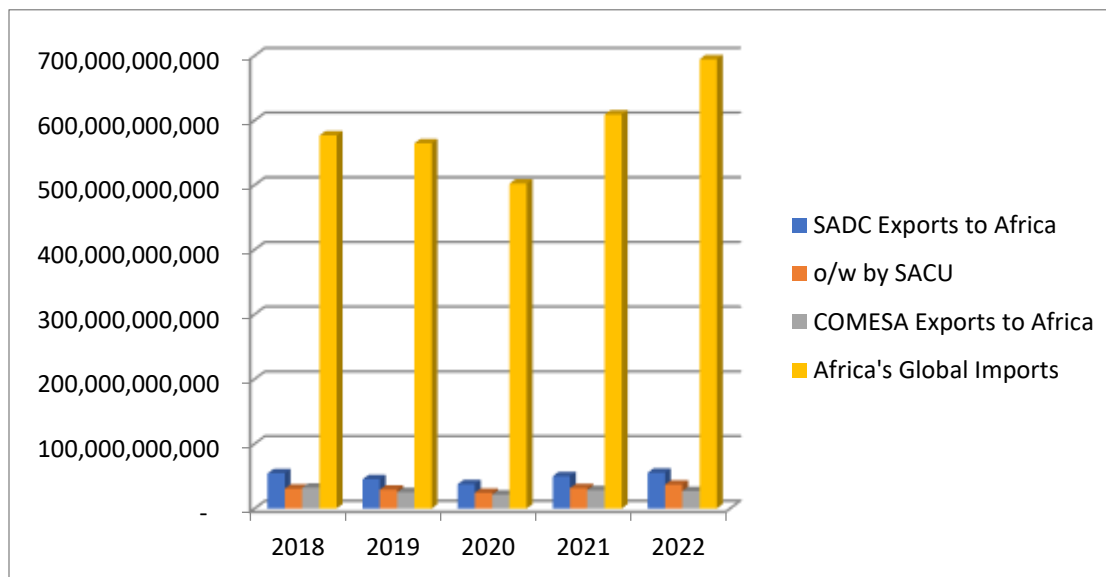
47. Analysis of trade figures between Southern African RECs and Africa indicate that from 2018 (the year of signature of the AfCFTA) there is no significant growth in SADC's or COMESA's exports to the rest of Africa. In addition, the data indicate that SADC's exports to the Rest of Africa are dominated by SACU exports, and mainly South Africa. SADC's market share in Africa's total imports declined from 9.4% in 2018 to 8.0% in 2022; while that of COMESA declined from 5.6% to 3.9% over the same period. This decline can partly be explained by the COVID-19 pandemic, but also the logistics/inter-connectivity state of Africa in as far as it can foster intra-African trade. Overall, however, the absolute figures are quite encouraging and provide a strong acquis on which the Southern African countries can build to boost their exports to the Rest of Africa under the auspices of the AfCFTA. Table 3 provides a summary of Southern African RECs Trade with the Rest of Africa, while Graph 1 presents a graphical presentation of the Southern African RECs Trade with the Rest of Africa.

Table 5: Summary of Southern African RECs Trade with the Rest of Africa, 2018 – 22, US\$

Description	2018	2019	2020	2021	2022
SADC Exports to Africa	54,397,490,000	45,195,168,000	37,563,838,000	49,855,394,000	55,230,944,000
o/w by SACU	30,572,831,000	29,304,180,000	24,203,503,000	31,619,260,000	36,837,287,000
COMESA Exports to Africa	32,060,865,000	25,266,906,000	21,506,001,000	28,226,063,000	26,791,102,000
Africa's Global Imports	576,776,818,000	564,656,942,000	502,221,533,000	609,289,228,000	694,523,527,000
SADC Market share in Africa	9.4%	8.0%	7.5%	8.2%	8.0%
COMESA Market share in Africa	5.6%	4.5%	4.3%	4.6%	3.9%

Data Source: UNCOMTRADE/Trademap and Author's Computation

Graph 1: Southern African RECs Trade with Africa, US\$



2.2.3. Rules of Origin (RoO)

48. Rules of origin are the rules for determining the country of origin of goods. According to UNCTAD (2019), RoO are like a passport for a product to enter a free trade area and circulate without being imposed a duty. The basic role of RoO is the determination of the economic nationality as opposed to the geographical nationality of a given good (ibid). It can be argued that the *raison d'être* of preferential rules of origin is the avoidance of trade deflection.

The WTO Agreement on Rules of Origin distinguishes two types of rules of origin:

1. **Preferential origin:** This determines whether products are eligible for preferential (lower or zero) tariffs and other benefits provided under preferential regimes, either in the context of trade agreements or unilateral preferential schemes. Qualifying under preferential origin may require imports to be completely or partially produced in a country that is a beneficiary from the preferential regime under consideration, according to its specific conditions identified. In some cases, however, materials from certain third parties may also qualify as originating. Information on rules of origin and origin provisions in trade agreements can be retrieved in the Rules of Origin Facilitator, an initiative developed jointly by the WTO and the International Trade Centre (ITC).
2. **Non-preferential origin:** This is not linked to trade agreements and may determine whether businesses have to comply with non-tariff requirements such as trade remedies and quotas (see guide on non-tariff measures). Not all countries apply specific legislation related to non-preferential rules of origin, and negotiations on adopting harmonized non-preferential rules of origin are still ongoing. The WTO's Rules of Origin Section provides a list of WTO Members that have notified their non-preferential rules of origin.

49. In principle, the Rules of Origin under the SADC, COMESA and AfCFTA promote cumulation within the member countries and aim to boost domestic industrial development and develop regional value chains. They all have thresholds on the value of non-originating materials that can be used in the production process without denying the final product preferential treatment as well as a minimum value that must be added domestically or the level of transformation that must be undertaken in order for a product to benefit from preferences. These are also contained in product-specific Rules.

50. The SADC RoO have gone a step further in elaborating specific manufacturing processes and operations that need to occur within a member country to confer origin to specific listed products. Indeed, instead of general rules, SADC uses product-specific rules of origin based on the so-called list approach i.e., the value-added rule, the CTH (Change in Tariff Heading) rule and specific process rules. The purpose of this approach to rules of origin is to make trade deflection more difficult, thus confining access to the preferences conferred by the PTA to producers actually located in the region¹⁵. One concern with this approach is that SADC RoO negotiations are conducted on a sector and product-specific basis and, as a result, take much longer to conclude than the liberal COMESA and EAC approaches¹⁶. Furthermore, while SADC RoO permit full cumulation of origin among member states, it is yet to be fully exploited because they are complex and more restrictive. This is because the rules do not meet the criteria of least trade restrictiveness, substantive and administrative simplicity, and ease of application laid out by the SADC Subcommittee on Customs and Trade¹⁷. It is no wonder that countries like Malawi, Swaziland and Zambia that are members of both SADC and COMESA have in most cases preferred to use the COMESA RoO (whose tariff rates, are on average, higher compared to SADC) owing to the fact that they are more straightforward to meet¹⁸. This risks undermining the maximisation of intra-SADC trade benefits.

51. The COMESA Rules of Origin are used to determine whether goods produced in the COMESA region are eligible for preferential treatment within the FTA. The COMESA Rules of Origin have five criteria and Goods are considered as originating if they meet any of the following five criteria:

- i. The goods should be wholly produced.
- ii. The Cost Insurance Freight (CIF) value of any non-originating material should not exceed 60% of the ex- works price of the goods.
- iii. Goods must attain the value added of at least 35% of the ex-factory cost of the goods.
- iv. Goods should fulfil the Change in Tariff Heading (CTH) rule; and

¹⁵ Draper, P., Chikura, C, & Krogman, H. (2016). Can Rules of Origin in Sub-Saharan Africa be Harmonized? A Political Economy Exploration, https://www.idos-research.de/uploads/media/DP_1.2016.pdf

¹⁶ Draper, P., Chikura, C, & Krogman, H. (2016).

¹⁷ Draper, P., Chikura, C, & Krogman, H. (2016).

¹⁸ Ndonga, D. (2021). Rules of Origin as a Key to the AfCFTA's Success: Lessons that can be Drawn from the Regional Experience. <https://www.afronomiclaw.org/category/analysis/rules-origin-key-afcftas-success-lessons-can-be-drawn-regional-experience>

- v. Good must have importance to the economic development of the member states and should contain not less than 25% of value.

52. According to UNCTAD and COMESA (2023), The low utilisation of trade preferences in COMESA has been attributed to the fact that the COMESA RoO have been under renegotiation for several years, thus causing uncertainties among economic operators and firms about the predictability of the applicable RoO. The report notes that it is quite evident that the average total utilization rate of preferences of EAC is by far higher than other RECs with 77.9 percent, COMESA at 39.8 percent and SADC at 25.3 percent. This finding of low utilization of trade preferences in SADC and COMESA matches existing literature and studies pointing out that SADC rules of origin and related administrative procedures are overly stringent¹⁹.²⁰. Indeed, while COMESA RoO allows for full cumulation of production, unilateral digression from the value-added threshold by some Member States increasing the threshold has become common. Putting SADC and COMESA RoO in context, the major task for the AfCFTA is to ensure that its RoO do not cause trade deflection i.e., a loophole for exporters that want to take advantage of different tariff rates within the AfCFTA by imports to the country with the lowest tariff for further re-exportation to other FTA members.

53. The AfCFTA Rules of Origin, just like the SADC and COMESA Rules of Origin, promote cumulation within the member countries and aim at boosting domestic industrial development and developing regional value chains. Article 6 of the Annex provides that Products which are not wholly obtained are considered to be sufficiently worked or processed (and therefore eligible for preferential treatment) when they fulfil one of the following criteria: Value Added; Non-originating material content; Change in tariff heading; or Specific processes. The Rules have thresholds on the value of non-originating materials that can be used in the production process without denying the final product preferential treatment as well as a minimum value that must be added domestically or the level of transformation that must be undertaken in order for a product to benefit from preferences. These are also contained in product-specific Rules. There is convergence across SADC, COMESA and AfCFTA on the processes that do not confer originating status. These processes include breaking bulk, operations exclusively intended to preserve products in good condition, breaking up or assembly of packages, and simple ironing and pressing operations, among others.

54. In keeping in line with the principle of building on the acquis, the Article on Transitional Arrangements under the AfCFTA provides that “*Pending the adoption of the outstanding provisions, State Parties agree that the Rules of Origin in existing trade regimes shall be applicable*”. These provisions are identified as: definitions of “Value Added” in Article 1 (x) and requirements for “their vessels” and “their factory ships, Drafting hybrid rules in Appendix IV to Annex 2 on the Rules of Origin; Drafting Regulations for Goods produced under Special Economic Arrangements/Zones;

¹⁹ Stefano Inama, “Rules of Origin in International Trade”, 2009, 2021. See also “Can Rules of Origin in Sub-Saharan Africa be Harmonized? A Political Economy Exploration”, Peter Draper, Cynthia Chikura and Heinrich Krogman, German Development institute, 2016, available at https://www.die-gdi.de/uploads/media/DP_1.2016.pdf and “Rules of Origin as Tools of Development? Some Lessons from SADC”, Frank Flatters and Robert Kirk, 2003, available at <https://edc.gov.bz/wp-content/uploads/2016/11/rules-of-origin-as-tools-of-development-some-lessons-from-ADC.pdf>.

²⁰ UNCTAD. (2023). The Utilization of Trade Preferences by COMESA Member States Intra-Regional Trade and North-South Trade. https://unctad.org/system/files/official-document/aldc2022d1_en.pdf

Drafting of additional provisions in Annex 2 on Rules of Origin on value tolerance, absorption principle and accounting segregation/GAAP; and Drafting AfCFTA Rules of Origin Manuals/Guidelines, among others. Some areas of divergence in the Rules of Origin under the COMESA, SADC and AfCFTA include their coverage of Trade Fairs, goods produced in Special Economic Zones/Free Zones, tolerance value thresholds for non-originating production inputs, and the extended cumulation principle, which is available under the AfCFTA, but not the RECs.

55. The AfCFTA RoO also have to navigate the challenges of multiple RoO regimes which have contributed to the stagnation of intra-REC trade growth in the COMESA and SADC trading blocs. This is because these multiple RoO have been problematic during customs procedures for member states of both trade blocs in terms of which rules to apply. Moreover, the AfCFTA RoO have opted for a single Product-Specific Rules approach applicable to all State Parties which, although it represents a simplification, comes at the expense of differentiated rules that would have recognized the limited implementation capabilities of some countries. Indeed, this one size fits all approach is problematic for the private sector especially MSMEs who are at varying levels of readiness to comply with the cumulation requirements under the AfCFTA RoO, and may result in uneven reaping of the AfCFTA benefits. Therefore, as AfCFTA State Parties move from design of RoO towards implementation it will be important to monitor whether all states operationalize both tariff preferences and RoO. It will also be important to understand the specifics of implementation of the RoO protocol and tariff preferences in each country and to undertake a review of the AfCFTA RoO with a view to making them foster regional integration, and simple and flexible to use by the continent's economic operators. Any such review process should build on the acquis of the already existing REC RoO, particularly those that have already been found to foster utilization of trade preferences under their respective FTAs.It.

56. This section has revealed that both SADC and COMESA have put in place a trade liberalization policy and ecosystem to facilitate intra-REC trade which the AfCFTA can leverage. For the SADC, given that its protocol provides for the continuation of existing preferential trade arrangements between the States and between them and third states, this gives a big boost to other AfCFTA State Parties who are non-SADC members to easily trade with the REC under the AfCFTA regime. With regards COMESA, the liberalization regime of 100% (irrespective of some member states who have maintained reservation on products classified as sensitive), which exceeds the AfCFTA cumulative liberalization threshold of 97% will be of immense catalyst to the AfCFTA trade regime within the REC. With COMESA tariff regime being the most utilized by members, it makes it easier for the AfCFTA to have a soft landing with regard to its implementation in southern Africa. Moreover, the AfCFTA trading regime will be vital in addressing the challenge of overlapping membership which has hampered the effective implementation of SADC and COMESA trade liberalization commitments.

2.2.4. Simplified Trade Regime (STR)

57. STR can be defined as a special arrangement which aims to simplify and streamline the documentation and procedures for the clearance of low-value consignments of small cross-border traders, at the same time enabling them to benefit from the preferential trading environment (Tralac,2021). The raison d'être of the STR is to facilitate small-scale cross-border trade, by way of simplified clearance procedures (such as forgoing the requirement for a certificate of origin) for low-

value consignments (for example, usually less than US\$2,000) on applicable products. Traders still have to pay VAT, excise duty, obtain immigration documents and comply with a range of standards in order to benefit from the STRs (Luke, 2023).

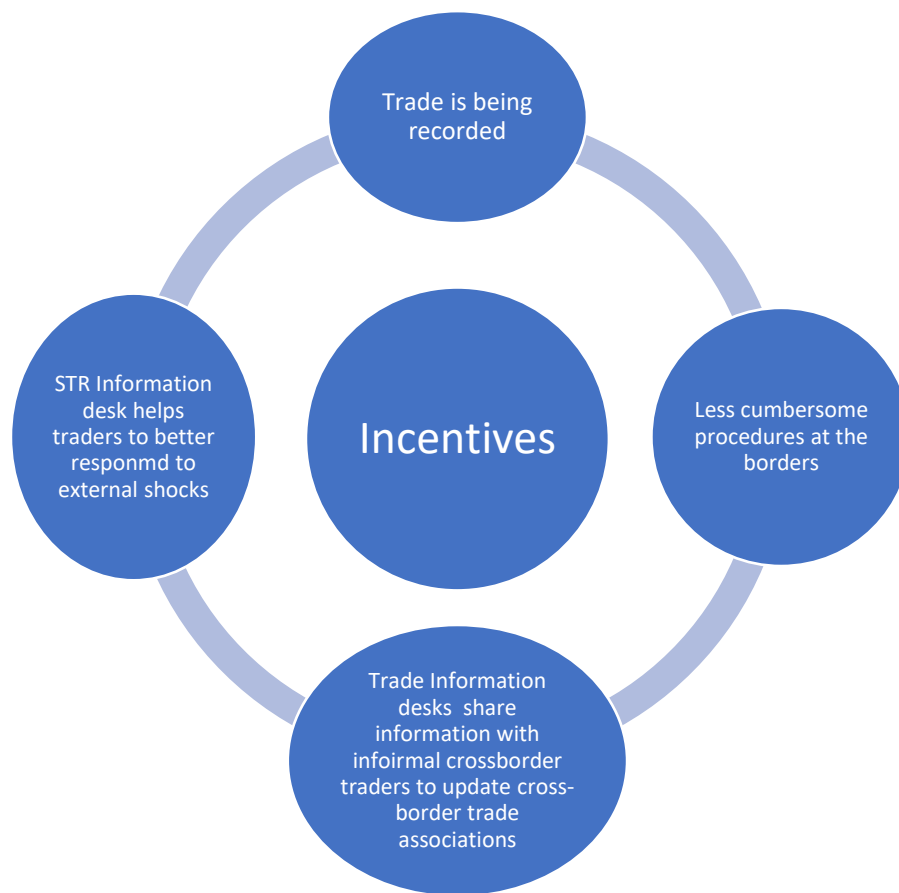


Figure 4. The STR ecosystem. Source: Luke, 2023

58. Arguably, one of the pro-SMEs arrangements that COMESA has developed is the Simplified Trade Regime (STR) which was launched in 2010 recognising that cross border trade constitutes a significant component of trade in the region. The STR aims to formalize Informal Cross-Border Trade (ICBT) by putting in place instruments and mechanisms tailored to the trading requirements of small-scale traders that are decentralized to border areas where informal trade is rampant with the view to facilitate ease of access by small traders. The STR targets small-scale traders importing and/or exporting goods worth US\$ 2,000 or less, which are on the Common list of eligible products negotiated and agreed by two neighbouring countries. The STR reduces costs for small traders and reduces the time of crossing the border by the use of a simplified Certificate of Origin and a Simplified Customs Document (SCD) as well as simplified customs clearance procedures. However, the COMESA STR is faced with implementation weaknesses. Indeed, the thresholds for goods are not harmonized across COMESA member states; for example, Zimbabwe applied the STR to consignments under \$1,000, whereas Malawi applied the STR to consignments under \$2,000 (Luke,

2023). Interviews with trade officers in Zambia and Malawi spotlighted this challenge and the fact that the goods covered under the regime were last reviewed in 2013 (Luke, 2023).

59. SADC is also in the process of establishing the STR with similar objectives to COMESA and EAC. The STR should be one of the best initiatives that the AfCFTA can emulate if it is to realise an inclusive trading regime i.e., one that works for small cross-border traders, the majority of whom are women and youth. In order to realise this, the AfCFTA Secretariat in partnership with the respective RECs Secretariats should publish the list of products eligible for respective STRs, build the capacity of traders and customs officials in the implementation of STRs, publish the STR documentation including in the languages understood by the women and small-scale traders.

60. One of the key proposals by Private Sector associations, which is also echoed in a number of National AfCFTA Implementation Strategies of Southern Africa countries, is the need for the AfCFTA to establish a STR which would be critical in supporting small cross-border traders (SME's) to utilise the trading regime. As a way of maintaining the *acquis*, the AfCFTA can benchmark and upgrade (in terms of implementation by member states and reviewing of goods covered under the STR regime) the COMESA STR in a way of ensuring its efficient responsiveness within and beyond COMESA.

2.2.5. Sanitary and PhytoSanitary (SPS) and Technical Barriers to Trade (TBT)

61. Sanitary and PhytoSanitary (SPS) measures, or measures to ensure food and feed safety for humans, animals and plants remain a major element of international trade. While it is important to ensure food and feed safety for humans, animals and plants, SPS have quite often been used as disguised barriers to free trade and often represent a large share of the controls faced by formal traders both behind and at the border. For example, such SPS measures may include numerous documentary requirements (e.g., import/export permits, phytosanitary certificates, fumigation certificates, quality standards certificates, non-GMO certificates), as well as inspections and tests to ensure that goods conform to national regulations²¹. Accordingly, all international trade agreements address themselves to this subject, providing a balance of rights and obligations amongst the contracting parties.

62. The SADC have in place the SPS Protocol as an Annex to the SADC Protocol on Trade. The Protocol has provisions relating to the rights of members to regulate for purposes of food and feed safety, but also ensuring that such regulation does not constitute disguised limitations on trade within SADC. It provides mechanisms for regional cooperation in addressing SPS matters, including aspects such as Equivalence, Harmonization, and Risk Assessment, among others. The Protocol also alludes to the use of international and regional best practices in the area of SPS. However, it is key to note that the implementation of SPS measures in SADC continues to be hindered by overlap and fragmentation of the SPS control system, as well as inadequate coordination between different SPS

²¹ Rathebe, J.M. (2015). The implementation of SPS Measures to facilitate safe trade Selected Practices and Experiences in Malawi, South Africa and Zambia.
https://standardsfacility.org/sites/default/files/STDF_Rathebe_Report_Final_Nov2015.pdf

authorities and other border authorities²². This has often contributed to overlapping documentary requirements and caused delays, increased transaction costs and uncertainty for traders. Therefore, there is still a need for SADC Member States to encourage greater inter-agency collaboration and coordination at borders, both between national agencies and with authorities on the other side of the border.

63. On its part, COMESA has in place SPS Regulations and has developed successive SPS Strategies. In 2007, the COMESA Council of Ministers established the SPS Sub-Committee under the Technical Committee on Agriculture, for effective coordination of SPS matters at regional level. Subsequently, the Council of Ministers directed the COMESA Secretariat to set up and make functional an SPS Unit at the Secretariat. The Council of Ministers also directed the Secretariat to enhance programmes aimed at mutual recognition of standards and SPS measures, as well as to expedite the harmonization process as stipulated in the COMESA SPS Regulations. In 2019, COMESA championed an SPS program working across the Tripartite FTA, whose major purpose was to promote a harmonized risk-based regulatory environment and strengthened bio-security systems that enhance food and nutrition security and facilitate agricultural trade, exports and investments. This program has had a number of achievements including (a) strengthening the management of Standards and Phytosanitary Measures in the region through a programme called Prioritization of SPS Investments for Market Access (P-IMA); (b) promoting regional leadership through Member State's coordination and collaboration on SPS issues; and (c) reducing trading costs associated with SPS measures without reducing countries' effectiveness or efficiency of managing SPS risks²³.

64. At the AfCFTA level, Annex 7 to the Protocol on Trade in Goods deals with SPS. The AfCFTA SPS Protocol is also a mirror of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, just as is the case with the SADC SPS Protocol. It also reaffirms the rights and obligations of State Parties to apply SPS measures for purposes of ensuring food and feed safety. The Protocol also sets up an SPS Sub-Committee for efficient implementation of the Protocol.

65. Effectively, therefore, both the RECs and AfCFTA address themselves to SPS matters, albeit to varying degrees. Nevertheless, the variances can be manageable given the fact that the WTO SPS Agreement provides the foundation for all SPS measures at both REC and AfCFTA level. This further creates some sort of convergence in SPSs measures between the respective REC's and AfCFTA, and thus stands to ease on the implementation mechanism.

66. Regarding Technical Barriers to Trade (TBT), SADC has in place a Protocol on Technical Barriers to Trade as an Annex to the SADC Protocol on Trade. The TBT Protocol aims at establishing a common technical regulation framework supported by appropriate regional TBT Cooperation Structures. The Protocol is also essentially a reaffirmation of the rights and obligations of Member States in respect of technical regulations, standards, and conformity assessment procedures with respect to each other under the World Trade Organization (WTO) TBT Agreement.

²² Ibid

²³ COMESA. (2019). COMESA Sanitary and Phytosanitary Programme (SPS) Annual Report 2018/9

However, it goes further and creates a regional technical regulation framework and structures for implementation and cooperation. The Protocol also sets up the SADC Accreditation Service (SADCAS) as a multi-economy Accreditation Body which provides accreditation services to those SADC Member States without their own Accreditation Bodies or whose Accreditation Bodies cover limited scopes or schedules. Under COMESA, there is no TBT-specific Protocol. Yet annually, the COMESA region is estimated to lose USD 74.4 million from trading of agriculture raw materials alone because of SPS and TBT policy measures²⁴. Nevertheless, discussions on TBT matters are largely handled within the framework of the SPS-TBT experts' meetings. In 2009, COMESA adopted the COMESA Standards, Metrology and Conformity Assessment and Accreditation Policy. COMESA has also run several programmes in the area of TBT.

67. In relation to the *acquis*, the study notes that Annex 6 to the AfCFTA Protocol on Trade in Goods deals with TBT and draws from the WTO Agreement on Technical Barriers to Trade – just like the SADC Protocol on TBT. The AfCFTA Protocol also provides for areas of cooperation and specific roles for Africa's Standardization bodies such as the African Organization for Standardization (ARSO) and African Electro-technical Standardization Commission (AFSEC). While the Protocol calls for Transparency in the application of TBT and sets up a TBT Sub-Committee to spearhead implementation at continental level, it makes less reference to regional TBT bodies. Other than reference to 'regional standardization, metrology, or accreditation bodies' the Protocol does not make specific reference to REC TBT bodies, yet the protocol will draw from the existing REC TBT bodies for its implementation. The context in which 'regional' is used in the Protocol appears to refer to Africa wide bodies such as ARSO, AFSEC, and not similar bodies within the RECs where they exist which stands to limit the incorporation of such regional bodies in the AfCFTA implementation. The SADC Protocol gives priority to institutional capacity at regional level in the area of TBT, and it is ideal that implementation of the TBT Protocol draws from existing REC institutions in that area. From the foregoing, it is clear that there is an *acquis* on SPS and TBT within the Southern African FTAs on which implementation of the AfCFTA can be hinged for accelerated implementation. This *acquis* is picked from the WTO into the RECs where it is perfected; and can be a strong basis for implementing the AfCFTA.

2.2.6 Trade Facilitation

68. Trade facilitation remains at the core of enabling regional integration to achieve the objectives for which it is pursued. Therefore, the subject of Trade Facilitation is at the fore at both RECs and AfCFTA levels. The major Trade Facilitation measures put in place under the COMESA are: Monitoring and Removal of Non-Tariff Barriers (NTBs), Harmonization of Road Transit Charges and Regulations, COMESA Carriers License that allows commercial goods vehicles to be licensed with one license which is valid throughout the region, One-Stop Border Posts (OSBP), Regional Customs Transit Guarantee Scheme, and the COMESA Yellow Card Scheme – a regional third party commercial motor vehicle insurance scheme.

69. Like COMESA, SADC is also putting in place a Regional Customs Transit Guarantee Scheme, with the Regulations having been approved by the Committee of Ministers of Trade (CMT)

²⁴ <https://www.comesa.int/comesa-research-forum-call-for-comprehensive-research-on-pharmaceuticals/>

in July 2021. The Scheme is aimed at facilitating intra-extra SADC Trade through the issuance of a single guarantee for goods in transit in the region. The Regulations are currently being piloted in the North South Corridor covering Botswana, Democratic Republic of Congo, South Africa, Zambia, and Zimbabwe. Both RECs are taking strides towards full use of the e-Certificates of Origin.

70. The existence of the above trade facilitation schemes can be leveraged by AfCFTA to propel its implementation within the RECs. Indeed, by being integrated in the already functional Trade Facilitation schemes in SADC and COMESA, the AfCFTA stands to broaden the RECs’ trade with the rest of Africa while at the same time consolidating the existing intra-REC trade and investment achievements. This will also lead to policy coherence in facilitating trade within the RECs and ultimately increase the functioning of the RECs on the African Regional Integration barometer. Furthermore, it is critical to note that at the AfCFTA level, Annex 4 to the Protocol on Trade in Goods deals with Trade Facilitation. The Protocol is basically a mirror of the WTO Agreement on Trade Facilitation, to which all the Southern African countries and RECs are already ascribing. Like the WTO Agreement on Trade Facilitation, it also sets up the Sub-Committee on Trade Facilitation, Customs Cooperation and Transit at AfCFTA level, and National Committees on Trade Facilitation at State Party level. This coherence in trade facilitation policy and institutional measures between AfCFTA and the RECs is critical to note as it shows complementarity which the AfCFTA acquires builds upon. Therefore, the two RECs remain to be assessed on their performance with regard trading under the AfCFTA regime as they already have in place measures to ensure that this trading happens with less hindrances.

71. It is also worth noting that the principles on Trade Facilitation at RECs and AfCFTA level are the same: simplifying and harmonising international trade procedures and logistics to expedite the processes of importation, exportation and transit; and expediting the movement, clearance and release of goods, including goods in transit, across borders. This forms a good basis for using the *acquis* to expedite and complement implementation of Trade Facilitation measures under the RECs and AfCFTA.

Trade Facilitation Instrument	COMESA	SADC	AfCFTA
Simplified Trade Regime	Adopted 2004	Adopted in 2011	The AfCFTA Protocol on Women and Youth in Trade calls for a Simplified Trading Regime to support women and youth in cross-border Trade.
Harmonised Road Transit Charges	The Road Transit Charges System was introduced in 1991 and is currently being implemented by 9	The SADC Protocol on Transport, Communications and Meteorology was adopted in 1996,	Under Article 16 of the AfCFTA Protocol on Trade in Goods, State Parties are required

	<p>member states. Other related measures in place are the COMESA Carrier's License (to allow commercial goods vehicles to be licensed with one license recognized across all member states), and the Harmonized Axle Loading and Maximum Vehicle Dimensions.</p>	<p>with one of the key objectives being elimination of hindrances and impediments to movement of goods and services.</p>	<p>to take appropriate measures including arrangements regarding transit in accordance with the provisions of Annex 8 on Transit.</p>
One Stop Border Stop	<p>Before 2009, there was no OSBP in the African Continent²⁵. In 2009, Chirundu Border Post, between Zambia and Zimbabwe opened as a pilot OSBP within the COMESA region²⁶.</p>	<p>SADC, which comprises 16 member states, has included the creation and implementation of Joint Customs Controls in its core mandate²⁷.</p>	
Customs Bond Guarantee System	<p>The COMESA Regional Customs Transit Guarantee (RCTG) Scheme is in place and is charged with facilitating the movement of goods under customs seals in the COMESA region and to provide the required customs security and guarantee in the transit countries.</p>		
Third Party Motor Vehicle Insurance System	<p>The COMESA Yellow Card, currently operational in 12 member states,</p>	<p>Under the TFTA, the SADC has signed an MoU on the harmonization of</p>	

²⁵ <https://www.au-pida.org/one-stop-boarder-posts-osbp/>

²⁶ Ibid

²⁷ Ibid

	is a motor vehicle insurance scheme that provides 3 rd party legal liability cover and compensation for medical expenses resulting from road traffic accidents caused by visiting motorists.	compulsory third-party motor vehicle liability insurance scheme. This is also provided for under the Article 6.8 of the SADC Protocol on Transport, Communication and Meteorology.	
Institutional Arrangement	COMESA has supported the formation of National NTBs Monitoring Committees which it has equipped by putting in place a short mobile messaging system and an online mechanism for reporting and monitoring the elimination of NTBs	SADC has in place a regional NTBs Unit, while all SADC Members have established National Focal Points in their respective ministries of trade to assist with the management of NTBs.	The AfCFTA has set up Sub-Committee on Trade Facilitation and National Committees, as well as an NTB monitoring and removal mechanism mirroring those already at REC level. RECs are given roles in NTB elimination.

Table 6: Trade Facilitation Instruments “acquis”. Source: Author

2.2.7. Non-Tariff Barriers (NTBs)

72. The SADC Trade Protocol provides for elimination of Non-Tariff Barriers, albeit with a proviso. The wording used in the Protocol is best endeavour, with Member States committing to ‘refrain’ from imposing any new NTBs. However, the principle and desire to eliminate NTBs to intra-SADC trade is well espoused within the Protocol.

73. Under COMESA, removal of NTBs remains a priority. As such, the COMESA Council of Ministers in December 2014 adopted the NTB Regulations, which streamline the way NTBs are resolved in the region. An online reporting mechanism has been created to capture and track the resolution of NTBs. In addition, a regional NTB Elimination Committee has been set up, and it is fed by the National NTB Committees that have been set up across COMESA Members for purposes of reporting and resolving NTBs.

74. Similarly, the AfCFTA Protocol on Trade in Goods addresses itself the subject of NTBs. Under Article 12, it provides that “Except as may be provided for in this Protocol, the identification, categorisation, monitoring and elimination of Non-Tariff Barriers by State Parties shall be in accordance with the provisions of Annex 5 on Non-Tariff Barriers”. In effect, it also has a proviso and foresees that some NTBs will be maintained – the same approach as SADC. Much like what is at RECs level, the Annex provides for Institutional structures for the elimination of NTBs, general categorisation of NTBs in the AfCFTA, reporting and monitoring tools; and facilitation of resolution of identified NTBs. Under institutional structures for elimination of NTBs, the Annex establishes an NTB Sub-Committee, National Monitoring Committees and National Focal Points. In addition, it spells out the roles of RECs in the NTB elimination process. An online platform for reporting and tracking the elimination of NTBs has been created.

75. The AfCFTA, much like what is at RECs level, provides for institutional structures (including National Focal Point, National Monitoring Committee, and NTB Coordination Unit) for the elimination of NTBs. In addition, the Protocol provides for general categorization of NTBs, Reporting and Monitoring Tools, and facilitation of resolution of identified NTBs. The AfCFTA NTB identification and elimination mechanisms are a mirror of already existing mechanisms at REC level. Essentially, the AfCFTA will be built on existing NTB monitoring and elimination mechanisms of the RECs. However, even with these mechanisms in place, persistence of NTBs has remained the major thorn in the flesh of RECs in Eastern and Southern Africa. In building upon the *acquis*, the AfCFTA has to ensure that the existing mechanisms are supported and enhanced with resources (policy, human and financial) in their mandate to address NTBs.

2.2.8. Trade in Services

76. The RECs and the AfCFTA all prioritise Trade in Services, with specific Protocols covering the subject. The SADC Protocol on Trade in Services entered into force on 13th January 2022, following the submission, by the Republic of Malawi, of her instrument of ratification in December 2021, which enabled the threshold of instruments of ratifications by two-thirds of SADC Member States set by the Protocol for its entry into force to be met. To date, eleven (11) Member States²⁸, have ratified the Protocol on Trade in Services. As part of the entry into force of the Protocol, both the adopted lists of commitments covering the six (6) priority sectors, i.e., Communication, Construction, Energy-Related, Financial, Tourism, and Transport services, and the eight (8) annexes, i.e. Settlement of Disputes Between the State Parties, Substantial Business Operations, Movement of Natural Persons (Mode 4), Interim Arrangements relating to Commitments on Subsidies, Financial Services, Telecommunication Services, Tourism Services, and Postal and Courier Services, became enforceable as of 13th January 2022.

77. The SADC Protocol on Trade in Services provides for denial of benefits to services and service suppliers of Member States that have not yet ratified or acceded to the Protocol, meaning that even the Member States that have negotiated their schedules of specific commitments but have

²⁸ The countries yet to ratify are: Angola, Comoros, DRC, Madagascar, and Tanzania

not acceded to the Protocol will not be covered during the implementation phase. The second round will cover the remaining services sectors, namely: Business; Distribution; Educational; Environmental; Health; Recreational, Cultural and Sporting Services; and other services not included elsewhere. The round will also cover the so called “built-in agenda” issues of the Protocol: domestic regulation; Mutual Recognition Agreements (MRAs); subsidies; and trade and investment promotion, and all outstanding matters from the first round. While it is still in its infancy, the Protocol resonates with the AfCFTA services priority areas which gives it a better landing zone during implementation, thus supporting the *acquis*. Indeed, the SADC Protocol on Trade in Services is ‘mindful’ of the urgent need to consolidate and build on achievements in services liberalization and regulatory harmonization at the Regional Economic Community and continental levels and makes specific reference to “*progressive liberalization ... taking account of the best practices and acquis from the RECs...*”. This approach will help anchor the AfCFTA on its services trade, especially transport, travel and hospitality (Tralac, 2022).

78. On its part, COMESA prioritized and negotiated Schedules of Specific Commitments in four priority sectors namely, Communication, Financial, Tourism, and Transport. Schedules of Specific Commitments for eleven (11) Member States were adopted by the Council of Ministers and gazetted in 2014. The levels of liberalization vary for the different COMESA Member States. All the eleven Member States whose Schedules of Specific Commitments were negotiated and gazetted have made commitments in the movement of natural persons and have liberalized the movement of intra-corporate transferees and business visitors. The second round of trade in services negotiations covering three additional services sectors of business, construction and related engineering and energy-related services commenced in 2019 and is still ongoing. In terms of specific commitments, most Member States have liberalized the three modes of supply: Mode 1, Mode 2 and Mode 3 in the four sectors²⁹ (COMESA, 2020). However, in some of the sectors a few Member States have not liberalized cross border services (mode 1) and commercial presence (mode 3) in certain sub-sectors under the four sectors (*ibid*). Currently, trade in services under COMESA is concentrated in transport, travel and other commercial services.

²⁹ The WTO GATS define services in four ‘modes’ of supply: cross-border trade, consumption abroad, commercial presence, and presence of natural persons. Mode 1 entails Distance learning, consultancy, BPO services, Mode 2 entails tourism, educational students for students, medical treatment; while Mode 3 entails banking, hotel.

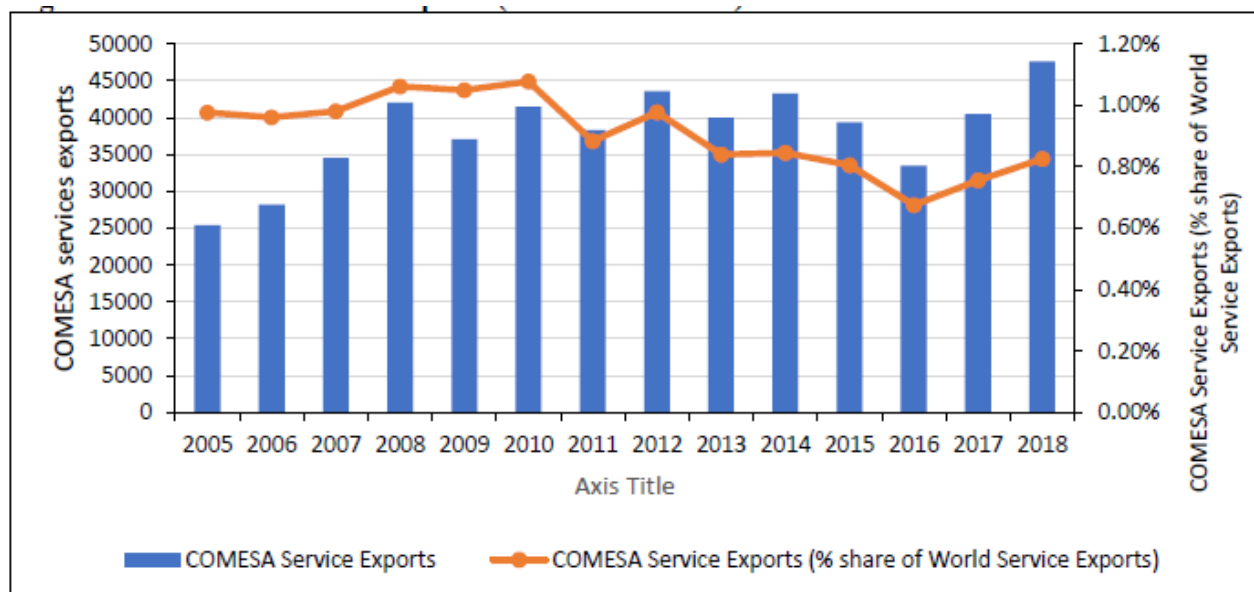


Figure 5. COMESA services exports (Million US dollar). Source: WTO, 2022

79. From the graph above it can be deduced that the value of service exports has been on an upward trend since 2016 having slowed down between 2012 and 2015. This can be a good boost to AfCFTA whose trading in services has been provided for under the Protocol on Trade in goods and services.

80. Under the AfCFTA, Trade in Services negotiations have prioritized five sectors: Business Services, Communication Services, Financial Services, Tourism Services, and Transport Services. As at April 2023, forty two (42) State Parties had submitted their Schedules of Commitments, out of which thirty seven (37) have already been verified by the AfCFTA Secretariat. Examining the services areas covered under the SADC, COMESA and AfCFTA shows that there is convergence at the broad level, with some RECs going wider than the AfCFTA. This wider scope by some RECs gives an impetus to accelerating AfCFTA trade in services by the RECs and thus should be boosted.

81. To facilitate both the trade in goods and trade in services, people must move. Therefore, Protocols that facilitate movement of persons are of utmost importance. Accordingly, both the SADC and COMESA have concluded Protocols in this area. One way in which the acquis is addressed under trade in services is the fact that the AfCFTA trade in services sectors were virtually picked from COMESA and SADC Trade in Services Protocols, and then Business Services added thereon. As a result of this, which is essentially building on the acquis of Southern Africa, the first countries to have submitted their Services Schedules under the AfCFTA were actually from COMESA and SADC.

82. Under SADC, the Protocol on the Facilitation of Movement of Persons, adopted in 2005, seeks to fulfill the objectives of the SADC Treaty, which requires Member States to “develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services and of the people of the region generally among Member States.” The Protocol outlines short-term and long-term objectives that are based on three core elements, which are:

- (i) Visa-free entry for SADC nationals into all other SADC Member States;
- (ii) Right of establishment; and

(iii) Right to residence.

83. The Protocol has so far been ratified by five Member States and is yet to enter into force.

84. Similarly, under COMESA, to facilitate immigration and free movement of persons, the COMESA has in place the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements. The liberalization of the movement of persons is intended to facilitate particularly the movement of businesspersons within COMESA. The Protocol is premised on two key elements: a ninety-day visa free regime, and access to visa on arrival. The AfCFTA has not specifically addressed itself to this subject through a specific Protocol. Rather, aspects related to free movement of businesspersons are handled under Trade in Services and other African Union Instruments (Protocol to AEC Treaty relating to free movement of persons, right of residence and right of establishment). In effect, the AfCFTA is not as comprehensive as the RECs on the subject of free movement of persons.

85. In the RECs, commitments on Trade in Services are narrow – both at WTO and within the RECs. But in the AfCFTA, this has been expanded, i.e. the AfCFTA scope is wider than in the RECs. Generally, most countries have opened up in Tourism, but in the other Services areas there is great variance. For the *acquis*, it is more difficult to attain progress for Services because the Sector is dealt with under Domestic Regulation, hence virtually there is no REC *acquis*. Even where there has been Mutual Recognition under RECs, say for Professional Services, the progress has been so slow. If one moves to continental level, e.g. for Lawyers, one has a problem of different legal systems across the continent – French and English. The *acquis* for Trade in Services will be more difficult to attain in the context of accelerating implementation of the AfCFTA. This could be an area where the RECs could work with AfCFTA to attain complementarity.

2.2.9. Trade Related Issues – Trade related issues adopted by the RECs

86. The key Trade Related Issues adopted by the RECs are:

- Investment
- Competition, and
- Intellectual Property Rights (IPRs).

87. It should be noted that in those three areas, the Southern Africa RECs had already made progress. There are many differences between the laws and policies which are to be discussed in this Study and which need harmonisation and rationalisation.

2.2.9.1. Investment

88. Both COMESA and SADC have adopted policies and legal frameworks for Investment. However, they differ significantly. COMESA adopted a formal Agreement establishing the region as a Common Investment Area similar to what was done by ASEAN.

89. The SADC Protocol on Finance and Investment was adopted by the SADC Summit in 2006. The Protocol seeks to foster harmonisation of the financial and investment policies of the State Parties. A specific Annex on Investment aims at the creation of a favourable climate for investment. The regional Investment Policy Framework provides in a non-prescriptive manner the SADC with the necessary framework to attract sustainable investment and maximise the development benefits from it.

90. The SADC Investment Policy Framework (IPF) of 2016 is aimed at providing an action-oriented and consensus driven non-binding roadmap for investment policy reform in SADC member states. It raises issues in the following five action areas, identified as having a strong bearing on the investment environment in the region: (1) transparent and coherent investment environment; (2) market access and competition; (3) investment security and protection of investors' rights; (4) responsible business and inclusive investment for development; and (5) promotion of regional and international cooperation. The SADC IPF presents tables listing specific actions proposed under each area, for the purposes of a prioritization exercise undertaken by SADC member states.³⁰

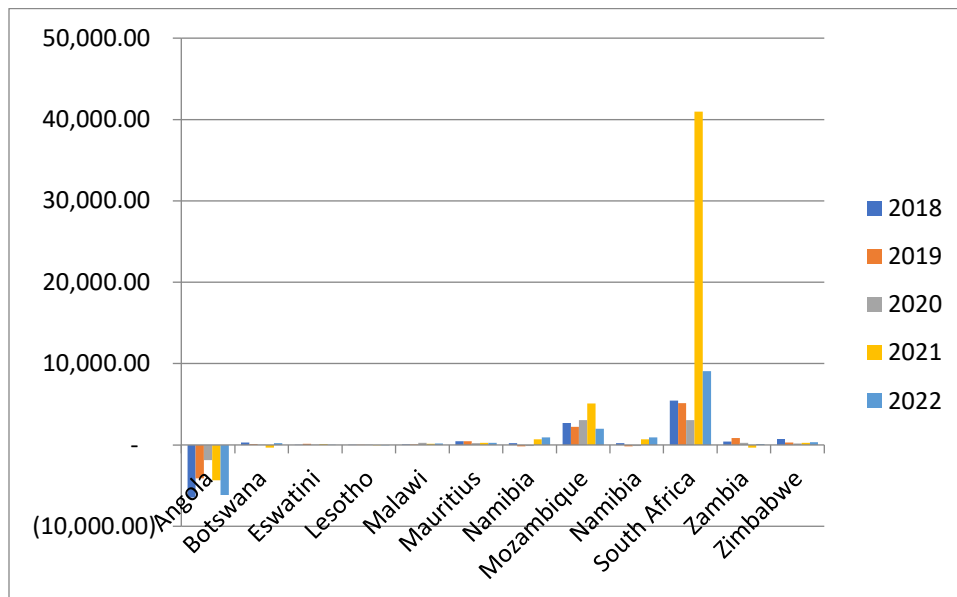
91. Analysis of FDI inflows for selected SADC and COMESA countries indicates that there are significant variations by country; and even by year within the same country in some instances. For example, between 2020 and 2021, South Africa registered a spike in FDI inflows. Table 5 presents a summary of FDI inflows into selected Southern African countries for the period 2018 – 2022, while Figure 7 presents the same data in graphical form.

Country	2018	2019	2020	2021	2022
Angola	(6,456.08)	(4,098.48)	(1,866.47)	(4,355.12)	(6,142.25)
Botswana	285.96	93.61	31.81	(318.87)	216.03
Eswatini	36.47	130.22	35.89	117.47	21.20
Lesotho	40.56	35.39	27.96	(12.43)	(8.30)
Malawi	77.01	55.23	252.18	129.50	188.56
Mauritius	460.51	444.08	224.67	253.19	252.10
Namibia	208.56	-178.93	-146.49	697.27	945.09
Mozambique	2,703.03	2,211.65	3,034.56	5,101.67	1,975.29
Namibia	208.56	(178.93)	(146.49)	697.27	945.09
South Africa	5,449.55	5,124.99	3,062.26	40,948.11	9,051.19
Zambia	408.44	859.82	245.21	(351.65)	115.90
Zimbabwe	745.01	280.00	194.00	250.00	341.50

Table 7a. Summary of FDI Inflows into Selected Southern African Countries, 2018 –2022, US\$ Millions. Source: UNCTAD, (2023) World Investment Report.

³⁰ SADC. (in press). SADC Investment Policy Framework. pp. 19–20

Figure 7b: FDI Inflows into Selected Southern African Countries, 2018 – 2022, US\$ Millions



92. Nevertheless, intra-SADC investment represents a small share of the overall SADC investment inflows (AfDB, 2019). However, this is likely to change as AfCFTA related opportunities for cross-border investment expand and regional integration deepens and remaining barriers to trade are removed. The expansion in cross-border investment will also require a deepening of policy and strategies and incentives for attracting cross-border investment that are transformative, develops regional value chains, and create jobs, such as manufacturing.

93. With regard COMESA, it has put in place a Common Investment Area as a promotional tool to guide Member States in various programmes aimed at harmonizing investment best practices and facilitating the private sector operations development in the region. Since its adoption in 2017, the COMESA Common Investment Area (CCIA) has undergone a number of reviews to take into consideration the emerging issues in the area of international investment regimes and specific standards regarding investor protection. It also covers the rights and obligations of investors and those of the host countries. Perhaps what is paramount to underscore is the fact that the reviewed CCIA is aligned with the Pan African Investment Code championed by the African Union³¹. This is critical for the AfCFTA Investment Protocol which is informed by the Pan African Investment Code.

³¹ <https://www.comesa.int/plans-afoot-to-publicize-common-investment-area-agreement/>

94. The AfCFTA Investment Protocol was adopted in 2022. The Protocol adopts legally binding commitments such as investment facilitation and protection and investor obligations, to enhance rules-based investment governance and predictability on the continent.

95. The Investment Protocol has four interrelated pillars—investment promotion and facilitation, investment protection, investors’ obligations and other state commitments. It could be a building block in a strategy to create a new equilibrium across the interests of key stakeholders—private investors and host countries, but also home economies, local communities and the wider business community operating in host economies. In the pursuit of these goals, the Investment Protocol establishes obligations on State Parties to promote and facilitate intra-African investment and to adhere to such traditional standards of protection as national treatment (post-establishment), Most-Favoured Nation treatment, and freedom from expropriation without compensation. At the same time, these obligations are subject to exceptions designed to preserve a margin of regulatory space for State Parties. It is notable that the AfCFTA Investment Protocol devotes a whole provision (Art 26) to the promotion and facilitation of investment that contributes to the fight against climate change.

96. Finally, the Investment Protocol also contains the ingredients of a dispute resolution mechanism under which disputes between State Parties, including cases of diplomatic protection under international law, are subject to the standard rules of the AfCFTA Protocol on dispute settlement (Article 44), while the thorny question of investor-state arbitration has been left to a future agreement that will be negotiated over the 12 months following adoption of the Investment Protocol³².

97. There is a risk that the CCIA and the SADC proposed policy on investment may become redundant after such a long time of non-implementation by the majority of Member States, and thus may not provide a soft-landing zone for the implementation of the AfCFTA Investment Protocol. Nevertheless, Southern Africa RECs Member States may look to the AfCFTA Investment Protocol to encourage investment opportunities especially since there are provisions on Sustainable Development not explicitly provided for their legal texts. Moreover, Article 49.3 places the responsibility of RECs to revise their investment legislations within 5 to 10 years of entry into force of the AfCFTA Protocol to achieve alignment.

2.2.9.2 Intellectual Property Rights (IPRs)

98. It has always been argued that the protection of IPRs facilitates bilateral trade. Strong intellectual property rights protection induces domestic innovation while weak protection of IPRs encourages imitation-led innovation. IPRs-driven innovation enhances domestic firms’ competitiveness and contributes to the production of new products, the use of new cost-saving production techniques and new product designs that ultimately motivates trade³³. At COMESA, it is therefore recommended that policy options be targeted at stimulating low levels of IPRs protection

³³ COMESA Policy Brief on Key Issues – 2020

in the COMESA region. Member States are encouraged to strengthen IPR components such as legal and political environment, Physical Property Rights and Intellectual Property Rights³⁴.

99. IP rights are private rights and territorial in nature (the principle of territoriality), which means that national laws regulate the conditions for their acquisition, maintenance and enforcement, and IPR granted or protected by a State are independent from those granted or protected by other States, and that the rights conferred under each State's IP law are limited to the territory of that State.³⁵

100. The Tripartite Agreement also provided for a future negotiation of a Protocol on Intellectual Property Rights. It has been observed³⁶ that Intellectual property (IP) is a technical area that has to date received little attention in the regional integration agendas of tripartite states in spite of the fact that the world is often said to be moving from an industrial to a knowledge-based economy of which intellectual property is a critical component. A TFTA IP Agreement would primarily be an internal intra-African initiative in that it would serve as a binding statement of the signatory countries' position on IP matters. It would also serve as an important external guide for these countries when they negotiate and implement the AfCFTA. In order to complement the AfCFTA IP Protocol, the TFTA IP Agreement should emphasize flexibility, the importance of a transition period, and the preservation of policy space to create limitations and exceptions that suit countries at various stages of economic development.

101. At a global level between States, international IP treaties and trade agreements cover various IPR in varying degrees of detail and comprehensiveness. Therefore, the treaty obligations that the contracting parties must adhere to equally vary.³⁷ The WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement negotiated during the 1986-94 Uruguay Round is the most comprehensive multilateral agreement on intellectual property (IP), and plays a central role in facilitating trade in knowledge and creativity, in resolving trade disputes over IP, and in assuring WTO members the latitude to achieve their domestic policy objectives.³⁸ As a legal recognition of the significance of links between IP and trade and the need for a balanced IP system, the TRIPS Agreement frames the IP system in terms of innovation, technology transfer and public welfare. Specifically, the TRIPS Agreement covers five broad areas i.e., (a) how general provisions and basic principles of the multilateral trading system apply to international intellectual property; (b) what the minimum standards of protection are for intellectual property rights that members should provide;

³⁴ Ibid.

³⁵ UN - Policy Paper The Role of Intellectual Property Rights in Promoting Africa's Development Overview of IPR in Africa SEPTEMBER 2022
https://www.un.org/osaa/sites/www.un.org.osaa/files/final_policy_paper_on_ips_in_africa_fin_en_230822_v5688_3.pdf at page 8.

³⁶ Henry Mutai - Intellectual Property Rights Promotion and Protection Under the Tripartite Free Trade Area (TFTA): Proposals for an Intellectual Property Protocol <<https://www.tralac.org/publications/article/10133-intellectual-property-rights-promotion-and-protection-under-the-tripartite-free-trade-area-tfta-proposals-for-an-intellectual-property-protocol.html>>

³⁷ UN - Policy Paper The Role of Intellectual Property Rights in Promoting Africa's Development Overview of IPR in Africa SEPTEMBER 2022 AT PAGE 8.

³⁸ WTO, Intellectual property: protection and enforcement.
https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm

(c) which procedures members should provide for the enforcement of those rights in their own territories; (d) how to settle disputes on intellectual property between members of the WTO; (d) special transitional arrangements for the implementation of TRIPS provisions³⁹.

102. The AfCFTA's IPR Protocol affords the State Parties an opportunity to prioritise areas of comparative advantage for African Countries in an international Intellectual Property (IP) instrument. Furthermore, it can be used to promote IP rules and standards that are calibrated to the continent's level of industrialisation and in line with AfCFTA's objective.

103. The Protocol aims to support the realization of the objectives of the AfCFTA by establishing harmonized rules and principles on the promotion, protection, and enforcement of IPR. The Protocol covers a comprehensive array of IPRs including plant variety protection, geographical indications, marks, patents, utility models, industrial designs, undisclosed information, layout designs of integrated circuits, copyrights and related rights, traditional knowledge, traditional cultural expressions and folklores, as well as genetic resources. The Protocol espouses the notion of the preservation of the *acquis* at national, regional and multilateral levels by providing a framework compatible with prior international IP treaties⁴⁰

104. A prominent feature of the Protocol is its development-oriented and pan-African approach, aiming to strike an appropriate balance between IP protection, advancement of public welfare, and the promotion of African interests. Moreover, the Protocol has a strong emphasis on technical assistance, multi-layered cooperation and capacity building in the administration and enforcement of IPR, a forward-looking perspective addressing emerging technologies, and special attention to the needs and interests of micro, small and medium enterprises, as well as women and youth entrepreneurs⁴¹.

105. The implementation of this Protocol will streamline and strengthen processes and mechanisms for the protection and enforcement of IPR across the continent. It has enormous potential to stimulate innovation, fostering technology collaboration among firms and individuals along continental value chains, and unleashing a sustained wave of intra-African investment to support expanded and sophisticated trade under the AfCFTA⁴².

106. Notwithstanding its significance, the adopted Protocol only provides a framework agreement, with several issues, obligations and modalities for the protection and enforcement of IPR covered therein to be further negotiated and adopted by State parties. Importantly, clarity and guidance will be required regarding the role and mandate of the AfCFTA Intellectual Property Office (Article 31), especially in terms of its linkages with, and implications for the existing regional IP organizations, namely the African Intellectual Property Organization (OAPI) and the African Regional Intellectual Property Organization (ARIPO)⁴³.

³⁹ Henry Mutai - Intellectual Property Rights Promotion and Protection Under the Tripartite Free Trade Area (TFTA): Proposals for an Intellectual Property Protocol <<https://www.tralac.org/publications/article/10133-intellectual-property-rights-promotion-and-protection-under-the-tripartite-free-trade-area-tfta-proposals-for-an-intellectual-property-protocol.html>>

⁴⁰ Koffi A.M Elitcha; Mie V Joerensen and Nahom Teklewold: UNECA Blog.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

107. At subregional levels, four out of Africa’s eight regional economic communities (RECs) have developed IP instruments as shown in Table 6. These four RECs are the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community for West African States (ECOWAS), and the Southern African Community for Development (SADC).

Table 8: Policies and Laws on IPR

Name	Description
SADC Regional Framework and Guidelines on Intellectual Property Rights (2018)	The framework and guidelines aim to foster cooperation on IP issues within the context of industrialization, trade, and addressing the socioeconomic development and competitiveness of the SADC region and its transition to innovation-driven knowledge economies. ⁴⁴ Both were approved by the SADC Council of Ministers in August 2018 in Namibia. ⁴⁵
SADC Protocol for Protection of New Varieties of Plants (Plant Breeders’ Rights)	Endorsed by the SADC in 2014, the Protocol for Protection of New Varieties of Plants (Plant Breeders’ Rights) is yet to be fully ratified to enter into force. ⁴⁶
Policy on Intellectual Property Rights and Cultural Industries of the Common Market for Eastern and Southern Africa (2011) (COMESA IP Rights)	The policy acknowledged that “in a ‘knowledge-based and innovation-driven economy’, IP has become a major tool or catalyst in economic growth and national development, and in wealth creation for individuals, companies, countries as well as regional groupings.” ⁴⁷
EAC regional intellectual property policy on the utilisation of Public Health-related WTO-TRIPS Flexibilities⁴⁸	Overall, the EAC policy on TRIPS flexibilities aggregates ten flexible TRIPS obligations which partner states could construe through an access-to-medicines lens (obligations which were subsequently enacted into a draft EAC Protocol on TRIPS

⁴⁴ SADC, Regional Intellectual Property Framework and Guidelines (Gaborone, 2018)

⁴⁵ SADC, “The joint meeting of the SADC ministers responsible for education and training; and science, technology and innovation, 20–21 June 2019 Safari Hotel Windhoek, Namibia”, 21 June 2019.

⁴⁶ Ncube, Science, Technology & Innovation and Intellectual Property, p. 86

⁴⁷ COMESA, COMESA Policy on Intellectual Property Rights (2011), para. 9.

⁴⁸ The EAC is still developing a comprehensive IP Policy.

Flexibilities). These obligations are a transition period, patentability criteria, exclusion from patentability, research exception, *Bolar* exception, test data protection, disclosure requirement, opposition procedure, parallel importation, and compulsory licence. Cumulatively, these recommendations are aimed at expanding available policy spaces within the region with the expected long-term benefit being the enhancement of regional pharmaceutical production capacity.

108. Apart from RECs, there are two IPR specialized organizations in Africa, ARIPO and the African Organization of Intellectual Property (OAPI). ARIPO aims at promoting, developing and harmonizing IP laws and policies among its 21 member States,⁴⁹ whereas each State retains its respective national IP instruments and institutions. The members could choose to become party on different protocols to different varieties of IPR, namely patents, utility models, trademarks, industrial designs, TK and folklore, and the new varieties of plant, copyright and related rights.⁵⁰ On the other hand, with its 17 member States,⁵¹ OAPI has a unitary system with uniform legislation, a common office and centralized procedures, which grant IPR over its entire territory. OAPI operates under the Bangui Agreement, which encompasses patents, utility models, trade and service marks, industrial designs, trade names, GIs, literary and artistic property, unfair competition, layout designs integrated circuits, and plant varieties, fully in line with the UPOV Convention. OAPI is the industrial property office common to its 17 member States, and registers trademarks which are valid in all member countries. OAPI manages patent applications on behalf of its member States, granting patents valid in all 17 States. In contrast to ARIPO member States, national IP offices of OAPI member States have no patent registration function.

2.2.9.3 Competition

109. While some Southern African Development Community (SADC) Member States have enacted their own laws on competition and consumer protection, others are yet to do so. This situation may lead to inconsistencies and uncertainties when businesses trading with several Member States expect similar practices throughout the Free Trade Area. Nevertheless, to prohibit unfair business practices and to promote competition and cooperation in the region, SADC signed a Declaration on Regional Cooperation in Competition and Consumer Policies in September 2009⁵². The declaration sets out a cooperation framework on competition policy for the SADC Free Trade

⁴⁹ Botswana, Eswatini, the Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe.

⁵⁰ Ncube, Science, Technology & Innovation and Intellectual Property, p. 66

⁵¹ Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Mauritania, Niger, the Republic of the Congo, Senegal and Togo

⁵² SADC, Competition Policy. <https://www.sadc.int/pillars/competition-policy>

Area that helps streamline international trade and support economic growth. It also encourages Member States to establish a transparent framework that contains appropriate safeguards to protect the confidential information of the parties and appropriate national judicial review. Furthermore, in order to facilitate effective cooperation, the SADC Secretariat has established a standing Competition and Consumer Policy and Law Committee, which is a forum that fosters cooperation and dialogue among competition authorities aimed at encouraging convergence of laws, analysis and common understanding⁵³.

110. It is key to note that fair competition among businesses is a cornerstone of free trade and is vital to the economic development of a region, playing an important role in promoting growth, efficiency, and the alleviation of poverty. Only COMESA has established a functioning Competition law and Competition Commission. The COMESA Commission's enforcement activities contribute to the regional integration agenda by ensuring that trade between Member States is not frustrated by anti-competitive and unfair business practices occasioned by firms operating in the Common Market. The Agreement establishing the Tripartite Free Trade Area provides for Member/Partner States to cooperate on competition policy. Member/Partner States of COMESA-EAC-SADC concluded negotiations of the Protocol on Competition Policy in March 2022.

111. The Draft Tripartite Protocol on Competition Policy does not provide for the creation of a Supra-national competition authority but is based on cooperation in the enforcement of competition and consumer protection matters by the Member/Partner States and Regional Economic Communities (RECs). It also guides Member/Partner States and RECs on the competition and consumer protection provisions that they should have at national and RECs level as well as to set up enforcement institutions.

112. The AfCFTA Competition policy enshrined in the Protocol is intended to encourage companies to offer consumers goods and services on the most favourable terms. It promotes efficiency and innovation and reduces prices within the AfCFTA market. Competition is necessary for making the market economies function well. It improves efficiency and healthy competition among businesses. Effective enforcement of competition and consumer protection laws enhances the protection of consumer rights and promotes the active participation of consumers in the market.

113. The Competition Protocol includes definitions of key provisions such as “anti-competitive business practices” which decide the practices that are to be considered incompatible with the proper functioning of the market. These include, amongst others, decisions on mergers and acquisitions, prohibitions of certain horizontal and vertical anti-competitive business practices or related practices that lead to market distortion. Other provisions include the establishment of the AfCFTA Competition Authority, which will function as an autonomous body with powers to administer and enforce provisions of the Protocol and decide on any undertakings, including approving mergers⁵⁴.

114. Today, competition in many African countries is restricted by business practices that undermine competitive dynamics and by government interventions and regulations that create obstacles to healthy competition, often aggravated by the absence of competition laws or weak

⁵³ Ibid.

⁵⁴ Koffi A.M Elitcha; Mie V Joerensen and Nahom Teklewold: UNECA Blog

<<https://www.uneca.org/stories/%28blog%29-deepening-the-afcfta-celebrating-the-adoption-of-new-protocols-on-investment%2C>>

enforcement of existing laws. As the AfCFTA effectively eliminates tariffs and non-tariff barriers between its State Parties, new opportunities for competition to a wider continental market arise. The Competition Protocol will play a key role in the effort to ensure healthy competition on the continent, accelerate reduction of consumer prices, and improve business practices conducive for Africa’s socioeconomic transformation⁵⁵. The provisions of the Protocol cater for fair competition, promoting innovation, removal of concentrated economic power by creating a level playing field for all enterprises, improving efficiency in trade and accelerating development. This will ultimately improve the ability of small and medium-sized businesses to become competitive while trading under ACFTA framework.

115. The next steps towards realizing the AfCFTA Protocol on Competition are built into the agreement. The Protocol establishes the AfCFTA Competition Tribunal as an autonomous body to decide on appeals from the decisions of the AfCFTA Competition Authority. The rules governing the functioning of the Tribunal are to be determined by the Council of Ministers in the future.⁵⁶ Under Competition policy, it has been agreed at AfCFTA level to preserve the jurisdiction of the RECs Competition Authorities. The major issue of concern is that the AfCFTA Competition Protocol does not include Consumer Protection. However, it is worth noting that initially, the COMESA Competition regime also did not have Consumer Protection after some countries such as Egypt resisted its inclusion. Nevertheless, aspects of Consumer Protection were added into the regime later on, and the AfCFTA could take the same approach.

116. The similarities and differences between the AfCFTA Competition policy and law and that of the RECs is highlighted in the table below.

Table 9: Competition policies and laws of RECs and AfCFTA

<i>COMESA LAW OR POLICY</i>	<i>SADC LAW OR POLICY</i>	<i>AfCFTA OR LAW</i>	<i>POLICY</i>	<i>Comment</i>
COMESA Treaty (Article 55) and Regulations (2004)	Article 16 of the SADC Protocol on Finance and Investment – provides for SADC to advance a Competition Policy	Protocol to the Agreement establishing the AfCFTA Competition Policy (2023).		Both frameworks provide modalities for ensuring fair competition and addressing anti-competitive practices.
COMESA Competition Policy in Place⁵⁷	Article 25 of the SADC Protocol on Trade	Establishes Investigative and Board	Body	COMESA Agency is the only Regional Agency in Africa that

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Power to investigate anti-competitive practices and conduct; investigating mergers and acquisitions; and investigating unfair, deceptive, and fraudulent business practices towards consumers and other businesses. The

			is active – AfCFTA will take very long to put an institution in place and will learn from COMESA Agency.
Jurisdiction – anti-competitive issues arising from trade under COMESA regime	Obligation on Member States to implement measures that foster competition and prohibit unfair business practices. (Trade Protocol)	Jurisdiction – anti-competitive issues arising from trade practices under the AfCFTA	Jurisdiction of AfCFTA Protocol subject to interpretation in case of conflict with Regional Agency (Article 19 of AfCFTA). However, Article 20 of Protocol says Regional Agencies to retain their jurisdictions with their regions.
New Guidelines on Market Definition, Restrictive Business Practices and Abuse of Dominance aimed to provide clarity on interpretation of the COMESA Competition Regulations and Rules of 2013 (2013 COMESA Competition Regulations), as well as predictability	To prohibit unfair business practices and to promote competition and cooperation in the region, SADC signed a Declaration on Regional Cooperation in Competition and Consumer Policies in September 2009. ⁵⁸		

Commission implements its mandate by regularly engaging and cooperating with the Member States through sensitization and advocacy programmes.

⁵⁸ This declaration sets out a cooperation framework on competition policy for the SADC Free Trade Area that helps streamline international trade and support economic growth.

2.2.10 RECs, AfCFTA and Inclusivity

117. The debate on inclusivity in trade development has been gaining momentum in the recent past. Indeed, it is out of such debate that programmes such as the Simplified Trade Regime, specifically targeting small scale cross border traders and women and youth, have been developed in the COMESA and the SADC. With respect to regional integration and inclusivity, besides the Simplified Trade Regime, the COMESA has put in place the COMESA Federation of Women in Business (COMFWB) whose objective is to promote programmes that integrate women into trade and development activities in Eastern and Southern Africa. Under the AfCFTA, a specific Protocol on Women and Youth in Trade is being negotiated with the major purpose of integrating women and youth supply chain actors in trade. This is a pointer to convergence of visions on inclusivity of trade (by integrating small and informal supply actors) at both the REC and AfCFTA levels.

2.2.11 Institutional Arrangements

2.2.11.1 Governing and Technical Institutions

118. The institutional arrangements for implementation of the integration agenda under the RECs and the AfCFTA basically follow the same path. They flow from technical Committees or Sub-Committees or Expert Committee, to Senior (technical) Officials, Sectoral Ministers, Councils of Ministers and then Heads of State or Government. The respective Secretariats are given largely supportive and coordination roles in implementation of the respective Agreements. This institutional structure is responsible for both the policy and legislative role on integration in the RECs and the AfCFTA.

119. At SADC level, however, steps are being made to have the SADC Parliament play a more prominent role (as is the case with the East African Legislative Assembly, for example). The 2021/22 SADC Annual Report notes that the Draft Agreement Amending the SADC Treaty to recognise SADC Parliament was approved by Council in March 2022 and recommended for adoption and signature by Summit.

120. The AfCFTA Negotiation Forum gave the Member States the mandate to spearhead negotiations as opposed to RECs on behalf of their members. The rules, however, indicate that the RECs can participate in the negotiations and provide guidance on behalf of their members. Perhaps, this was necessitated by the fact that the RECs experienced varied degrees of progress in consolidating their FTAs.⁵⁹ Some of the RECs have expressed concern about the fact this creates a challenge for them as they are not able to effectively participate at the AfCFTA negotiations as member⁶⁰

2.2.11.2 Dispute Settlement

121. COMESA has in a place the COMESA Court of Justice and also has inbuilt dispute settlement mechanisms in most Trade Instruments. SADC also has Tribunal which though has been

⁵⁹ Chris Onyango op.cit.

⁶⁰ Interview with Dr. Chris Onyango, Director of Trade and Customs, COMESA.

in-operative for a long time following controversial rulings on compensation to investors by a Member State.⁶¹ The SADC Protocol on Trade also has an inbuilt dispute resolution mechanism under Article 32 failing which the parties can resort to the Tribunal.

122. At the AfCFTA level, an elaborate Protocol Rules and Procedures on the Settlement of Disputes (more or less similar to the WTO Dispute settlement system) has been put in place. This is much more detailed than what is available at the REC level. The Protocol sets out a two level system for the consideration of disputes within the context of the AfCFTA, as well as sanctions for any breach. It also provides for the composition of the Dispute Settlement Body at both Dispute Settlement Panels and Appellate Bodies. NTBs are clearly highlighted as some of the aspects that the Dispute Settlement Mechanism put in place will handle. The Protocol provides for the meeting of costs related to any disputes handled under the auspices of the Body, providing that “A Party to a dispute shall bear all other costs of the process as determined by the DSB”.

⁶¹ Gerhard, E. (2022). Dispute Settlement in and about the AfCFTA: What to expect?
<https://www.tralac.org/blog/article/15707-dispute-settlement-in-and-about-the-afcfta-what-to-expect.html>

56. Implementation of Southern Africa FTAs at National level of the RECs *acquis* in consonance with the AfCFTA regime

123. Five countries in the Southern African region have been assessed with respect to the opportunities arising from implementation of the AfCFTA based on the *acquis* of the RECs they belong to. These are Eswatini, Malawi, Namibia, Mauritius and Zambia. Eswatini is different in that it belongs to three regional trade arrangements namely COMESA, SADC and SACU and therefore offers the most complex predicament. Eswatini and Namibia belong to SADC but are also part of SACU which is a subset of SADC. Malawi and Mauritius belong to two of them namely COMESA and SADC, and thus offer a more harmonised approach in terms of assessing their performance with regards putting in place intra-regional trade facilitation measures which the AfCFTA can leverage. Perhaps, what is more important to note with regard the RECs *acquis* and how it relates with the AfCFTA is the fact that the states that belong to both COMESA and SADC are in a better position owing to the efforts made under the Tripartite to harmonise their trade regimes subject to the fact there are some differences between the Rules of Origin under the Tripartite to those of the two RECs and the AfCFTA.

3.1 The Case of Eswatini

124. As one of the member states to SACU, SADC and COMESA, Eswatini enjoys a range of economic benefits from its multiple memberships. As a member of the SACU, Eswatini benefits from duty-free access to one of the continent's largest economies (South Africa), as well as receives a significant share from SACU's common revenue pool that accounts for over 60% of total government revenue and 17% of GDP (Nikki, Paulina & Kirk, 2008). Eswatini is highly integrated in all the RECs, especially SADC. Moreover, the country enjoys *indefinite derogation* clause as a member of COMESA which exclusively benefits Eswatini as a smaller partner country (SRA, 2019). The *indefinite derogation* clause means that Eswatini is not obliged to reciprocate preferential imports from other member states under the COMESA Treaty, but still enjoys preferential tariffs and market access for its exports to COMESA (ibid). It is no wonder that Eswatini enjoys a trade surplus within COMESA due to the application of the *indefinite derogation* clause. However, as integration efforts begin to increase within both economic groupings, and more especially under the AfCFTA, Eswatini will need to examine its current trade policy to establish how best to optimize benefits from regional integration that promote economic growth and long-term development.

125. In field findings from Eswatini, it was highlighted that Eswatini has had to play a delicate balancing act in order to ensure that many of their exporters retain the market they had under the *acquis* of the RECs. Eswatini was already a member of the Preferential Trade Area (PTA) for Eastern and Southern Africa which was signed in 1981 through a special Protocol annexed to the Treaty providing for the Unique Status of Eswatini (then Swaziland), Lesotho and Namibia in recognition of their membership of SACU. Namibia became independent in 1990 and immediately started enjoying the same derogations from reciprocating the trade preferences as was the case with the other two. The PTA Treaty was then reconstituted under the COMESA Treaty in 1994, which preserved the derogations extended to Eswatini, Lesotho and Namibia thus preserving the *acquis* that the three States had been granted under the preceding PTA Treaty. In addition, by the time the

COMESA Treaty was adopted in 1993 the process for majority rule was well underway in South Africa and special provision was made for the membership of South Africa without mention of any derogations. However South Africa subsequently chose not to join COMESA which then complicated the status of the three countries that were also with South Africa in SACU. Subsequently, Namibia and Lesotho pulled out of COMESA, but Eswatini remained in COMESA. Field interviews in Eswatini further indicated that since COMESA continued to extend derogations to Eswatini companies exporting into COMESA, they chose to remain in the institution to preserve the *acquis* they had been granted. This may be construed as being in direct conflict with the AfCFTA, where Eswatini is undertaking similar liberalisation commitments like other State Parties, albeit under different timeframes and schedules.

126. On the other hand, Eswatini has faced challenges in exporting under the SADC and SACU regimes with respect to some of her exports particularly sugar as Botswana and Namibia preferred to continue importing those commodities from outside the SADC and SACU regions. The survey Interviews reveals the possibility of this continuing to be a problem under the AfCFTA. As part of SACU, Eswatini has now submitted their tariff offer to the AfCFTA with respect to only Category A goods which constitute 90 percent of their trade. SACU is now preparing to submit the Category B and C tariff offers constituting the 7 per cent sensitive goods and the 3 percent constituting the exclusion goods. SACU has also started on a more comprehensive assessment of the tariff headings before submitting the remaining sensitive and exclusion goods to AfCFTA. Therefore, through SACU, there is progress being registered by Eswatini in implementing the AfCFTA Trade in goods Protocol through its tariff offers.

127. However, the difference between SACU and the other Southern Africa RECs is that because it is a Customs Union with a CET none of the countries can negotiate with third parties without the concurrence of the other countries, and the CET provides the *acquis* on which engagement with third parties is based. On the tariff offer, all the concerns of the five countries had to be taken into account in order to arrive at the final offer under the AfCFTA. However, there have been divergences on the Rules of Origin to push for under the AfCFTA, largely due to differences in the levels of development of certain value chains within the SACU countries. For example, there have been differences within SACU on whether to push for Change in Tariff Heading or have elaborate process-based Rules with respect to Sugar and Sugar Confectionary, Automobiles, and Textiles and Clothing; with countries that are more advanced in these value chains preferring the latter while those still at lower levels of development prefer the former.

128. From the interviews, it became clear that Eswatini's multiple and overlapping memberships in regional economic communities (RECs) has created a complex web of competing commitments, which together with different rules and standards, has resulted in high costs to intra-African trade and undermined trade facilitation efforts that are at the core of the country's integration agenda. Indeed, interview respondents argued that one key feature distinguishing the SACU trade regime from that of COMESA, SADC and the AfCFTA is the absence of Rules of Origin under SACU, which are existing in COMESA and SADC. This might create an implementation challenge for Eswatini given the fact that AfCFTA RoO need to be aligned with those under COMESA and SADC. Moreover, Eswatini has yet to sign off on the Tripartite FTA as they are still to negotiate with the

EAC. Therefore, to move forward, Eswatini needs to leverage the AfCFTA in order to solve the fragmentation arising from overlapping memberships in many regional integration bodies with similar plans.

129. Furthermore, with regards the maintaining of the *acquis*, there is a need to redefine how Eswatini's *indefinite derogation* clause under COMESA will be handled under the AfCFTA. This is in view of the fact that the country has committed to liberalise 97% of her tariffs under the AfCFTA. In addition, as interviews revealed, Eswatini, is yet to know the full implications of the SACU tariff offer to the AfCFTA. For that purpose, the SACU States have asked the SACU Secretariat to undertake a comprehensive Study that will inform them of the implications. This only magnifies the challenge of respecting the RECs *acquis* during AfCFTA implementation. In an attempt to harmonise between this clause and AfCFTA implementation, respondents from ministry of Trade argue that Eswatini could review its applicability of the clause by providing more market access to COMESA imports through introducing selective preferential tariffs to improve competitiveness of its domestic industries, as the *indefinite derogation* is not sustainable in the long run. Indeed, true to their recommendation, Eswatini is putting in place measures to rebalance its trade by increasing intra-regional trade in COMESA and SADC, on top of rationalising its membership in the regional benefits received from SADC.

130. Another key issue to consider with regards the RECs *acquis* and AfCFTA implementation when it comes to Eswatini is Trade in Services. While respondents are of the view that the AfCFTA approach, where commitments are being accompanied by regulatory annexes is good, they are concerned that unlike under SADC, annexes of Construction and Energy (for the Protocol on Trade in Services) have not yet been included in the AfCFTA regime. This is in addition to the fact that the SADC is negotiating businesses services in seven sectors like COMESA. This not only creates an incoherent environment but also makes it hard for the implementation of construction and energy trade under the AfCFTA regime. However, this also signifies that the AfCFTA Secretariat could borrow the annexes of SADC to develop the pending annexes on the Protocol on Trade in Services. Furthermore, while the AfCFTA has initiated the Guided Trade Initiative (GTI) for services, the AfCFTA has not yet agreed an annex on regulatory frameworks, which leads to lack of clarity on how the proposed AfCFTA GTI on Services will work. Furthermore, there is no agreed upon Annex on Financial services; businesspersons, telecom services, though they are on table. Furthermore, so complex is implementation of AfCFTA GTI on Services that aspects like financial services are not possible to implement without another dedicated Annex on Prudential carve out as it deals with risks associated with financial services trading. This, therefore, provides AfCFTA Secretariat with an opportunity to put in place measures to ensure a harmonised approach to implementation of AfCFTA GTI Services trade.

3.2. The Case of Malawi

131. Malawi has been active in the RECs as a founder member of the PTA in 1982 and subsequently of COMESA in 1993 and SADC from inception. Malawi joined the COMESA FTA which was launched in 2000.⁶² Under the COMESA Treaty, all goods may be traded under

⁶² <https://www.trade.gov/country-commercial-guides/malawi-trade-agreements>

preferential treatment if they satisfy the prescribed Rules of Origin. In principle, the SADC FTA took effect in January 2008, but Malawi, Mozambique, Tanzania, and Zambia are still implementing their scheduled tariff phase down. A key observation here is the delay by Malawi in implementation of its tariff phase down under SADC. It is important to note that this slow implementation of commitments by Malawi might set a red signal on the *acquis* when it comes to implementation of the AfCFTA. Furthermore, at the regional level, Malawi also participates in the COMESA-SADC-EAC Tripartite Free Trade Area (TFTA) negotiations, while at the continent level, Malawi signed the AfCFTA agreement and deposited Instrument of Ratification to the African Union in January 2021. Despite Malawi’s membership in these organizations, intraregional trade has not been a strong component of Malawi’s exports.

132. In terms of trade performance, Malawi has seen mixed results. Malawi’s top 10 export sectors are; tobacco, oilseeds, tea (incl. coffee and spices), sugar, beverages, plastics, wood, pulses and other edible preparations. In terms of services, Malawi has recorded a trade surplus in communication and financial services (Ministry of Trade, 2021). South Africa is the most stable export destination over the years while Egypt, Zambia, Tanzania, Mozambique and Kenya are growing markets for Malawi (ibid). However, Malawi continues to register a trade deficit which the AfCFTA could plug. In 2019, total exports of merchandise from Malawi to the Africa was USD 331,472,000 which constituted 36.31 percent of what Malawi exports to the world, while total imports were USD 802,657,000 which is 27.3 percent of total imports from the rest of the world, signifying a goods trade deficit of USD - 471,185,000 (ITC, 2019)

US\$ '000	2015	2016	2017	2018	2019
Export of Goods	422,280	350,018	296,965	317,233	331,472
Import of goods	786,756	761,922	758,137	809,057	802,657
Trade Balance	-364,476	-411,904	-461,172	-491,824	-471,185

Table 10. Malawi Goods Trade (Africa). Source:ITC Trade Map Data 2020

133. Malawi has fully liberalized her trade under COMESA and is also fully liberalized under the SADC FTA – except for few tariff lines (2% with Republic of South Africa -RSA for sensitive goods). Relating to AfCFTA, interviews revealed that Malawi made an initial tariff offer to AfCFTA in 2021 and received comments from the AfCFTA Secretariat, which they are now revising. In submitting her offers, Malawi based on the need for industrial protection and revenue collection. In other words, as a means of building on the *acquis*, in designing her tariff offers, Malawi took into consideration the existing commitments i.e., applicable rates under zero both in SADC, COMESA, and the WTO. Indeed, respondents from the Ministry of Trade Malawi noted that the COMESA and SADC *acquis* has been helpful as Malawi has acquired the experience of understanding the opportunities and challenges, they are likely to face. The Malawi National AfCFTA Implementation Strategy notes some of the ‘enabling factors to the achievement of AfCFTA objectives’ as: “Strong export/import track record in SADC, COMESA regions and potential in West, Central and North Africa”, and “Malawi’s trade openness (customs tariffs and NTBs) gives market access competitive edge in AfCFTA”. In addition, the Strategy highlights as one of the Opportunities the fact that “Gains in RECs taken into AfCFTA are easily adaptable for Malawi”. Therefore, the Malawi National AfCFTA Implementation Strategy has been crafted in such a manner that the country aims at building on the *acquis* of the RECs to implement the AfCFTA.

The COMESA RoO are more liberal and easier to use, for the private sector, so Malawi will continue to rely on that *acquis*. **Malawi Ministry of Trade.**

134. A major documented challenge to Malawi's participation in trade is NTBs, especially under COMESA and SADC. While the Tripartite NTB monitoring has helped in partially addressing this (elimination of NTBs), interviewees noted that there are no punitive measures under Tripartite if a member does not eliminate NTBs. Secondly, for SADC, it was noted that the RoO are too stringent, which respondents hypothesize is likely to result in similar challenges under AfCFTA whose RoO they consider as equally stringent. The question of relying on the *acquis* can be compromised under such circumstances where NTBs remain an issue, coupled by stringent RoO. Moreover, like many COMESA and SADC member states, Malawi faces a major challenge of the logistics of moving goods across the continent.

135. With regard trade with the Rest of Africa, interviews revealed that the Malawi Strategy for the AfCFTA focuses on market opportunities in West and North Africa through trade missions; trade fairs; establishing embassies, domestically prepare local industry to be export led, and boosting SMEs potential to harness AfCFTA market. The strategy also aims at promoting the establishment of distribution networks in North/West Africa. Indeed, a review of the Malawi National AfCFTA Implementation Strategy reveals that the Strategy focuses on trade opportunities outside SADC and COMESA. Moreover, Malawi has been actively seeking to join the GTI. This proactiveness under AfCFTA can serve as a good example to other SADC and COMESA member states in their respective efforts to implement the AfCFTA. Furthermore, interviews revealed that within the RECs (COMESA and SADC), Malawi is among the top 20 countries with low tariffs. Malawi will therefore have minimal effect on tax revenue losses, which will ease the implementation of AfCFTA in the country.

136. Interviews were also conducted on Malawi's preparedness with regards to Trade in Services as one of the pillars of the REC's *acquis* and AfCFTA regime implementation. It was found out that Malawi has submitted its services liberalization schedules under SADC, COMESA and AfCFTA. Respondents noted that for SADC, the covered 7 priority sectors include Financial, Tourism, Transport, Communication, Energy and Energy related and Construction while under COMESA Malawi has submitted schedules for similar areas but also included business services. Under the AfCFTA findings revealed that Malawi has already submitted the four schedules i.e., Communication, Transport, Tourism and Business services, all of which have been already accepted. Nevertheless, findings revealed one common consensus that under trade in services, Malawi expects the same challenges they have faced under COMESA and SADC. For instance, under mode Four, there is a need to accelerate the mutual recognition of qualifications which is still ongoing under COMESA and SADC. Sensing this risk, Malawi's strategy will aim at increasing civic education for private sector to know where opportunities exist. This was confirmed by respondents from the Ministry of Trade who indicated that Malawi believes that the commitments made under the *acquis* of COMESA and SADC were steppingstones for submission to AfCFTA.

137. Interviews also found that while the AfCFTA offers opportunities for market access to Malawi's service providers, this will require building comparative advantages for the country such in areas as business services, recognition of qualifications and skills (mutual recognition). However, the REC's *acquis* under this aspect may not be achieved given the fact that member states are still negotiating mutual recognition at COMESA and SADC, in addition to the need for civic education for private sector to know where opportunities exist. In other words, implementation of AfCFTA Trade in Services will only be tested once the regional regulatory frameworks at COMESA and SADC are in place, and this will ultimately shape the *acquis*.

138. While interviews revealed that building on the existing *acquis* at REC level is critical in propelling AfCFTA implementation, respondents cautioned that the reliance of the RECs *acquis* under the AfCFTA Trade in Goods is a double-edged sword. According to the respondents, - while the *acquis* of the RECs will support the AfCFTA to create a larger market, expanding beyond the region may be difficult as the States such as Malawi may opt to continue applying the regional *acquis* more where it favours their trade especially considering that the Rules of Origin of the AfCFTA are more stringent than those of COMESA⁶³." The views of the respondents resonate very well with the Malawi National AfCFTA Implementation Strategy which lists, as one of the threats: "role of RECs (SADC, COMESA, EAC and TFTA) on enforcement of AfCFTA obligations". The other threat to build on the *acquis* to accelerate implementation of the AfCFTA as highlighted in the Malawi National AfCFTA Implementation Strategy is the fact that the SADC National Committee is coordinated under the Ministry of Foreign Affairs and Economic Cooperation while COMESA national focal point is Ministry of Trade. Another challenge identified to work against the existing *acquis* is the logistics between the Southern Region and the West and North African region as it is very difficult to move goods between the two regions.

"In order for Malawi to take full advantage of the AfCFTA, the country will need to build on the experiences gained under the RECs *acquis* i.e., trade facilitation mechanisms. In addition it will be necessary to undertake export promotion initiatives such as the trade fairs introduced by the AfCFTA and undertaking deeper market intelligence to analyse the barriers that exports may face into the new areas in the North, Central and North of Africa" Mufwa Munthali-Director of Trade Malawi

a. The Case of Mauritius

139. Mauritius has been active member of COMESA and SADC which represent over 68.5% of the African continent. Mauritius also participates in the COMESA-SADC- EAC Tripartite Free Trade Area (TFTA) negotiations. Mauritius is a services-oriented economy, with tourism and financial services being the main drivers of growth. The contribution of the services sector to GDP increased from 63% in 2010 to 67.3% in 2019, with manufacturing (or Industry) being the second largest sector of the economy, contributing to 17.4% of GDP in 2019 (ECA, 2019). The services sector employs most of the Mauritian workforce, providing 69% of the country's jobs, with the industrial sector representing 25% of the country's employment (which includes the manufacturing sector, construction, and mining activities), while the agricultural sector employs 6.9% of the

⁶³ Mr. Mufwa Munthali, Director of Trade, Malawi in an interview

workforce (ECA, 2021). In this context, tradable sectors like manufacturing, accommodation, construction and transport can benefit immensely from the AfCFTA, using the ease in trading environment to expand and boost their activities. However, despite her membership, respondents argued that Mauritius has yet to fully utilise its potential – an assertion also reflected in the Mauritius National AfCFTA Implementation Strategy. For example, over the period 2017-2019, Mauritius' exports to COMESA only represented 12% of its total exports (USD 237 million), whilst its exports to SADC represented 19.2% (USD 381 million) and are mainly made up of three sectors: textiles, sugar, and plastics (ECA, 2021). Conscious of this low performance and driven by the need to increase on her intra-COMESA and SADC trade share, the Mauritian Government has been striving to implement appropriate macroeconomic policies which would encourage healthy economic growth, full employment, and reasonable inflation, with intra-African trade and investment promotion playing an important role.

140. From interviews with the private sector institutions, it can be deduced that Mauritius has one of the most proactive regional trade integration schemes which AfCFTA State Parties can emulate. Indeed, Trade policy reforms in Mauritius since the 1980s have led to the elimination of a wide range of non-tariff barriers such as trade licences which aimed at facilitating trade and also supporting the Exports Processing Zones (EPZ) sector (Sanjeev & Veepin, 2007). In relation to this, an interview conducted with the Mauritius Directorate of Trade indicated that the country has completely liberalised trade in both COMESA and SADC, meaning that Mauritius is more advanced under those regional integration trade regimes. The country has made significant efforts in reducing customs duties over the years, and it can be argued that the context in which trade and investment policy reforms have been undertaken clearly indicates the Mauritian government's willingness to liberalise her trade and investment ecosystem. According to the Mauritius Directorate of Trade, Mauritius has committed itself to implementing free trade policies in the region given that regional integration has always been considered by the country as an instrument to achieve further economic development, diversify its export base and as a stepping-stone to international competition. This is also because the Mauritian Government has always favoured the idea that regional integration increases market size, even if it represents the integration of small economies.

141. True to its talk, field findings indicate that Mauritius is one of the few countries in the region that has been closely monitoring the regional integration process and has been involved in the setting up of trade regimes through a dynamic partnership between the public and the private sector. As stressed by the Directorate for Trade, Mauritius' trade policy approach is based on trade openness and active engagement at multilateral and bilateral levels. The current policy stance focuses on the diversification of its markets, with a growing focus on regional African markets, and product diversification, with a special focus on the blue economy. Additionally, respondents stressed that Mauritius is aiming to become a hub for trade and investment in Africa and a regional maritime hub through the major infrastructure of its port, linked to an overall infrastructure modernisation effort (e.g., the setting up of smart cities and modern transportation system), smart agriculture development, fostering of technology-intensive manufacturing. In relation to the acquis, respondents believe that with Africa having a 97% of maritime transport deficit (whereby 97% of shipping vessels are foreign owned), the desire by Mauritius to become a maritime hub for Africa can propel the much-needed maritime transport to facilitate trade under AfCFTA. The country's desire to foster

a tech-intensive manufacturing base would also provide the right environment for the promotion of the much-needed production capacities to support AfCFTA's industrial and digital trade agenda.

142. Interviews also revealed that Trade and Investment have been a centrepiece of the country's economic success, focusing predominantly on an export-led growth strategy. This success has been based on taking advantage of the country's preferential access to developed markets, particularly the EU, in sugar, and textile, clothing and apparel sectors, combined with a tariff-free policy on inputs, tax incentives and subsidies, and relaxed labour regulations for the export-oriented sector located in its industrial zones (Baker, Deleplancque, Kiran, Quiles, & Vanzetti, 2017). Nevertheless, much of this trade has been outside Africa. Indeed, Mauritius' main export partners lie outside of Africa – such as the EU, which absorbs 36.1% of total exports (mainly France), the UK (11.1%) and the USA (10.8%) (ECA, 2021). In terms of imports, Mauritius imports mainly from the EU, China, and India, with whom the country also has strong investment ties. On the exports side, a similar picture is found, with Mauritius exporting mainly consumer (final) goods, and a limited number of raw materials (ibid). This indicates a limited integration into regional value chains, eroding regional integration and the possibility to expand into new sectors and products.

143. With regards to intra-regional trade performance, the major threat to the Mauritian economy in the trade relationship with SADC has been imports from South Africa. Indeed, given the fact that more than 90% of the imports in SADC are dominated by South Africa, trade liberalisation poses a real threat to the local manufacturing companies sector (Sanjeev & Veepin, 2007; Baker, Deleplancque, Kiran, Quiles, & Vanzetti, 2017).

144. Under COMESA, consistent derogations by member states like Egypt, in maintaining tariffs on products which were affecting the local Mauritian manufacturing industry remains a threat to Mauritius' effective utilisation of the regional integration scheme (Sanjeev & Veepin, 2007; Baker, Deleplancque, Kiran, Quiles, & Vanzetti, 2017). Nevertheless, in his submission, the Mauritius Directorate of Trade argues that COMESA has led to improved trade facilitation within the region, lower transaction costs and greater efficiency by easing the ability to source and cumulate inputs more easily.

145. To quote the directorate, "Mauritius is well positioned to develop a market niche for itself in areas such as developing its potential as a distribution centre, the financial and insurance sector as well as in Information and Communication Technology (ICT), pharmaceuticals, higher education services, jewellery and textile and apparel for the SADC and COMESA region in general". These opportunities are expected to be replicated under the AfCFTA. The above contextual analysis of Mauritius trade performance helps us understand the country's readiness to utilise the AfCFTA trade regime. Mauritius was one of the first countries to implement the GTI and has completed the internal processes to implement the GTI by adopting internal rules for its implementation. Furthermore, Mauritius' signing of the AfCFTA is aligned with the country's trade policy objectives, because Mauritius is a very open economy, with 93.7% of its tariff lines being duty-free, and an average tariff of 1.19% (ECA, 2021) – higher than the level of tariff liberalization envisaged under the AfCFTA. Therefore, pursuing further market access opportunities through the AfCFTA is a positive development for the country's private sector and the Mauritian economy.

146. Amidst the promises of AfCFTA, there have been questions on what the *acquis* would be for Mauritius, given the fact that the country has given 100% in COMESA FTA, almost 100% in the SADC FTA (under SADC and COMESA Mauritius has no exclusions), but in AfCFTA they have given 97%. Furthermore, while the excluded goods at the AfCFTA are the same as at REC level (which is only for the sensitive goods), the AfCFTA is different as immediate liberalisation is only 90 percent of the tariff lines. Mauritius has a phased period of five years. Moreover, Mauritius' submission of sensitive goods under EU-EPA is exactly the same as has been submitted to the AfCFTA. In an interview with the Directorate for Trade, it was revealed that while Mauritius was able to liberalise fully under COMESA and SADC, they are aware that in the wider market of the AfCFTA they expect some of their goods such as cooking oil to face stiffer competition from the more advanced producers in the wider market. Mauritius already had experience in applying some safeguard measures for some of the goods they considered sensitive under COMESA and SADC. Using that experience, those same goods have been excluded from AfCFTA trade." Moreover, whereas Mauritius is yet to fully exploit Africa's potential as a source of raw and intermediate materials, the AfCFTA has the potential to be a large market for Mauritius' services exports, particularly on Business Services, which account for nearly a third of the continent's total imports of trade in services i.e., USD 42.4 billion out of USD 153.1 billion (UNECA, 2021). Moreover, with regards restrictiveness in trade in services, the World Bank's Services Trade Restrictiveness Index (STRI), which collects and analyses the restrictiveness level of services trade policy measures across the world ranks Mauritius as one of the least restrictive in terms of services trade (ECA, 2021), which makes it a relatively easier market to penetrate under the AfCFTA Trade in services regime.

147. Understanding the Mauritius *acquis* and AfCFTA implementation requires one to examine the trade facilitation related provisions therein the AfCFTA. Interview findings revealed that the AfCFTA regime is more protectionist compared with the COMESA and SADC regimes when one takes account of the RoO. It is key to underscore that Mauritius's liberalisation under AfCFTA does not mean that the country is oblivious of the challenges associated with a liberal trade regime. An interview with the directorate of Trade revealed that the AfCFTA has potential to create stiff competition between Mauritius' cooking oil producers and North Africa producers. The same can be said of services sector where the country will have to compete with efficient countries like Kenya, Nigeria, and South Africa among others. One key argument by Mauritius is that it is aware of the trade gains and losses associated with the AfCFTA as this is not new, with the country having already experienced the same under her COMESA and SADC engagement. This clearly explains how the AfCFTA will build on the existing *acquis* of Safeguard Measures to ensure that its implementation does not negatively impact on Mauritius's economy.

148. Moreover, apart from the fact that Mauritius' most sensitive good like sugar have been protected and some other products like margarine have been excluded under AfCFTA, there are also other potential benefits accruing to the country's full throttle ratification and implementation of AfCFTA. It is estimated that under the AfCFTA, the removal of tariffs will increase the country's income by 0.3%, whilst the removal of NTBs, and adoption of trade facilitation measures would lead to a 3.8% and 6.9% increase respectively (ECA, 2021). A similar analysis is seen on the trade side, with the removal of tariffs increasing imports by 0.8% and exports by 0.7% by 2035, whilst aiming for a comprehensive implementation of the AfCFTA – i.e., removing NTBs and including

trade facilitation reforms – would boost imports by 31.7% and exports by 32.9% (ibid). This minimal impact of the tariffs is mainly due to the fact that the country already has a deep preferential access to its main African markets, and therefore, its benefits are minimal (ibid).

149. AfCFTA implementation in Mauritius will also leverage the existing COMESA regulations and related mechanisms on managing NTBs. With regards potential revenue losses (Mauritius, due to its membership of SADC and COMESA, faces an average preferential tariff of 5% when trading with COMESA Member States, and 4% when trading with SADC Member States- ECA, 2021), field findings revealed that Mauritius is convinced that since the other countries have a long period of adjustment for sensitive goods that should allow them to adjust so as not to feel the impact of liberalisation under the AfCFTA. Another key concern by Mauritius as revealed in the field findings is the likelihood that Mauritius’ production of raw materials might be insufficient to satisfy the needs of a more developed agro-processing industry. Therefore, ensuring that the industry is able to obtain the necessary raw materials to operate is crucial to ensure the competitiveness of the economy. With Mauritius currently only importing agricultural products from South Africa, Madagascar and Egypt, there are opportunities on the continent - to source raw materials from other major agricultural producers, such as Democratic Republic of Congo or Zimbabwe. According to the Mauritius National AfCFTA Implementation Strategy, in order to do so, it will be necessary to work with the national SPS accreditation bodies on the continent to ensure that they have the capacity to test the agricultural goods before these are sent to Mauritius for processing – a clear case of building on the *acquis*.

150. With regards intellectual property, the government of Mauritius believes that IPRs regimes, which provide private sector incentives, on the one hand, while maintaining public policy objectives, on the other hand, can be utilised as a policy tool aimed to promote private investment, entrepreneurship, competition and innovation. As economic assets, the AfCFTA IPR regime is expected to propel Mauritius towards a knowledge-based economy that embraces, amongst others, digital technology, internet, information technology and communication. The Mauritius National AfCFTA Implementation Strategy notes that Mauritius is not a signatory to key international conventions, such as the Madrid System,⁶⁴ The Hague Agreement⁶⁵, and The Patent Cooperation Treaty⁶⁶. The Strategy notes that the AfCFTA represents a good opportunity to boost the country’s efforts to strengthen its intellectual property regime – a clear highlight of complementarity from the AfCFTA.

151. On Competition Policy, the Mauritius National AfCFTA Implementation Strategy highlights a clear strategy of building on the *acquis*. It notes that: “the Mauritius Competition Commission has signed a number of Memoranda of Understanding (MoU) to boost its cooperation efforts with local and international regulators. At the regional level, the Commission collaborates with the competition commissions of the Republic of Seychelles, South Africa, SADC and COMESA on regional merger transactions and potential anti-competitive agreements. A review of the competition law is also underway, which will be a good opportunity to adapt the law to the outcome of the AfCFTA negotiations”.

⁶⁴ This allows business to register, manage and protect their trademarks across 92 contracting parties.

⁶⁵ This allows industrial designs to be protected in multiple countries or regions with minimal formalities.

⁶⁶ This enables business to simultaneously seek patent protection in multiple jurisdictions.

152. The Mauritius National AfCFTA Implementation Strategy has four Strategic Objectives, which essentially envisage building on the *acquis*. These are: successfully implementing the AfCFTA; Facilitating the transmission of Trade Information across all business players, particularly SMEs; Reinforcing the country's Trade Promotion and Economic Diplomacy efforts; and improving the country's Transport and Logistics Connectivity with the Continent. The Strategy also envisages for the need for countries to pass domestic legislation to be compliant with the AfCFTA commitments. It is at the level of passing domestic laws that close scrutiny has to be made to ensure that there is no conflicting commitment with the *acquis* under the RECs. The Mauritius Strategy also places great emphasis on the potential opportunities from the AfCFTA Trade in Services Protocol as services has become a key driver of Mauritius' external trade in recent years.

153. From the above analysis, it is clear that Mauritius is positioning herself to harness the AfCFTA by building on the *acquis* with respect to all areas covered by the Agreement, and the institutional arrangements available under the RECs and the AfCFTA. The Trade in Goods and Trade in Services offers have been based on the already existing offers at REC level; and Mauritius looks forward to using REC mechanisms such as SPS controls, Accreditation Services, Competition Commissions, and IPR Institutions to leverage on implementation of the AfCFTA.

3.4 The case of Namibia

154. Interviews with the Ministry of Trade and SADC Secretariat revealed that Namibia has often regarded regional integration as a stepping stone to the country's integration into the world economy. In a bid to fulfil this conviction, the country has consequently entered into a number of trading arrangements. Namibia is a member of both SADC and SACU. The adoption of the 2002 SACU Agreement was a response to the organisation's historical legacy and regional political and economic changes during the 1990s. Namibia became independent in 1990 and joined SACU as a full member.⁶⁷ The new SACU Agreement (2002) alters the organisation's structure and some of its operational aspects by providing for an international organisation with legal personality, specific institutions, rules on decision-making, the development of common policies, and the possibility of formal dispute resolution⁶⁸. Furthermore, interviews revealed that while she was initially a member of COMESA, Namibia pulled out in 2003 because it was already a member of the SACU. Through SACU, Namibia has been involved in a number of FTAs and Negotiations with other economic groupings or individual countries like the U.S.A.

155. Like Eswatini, Namibia is part of the SACU offer that has been extended to the AfCFTA and is aimed at acting as a steppingstone (*acquis*) for the implementation of the AfCFTA. Interviews from the SADC Business Council revealed that the SADC Trade Protocol which largely informs the region's AfCFTA position has been successful although most of the trade has been more favourable to South Africa. This has been coupled with businesses always having issues with NTBs imposed at the border – most of it due to poor communication and an economic decline which prompts countries to start import bans. While there are fears of such scenarios being replicated under AfCFTA, hence affecting the *acquis*, it is key to note that one of the key features of Trade regimes is resolution of

⁶⁷ Gerhard Erasmus: Namibia and the Southern African Customs Union:

https://www.kas.de/c/document_library/get_file?uuid=51b9bf79-d811-ee00-10eb-26f52038d4c0&groupId=252038

⁶⁸ Ibid.

disputes and issues through dialogue which has been prominent in SADC. Moreover, given the fact that the SADC lacked a form of compensation, the AfCFTA Adjustment Facility is expected to be beneficial to countries like Namibia. Therefore, the acquis here is that the AfCFTA will help in promoting safe implementation of the tariff commitments by guaranteeing compensatory measures to Namibia.

156. Field interviews also revealed that one of the areas of concern by Namibia is the fact that the SADC RoO speak to lack of cooperation on industrialisation, which has led to significant challenges on clothing and textiles and automobiles. Moreover, there is a concern by the Namibian private sector that while the AfCFTA is based on three pillars i.e., market access, infrastructure and industrialisation, more concentration is placed on market access rather than infrastructure and industrialisation. As a way of supporting the existing acquis, private sector respondents are of the view that there is need for the AfCFTA to ensure cooperation on RoO which should take a sectoral approach. Indeed, field findings reveal that while the existing acquis at SADC can be the best starting point for the AfCFTA, there is need for countries to be held more accountable at AfCFTA than it has been at SADC level, both in implementation of RoO and in elimination of NTBs.

157. In a bid to facilitate intra-regional trade, Namibia recognises the fact that governments should address corruption beyond border-posts with trained and professional individuals. As a result, Namibia has made a conscious effort to sign agreements that set the footprint for development and investment, covering trade, peace and security, trans-boundary natural resources, science and technology, education and training, and the empowerment of women and youth (Nagar & Mutasa, 2017). Furthermore, Namibia has signed numerous SADC Protocols, including those on mining; energy; control of firearms, ammunition, and other materials; mutual assistance in criminal matters; extradition; mutual defence; finance and investment; gender and development; science, technology, and innovation; assistance in tax matters; environmental management for sustainable development; shared watercourses; tourism; transport, communications, and meteorology; and wildlife conservation and law enforcement (ibid). However, majority of these protocols are yet to be implemented which makes it challenging for the implementation of AfCFTA along the associated Protocols. Nevertheless, all these measures form a trade facilitation ecosystem which, if implemented can be used to bolster the AfCFTA implementation in the country, while serving as a point of reference to other State Parties.

158. In the context of building on the acquis to implement the AfCFTA, the Namibia National AfCFTA Implementation Strategy highlights the following: “As Namibia is a small open economy, AfCFTA provides an expanded market for its goods and services. It builds on progress achieved through Namibian participation in regional integration initiatives, mainly the SADC and the SACU, as key steppingstones to continental economic integration. Experience from these initiatives suggests that while Namibia performs favourably in terms of trade, infrastructure, financial and macroeconomic integration, the challenge lies in productive integration. AfCFTA can be an important platform for Namibian economic diversification, export expansion and competitiveness towards sustainable growth, creation of sustainable jobs and reduction of poverty”. The Strategy identifies key areas for the acquis as: tariff liberalization, Rules of Origin, NTB removal, Standards and Technical Regulations, and investment and regional value chain development linked to domestic, SACU and SADC economic diversification strategies and action plans.

3.5. The case of Zambia

159. Zambia is a member of COMESA and SADC and liberalised its trade fully under both the COMESA and SADC. By virtue of being a member of the COMESA and SADC, Zambia is also participating in the Tripartite FTA. Under the AfCFTA Zambia falls in the category of LDCs that are expected to fully liberalize over 15 years. Interviews with government officials revealed that it is hoped that the AfCFTA will provide Zambia an opportunity to diversify its non-traditional exports within the priority sectors and destination base, as the country pursues its long-term vision of being an upper-middle-income country by 2030. This is given the fact that outside COMESA and SADC, the country's trade with African countries is low. Indeed, Zambia's trade within Africa is concentrated within the SADC and COMESA regions, with South Africa, the Democratic Republic of the Congo and Zimbabwe accounting for more than 75 per cent of total trade annually from 2016 to 2018 (MCTI, 2021). The exports of Zambia are highly concentrated in a few products and a narrow market base. Copper accounted for an average of 75.6 per cent of total foreign exchange earnings from 2014 to 2018, while the non-traditional exports (other exports excluding copper and cobalt) contributed an average of 25 per cent over the same period (ibid). These non-traditional exports are also dominated by a few sectors. In 2017, most of the non-traditional exports (72.9 percent) were from four subsectors: engineering (25 per cent), primary agriculture (19.3 percent), chemicals and pharmaceuticals (14.8 per cent), and processed and refined foods (13.2 per cent) (ibid). This limited concentration of exports poses a significant challenge to utilising the vast market opportunities presented by AfCFTA and might lead to the country's low share of trade under the regime.

160. Furthermore, despite the potential to diversify exportable goods and export markets, this is constrained by weak trade facilitation infrastructure and prohibitive transport costs (MCTI, 2021). Indeed, the available portfolio of finance for export production, export marketing or research, development and innovation in the export sector is very limited (ibid). Further, the country has inadequate capacity, institutional and legal frameworks to identify and invoke trade defence mechanisms when faced with unfair trade practices (ibid). These are aspects that the government has flagged to improve in order to ensure the country's gainful participation under AfCFTA trade regime. With regards to services, Zambia's main services imports are transport, travel and business services. In 2019, Transport services accounted for 57 per cent (\$ 957.4 million) of total services imports, while travel services contributed 17 per cent (\$ 279.3 million) of total imports. Insurance and pension services contributed 7per cent, while other services, comprising financial and business services, were at 25 per cent (\$ 323.4 million) (MCTI, 2021).

161. Interviews with representatives from the Foreign Trade Department also revealed that Zambia's tariff phasedown schedule to the AfCFTA has been approved by the AfCFTA Council of Ministers and they are now in the process of domestication. Prior to its submission to the AfCFTA, Zambia held wide consultations at national level; and its submission is informed by her membership in the COMESA and SADC FTAs.

162. However, like other countries sampled, one of the challenges Zambia foresee at the AfCFTA as compared to the RECs particularly COMESA is the complexity of the AfCFTA RoO which are

considered to be more complex considering the number of countries involved in the negotiations. A key argument here, therefore, is that it is critical to examine how RoO in COMESA and SADC can be synchronised with those of the AfCFTA in order to ensure that the latter are more simplified and easier to activate by private sector actors from Zambia. Interviews revealed that MSMEs tend to utilise regimes whose RoO are flexible, simplified and ease on their access to markets with less delays at customs. Furthermore, MSMEs prefer RoO which offer high percentages of cumulation on manufactured products as this allows them to access cheaper raw materials from other members and sell competitively in the associated trading regime. This is the reason why coherence in COMESA, SADC and AfCFTA RoO should be examined under implementation strategies in order to pave way for easier utilisation of AfCFTA trade regime.

163. It is also key to note that Zambia has expectations that the AfCFTA may offer more opportunities to their private sector especially for value addition and formation of regional value chains and peer learning. According to the COMESA Secretariat and Ministry of Trade Zambia, *“Zambia expects that trade under the AfCFTA will face the same challenges as they faced under COMESA and SADC such as the Non-Tariff Barriers and Non-Tariff measures....their only expectation is that the NTBs monitoring tool developed under the Tripartite and now adopted under the AfCFTA will mitigate those challenges.”* Perhaps what is commendable is the fact that Zambia is conscious of the challenges associated with the AfCFTA and the COMESA and SADC *acquis* that, as per interviews, the country is reviewing her trade and investment related national legislations to align them with the new AfCFTA regime. This is believed will ultimately create a supportive environment for the implementation of the AfCFTA.

164. Furthermore, while Zambia believes that market access opportunities have not been fully maximised under COMESA and SADC, and this should encourage the Zambian private sector to take advantage of the wider market under the AfCFTA by leveraging the RECs regimes for value addition and formation of regional value chains. Using this approach, the Zambian government believes the AfCFTA support measures targeted at propelling the implementation of the AfCFTA at national and REC level can be leveraged by her private sector to increase on its competitiveness.

165. Another critical area of focus by Zambia is Trade in Services. Interviews with government representatives revealed that while the AfCFTA trade in services targets five priority sectors i.e., Tourism, Business, Financial, Communications and Transport, Zambia has submitted offers for the initial 4 sectors to SADC and COMESA and is still working on submitting the remaining ones i.e., energy, business and financial services. It was also revealed that the slow commitment in the case of energy is due to the fact that it is a new area where most countries need capacity building support before developing the schedules. Nevertheless, so coherent have Zambia’s services tariff schedules been with those of AfCFTA that they have already been accepted. It is not surprising that with regards the AfCFTA building on the existing *acquis* at COMESA and SADC levels, Zambia does not foresee any conflict between the regimes of the RECs and the AfCFTA since the RECs have been the building blocs towards attainment of AfCFTA.

166. In fact, the Zambia National AfCFTA Implementation Strategy has as one of its principles “Continuity: Building on the progress achieved at the level of Regional Economic Communities such as SADC and COMESA”. Further, the Strategy highlights “Experience in free trade operations from COMESA and SADC” as one of the strengths that the country has as it positions itself to fully

harness the AfCFTA. Further aspects of building on the *acquis* are with respect to the strategic objective of making trade under the AfCFTA gender inclusive, under which the Strategy states the implementation measure as “champion introduction of a continental Simplified Trade Regime, similar to the EAC and COMESA Simplified Trade Regimes, and implement gender-sensitive trade facilitation measures that build upon existing measures, aimed at simplifying and harmonizing customs and border procedures, as well as import and export processes”. Similarly, under the objective of starting trading under the AfCFTA, the Strategy lists the implementation measures as “leverage the regional integration efforts to build joint transport and border infrastructure (such as the One Stop Border Posts and bridges) to improve transportation and cooperate on the development of transport corridors and other related infrastructure”. These are clear manifestations of building on the *acquis* of existing RECs to accelerate implementation of the AfCFTA.

167. Regarding the new AfCFTA areas of Competition, IPR and Investment, Zambia hopes to build on the existing practices at REC level to take advantage of those opportunities arising under the AfCFTA. For example, the Ministry of Trade notes that Zambia has a national competition agency and has actively been participating in the COMESA Competition Agency to ensure fair competition under intra- COMESA trade and investment. Zambia also notes that since the REC policies on Investment and IPR are not fully implemented the AfCFTA policies could open new opportunities that they will explore. This is because as argued by the Zambian Ministry of Trade, the AfCFTA is a mechanism to deepen integration among RECs, and so it will only be natural that the COMESA and SADC institutions should also continue to exist, albeit in a strengthened manner due to leveraging opportunities from the AfCFTA.

168. In a way of ensuring that its private sector utilises the trade and investment opportunities associated with the AfCFTA, field findings revealed that Zambia’s strategy for AfCFTA Implementation has been designed to focus on scaling up of SMEs productivity from the supply side to get them export ready within ten years. The problematic aspect of this resolve is that Zambian MSMEs will have to comply with three different trade regimes i.e., SADC, COMESA and AfCFTA, which is not cost effective. Moreover, it is key to note that the AfCFTA regime will prevail in situations where the RoO under COMESA and SADC are lower than those of AfCFTA. In order to resolve this, there is need for capacity building and awareness raising campaigns in areas such as standards and packaging compliance to qualify for trading under AfCFTA regime.

3.6. Views of the Secretariats of COMESA, SADC and SACU and Private Sector on Implementation of the *acquis*

169. It should be recalled the RECs are considered an important pillar in the development of the AfCFTA. Article 29 (Technical Assistance, Capacity Building and Cooperation) provides that "The (AfCFTA) Secretariat working with State Parties, RECs and Partners shall coordinate and provide technical assistance and capacity building in Trade and Trade Related Issues for the implementation of this Protocol". Similar provisions are made in Article 27(3) of the Protocol on Trade in Services and Article 7 of Annex 5 (NTBs). In effect, the AfCFTA envisages clear roles for the RECs in its implementation.

170. In spite of the potential benefits of the AfCFTA, findings sounded some of the risks which should be taken note of. In an interview with the COMESA Directorate of Trade and Customs revealed that there is a risk that new institutions established by AfCFTA may create duplication – Competition, IPR and Investment have not provided for recognition of the ones established by the RECs – it would have been better if the ones for AfCFTA had been Apex bodies.” However, a positive aspect of this is that AfCFTA can galvanise areas where RECs have been slow such as on Free Movement of businesspersons which is important for accelerating trade opportunities in Africa. Furthermore, the surveys revealed that a major challenge on the continent is the lack of sufficient regional routes for trade to take place and scale up at both REC and AfCFTA level. Unfortunately, investment in the hard infrastructure across the continent has been limited. Key infrastructure is still left to individual countries instead of being done at regional level.

171. In all the interviews, it was revealed that the concern of competing interests is real on the continent because it has been shown in SACU, SADC and COMESA that regionalism can lead to unbalanced economic development with industries agglomerating in the most economically dominant member state. This begs three important questions: (i) how can the Southern African RECs integrate their production factors so as to deepen integration in the region as opposed to enhancing trade with 3rd parties; (ii) how can the RECs Secretariats or countries such as Egypt, Botswana and South Africa allay the prevalent ‘big brother’ fears amongst some other member states; and (iii) how can the Southern African RECs promote investment in smaller partner states, and not only in the dominant centres? Moreover, respondents argued that regional integration among the RECs remains a state-driven affair, with member states neither willing to cede sovereignty to a supra-national body nor willing to empower organs representing citizens. Amidst the hesitancy in ceding sovereignty by states, the private sector continues to play a key role in boosting trade and investment across the RECs while engaging states on implementation of their commitments. These are the same questions that the AfCFTA needs to address in order ensure inclusive implementation among state parties.

172. Furthermore, from all the interviews, it also emerged that the representatives of particular interests in the regional integration process, were to a greater extent less consulted during the AfCFTA discussions. For instance, it was noted that the private sector and civil society only lobby on issues that are predetermined at the national government or regional secretariat level, and it was emphasized that non-state actors needed to be involved in setting the regional agenda as well the whole process of integration. The non-State actors need to leverage existing national and regional spaces for consultations to ensure that they proactively input in the AfCFTA negotiations and implementation monitoring. Another key observation made during interviews is that the AfCFTA work is being driven by the AfCFTA Secretariat rather than member states and yet it is the member states to implement the Protocols and decisions. A concern shared by many is that implementation will be a challenge unless State Parties feel that they are driving the process and not the AfCFTA Secretariat.

173. It is also the view of the private sector from COMESA and SADC, that implementation of the AfCFTA will be easier for them because most of the instruments have been taken from the RECs. In order to enhance this, the private sector appeals for the alignment of the priority sectors between those of the RECs and the AfCFTA. It is also key to note that as building blocs, the Southern African

RECs of SADC and COMESA have established instruments that AfCFTA has adopted without necessarily having to re-invent the wheel. Nevertheless, in order for the AfCFTA to work effectively, collaboration and coordination with the RECs is critical. This is because perceptions from the respondents indicated that there is still insufficient coordination between the RECs and the AfCFTA Secretariat. A major challenge is that RECs are observers at AfCFTA meetings. It is Member States that are represented at the AfCFTA. This also applies to sequencing meetings. The meetings of RECs need to be synchronised with those of the AfCFTA. Furthermore, perceptions from the COMESA Business Council revealed that the business community in COMESA has not had much interaction with AfCFTA, neither were they involved in the negotiations. This needs to be addressed if the AfCFTA is to create inclusive opportunities among all supply chain actors.

174. Another big challenge likely to confront the AfCFTA is on the level of commitment to implement the promised tariff elimination, and persistent NTBs. For example, while field findings indicated that COMESA has gone a long way in eliminating NTBs, the private sector was concerned that their trade frequently faces NTBs and arbitrary implementation of tax regimes and other Non-Tariff Measures which hinders the FTA implementation. Moreover, while the Tripartite has the NTB online monitoring mechanisms, it was still the responsibility of the governments to remove those NTBs. As a starting point, and as a means of building on the existing *acquis* for its implementation, the AfCFTA should adopt many of those Trade Facilitation measures put in place by the RECs.

57. Best Practices in Regional Integration

175. This section studies and details best practices from other Regional Economic Communities (RECs) in Africa and the rest of the world with lessons learnt from the effective implementation of regional trade agreements and harmonization of trade regimes in those regions. The section specifically teases out the best practices from African RECs, the Association of Southeast Asian Nations (ASEAN), the European Union (EU), and the Mercado Común del Sur (MERCOSUR). The rationale of this section is to highlight lessons for Southern African countries that they could build on and or replicate in order to expedite implementation of the AfCFTA building on the *acquis* within the RECs to which they already subscribe.

4.1 Adjustment measures to cater for infant industries

176. The argument for the inclusion of adjustment measures in regional integration schemes has always been aimed at catering for infant industries because it promotes economic development and sustainability. This is because infant industries often lack the competitive advantage of established industries, and without protection and support, they may struggle to survive, a result of which would be a skewed integration agenda. Thus, a number of RECs have always been conscious of this and have endeavoured to put in place measures to allow participating countries a specific timeframe to adjust to the shocks of tariff liberalisation. One of the best examples of adjustment measures for infant industry protection is in SADC. Indeed, under SADC, Malawi, Zimbabwe and Tanzania were authorized to impose 25% import duties on sugar and paper products until 2015 in order to allow the industries to adjust (AUC, 2019). Moreover, Zimbabwe was granted derogation (in terms of Article 3 (c) of the Protocol on Trade) to suspend tariff phase-downs until 2014 given its difficulties in implementing its tariff commitments on sensitive products (Sandrey, 2013). It has been argued that this waiver gave these countries the much-needed policy space to effectively prepare for the eventual liberalization, enabling them to prepare their respective private sector to compete in SADC (ibid).

177. In addition, COMESA also introduced an Adjustment Facility in 2002, under which States that showed loss of revenue following removal of tariffs under the COMESA FTA were compensated for the losses. The COMESA programme under the title Regional Integration Support Mechanism (RISM) was intended to support member states by:

- a) off-setting revenues losses arising from the reduction of removal of tariff barriers, which will enable governments in undertaking the necessary fiscal adjustments.
- b) mitigating frictional costs of adjustments by improving the efficiency of domestic markets, facilitating internal reallocation of resources and assisting firms in meeting the cost of compliance to new obligations.
- c) improving the competitiveness of industries and taking advantage of new market opportunities through support to productive infrastructures and investment in developing new products, processes and technologies.

178. The AfCFTA borrowed lessons from this best practice to adopt an Adjustment Facility. The SADC adjustment measures also constitute best practices under AfCFTA, for assessing the readiness of the member states to undertake further liberalization commitments concerning sensitive and excluded products.

4.2. Trade facilitating infrastructure

179. The role of infrastructure, both hard, physical and soft policy/service in boosting intra-regional trade cannot be overstated. This is because better infrastructure helps facilitate trade by cutting down on the cost and time of movement of goods and services. A SADC Corridor Management Strategy was approved in 2008 and has served as the basic framework for cooperation and coordination in transport integration. The corridors strategy focuses on developing legal instruments for joint governance of corridors; institutional frameworks for joint and coordinated management of transport corridors; and prioritisation and implementation of critical corridor transport and logistics infrastructure.⁶⁹

180. In a bid to facilitate intra-SADC trade, cooperation on infrastructure projects among Partner States has been key. For example, Botswana and Zambia have jointly invested in the Kazungula bridge across the Zambezi River that links the two countries and was opened by the Heads of State of the two countries in May 2021 (AfDB, 2021). The bridge has since replaced the longstanding slow ferry service across the river, and as a result, trucks on regional routes can now cross the river in a few hours, or less, rather than the previous three days to a week (AUC, 2021). The bridge is also able to boost trade between the two countries as more than 250 trucks a day should be able to cross the Zambezi instead of the handful that were able to cross before (ibid). Furthermore, the opening of the Kazungula bridge also means that trucks can avoid using the biggest crossing between the ports and factories of South Africa and the rest of southern Africa, Beit Bridge, which is also one of the most congested borders in Africa and has often led to increased transport costs (AfDB, 2021). This has resulted in a reduction in transport costs, an increase in the security of cargo and the provision of an alternative route for trade to the sea for inland markets.

181. One-Stop Border Posts (OSBPs) is another key trade-facilitating infrastructure between Zambia and Botswana. The Kazungula One-Stop Border Post that connects Botswana and Zambia has eased congestion at border crossings and boosted trade on Africa's busiest corridor i.e., the North-South corridor that stretches from the port of Durban in South Africa to the Democratic Republic of Congo (AUC, 2021). Therefore, as AfCFTA enters its implementation phase, State Parties should emulate this example and leverage cooperation on infrastructure to support intra-regional and intra-Africa trade.

4.3. Leveraging partnerships to promote the movement of persons

182. Under the EAC Treaty Article 104 of the Treaty, the Partner States agreed to adopt measures to achieve the free movement of persons, labor and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community (EALA, 2007). Furthermore,

⁶⁹ SADC Website: <https://www.sadc.int/latest-news/sadc-ministers-transport-ict-information-and-meteorology-meet-discuss-sectoral-issues>

under Article 7 of the Common Market Protocol, Partner States guarantee the free movement of persons who are citizens of the other Partner States, within their territories, while under Article 10, Partner States guarantee the free movement of workers, who are citizens of the other Partner States, within their territories (EACJ, 2009). As a result, currently, EAC Partner States, without discrimination, allow the free entry and exit of each other's nationals into and from their respective territories, without a visa, and ensure their free movement and stay within the state for a renewable period of up to six months (AUC, 2019). This has also been supported by the internationalization of the East African passport which was launched and operationalized in 2017 (ibid). It can be argued that the free movement has enabled the EAC to make significant progress in the area of social integration. Therefore, in order to ensure effective implementation, the AfCFTA State Parties can borrow lessons from the EAC and make the ratification and implementation of the AU Protocol for Movement of Persons part of the AfCFTA package. This should be tied to the AfCFTA ratification and implementation process.

183. It is also key to note that in a move to ease the movement of persons, especially for informal cross-border traders who often lack costly passports, from January 1st 2014, Kenya, Uganda and Rwanda began using their respective national identity cards as official travel documents that would enable their citizens to travel among the three countries (Trademark Africa, 2017). Under this arrangement, travelers just have to present their identity cards to immigration officers at border posts to verify their validity before being issued with a stamped coupon to cross the border (ibid). In a bid to ensure an inclusive intra-African trade, other AfCFTA State Parties could, on a collective or bilateral process replicate this process and cooperate in the recognition of National IDs as travel documents.

184. While the SADC Protocol on Facilitation of the Movement of Persons is not operational due to inadequate ratifications by member States, bilateral agreements enabling the granting of 3-month visas have been explored (AUC, 2019). In the context of AfCFTA where the adoption of the Protocol on Free Movement of Persons, Right of Residence and Establishment is still at 30 signatures and 4 ratifications (Rwanda, Niger, Sao Tome and Principe, and Mali), AfCFTA State Parties can emulate the SADC and negotiate bilateral agreements enabling free visa and ease on work permits, as a temporary measure to facilitate implementation of AfCFTA among themselves.

185. ECOWAS, like the EAC, is the only REC that has made the most progress in not only adopting legal frameworks such as the abolition of visas, the establishment of community passports and facilitating the free movement of persons but also by signing them, ratifying them and fully implementing them (AUC, 2019; AUC, 2021). However, unlike the EAC, ECOWAS has defined social integration through the free movement of persons as a priority since its creation and this desire has been supported by the creation of the ECOWAS Community Passport and ECOWAS Biometric Identity Card (AUC, 2021). Indeed, presently, there is a visa-free movement of ECOWAS citizens within the REC, which has been supported by National passports being converted into ECOWAS regional passports, with 7 partner States already using them (AUC, 2019). Furthermore, with the signing of the Protocol on Free Movement of Persons, Right of Residence and Establishment in May 1979, the ECOWAS developed many programmes on gender, education, health, youth, and women's empowerment in order to support social integration within the region (ibid). It is no wonder that the

ECOWAS is hailed as an African REC that continues to maintain a long-standing regime on the free movement of persons that facilitates cross-border services flows (Luke, 2023). With AfCFTA's implementation being threatened by limited acceptance offer movement of persons, the ECOWAS can serve as the best example which can be emulated to support trading in services under the AfCFTA regime.

4.4. Leveraging digitalization to expedite financial payments within SADC

186. (SIRESS), which was developed with the major objectives of facilitating intra-regional trade for member countries, lowering the cost of cross-border payment through the provision of a cheaper payment mechanism, and improving the efficiency of cross-border payments through the reduction of settlement times (Bank of Zambia, 2023). As a result, the SIRESS has facilitated intra-SADC trade by reducing the settlement of regional financial transactions from 2-3 days to 24 hours (AUC, 2019). The AfCFTA Pan African Payment System can therefore leverage the SIRESS to boost its efficiency in the region in a bid to expedite intra-African trade payments.

4.5. Leveraging Mutual Recognition Agreements (MRAs) to promote Trade in Services

187. In a bid to facilitate the movement of professional services, the EAC Common Market Protocol requires Partner States to harmonise and mutually recognise academic and professional qualifications, experience obtained, requirements met, and licences or certificates granted in other Partner States (Kago & Wanyama, 2017). As of 2022, four MRAs i.e., accountants (auditing), architects (excluding the Architects' Association of Tanzania), engineers and veterinary have been signed by the private sectors and professional boards of the Partner States (ibid). Furthermore, negotiations on MRAs for lawyers (advocates) and surveyors are still ongoing (Dorica, 2022; AUC, 2019). Moreover, this has been beefed up by Kenya, Rwanda and Uganda scrapping work permit fees for their respective nationals seeking employment in each other's territory (ibid; Tralac, 2015). By doing this, it can be said that the three countries have managed to facilitate the right of establishment, the right of residence and access to the labour market for their citizens across the three states. Therefore, in order to effectively implement trade in the selected services sectors, AfCFTA State Parties and private sector bodies can draw lessons from the EAC in designing and implementing MRAs. Moreover, this is critical given the fact that the African services industry has increased significantly in the light of rapid urbanization and accounts for a growing share of GDP and employment.

4.6. Cooperation in trade facilitating infrastructure

188. In 2015, the EAC Heads of States assented to the EAC One-Stop Border Posts (OSBPs) Act, 2016, whose major purpose is to promote a coordinated approach to facilitating trade, the movement of people and improving security at border crossing points throughout the region, while reducing the number of stops made at border crossings (EAC, 2016). Currently, the EAC has over 16 OSBPs that are operational with trained personnel, which has resulted in a significant reduction in the time taken

by travellers and trucks at the borders i.e., from days to about 1.5 minutes to 30 minutes on average respectively (EAC, 2018).

189. In addition to the OSBPs, EAC Partner State's cooperation in trade-facilitating infrastructure has been evident in the construction of ports, roads and railways. For example, the Lamu Port-South Sudan- Ethiopia-Transport (LAPSSET) Corridor Programme is East Africa's largest and most ambitious infrastructure project, bringing together Kenya, Ethiopia and South Sudan (AUC, 2021). Kenya is also building a railway from Mombasa to Malaba on the country's western border with Uganda while Tanzania is also doing the same to link with Rwanda and Uganda (AUC, 2021). Tanzania is also constructing the standard gauge railways that will cover 2561km from Dar es Salaam to the shores of Lake Victoria, connecting with Kenya (ibid).

190. Furthermore, in 2021, Uganda signed a \$330 Million agreement with the DRC where the former is to build 223km of roads in the DRC in order to improve trade between the two countries (GCR, 2021). Indeed, as of March 2022, the construction of the 125-kilometre Kasindi-Beni-Butembo Road in the DRC has commenced (Monitor, 2022). Also, negotiations between Tanzania and Burundi to build 282 kilometres of electrified Standard Gauge Railway (SGR) line that will initially connect the two countries and pass through the DRC are ongoing (Trademark Africa, 2023).

191. Another trade-supportive infrastructure commendable at the EAC level is the East African Payment System (EAPS). The EAPS is a cross-border system that facilitates the transfer of funds within the EAC and works by ensuring that transactions are charged at the same rate as local transactions in respective partner states' Real Time Gross Settlement (Ogochukwu & Ebelechukwu, 2022). Currently, participating countries are Kenya, Tanzania and Uganda, with Burundi, Rwanda, South Sudan and DRC yet to join (ibid), with the EAC already commencing preparations for an integrated Single Payment System for the region (EAPS 2). Given the need for infrastructure to support intra-African trade, AfCFTA State Parties can draw lessons from EAC partnerships and cooperate in putting in place the much-needed infrastructure.

4.7. Cooperation in Tourism Development

192. The role of tourism in promoting trade in services, generating employment for the youth and revenue to governments cannot be overstated. For instance, the SADC Tourism Programme serves as a roadmap to guide and coordinate the development of a sustainable tourism industry in the region and to facilitate removal of barriers to tourism development and growth. In a bid to promote tourism by facilitating the seamless movement of tourists, Uganda, Kenya and Rwanda, through the Coalition of the Willing came up with the issuance of a Single Tourist Visa, whereby Kenya would take 40 per cent of revenues, with Uganda and Rwanda splitting the rest between them (AUC, 2019). This initiative has eased the rather often cumbersome immigration procedures for tourists among the cooperating countries and facilitated prospects for future cooperation in other tourism-supportive infrastructure. With the AfCFTA earmarking Tourism (Hotels and Restaurants; Travel agencies and tour operators; Tourist guide services) as a priority area under trade in services, State Parties can

emulate the initiative between Kenya, Rwanda and Uganda and deepen their cooperation in tourism development, especially single tourist visa.

4.8. Mechanisms to eliminate Non-Tariff Barriers (NTBs)

193. In a bid to eliminate NTBs, the EAC enacted the Elimination of Non-Tariff Barriers Act in 2017. The Act provides 5 mechanisms for the elimination of NTBs i.e., Establishing National NTBs Monitoring Committees in all Partner States; establishing Regional NTBs Monitoring Committees; EAC Time Bound Programme for the Elimination of Identified/Reported NTBs (launched in 2009); Elimination of NTBs by Mutual agreement; and Web-Based System on the elimination of NTBs (EAC, 2022). Furthermore, the EAC Secretariat in partnership with the East African Business Council (EABC) has established a mechanism to identify, monitor and resolve NTBs as they arise. EAC has also trained supply chain actors in cross-border trade to identify and report NTBs directly through online or SMS-based tools (Akinyi, 2021). As a result, to date, 230 NTBs have been resolved cumulatively (EAC, 2022). One of the biggest hurdles that the AfCFTA implementation has to brace for is the elimination of NTBs if trade under the regime is to be realized. While the AfCFTA has an online portal to report on NTBs, it could borrow lessons from the EAC on simplification of NTBs identification, reporting, elimination and monitoring ecosystem through use of mobile phones. It could also borrow experiences from the EAC on swift mechanisms to eliminate NTBs through leveraging national and regional (EAC) NTBs elimination monitoring committees.

4.9. Establishing regional Trade facilitating institutions

194. Regional trade-facilitating institutions play a crucial role in promoting economic integration and facilitating trade among partner states. This is because they create a platform for dialogue, cooperation, and harmonization of policies, leading to the development of common trade rules, removal of barriers, and the enhancement of cross-border trade, benefiting participating nations. These include institutions for providing development finance such as the Development Bank of Southern Africa (DBSA for SADC) and the Trade and Development Bank (TDB) for COMESA. Others include the proposed SADC Development Fund and the COMESA Fund. In addition, there are key private sector institutions such as the SADC Business Council and the COMESA Business Council.

195. It is beneficial for African RECs to put in place key institutions that directly facilitate intra and inter-REC institutions, so as to pave the way for seamless implementation of the AfCFTA.

4.10. Key trade facilitating systems

196. Apart from able institutions, COMESA and SADC have put in place a number of notable systems aimed at facilitating the movement of goods and services. Key of these systems include COMESA Foreign Exchange Centre with the Regional Payment and Settlement System (REPSS); COMESA Virtual Trade Facilitation System (CVTFS) and NTBS monitoring systems (AUC, 2019;

AUC, 2021). The CVTFS has been key in facilitating the management and monitoring of the movement of goods efficiently and in real time; while the REPSS has seen a reduction in transaction and operational costs and brought about a switching of relationships for trade transactions from between commercial banks and foreign correspondents to commercial banks and central banks thus making intra-regional trade transactions cheaper among the 9 implementing countries (Chibomba, 2022). In addition the RCTG is a customs transit regime designed to facilitate the movement of goods under customs seals in the COMESA region and to provide the required customs security and guarantee in the transit countries (COMESA, 2021).

4.11. COMESA Competition Commission

197. Established under Article 6 of the Regulations made under the Treaty establishing COMESA, the COMESA Competition Commission commenced its operations in 2013 and is mandated to ensure fair competition and transparency among economic operators in the region. This is done through monitoring and investigating anti-competitive practices of undertakings within the Common Market and mediating disputes between Member States concerning anti-competitive conduct. It should be noted that the COMESA Competition Commission is the first regional competition authority in Africa and the third in the world, after the European Competition Authority and EAC Competition Authority. Among its key achievements since inception, is investigating over 360 merger cases with the companies involved deriving an aggregate turnover of over USD 210 billion in the Common Market, which represents the amount of business generated from the Common Market (Mwangi, 2023). It has also investigated 40 cases of restrictive business practices in the last 10 years since its inception (ibid). The AfCFTA Competition Policy and Authority can benchmark and build on these key successes in order to ensure fair competition during AfCFTA implementation.

4.12. Cooperation in Internet infrastructure by ECCAS

198. The role of Internet infrastructure in facilitating intra-REC trade cannot be overemphasised. Indeed, Internet infrastructure plays a vital role in intra-regional trade by facilitating seamless communication, data exchange, and online transactions within a region. Reliable and efficient internet connectivity enables businesses to access markets, engage in e-commerce, share information, and collaborate, fostering economic growth, market integration, and increased trade opportunities within the region.

199. Economic Community for Central African States (ECCAS) serves as one of the best examples of intra-REC cooperation in building a trade-facilitating internet infrastructure, as evidenced in the High-Bandwidth Optical Fibre Infrastructure Development Programme currently under implementation. The aim of the programme is to interconnect ECCAS member states with high-speed telecom infrastructure. In February 2023, a 935-km-long infrastructure linking the Central African Republic (CAR) to the Republic of Congo and Cameroon constructed under this programme was finalised (Kassouwi, 2023). With the AfCFTA being launched in the era of digitalisation and having a Digital Trade Protocol, increased inter and intra-REC partnerships internet infrastructure will go a long way to calibrate trading under the regime.

4.13. European Union (EU)

200. Comprising 27 Member States, the EU remains one of the best examples of trade facilitation between disparate nations and has been benchmarked by many RECs. Indeed, so exemplary is the EU that in 2021, intra-regional trade was most pronounced in the EU with the region raking 68% (UNCTAD, 2022). Furthermore, the EU is the world's largest trading block, accounting for about 15% of world trade, worth close to EUR 4 trillion (European Commission, 2022). A number of critical best practices can be borrowed from the EU.

4.13.1 Customs Union and Common Market:

201. Established in 1968, the Customs Union is regarded as one of the EU's earliest achievements which required that all EU members apply the same tariffs to goods imported into their territory from the rest of the world and apply no tariffs internally among themselves (European Commission, 2022). Together with the common market, this has created a single market consisting of almost 450 million consumers and represents 18% of the world's gross domestic product (Karoliina & Päivi, 2023). The establishment of the customs union and a common market has led to increased trade flows and economic growth within the EU. It is no wonder that Trade in goods makes up 25% of the EU's GDP, whereas services account for over 70% of the EU's GDP (Bublitz, 2018). Indeed, operating 24 hours and 365 days a year, processing 691.5 million import declarations, 17.5 million transit movements, and 486.3 million export declarations, in 2021, the value of EU trade with other countries amounted to EUR 4.3 trillion, accounting for 14% of world trade, while up to 56 million jobs in the EU are dependent on intra-EU trade (ibid). Arguably, the EU single market provides a good case for consolidation of regional integration. With the AfCFTA envisioning the creation of an African Customs Union, the EU can be emulated in the policies, institutions and management of a customs union and common market.

4.13.2 Introduction of the Euro currency:

202. Introduced as cash in 2002, used by over 340 million EU citizens in 20 Countries, the euro has eliminated the risk of currency fluctuation and exchange costs, and strengthened intra-EU trade. It has also mitigated the impact of external shocks on the euro area economies and led to deeper integration. This has protected consumers and businesses within the euro area from costly swings in currency markets, which, in some countries are used to undermine confidence, discourage investment and cause economic instability (EU, 2020). It can also be argued that the Euro has fostered economic integration, boosted trade volumes, and encouraged cross-border investment, leading to increased business opportunities and a more seamless trade environment within the EU. For Africa which has 42 currencies, the ultimate desire to create a payments system that encourages and facilitates increased intra-African trade by lowering the costs of having to rely on foreign currencies.

4.13.3 Telephone and digital services:

203. In 2017, following legislation by the EU Parliament, the EU abolished roaming charges meaning that consumers will continue to be able to use their mobile phones when travelling abroad in the EU with no additional fees on top of what they already pay at home. Furthermore, the legislation has ensured that EU citizens enjoy the same quality and speed of mobile connection

abroad as at home (European Parliament, 2022). It has also resulted in a surge in mobile phone use abroad and has been hailed as a huge success (ibid). This is because roaming providers are obliged to offer the same roaming quality as that provided domestically if the same conditions are available on the network of the visiting country (ibid). With high roaming fees being reported over time as one of the Non-Tariff Barriers inhibiting intra-regional trade in the Africa (Luke, 2023), the EU can serve as a good example for the continent RECs in putting in place single roaming fees.

4.13.4 Schengen Area:

204. The Schengen Agreement signed on June 14th, 1985, is a treaty that led most of the European countries towards the abolishment of their national borders, to build a Europe without borders known as the Schengen Area. The Schengen agreement remains the world's largest free travel area in the world, and on an annual basis, there are some 24 million business trips and 57 million cross-border goods movements within the Schengen area each year (European Parliament, 2016). By easing the travel of people, the Schengen area has significantly decreased the trade friction between trade partners and facilitated intra-EU trade integration. With the African Union envisioning the continent to be with seamless borders, and management of cross-border resources by 2063, and with the need to facilitate easy movement of services and people, the Schengen Area provides a good best practice to emulate.

4.13.5 Coordinated global Trade policy/negotiating Trade Agreements as a bloc:

205. The EU's trade policy owes its efficacy to its federal structure and to a common policy concept shared by the 28 Member States. The EU has achieved a strong position by acting together with one voice on the global stage, rather than with separate trade strategies. The EU is responsible for the trade policy of the member countries and negotiates agreements for them. Speaking as one voice, the EU carries more weight in international trade negotiations than each individual member would. This has promoted a coherent approach to trading with third parties i.e., other countries and regions which has preserved the EU regional integration project. Africa's regional integration project continues to be highly challenged by uncoordinated trade negotiations and unilateral negotiations of FTAs which third parties by Countries which challenge the integration process. In order to promote policy coherence and advance the implementation of AfCFTA, this could be emulated.

4.14 Association of South-East Asian Nations (ASEAN)

206. In 2009, the ASEAN signed the ASEAN Trade in Goods Agreement (ATIGA) furthering its commitment to an open and integrated regional trade (Singh, 2022). ATIGA is the successor to the agreement on the Common Effective Preferential Tariff (CEPT) Scheme of the ASEAN Free Trade Area (AFTA) and entered into force in 2010 (ERIA, 2021). The ATIGA goes beyond tariff reductions and contains specific provisions on rules of origin (ROO), non-tariff measures (NTMs), trade facilitation, and sanitary and phytosanitary (SPS) measures, and is the main instrument in realizing the goal of establishing a single market and production base in ASEAN, a key pillar of the ASEAN Economic Community (ibid). In 2022, the ASEAN Economic Ministers strategically launched negotiations to upgrade the ATIGA (Singh, 2022).

207. ATIGA's most significant outcome is the reduction of intra-ASEAN trade tariff to zero for almost all types of goods and to date, more than 98% of all tariff lines have zero rates, and more

than 70% of intra-ASEAN trade is also conducted at MFN rates at zero. (ibid). ATIGA has supported the creation of the ASEAN Single Window which has led to notable achievements. For example, the ASEAN Single Window enables seamless electronic exchange of trade documents, such as Certificates of Origin and Customs declarations, for all 10 ASEAN Member States' Customs (ibid). Another example is the ASEAN Trade Repository, which serves as a single information source on tariffs, regulations, and administrative procedures.

208. Under E-Commerce, the ASEAN E-Commerce Trustmark Framework is currently being developed to promote a trusted e-commerce environment and therefore further enhance cross-border transactions in the region by minimising information asymmetry between buyers and sellers (ASEAN, 2022). The REC has also put in place guidelines on Consumer Protection in E-commerce whose intention is to provide practical and technical guidance in establishing legal frameworks and institutional mechanisms to help monitor and keep in check abusive or unfair online business practices (ibid). All these measures have increased ASEAN's significance in global trade given that although ASEAN accounts for just 3.3 per cent of the world's GDP, it produces more than 7 per cent of exports (ASEAN, 2022).

209. Another best practice from ASEAN is the implementation of the ASEAN Free Trade Area (AFTA). The ASEAN Free Trade Area was established in January 1992 to eliminate tariff barriers among the Southeast Asian countries with a view to integrating the ASEAN economies into a single production base and creating a regional market of 500 million people (ASEAN, 2002). As a result, the elimination of tariffs and non-tariff barriers among the ASEAN members has served as a catalyst for greater efficiency in production and long-term competitiveness (ibid). Indeed, most intra-ASEAN trade is supply chain-related trade in parts and components that mostly travel duty-free anyway (ASEAN,2022). For the AfCFTA, lessons can be borrowed from ASEAN with regards to industrialization through boosting regional value chains. Therefore, it can be argued that the decision to provide coherence between the AfCFTA tariff reductions and WTO liberalization provisions has supported value chain-driven trade because final markets for the finished goods lie predominantly in industrial country markets outside the region. For the AfCFTA which has just been created, some best practices from ASEAN can go a long way in supporting its effective implementation.

4.15 Mercado Común del Sur (MERCOSUR)

210. Established in 1991 under the Asuncion Treaty with the purpose of building a common market, MERCOSUR is the 5th major world bloc, with an estimated population of 270 million inhabitants, a GDP of about US\$5.1 trillion and accounting for over 50% of all South American imports and exports (MERCOSUR, 2023). Mercosur is a type of trade bloc known as a customs union, in which member countries trade freely among themselves and impose a common external tariff (CET) on imports from non-member countries. Since its establishment, a number of key best practices which stand out have been realised. For example, in June 2000 the member countries agreed to establish joint fiscal, public-sector debt and price targets, as well as a convergence process towards them (Ivana, 2016). As a result, an ex-ante monitoring system of the convergence trajectory of each country to the stipulated targets has been established by the Member States' treasury ministers and central bank chairmen (ibid). A key issue here is that MERCOSUR has gone beyond

trade to macro-economic and fiscal policy cooperation as these largely impact the nature of intra-regional trade.

211. Another good practice in MERCOSUR relates to the MERCOSUR Residence Agreement. Signed in 1991, the agreement ensures granting of residence and work permit to citizens of signatory States with no requirements other than nationality, upon presentation of a valid passport, birth certificate and police clearance certificate (ILO,2017). Under this Agreement, beneficiary Citizens may apply for a temporary residence permit of up to two years in another country of the block and may apply for permanent residence before the expiration of the temporary residence permit (ibid). Moreover, the agreement charges States to ensure that the beneficiaries of the Residence Agreements enjoy the same rights and civil, social, cultural and economic freedoms as nationals of the host country (ibid). This has not only eased the movement of labor but has also facilitated trade in services within MERCOSUR. This is a best practice that AfCFTA can emulate to fast-track its implementation of trade in goods and services, including the free movement of people.

212. While MERCOSUR does not have a common foreign trade policy, it has a rule requiring that trade agreements with non-members be negotiated with the group as a whole as this helps preserve its customs union (Bala, 2021). Indeed, while this rule is currently being challenged by individual Member States like Argentina and Uruguay, it has helped preserve intra-MERCOSUR trade and integration, which is an important driver of growth (ibid). With Africa whose intra-REC trade and AfCFTA implementation is being threatened by individual negotiations of FTAs with third parties, MERCOSUR serves as a good example to benchmark on opportunities of negotiating FTAs with third parties as a bloc.

213. In conclusion, the highlighted best practices currently adopted in each of the examined individual RECs can be scaled across all RECs in Africa. By emulating the above mentioned best examples, the African Union and AfCFTA Secretariat can save limited resources but also help accelerate Africa's integration process in general and intra-African trade and investment in particular.

58. How to Harness Regional Integration for the AfCFTA?

214. This section discusses the opportunities and challenges for Regional Integration in Southern Africa and how the region can leverage the AfCFTA to deepen and widen its regional integration agenda and vice versa.

5.1 Opportunities for Regional Integration

215. One of the opportunities for regional integration in Southern Africa is the contribution to economic integration and market development. The *raison d'être* of regional trade agreements is to provide members with preferential access, relative to non-members, to the markets of all member countries and, in so doing, support regional trade in intermediate and final goods (UNCTAD, 2019). In Southern Africa, economic integration has contributed towards gradual structural change and economic development and to market integration, which has the potential to ultimately lead to large markets and economies of scale (SADC, 2017). By allowing some of the domestic production to be replaced by intra-regional imports, economic integration in the Southern African region has encouraged specialisation and enhanced light manufacturing as a step to industrialisation through the joint production of goods and services (ibid). This has the potential to increase the political will of Partner States to remain in an agreement, while the objectives of regional trade agreements like AfCFTA (e.g., regional industrialization, regional structural transformation, regional economic diversification and enhanced regional trade) remain unhindered. Indeed, AfCFTA's successful implementation in Southern Africa can be harnessed through the existing strides in economic integration and regional value chains in the manufacturing sector among others.

216. Regional integration has also promoted the transfer of technology and expertise within Southern Africa through intra-REC investments which the AfCFTA can harness to scale up its implementation within the region. RECs like SADC and COMESA have invested in physical and digital cross-border infrastructure e.g., transport and digital communications systems, which are fundamental to trade in the region (OECD, 2017). This has also included cooperation in Energy, water and sanitation, meteorology and digital health tracking infrastructure which have proven critical components of regional infrastructure during pandemics and other health crises (AUC, 2021). Technology transfer is critical in boosting industrialization and diversification of production. In southern Africa, technology transfer has led to diversification in the range of goods produced within countries in the region and created greater possibilities for intraregional trade (SADC, 2017). This can provide a good starting point for the AfCFTA, which is expected to increase intra-African trade flows, and ultimately lead to potentially higher economic growth in the future. Moreover, for individual southern Africa countries with higher levels of manufacturing development, the AfCFTA can create a greater initial role in leading the development of regional value chains not only in southern Africa but also on the continent. Furthermore, by building on the current industrialization benefits in Southern Africa, Partner States can boost intra- African trade under AfCFTA by increasing the economic viability of industrialization on the continent and accelerating structural transformation, with commensurate positive effects on product diversification.

217. Another opportunity that regional integration in southern Africa offers to both the region and the AfCFTA is increased regional trade and investment flows. For example, in a bid to facilitate

intra-regional trade, the SADC has introduced digitalised Certificates of Origin (CoO) which has saved traders time and reduced the costs of transactions (GIZ, 2023). Indeed, it is estimated that in Eswatini, traders utilising the digitalised CoO have saved an estimated EUR 957,354 and 6,315 days (ibid). Through leveraging partnerships with development actors, SADC has been able to address 8 critical NTBs on agricultural products like wine and pharmaceutical products (ibid). The elimination of these NTBs has led to cost savings for the SADC private sector of approximately 20 million euros (ibid). The SADC Protocol on Trade in Services adopted in 2022 paved the ground for the liberalisation of trade in six priority service sectors i.e., communication, construction, energy, financial, tourism, and transport (ibid). With regard to investment, the SADC Secretariat has developed a model of bilateral investment treaties to harmonise them across the region and help member countries in designing them (OECD, 2017). The secretariat has also partnered with the OECD and NEPAD, to accelerate the harmonisation and implementation of investment policies in the region. Therefore, in a bid to boost trade and investment flows under its regime, the AfCFTA can leverage SADC in its implementation.

218. Infrastructure development is another opportunity that regional integration has presented in the southern Africa region. In a bid to fast-track trade facilitation within the region, RECs like COMESA and SADC have invested in physical and digital cross-border infrastructure e.g., transport and digital communications systems, which are fundamental to trade in the region (OECD, 2017). This has also included cooperation in Energy, water and sanitation, meteorology and digital health tracking infrastructure which have proven critical components of regional infrastructure during pandemics and other health crises (AUC, 2021). The SADC and COMESA have also beefed this with their respective Regional Infrastructure Development Master Plans to guide development in key infrastructure such as road, rail and ports, and also act as frameworks for planning and cooperation with development partners and the private sector. The AfCFTA can bolster this existing cooperation through upscaling intra-regional investments in critical trade-facilitating infrastructure through a coordinated regional investment approach.

219. Regional integration is also revered for its potential to create employment opportunities. By supporting product and market diversification and labour mobility, regional integration can generate jobs across the supply chains for the increasing number of youths in the southern African region and on the continent. For example, in COMESA and SADC regional integration has created significant jobs in agriculture, manufacturing and services sectors across all supply chains (AUC, 2021). This has had significant improvements in citizens' welfare and the social performance of the RECs. For southern Africa, AfCFTA is projected to create another two million new jobs, of which the majority of the new opportunities will emerge in sectors with a predominance of female labour, thereby contributing to women's economic empowerment in the region (COMESA, 2021). Therefore, regional integration has the opportunity of magnifying the social welfare performance of AfCFTA in job creation by building on the already existing jobs and improving the welfare returns. Moreover, such AfCFTA-induced new jobs, combined with policies that address gender barriers, provide an opportunity to narrow the gender income gap.

220. Another opportunity stemming from regional integration is the promotion of policy harmonisation among partner states. This is because regional integration has long been an important

instrument for African governments to cooperate and harmonize their policies, in order to achieve sustainable development. Indeed, both in COMESA and SADC, efforts have been prioritised at the harmonisation of political, financial and socioeconomic policies and plans of member states, beyond just trade and investment policies. Sectoral policy harmonization plays a key role in regional integration because it eases the implementation of decisions and plans through ensuring committing of resources (both human, financial and time) to a shared plan/policy. With the AfCFTA commencing its implementation in southern Africa, policy harmonization will be critical in advancing the depth and speed of its implementation.

221. Lastly, another critical opportunity arising from regional integration is its potential to strengthen the voices of small nations that often face disadvantages in dealing with the rest of the world because of their low bargaining power and high negotiation costs. Indeed, regional integration in southern Africa has enabled member states to create a common front and stronger voice which they have used to engage the rest of the world towards the reshaping of the global economic, financial and political systems (AUC, 2021). Evidence has shown that closer trade links among economies have the potential of strengthening their capacity to participate in world trade. This is because, regional integration supports such countries to overcome the obstacles caused by the relatively small size of the domestic markets by offering producers opportunities to realize greater economies of scale and benefit from the establishment of regional infrastructure (AUC, 2021). With regard to AfCFTA, there is a big potential to harness this collectivism by allowing countries in the COMESA and SADC to have a common front for asserting their interests from a stronger and more confident position in the global market and in international economic relations. This is important for the majority of SADC and COMESA member states who are small and fragmented states.

5.2 Challenges for Regional Integration

222. While there have been strides in the realization of the objectives of regional integration in southern Africa, a number of challenges are prevalent. These challenges, unless addressed, will also limit the effective realization of AfCFTA-related opportunities.

223. One of the core challenges is weak productive capacities and limited economic diversification among southern African RECs partner states. Indeed, weak productive capacities and limited economic diversification constrict the range of intermediate and final goods that can be traded and potentially inhibits the fuller development of regional value chains (UNCTAD, 2019). For instance, ten out of the fifteen countries are exporting natural or cultured pearls, precious or semi-precious stones, and precious metals in their top 10 export products (OECD, 2017). Manufacturing exports are also very similar, for instance, machinery and mechanical appliances (ibid). The OECD (2017) notes that limited diversification has led to SADC countries being more integrated into global value chains (GVC) than in regional ones, as most of the foreign value added embedded in exports comes from outside the region. Furthermore, it has led to unnecessary competition rather than cooperation as evidenced by trade wars and non-Tarif Barriers⁷⁰. Weak

⁷⁰ Some of the trade wars include for instance the reports by Eswatini that some sister SADC States have been reluctant to import their sugar

production capacities have also resulted in low utilization of the available regional markets by the private sector due to limited capacity to sustainably meet the product standards and volume demands. It is no wonder that intra- SADC trade is only 10% which is very low compared to 24% in ASEAN and 68% in the European Union (Chidede (2017). It is also due to such competition and prevalent NTBs that some critics opine that the SADC Partner States are prioritizing trade with external countries rather than investing in increasing trade from a regional perspective (Mlambo & Mlambo, 2018). Therefore, addressing supply-side constraints and weak productive capacities is a policy imperative in Southern Africa to boost intraregional trade through the development of a regional value chain. This is because countries that have more diversified exports tend to have higher shares of intra-African exports than countries that have less diversified exports (UNCTAD, 2019). In order for the private sector to maximize the opportunities therein, the AfCFTA implementation in southern Africa should be accompanied by the building of productive capacities, the acceleration of structural transformation and the unleashing of the potential of the private sector in the region.

224. High non-tariff-related trade costs have also inhibited the competitiveness of firms and economies in Southern Africa. Such high trade costs, related to business and trade facilitation, can be explained in terms of the hard and soft infrastructure deficits in southern Africa that have an impact on transport and transit costs and at-the-border and behind-the-border costs (UNECA, 2019). They can also be explained in terms of non-tariff measures that act as non-tariff barriers (NTBs) which, in southern Africa have raised trade and transaction costs for businesses (ibid). Countries in Southern Africa face large trade costs, associated with their hard and soft infrastructure deficits (in energy, transport, information and communications technology, logistics performance, etc.), complex customs and administrative procedures and other obstacles to moving goods across borders and delivering them to the final point of sale. For example, 80 NTBs including cumbersome domestic customs requirements and inadequate internal and cross-border infrastructure remain unresolved in both the SADC and COMESA (COMESA, 2023). NTBs, pose additional direct or indirect costs and time for the import and export of goods and constrain the competitiveness of traders. Moreover, they tend to hit harder on small and medium enterprises as they often lack the appropriate resources to deal with NTBs. It is therefore key to note that deepening trade in southern Africa both from the existing RECs and the AfCFTA will largely depend on the ability of partner states in the RECs to easily monitor, detect, and resolve NTBs.

225. Mono-Cultural Agro-Based Economies with limited value addition in southern Africa are another challenge to regional integration in the region. With the exception of South Africa, the SADC national economies are largely monolithic, produce mainly raw materials and have an urban-rural duality, with the two sectors not quite integrated (Mlambo & Mlambo, 2018). Partly as an enduring legacy of colonialism and partly as a result of a lack of vision by the political leadership, southern African countries continue to produce raw materials for export to their former colonial powers (ibid). Inserted into the global economic structures primarily as producers of raw materials and producing more or less the same raw goods, and in need of more or less the same manufactured goods makes intra-regional trade, a necessary condition for integration, impossible. For example, Mozambique produces cashew and cotton, while Zimbabwe also produces cotton and tobacco, yet their greatest need now is technology, computers, cars and other manufactured goods, which neither produces (OECD, 2017). Similarly, Angola, Botswana and the DRC all produce diamonds, yet

neither of them can even process them nor manufacture the machinery to mine the diamond (ibid). This has resulted in NTBs and trade blockages in terms of export surges, slowing down regional integration efforts. It is therefore important for the RECs and AfCFTA State Parties to invest in regional value chains so as to ensure diversified exports.

226. The pursuit of national interests has been the major obstacle to regional integration in southern Africa, which subsequently threatens effective trading under the AfCFTA regime. Often SADC member states pursue policies that promote their interests at the expense of other members; parochial interests of the ruling elite, have often prevailed over the interests of the masses of the region (Chingongo & Nakana, 2008). This contradicts the spirit of cooperation and unity that SADC espouses, and it hampers the development of common values (ibid). Even more serious, virulent nationalism undermines Pan-Africanism, a noble idea that seeks to unite Africans and which is the underlying ideology informing regional integration and the broader African Union (AU) project of building peace, security and development on the continent (ibid). For example, the rising xenophobia, often pronounced in the southern African region, riding on the back of nationalist ideology, belies this notion of a southern African personality, and clearly demonstrates the challenges of building African unity at the grassroots level. Not only is the celebration of nationalism likely to cause more hostility than unity between and among the countries and peoples of the sub-region, but it also leads to incompatible policies which are difficult to harmonize (AUC, 2021). In order to achieve social integration and facilitate trade in goods and services, COMESA, SADC and AfCFTA State Parties should address the structural issues of ceding national interests to regional interests in order to bolster the regional integration project which is largely a factor of political will.

227. Multiplicity and overlapping membership of regional integration schemes and mandates have proven to be a key challenge to the effective implementation of regional integration in southern Africa. Indeed, multiple memberships constitute a real challenge in southern Africa especially when it comes to the establishment of certain integration instruments such as the FTA and the Customs Union (Luke, 2023). The FTAs and customs unions are also littered with carve-outs for sensitive products that challenge the expected norms, and eventually impose a huge burden on the limited administrative and financial capacities of the states concerned and lead to conflicting obligations (AUC, 2021). According to OECD (2017), The multiple memberships of SADC countries in different free trade areas have increased the difficulty for customs officers to establish the precise preferential tariffs applying to each product (OECD, 2017). It also explains why most Member States find it difficult to adequately meet financial obligations to integration schemes and the failure of such schemes to effectively implement their programmes, policies and projects (AUC, 2021; Luke, 2023). While the AfCFTA has the potential to address the multiplicity of memberships, this will also depend on the extent to which southern African RECs member states cease to seek membership into new RECs. Moreover, this will spur coherent regulatory policies across many sectors (e.g., tax, finance and investment) to allow the creation of an integrated market, ultimately increasing the predictability and legal certainty of entrepreneurial activity. The advancement of the Tripartite FTA and its full implementation will also go a long way in mitigating the challenge of multiple membership.

228. Slow ratification of regional policies meant to induce growth and intra-regional trade and investment flows in Southern Africa has been pronounced as a challenge over the years. McNamee et al. (2015) argue that while the SADC is very good at developing policies aimed at encouraging regional development; the unwillingness to quickly implement these policies is another compounding factor affecting regional development and growth. Indeed, few countries on the continent seem to be prepared for the partial surrender and the pooling of sovereignty, which is critical for the success of any regional integration scheme (AUC, 2021). As a result, many protocols have been signed but remain unimplemented, due to the absence of effective sanctions against defaulting Member States and weak enforcement and implementation capacity (ibid). For example, SADC member states are very slow in ratifying regional protocols, mainly because they put national interests first than that of the region. It is not surprising that only two Member States i.e., Mauritius and Tanzania are participating in the AfCFTA Guided Trade Initiative (GTI) whose objectives, among others, are (a) demonstrate that the AfCFTA is functioning; and (b) give hope to the continent that trading under AfCFTA is achievable. It is key to note that the GTI was launched as a special initiative following the reluctance of the AfCFTA State Parties to commence trading under the pact's trading regime. At the regional level, slow implementation has led to decisions and programs being implemented by a handful of member states, thus reducing the potential benefits of such programs. In order for intra-regional trade and investment to be effectively realized under SADC, COMESA and AfCFTA trade regimes, it is important that member states, as a matter of urgency, address the challenge of slow implementation of policies and commitments.

229. Southern Africa's regional integration process has also been set back by the poor design and sequencing of the arrangements. According to the African Union Commission (2021), this is reflected in the heavy emphasis of most of the schemes on trade liberalisation and market integration without much regard for the fostering of production integration and regional complementarities or the development of regional infrastructure - especially transport and communication - to drive market integration; the inability to adequately handle issues relating to human rights, good governance, accountability, and transparency, which are vital for political stability, peace and security and required for the attainment of economic objectives of integration; the absence of self-financing mechanisms for the regional integration organizations the inadequacy of mechanisms to ensure that the benefits of integration are equitably distributed among the Member States; the lack of involvement of the private sector and civil society in the integration process; and the disproportionate time allocated to conflict-related issues, which has significant implications for the skills and competencies required by the RECs. These are key aspects that AfCFTA implementation in the RECs should consider in order to ensure that its benefits are maximized and potential risks mitigated.

230. The lack of political will by Member States to cede some power to supranational entities has also challenged regional integration in Southern Africa. Currently, most RECs are based on inter-governmental coordination coupled with weak Secretariats which have no supranational decision-making and implementing power. This is made worse by the lack of clarity in many of the protocols negotiated by the RECs since they are quiet on obligations and how they should be implemented (AUC, 2021). Drawing from the European integration experience, and considering Africa's current challenges, one major bottleneck that stands in the way of achieving deeper integration in Africa is

the Member States' reluctance to cede sovereignty to key organs of the African Union (ibid). Giving more power to the Secretariats to enforce regional commitments and to hold Member States accountable for non-compliance could reinforce integration in southern Africa. This should be emphasized under the AfCFTA implementation structure.

231. Poor trade facilitating infrastructure, both hard, physical and soft policy/service, is one of the strongest arguments for the weak regional integration in Africa. Transport costs in Africa have been adjudged one of the highest in the world, with only 30% having access to electricity, the lowest telephone penetration of 14% compared to the world average of 52%, and the lowest internet penetration of 3% compared to the world average of 14% (AUC, 2021). Currently, shipping within Africa is more expensive than shipping from outside the region, and some flights connecting some African countries still fly out of the continent to arrive at the final destination (ibid). Furthermore, despite efforts over many years to increase African participation in the supply of shipping services, the continent still relies mostly on foreign-owned vessels (UNCTAD, 2022). Moreover, compliance with environmental regulations and competitiveness could make African ownership even more difficult, and along some routes, the continent may also face the higher costs associated with the deployment of greener ships (ibid). Investment in infrastructure is therefore critical if regional integration schemes i.e., SADC, COMESA and AfCFTA are to promote inclusive intra-African trade and investment. Indeed, addressing infrastructure gaps will in essence be addressing one of the biggest obstacles to realising the AfCFTA's full economic potential, as better transport infrastructure that makes local, national and regional journeys easier is vital for fostering trade across the continent.

232. Complex Rules of Origin (RoO) have also been noted as a challenge to regional integration in southern Africa. RoO are defined to guarantee that substantial transformations happen on imported goods in the importing country of the FTA before the product is traded with another member of the same FTA and are important mostly for manufactured goods. In SADC, the rules of origin were mainly designed to protect existing industries from increased intra-regional competition, in particular the textile and clothing industry in South Africa (OECD, 2017). Rather than facilitating development through trade, the complex and restrictive input-sourcing requirements of the SADC rules of origin have a negative impact on trade and attractiveness for industrial investment (ibid). In the absence of reform to simplify rules of origin, the AfCFTA RoO manual can be applied by all member countries to facilitate the application of existing RoO. Indeed, the AfCFTA has the potential to provide this opportunity as its Rules of Origin provisions provide for more options and flexibilities for cumulation by State Parties.

233. FTAs with third parties have also continued to undermine regional integration in southern Africa. For example, in the multiple trade regimes that are in place, the EU and (most) African countries have established a structured framework for their trade relations. However, the EU trade arrangements are neither efficient nor appropriate from a development perspective. The effect of the EU's varying trade regimes is fragmentation of African markets, with gaps in coverage and hard borders for EU trade between African countries within the same customs union. This is the case, for example, in the SADC, the Economic Partnership Agreement (EPA) group within this REC contains only seven of the 16 SADC member states that are implementing an EPA. Other member States like Zimbabwe, Mauritius, Madagascar and Seychelles are negotiating deeper EPA with the EU under

the Eastern and Southern Africa (ESA) configuration. The different rules of origin and tariffs that apply to the different trade regimes do not help to foster integrated supply chains between countries. The risk is that, if care is not taken, this will deepen divisions between trade regimes among African countries, making African trade policy harmonization even more difficult.

234. Lastly, inadequate resourcing and high donor dependency by RECs Secretariats is a big challenge to regional integration in southern Africa. One major reason for the slow or failed implementation of regional projects and programmes is a lack of resources. Yet while States have been accused of failure to commit resources to finance regional projects and programmes, sometimes, these resources are just not available. This has resulted in an overreliance on donors and international financing institutions which, to date, have contributed the bulk of the funding for the activities of most RECs and the African Union (AUC, 2021; Luke, 2023). This means that although most Member States have been independent for 50 years or more, they still rely primarily on European donors to finance their integration agenda (ibid). Reliance on donors distorts priorities since they influence what projects to finance as well as make input into programme design and policy formulation which then means that African RECs/States implement donor/European priorities as opposed to their own. Furthermore, without assured resources, it is not possible to plan for the future; a problem that the AfCFTA and RECs like COMESA and SADC face. Indeed, currently, many RECs have Secretariats that are responsible for coordinating the implementation of the regional integration agenda but have difficulty in carrying out their mandated responsibilities because they have weak institutional capacity, inadequate human resource capacity and are under-resourced and heavily reliant on donor financing (Luke, 2023; AUC, 2021). During interviews of state officials there was also concern that a lot of their time is taken up attending meetings of multiple institutions their states belong to. Therefore, it is important that COMESA, SADC and AfCFTA State Parties seek alternative measures to internally finance their regional integration scheme so as to ensure the independence of the Secretariats and their effectiveness in the delivery of their mandate.

235. In conclusion, boosting intra-regional trade in Southern Africa is more than eliminating tariffs, but rather addressing on-the-ground constraints that paralyse the daily operations of ordinary producers and traders. Indeed, regional integration that solely emphasizes the removal of tariff and non-tariff barriers, on its own, cannot deliver on the stated goals of promoting sustainable development for the continent. Rather regional integration should be accompanied by the building of productive capacities, the acceleration of structural transformation and the unleashing of the potential of the private sector. Critical requirements include fostering domestic entrepreneurship, domestic resource mobilization, political stability and peace, and establishing appropriate institutional structures and mechanisms to ensure an equitable distribution of socioeconomic costs and benefits across all countries in southern Africa in a way that is politically acceptable to all.

236. Regional integration in southern Africa should be a launch pad to deepen integration in the world economy by accelerating the building of productive capacities and competitiveness among African enterprises. This is because the Southern African region's states, many of which are sparsely populated and fragmented, and whose economies are often isolated make regional integration a compelling case. Indeed, Africa is currently the least integrated continent, with the lowest economic intra-regional exchange level and the smallest share in world trade. Therefore, African economies

need to integrate regionally to gain efficiency, exploit economies of scale and reduce the thickness of borders by facilitating the free movement of goods and people. Regional integration is therefore essential for Africa to deal effectively with other development challenges that are internal in origin.

237. While the operationalisation of the AfCFTA means that Africa is ready for business, more needs to be done to make the AfCFTA work; this goes beyond ratification. Goods to be traded, infrastructure, and a conducive environment should be in place. The continent needs regional integration to broaden its market and attract foreign investment its rich endowment of natural resources, has been largely due to the perception of the continent as the world's riskiest place to do business (AUC, 2021). The high risks of doing business derive not only from the high incidence of conflicts and political instability and the good governance deficit but also from high business costs associated with the inadequacy of transport, communications and power infrastructure (ibid). A well-designed and effectively implemented regional integration process can help to address these problems.

59. Conclusions and Recommendations

a) Existing Progress made by Southern Africa RECs *acquis* to build on

238. It is quite apparent that the AfCFTA can benefit greatly from the progress made by the RECs of Africa inclusive of the Southern African RECs of COMESA and SADC as well as the SACU arrangement. Indeed, given the presence of trade facilitating infrastructure, institutions and ecosystems, including being championed by some of the most RECs with high levels of intra-Africa trade i.e., SADC and COMESA, the AfCFTA will strengthen the integration agenda within these RECs rather than starting from scratch. This is even given the fact that the AfCFTA is designed with an intention of preserving the *acquis* in areas where RECs have attained higher degrees of integration, and scaling up on those areas where RECs require a boost to widen and deepen their intra-regional trade and investment.

b) Areas of the RECs and AfCFTA that can be prioritised for implementation by the Southern Africa countries building on the *acquis*

239. The AfCFTA, from the onset, envisages using the RECs as its anchor. This was even foreseen under the instruments that set up the African Union and the Treaty Establishing the African Economic Community. Whereas significant strides have been taken in the direction foreseen at the start and through the evolution of African integration, the speed of making such strides has not been as it had been envisaged. However, this can be changed when RECs implement the AfCFTA. Learning from more advanced integration blocs in the world, this is not surprising. Integration is a process, not an event. Bearing this in mind and considering the speed at which integration within the RECs is taking place – for example, implementation of FTA provisions by all members of a REC, persistence of NTBs despite being outlawed in the REC Protocols – there are serious lessons that ought to be picked regarding anticipated accelerated implementation of the AfCFTA building on the *acquis* of the RECs. If implementation within the RECs has been rather slow, what can be made to make it faster under the AfCFTA? For example, consideration should be made for a minimum package within the RECs to be in place first before full blast implementation of the AfCFTA. The minimum package should entail safeguard measures, capacity building measures for supply chain actors to be ready to trade under the regime among others. Moreover, this is given the fact that the AfCFTA has made great promises to, especially the private sector, and care should be taken to ensure that their expectations are met to a great degree.

240. Despite the different liberalization ambitions and time schedules under the SADC, COMESA and AfCFTA, this study reveals that there are many areas of convergence between the instruments of the RECs and the AfCFTA as clearly articulated in this study. These include gradual elimination of tariffs guided by the principle of reciprocity; aspiring to transform into Custom Union with a Common External Tariff; ultimate objective and vision of driving RECs and Africa's industrialization; commitment to remove NTBs, and create reporting and elimination mechanism; commitment not to use SPS measures as disguised barriers to trade, and balancing of rights and obligations; similarity in prioritized services sectors; promises deeper coverage of mechanisms to handle disputes among others. These areas of convergence should form a good basis to accelerate implementation. However, extra attention must be paid to the areas of divergence between REC and

AfCFTA instruments in order to pave way for seamless AfCFTA implementation. The AfCFTA in its current form largely addresses regulatory integration given that its implementation depends on the willingness of states to uptake their commitments, thus; the RECs and AfCFTA itself must prioritize physical integration in order for the AfCFTA to realize all its promises.

241. Moreover, the removal of NTBs both under SADC and AfCFTA trade regimes is likely to proceed with difficulty, as the calculation of tariff equivalents is much easier in theory than in practice, and negotiations are likely to be complicated. In the SADC case, restrictive import licensing, administrative delays, bureaucratic contortions, stipulations of sources of supply, and prohibitions on importation of certain goods may prove to be serious challenges in this regard. SADC may benefit by taking a leaf from the COMESA arrangement to implement a more practical approach to the reduction of NTBs, which in return, could facilitate the implementation of the AfCFTA.

242. Both the COMESA and SADC FTAs are well ahead of the AfCFTA FTA/liberalization schedule, with COMESA liberalizing 100% percent as opposed to 90-97% under the AfCFTA. For SADC, on entry into force of the FTA, they had products for liberalization over a longer period. However, much as that period expired, some countries keep asking for extensions. The SADC FTA leaves 3% excluded from tariff liberalization, which is the same as the AfCFTA. In practice, the Southern Africa countries that have dual membership in COMESA and SADC tend to apply the COMESA FTA regime, and the SADC regime when trading with South Africa.

243. Furthermore, this highlights what the AfCFTA needs to do with regards ensuring harmonization of tariff removal to realign with those of COMESA and SADC, as this will largely determine the extent of its implementation. Indeed, while AfCFTA rules and regulations are broad in scope to allow for some deviation among RECs and state relations, uncertainties still exist regarding overlapping memberships and the AfCFTA's relationship with some RECs. One issue in particular is how tariff liberalization will be applied to least-developed countries (LDCs) and non-LDC counterparts within Customs Unions. Some RECs may face difficulties in resolving tariff liberalization given the agreement allows LDCs longer tariff phase down periods of 13 years for sensitive products versus 10 years for non-LDCs (Hartzenberg, 2019). Further, it is unclear what the AfCFTA relationship with the recently finalized Tripartite Free Trade Area covering three RECs (EAC, SADC, and COMESA) will look like (Tralac, 2018). This is the reality that, through the *acquis*, the AfCFTA has to navigate given the different tariff liberalisation timelines for non-LDCs, LDCs and the G7 countries. A mechanism for monitoring the implementation of the AfCFTA tariff offers and reviewing the impact on the COMESA and SADC member states should be developed and effected by the countries. This will ensure a harmonised approach in implementation of liberalisation offers both under the TFTA and AfCFTA.

244. This, with regards *acquis* principle, while AfCFTA can leverage on the increased intra-COMESA trade (currently at 7%) and COMESA trade with the rest of Africa (currently at 9.3%) to boost trading under its own trading regime, it still has to navigate the slow implementation of tariff reduction program among COMESA Member States. Moreover, that tariffs on intra-COMESA trade have fallen significantly provides a good landing zone for the AfCFTA implementation within the

REC, given that one of the critical tests to the ACFTA is the speed at which State Parties will eliminate the tariffs during actual trading under the AfCFTA regime.

c) Regulatory, Institutional and other measures that necessary to accelerate the implementation of the AfCFTA building on the *acqui*.

245. There are already a range of measures complementary to trade liberalization, such as the promotion of cross-border investment, protection of intellectual property rights, competition policy, trade development, and coordination of trade policies, are also embraced in the SADC Trade in goods Protocol. In addition, the implementation of intraregional trade measures, such as trade facilitation, transit trade, standards and technical regulations on trade, and monetary and financial arrangements, are also provided for. One of the commendable aspects of the AfCFTA is its broader scope whereby State Parties have negotiated similar complementary trade liberalisation protocols i.e., promotion of cross-border investment, protection of intellectual property rights, and competition policy among others. By containing similar categories of protocols like those of SADC, the AfCFTA complements rather than watering down the existing trade related protocols in SADC. An important issue for consideration by the AfCFTA State Parties it to support operationalisation of the aforementioned SADC trade liberalisation complementary protocols, as by design, the success of the AfCFTA depends on the functionality of the trade related mechanisms in the RECs like SADC.

246. It is critical to assess the efficacy of both the COMESA and SADC trade in goods programme implementation. Interviews conducted with SADC officials revealed that one of the major weaknesses of the SADC Trade regime is the fact that a limited selection of commodities are eligible for preferential trade under the Protocol, which can be expected to limit its impact on intraregional trade expansion. Member states can be expected to offer commodities that do not constitute a significant proportion of their imports or those they know are not produced in the region for preferential treatment under the arrangement.⁷¹

247. The case of SACU is a big lesson to what the AfCFTA has to counter during its implementation in the customs union. Given the different levels of development and production capacities, there is a possibility for import surges induced by trade diversion effects, which could result into trade tensions, NTBs and threaten infant industry. It is therefore critical that the safeguard mechanisms provided thereunder AfCFTA are easily executed by SACU members during AfCFTA implementation. The AfCFTA could also build upon SACU's approach of finding a mutually acceptable solution in addressing NTBs, promoting infant industry among others.

248. Other measures include those put in place to address the challenges to regional integration in southern Africa.. These challenges encompass weak productive capacities and limited economic diversification, high non-tariff-related trade costs, mono-cultural agro-based economies, pursuit of national interests over regional cooperation, multiple and overlapping memberships in integration schemes, slow ratification of regional policies, poor trade facilitating infrastructure, complex Rules of Origin, FTAs with third parties, and inadequate resourcing and donor dependency by regional

⁷¹ Trudi

organizations. Addressing these challenges is imperative to unlock the region's full economic potential and foster a cohesive and prosperous southern Africa.

Recommendations

249. In a bid to address this, the following recommendations should be explored:

- **Incorporate commitments in national laws:** It is important that States incorporate their regional integration commitments into national laws for easier access and understanding by particularly the private sector.
- **Strengthen Productive Capacities:** Southern African countries should prioritize the development of productive capacities and economic diversification. This includes investing in education, technology, and innovation to enhance manufacturing and reduce reliance on raw material exports. Regional value chains should be promoted to encourage intra-regional trade and cooperation.
- **Reduce Non-Tariff Barriers:** Efforts should be made to streamline customs procedures, harmonize regulations, and address non-tariff barriers. This will require cooperation among member states to simplify and standardize trade processes, reducing the costs and time associated with cross-border trade.
- **Promote Regional Value Chains:** To foster economic integration, southern African countries should establish regional value chains through exploring the cumulation prospects under the RECs and AfCFTA RoO arrangements so as to leverage each nation's strengths and complementarities. This will enable them to produce a wider range of goods and services, reducing dependence on external markets. Moreover, this would be in line with the industrialization strategies of the RECs.
- **Enhance Political Will:** Member states should prioritize regional interests over narrow national interests, promoting cooperation and unity. Promoting Pan-Africanism and fostering a sense of African identity will be crucial in overcoming divisive nationalism.
- **Address Multiplicity of Memberships:** Efforts should be made to rationalize and consolidate membership in various regional integration schemes. This will reduce administrative burdens and facilitate a more coordinated approach to regional integration. While the *raison d'être* of RECs in the presence of AfCFTA is to increase trade and investment with the rest of Africa, this can be boosted through halting the multiplicity of membership (spaghetti bowl) which has been noted as one of the challenges to realization of the African Economic Community (AUC, 2021).
- **Accelerate Policy Implementation:** Member states must commit to swift implementation of regional policies and protocols. This includes establishing effective mechanisms to hold defaulting states accountable and ensuring timely execution of agreed-upon programs.
- **Invest in Infrastructure:** Southern Africa should prioritize infrastructure development, including transport, energy, and information technology. Improved connectivity and access to essential services will reduce trade costs and enhance regional integration.
- **Simplify Rules of Origin:** Harmonizing and simplifying rules of origin within the AfCFTA framework will encourage the growth of intra-African trade. Streamlining these rules will make it easier for businesses to navigate complex regulations. In order to achieve this, it will require ensuring coherence and greater alignment across RECs Protocols and AfCFTA Protocols.

- **Reevaluate Third-Party FTAs:** Member states should assess their existing trade agreements with third parties and work towards harmonizing them with regional integration objectives. Ensuring consistency and coherence in trade policies will foster regional unity and integration.
- **Foster Financial Independence:** Regional integration organizations, such as COMESA, SADC, and the AfCFTA Secretariat, should seek alternative sources of funding to reduce donor dependency. This will enable them to set their own priorities and implement programs that align with the region's interests and objectives.

250. It is key to note that addressing these above recommendations collectively will require a concerted effort from all stakeholders in southern Africa. By addressing these challenges and implementing these recommendations, the region can overcome barriers to regional integration and unlock its full potential within the AfCFTA framework. The myriad challenges faced by southern Africa in its pursuit of regional integration demand urgent attention and proactive solutions. The region's potential, as exemplified by the African Continental Free Trade Area (AfCFTA), can only be fully harnessed if these obstacles are effectively addressed. Moreover, the complexities arising from multiple and overlapping memberships in integration schemes, slow ratification of regional policies, and the woeful state of trade-facilitating infrastructure pose substantial roadblocks. The intricacies of Rules of Origin, the influence of third-party FTAs, and the debilitating reliance on external donors further compound the challenges.

251. To unlock the full potential of southern Africa and enable a prosperous future, a collective commitment to address these impediments is paramount. Regional organizations such as COMESA, SADC, and AfCFTA should prioritize streamlining policies, fostering diversified economies, and enhancing trade facilitation infrastructure. Furthermore, a shift towards genuine cooperation, a reduction in overlapping memberships, and swift implementation of ratified policies are essential. Finally, financial independence and adequate resourcing are vital to ensure the region's self-determination and effective regional integration, paving the way for a more prosperous southern Africa.

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