

Chapter 6

A Win-win Approach to the CFTA: Critical Policies

This chapter builds on the content of Chapter 5 and elaborates on the critical policies and provisions that are needed to ensure that the gains of the Continental Free Trade Area (CFTA) are fully exploited and shared equitably.

It argues that negotiators must design the substantive content of the CFTA to support the aspirations for industrial development and structural economic change. To do so, they must “get right” six key components of the CFTA—non-tariff barriers (NTBs), rules of origin, investment and cross-border movement of persons, services liberalization and regulation, trade remedies, and monitoring and evaluation. This chapter identifies the critical challenges and policy recommendations for each of these components. It then outlines the Boosting Intra-African Trade (BIAT) Action Plan, which provides a framework for critical flanking policies that would support the CFTA. Lastly, it reviews the need for strategic logistics management to facilitate trade by buttressing investments in physical infrastructure.

Getting non-tariff barriers right

NTBs are impediments to trade and are particularly onerous in Africa; they include import bans, unjustified documentation and conditions, excessive border checks, and police stops. The average applied rate of tariff protection in Africa is 8.7 per cent, but other obstacles increase the cost of Africa’s trade by an estimated 283 per cent (Sommer and Luke, 2017). Box 6.1 details the most common NTBs reported in Africa.

Getting NTBs right in the CFTA will mean including provisions to reduce these barriers. The CFTA is to include provisions on non-tariff measures, such as sanitary and phyto-sanitary standards and technical barriers to trade that can constitute some of the NTBs for cross-border trade in Africa. However, what will be especially important is targeting the particular NTBs that affect vulnerable groups to ensure that they gain from the CFTA.

Box 6.1

Typical non-tariff barriers in Africa

NTBs are particularly obstructive to small and medium-sized enterprises, informal cross-border traders, and women traders. Among the common NTBs reported in Africa are:

Customs and trade procedures, including non-standardized systems for imports declaration and payment of applicable duty rates; non-acceptance of certificates and trade documentation; incorrect tariff classification; limited and uncoordinated customs working hours; different interpretation of the rules of origin and non-acceptance of the certificate of origin; application of discriminatory taxes and other charges; and cumbersome procedures for verifying containerized imports.

Immigration procedures, for example, non-standardized visa fees and cumbersome or duplicative immigration procedures.

Quality inspection procedures, including delays in the inspection of commercial vehicles; cumbersome and costly quality inspection procedures; unnecessary quality inspections; non-standardized quality inspection and testing procedures; and varying procedures for issuing certification marks.

Transport-related requirements, such as non-harmonized transport policies, laws, regulations and standards; vehicle overland control systems; vehicle dimensions and standards; cross-border road permits; and prohibitive transit charges.

Road blocks, for example, numerous and uncoordinated road blocks by state agents.

Source: AU (2017).

Much can be learned by the success of NTB mechanisms employed by the regional economic communities (RECs) (Box 6.2). An effective NTB mechanism enables

the reporting of NTBs by individual traders and includes an administrative structure that escalates issues to responsible governments and monitors their resolution.

Accordingly, it is recommended that the CFTA leverage the existing NTB mechanisms of the RECs rather than reinvent a wholly new mechanism. To do so the CFTA should extend the remit of the existing REC mechanisms to include trade between and within *all* RECs. The CFTA Secretariat may then assume the responsibility of coordinating these mechanisms across Africa.

Getting rules of origin right

Rules of origin are a foundational component of a free trade area. They aim to ensure that products traded within a free trade area really originate within a member country. Their objective is to avoid trade deflection and circumvention. For example, they would aim to stop third countries that are not party to the CFTA from re-exporting via one CFTA member state to another, illegitimately benefiting from the trade preferences that should be exclusive to the CFTA.

However, this primary objective must be balanced against excessively obstructionist rules of origin, which could be used as a protectionist measure against trade between CFTA member states (Estevadeordal et al., 2014). Moreover, overly burdensome rules of origin can prove particularly challenging for micro, small and medium-sized enterprises, including informal cross-border traders and smallholder farmers. Rules of origin are also tough to negotiate, especially for under-resourced negotiating delegations.

Getting the rules of origin right in the CFTA requires harmonizing rules of origin across RECs to facilitate regional value chains (RVCs), considering preferential rules of origin for less developed African countries and drawing lessons from how rules of origin have been negotiated in the Tripartite Free Trade Area (TFTA).

Regional value chains and harmonizing rules of origin in Africa

Numerous papers have highlighted the need to harmonize the rules of origin used across Africa in the CFTA (ECA, 2013a; UNCTAD, 2016; Draper et al., 2016). Harmonizing them would ease intra-African trade by reducing the complexity of complying with multiple sets

Box 6.2

Monitoring and reporting NTBs in the COMESA, EAC and SADC

The Tripartite Free Trade Area (TFTA) is yet to be finalized. However, the framework agreement (concluded in 2015) includes an NTB mechanism to coordinate the monitoring and reporting of NTBs in the three RECs.

Under the mechanism, NTBs are reported either online or by Short Message Service by individuals when they consider themselves to have faced a barrier in trading. Reporting is open to anyone, including drivers, travellers, business people or traders.

The report is forwarded by an administrator to nominated focal points in the reporting and offending countries, as well as to the REC or RECs concerned. Although responsibility for resolving the NTB lies with the sending country, RECs perform a facilitating function by providing capacity building or arranging meetings between countries where necessary. Progress is monitored on a publicly available website (<http://www.tradebarriers.org>), which updates the progress and whether any resolution action is under way.

The process includes concrete timelines for removing NTBs. Individuals can monitor and receive an update of progress made in resolving their complaint. The mechanism also retains a record of all complaints, and adds them to a database on NTBs. Since it was set up in 2009, the mechanism has registered 556 NTB complaints, 501 of which have been resolved.*

The Tripartite NTB mechanism is currently augmenting this service with an archive of NTBs in the Tripartite region. Estimated to be available for 12 Tripartite countries by the end of 2017, the mechanism will provide information on NTBs by tariff line and UNCTAD NTB category. Doing so will improve transparency and trade information on NTBs for businesses and traders in the Tripartite region.

* Registered and resolved complaints as of 26 May, 2017 (for latest see <http://www.tradebarriers.org>).

Source: AU (2017).

of rules (Bhagwati, 1995). Doing so fosters inclusiveness by easing the use of rules of origin for smaller and less sophisticated traders (Corneja and Harris, 2007).

Preferential rules of origin in Africa

Africa's countries span various stages of economic development. The United Nations distinguishes between developing and least-developed countries (LDCs). To cater to this distinction, preferential rules of origin should be considered within the CFTA. They could help to ensure that Africa's less advanced countries are not excluded from CFTA opportunities by burdensome rules-of-origin requirements. Here rules of origin would be differentiated to provide less developed African countries with a set of rules that are easier to satisfy. Doing so can help spread the gains of the CFTA to smaller and less sophisticated businesses in Africa's less developed countries.

This initiative would not be without precedent. African countries have continually pressed for such special and differential treatment in the rules of origin discussions at the World Trade Organization (WTO), culminating in the Ministerial Decisions on preferential rules of origin in Bali, in 2013, and Nairobi, in 2015.

Drawing lessons from rules of origin negotiations in the TFTA

Agreement on the rules of origin was one of the stumbling blocks delaying conclusion of the TFTA. Central to this was the decision to negotiate product-specific rules of origin, entailing the highly onerous, time-consuming and technically demanding process of determining particular rules for over 5,000 products. Such an approach requires an intensely close relationship between negotiators and businesses and an in-depth understanding of the productive capacities of rival negotiating partners.

The TFTA's decision to use product-specific rules was motivated by some countries' request to ensure adequate protection of industries from trade deflection and circumvention. For instance, some countries worry that unsophisticated rules in textiles could allow third countries to access their markets through the affixation of highly limited value addition in their TFTA partner countries. Recent analysis suggests, however, that this fear is unwarranted, and that more general rules are not necessarily lax or lacking in rigor (Draper et al., 2016).

Though more sophisticated negotiating parties may possess the capability to negotiate product-specific rules of origin, they are difficult for less-developed countries with less well-resourced negotiating teams. Moreover, once negotiated, such rules can also prove difficult for less-developed countries to administer. At best, product-specific rules may allow tailoring to the exact specifications and requirements of trading businesses. At worst, they prove overly time-consuming to negotiate, potentially adding several years to the time taken to negotiate the CFTA. They also disproportionately advantage more sophisticated negotiating teams.

One solution draws on the novel approach of the Pan-Arab free trade area, which used general rules of origin over a transitional five-year period, during which specific rules were negotiated. This technique enabled these countries to lock into their free trade area without delay, and to eventually graduate to product-specific rules within a specified period. Such a compromise could expedite the finalizing of the CFTA. Or, the CFTA could limit the use of product-specific rules to only the most controversial or sensitive products, and apply simple and liberal rules of origin as far as possible otherwise (AU, 2013; ECA, 2013a).

Getting investment and cross-border movement of persons right

Facilitating intra-African investment is crucial for allowing the flow of much-needed resources for the large-scale interventions required to transform Africa's agriculture and industry. Foreign direct investment (FDI), including intra-African investment, will be key. Indeed, one only needs to analyse the current construct of Africa's telecommunications sector to conclude that intra-African investment is important for getting entrepreneurs to innovate. The same is found in transport—road, rail and air, all of which are a showcase of strong intra-African investment. Financial services are no exception, with pan-African banks increasingly having continental, or at least regional, presence.

A CFTA that makes it difficult for Africans, including entrepreneurs, to move across the continent will be a missed opportunity. It should be designed to support African investors and improve weak business conditions.

The design of provisions for investment and cross-border movement of persons in trade agreements have typically been considered part of trade in services. The optimal decision would need to be informed by what the CFTA seeks to achieve and what would work in context. Any technical errors at this stage focus on limitations rather than facilitating access would create operational difficulties for the future and would be questionable in their value for African entrepreneurs. What is needed is a broader, forward-looking approach that boosts investment and movement for Africans to tap opportunities presented by the CFTA in agriculture, industry, services and investment.

Front-loading how these two important issues—of investment and movement of persons—can be incorporated in a pro-people manner in the CFTA would democratize the Agreement and allow African entrepreneurs to engage in (not just spectate at) the opportunities created by the CFTA.

Investment

The question for CFTA negotiators is whether they will wait for phase 2 to deal with investment, or instead use the opportunity presented by a discussion on supply of services through establishing commercial presence to determine an approach that will work for a comprehensive treatment of the key issues through the CFTA. The threshold question is whether it is appropriate and sufficient to limit the treatment of investment in the CFTA to a General Agreement on Trade in Services (GATS) mode 3 approach.

Mode 3 is the supply of services through an established commercial presence.¹ Service suppliers of a member state enter the territory of another, set up a branch or subsidiary presence on the basis of commitments made, and offer their services to consumers in the host country. This type of access is often found in the schedules of WTO members and is typically used by large companies. In the CFTA, it would entail, for example, large mobile telecommunications giants setting up branches to run their businesses in other African countries. Such companies would normally send their key personnel to lead these branches, which in turn would be offering their services through the presence of natural persons—mode 4—in what is known as intra-corporate transfers. These people would be beneficiaries of cross-border movement of persons.

A key development test for the CFTA will be its ability to deliver for all, and not just big business. This will require an approach that is sensitive to the bulk of African businesses that are micro, small and medium-sized enterprises, and it may require going beyond the General Agreement on Trade in Services (GATS) approach to consider a separate and dedicated CFTA chapter, annex or even agreement on investment.

Investment in Africa would also need to draw on the lessons of reforms to international investment agreements as a way to ensure a balance between investment protections, on the one hand, and investment promotion and facilitation (a core objective), on the other. Similarly, resolution of issues tied to the contribution of investment for attaining national development goals are key in designing the right approach, which would include careful consideration of provisions on “fair and equitable treatment,” investor–state dispute-resolution mechanisms, illicit financial flows, corruption, good governance, endangered species and the environment.

It can be argued that these issues could always be placed as limitations to market access or national treatment in mode 3. However, at least two series of issues would arise: one related to scope—in light of the need to include investment in goods as part of the agreement, and one that conditions around market access, as provided in GATS Article XVI, seems to be of a defined scope and largely focused on quantitative-type measures. Such a scope would leave unanswered questions on how to treat issues concerning the need for investors to contribute to good governance as a precondition to accessing the market. Africa would be better served by a broader and more comprehensive treatment of investment issues in a dedicated chapter, annex or agreement on investment that includes services. This method can help provide an adequate scope for approaching investment provisions in the CFTA.

Cross-border movement of persons

The question for negotiators here is how to design an approach that does not take away from African entrepreneurs what they already have in their RECs, while creating new opportunities for inter-REC movement.

Traditional approaches to structuring movement of persons in a trade agreement tend to take the GATS mode 4 approach, where for a certain category of natural persons—typically intra-corporate transfers—members states would offer access for defined periods and on certain conditions. This is frequently inscribed as limitations on national treatment.

Conceptually, Africa needs an approach that focuses on supporting and facilitating people's movement. From a design perspective, it is important that negotiators focus on letting people in, especially those involved in MSMEs.

Several African countries have made GATS mode 4 commitments but also have gone further and deeper with their RECs beyond their mode 4 schedules. EAC, for example, has its Common Market Protocol² that has already taken large strides not only in movement of service suppliers, but also workers.³ ECOWAS has its protocol on the free movement of persons,⁴ as does COMESA.⁵ All of them seek economic cooperation and integration, and it would be wrong to assume that there is a design difference in the intentions of these RECs and movement of persons in a trade agreement like the CFTA.

Where do solutions lie?

The key question is therefore: What sort of CFTA approach adds value to the RECs' achievements? An approach that focuses on scheduling limitations to access might not be the way to go. Rather, it would be important to think more about how to facilitate cross-border movement. Here again, the question of scope is critical: easing access for investors, traders and services suppliers, all in one instrument.

On investment, there is need for an approach with a good balance between protections and facilitation, all within the development prism. There is already a great body of work on which to build in the Pan African Investment Code, which itself has benefited from global and regional good practices in shaping new-generation, pro-sustainable development and international investment agreements. This is a good basis for a fully fledged investment chapter in the CFTA providing a framework for all categories of investors, including those in MSMEs. Because of the breadth of what is sought, it is proposed that this is not part of the services component of the negotiations, but rather

a stand-alone chapter. It would necessarily mean that all aspects related to the supply of services through establishment of commercial presence would be looked at—making the necessary changes—as part of the broader investment chapter.

On cross-border movement of persons, negotiators could consider an instrument—a separate annex for example—that focuses on facilitation and takes the best of what each of the RECs offers regarding the different steps a natural person takes to supply their services, trade their goods or invest in another African country. Such steps could include terms of accessing opportunities, applying for selection, and moving to other African territories for business, extensions and return.⁶ A linked need would be regulatory cooperation in facilitating movement, including involving in the discussions all stakeholders, such as sector regulators, immigration officials, trade negotiators, civil society organizations and trade policy networks, to secure early buy-in on how this would work.

Investment and cross-border movement need to be thought through early, especially as both goods and services agreements are being negotiated now.

Getting services liberalization and regulation right

With a few exceptions, services have come to dominate the economic landscape. Globally they constitute about 70 per cent of GDP and 60 per cent of employment (World Bank, 2016), with cross-border services (excluding services investment) accounting for a quarter of world trade in 2014 in gross value terms (Loungani et al., 2017).

Services, both as inputs to production processes and as final products, are now seen as providing meaningful opportunities for developing countries to fast-track growth, reduce poverty and promote structural economic transformation.⁷ This so-called “services revolution” has been attributed to “3Ts”: *technology*, enabling services to be storable through digital means; *transportability*, undermining the necessity that services are often produced and consumed at the same time and place; and *tradability*, highlighting the challenges of restricting trade through government barriers for such services (Ghani and Kharas, 2010).

Services and services trade are also increasingly understood as fundamental components of goods trade (Swedish National Board of Trade, 2012). When decomposing the direct and indirect value added of imports that go into exports, estimates for 2007 put services trade at almost 50 per cent of the global total (Francois et al., 2013). Driven in large measure by the fragmentation of global production and the rise of global value chains, trade in goods and services is deeply interconnected. Getting services right in the CFTA requires a three-pronged approach, as outlined below.

Building on existing REC achievements

The starting point for services negotiations are the existing achievements (and challenges overcome) in the RECs; that is, building on what has worked and avoiding what has not worked. Learning from implementation challenges on the ground will be essential.

EAC—the REC most advanced in its liberalization of services—has faced many such challenges, including how member states interpret their schedule of commitments and the technical issues in the schedule. And the mode 4 (movement of persons) commitments were not clear, as they were linked to a separate schedule on movement of labour. However, achievements were secured with mutual recognition agreements for professional bodies, including accountants, architects, engineers, veterinary surgeons and land surveyors. Such agreements are under negotiation for lawyers, pharmacists, medical professionals, land valuers and quantity surveyors.

Achieving the right levels of flexibility and ambition

Going beyond what the RECs have achieved in progressive services liberalization and regulatory cooperation requires a commitment that the CFTA fulfils its potential. As seen in the WTO's Trade Facilitation Agreement, being able to link targeted technical assistance, capacity building and support for regulatory reforms to the undertaking of (market access and regulatory) commitments is likely to create an amplifying effect. Ultimately, however, the approach must be realistic about member states' comfort level in committing to binding services reforms in trade agreements and to advancing with regulatory cooperation.

A highly flexible mechanism has the greatest chance of success. Flexibility is needed for the scope and depth of market access commitments and for the range of mechanisms needed for regulatory cooperation. Such flexibility should also enable differing levels of engagement among the variegated African Union (AU) member states.

For progressive liberalization, that flexibility would entail sticking with what member states know to some degree (for example, GATS-based, positive list) and being innovative to help in delivering more meaningful results. Starting from applied regimes, and making use of some form of standstill mechanism, constitutes prime examples, though member states may need to consider a non-uniform approach to these if horizontal application proves challenging. For regulatory cooperation, this involves deploying the most appropriate mechanism, formal or informal, based on different sector-specific variables, including the domestic regulatory environments across member states in the sector, approaches adopted within the RECs/AU (where relevant), global best/good practice and political economy dynamics.

The upshot may be harmonization in certain sectors (for example, where more than one REC already has made progress on regulatory cooperation, such as telecommunications or transport), mutual recognition agreements in others, treaties (for example, air transport, investment) or more informal approaches such as soft law or informal exchanges of information (including guidelines and voluntary standards). Even simple transparency exercises can help to reduce the informational costs faced by firms dealing with regulatory differences, and it could lay the groundwork for more in-depth cooperation in the future.

Overcoming challenges

There is a risk, however, that such efforts, if not adequately targeted and balanced in their ambition, could quickly evolve into “business as usual,” with an eternal schedule of official meetings, missed deadlines and implementation (and compliance) deficiencies. For this reason, the process must be infused with a high level of credibility. For progressive liberalization, ensuring there is at least some use of the market access innovations touched on above will help to deliver real market opening and transparency, and prevent an approach that sees member states make

commitments on paper that are already far-distanced from the actual conditions of African services firms. For the work on regulatory cooperation (an area less familiar to trade negotiators), ensuring that the process is supported by highly competent individuals, including those with strong local knowledge, and is adequately resourced, will be important to establish credibility among stakeholders from the outset. The use of specific targets over a certain period (for example, on the number of sectors, removal of restrictions, or negotiation of cooperation mechanisms) may also prove helpful. Establishing such credibility will help to situate such efforts as effective Aid-for-Trade vehicles and mobilization of resources for technical assistance and capacity building, including that for enforcement.

One option for the work on regulatory cooperation is to convene an African Regulatory Cooperation Forum as an inter-governmental body under the auspices of the African Union Commission (AUC). Such a forum would command authority and be well placed to pool national, regional and international expertise on the service sector's regulatory frameworks across the continent, and on good regulatory practices globally and elsewhere in the developing world. Additional technical partners, continental and international,⁸ could provide important expertise, helping to boost the credibility of the Forum as an effective mechanism for regulatory cooperation, while supporting member states' regulatory reform efforts. The Forum could function in part as a knowledge platform for such cooperation. Engaging such key development partners, as well as the donor community, can similarly assist in mobilizing the requisite resources.

Establishing credibility among stakeholders is likely to have a positive knock-on effect for stakeholder inclusiveness (a common challenge in REC-level services integration experiences to date). An inclusive approach is needed to engage a broad range of actors, including trade officials, sectoral officials, regulators, qualification authorities and a range of non-state actors, including the private sector and consumer advocates. Such inclusiveness is needed not only to help ensure that the CFTA services agreement is crafted in such way as to deliver meaningful benefits to the people and workers of Africa, but also to ensure the necessary buy-in for putting plans into action.

Promoting the use of local expertise for regulatory cooperation work will also help to navigate the different consumer preferences, cultural and historical roots, and political economy considerations underpinning regulatory differences. And while it is important that any approach remains linked to negotiated market access outcomes, there are also advantages to removing them from the trade negotiating process, including mitigating narrower, mercantilist sentiments and enabling greater cross-pollination of trade and regulatory perspectives (both official and non-state).

The CFTA represents a unique opportunity for AU member states to "do services differently." For success, they must pursue an ambitious and realistic agenda, combining progressive liberalization and regulatory cooperation. To translate this into real new opportunities for African services firms, this work and its outcomes must be credible and inclusive.

Getting trade remedies right

Trade remedies (Box 6.3) are an important fail-safe for vulnerable groups in the CFTA and for countries wary that competition may damage their domestic industries. However, trade remedies can also be a covert means of protectionism.

Trade remedies are important in bringing the CFTA about. Countries are more willing to implement liberalization commitments if they have the flexibility to protect industries when necessary. Kucik and Reinhardt (2008) find countries with national trade remedy mechanisms to be more likely to join the WTO, agree to more tightly binding tariff commitments and lower tariffs.

Only Africa's most economically advanced countries have national trade remedy regimes in place, including Egypt, Morocco, South Africa (whose regime extends to cover the Southern African Customs Union [SACU] countries) and Tunisia. South Africa's first anti-dumping law goes back to 1914 (Joubert, 2005). Countries including Ghana, Kenya and Mauritius are at various stages of drafting trade remedy laws and setting up investigating authorities. A further 11 CFTA countries are not members of the WTO, and are not governed by WTO rules on trade remedies (Box 6.3).

Box 6.3

What are trade remedies?

Trade remedies are trade policy tools that allow governments to depart from the usual WTO or FTA rules and take remedial action against imports that are causing material injury to a domestic industry. Their application is subject to certain substantive and procedural conditions outlined in the WTO General Agreement on Tariffs and Trade (GATT) from 1994. They are divided broadly into three categories.

Anti-dumping measures: These may be applied when an imported product is being “dumped” (that is, sold at or below its “normal” price) and when dumped imports are causing or threatening to cause material injury to domestic industry producing like products (or would materially retard the establishment of a domestic industry).

Countervailing measures: These are applicable when subsidized imports are causing or threatening to cause injury to the domestic industry producing the like products.

Safeguard measures: These can be applied when a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or competitive products. Unlike anti-dumping and countervailing measures, the application of safeguarding measures does not require an “unfair trade” action. Instead, the objective of safeguard measures is to provide a temporary remedy while facilitating structural adjustment of the industry affected by the imports.

The application of trade remedies between WTO member countries is governed by WTO law. However, some CFTA participants are not WTO members: Algeria, Comoros, Eritrea, Equatorial Guinea, Ethiopia, Libya, São Tomé and Príncipe, Somalia, South Sudan, Sudan and Western Sahara. As such, the CFTA requires trade remedy provisions to govern the use of trade remedies involving these countries.

Though all WTO members may apply trade remedies against each other in accordance with WTO law, the CFTA may include alternative trade remedy provisions to govern their use between CFTA member countries. For instance, African countries rarely resort to WTO-compliant trade remedies, because to do so is technically onerous and many such countries lack the requisite technical capacity or experience. The CFTA can therefore add value by either incorporating flexibilities into trade remedy provisions to ease their use by less developed countries or by supporting such countries in developing the necessary trade remedy regimes.

Getting trade remedies right in the CFTA will require providing for remedies that are both adequately rules-based and robust so as not to be exploited illegitimately as a means of protectionism, and sufficiently accessible for less-advanced countries. It will also mean helping African countries develop trade remedy regimes so that they are prepared not just for trade defence within the CFTA, but—perhaps more important—for defence against more advanced international competitors. Here the CFTA may take the TFTA approach as a starting point.

TFTA approach to trade remedies

The TFTA tried to compromise between demand for robust and rules-based trade-remedy provisions and flexibilities for less developed countries. It did this by adopting an annex with guidelines for Partner States to develop domestic trade remedy regimes (investigating

authorities and supporting legislation) to be able to undertake investigations and impose measures.

The analysis behind this approach is that developing trade remedy regimes is desirable not just within the framework of intra-African trade, but also for a country's broader trade outside the continent where substantially more sophisticated competition exists. The annex on guidelines would help Partner States in setting up these regimes.

Need for a new CFTA approach to trade remedies

Trade remedy institutions require a high level of specialized legal and economic expertise that is prohibitively expensive to train and retain for all but the most advanced African countries. South Africa's trade remedy authority, which employs over 20 permanent

staff, has an annual operational budget of around \$25 million (Illy, 2013). The Egyptian equivalent, the Central Department of International Trade Policies, employs more than 200 people (Illy, 2013).

The limited financial resources of many African countries, often urgently required in sectors such as health care, education and infrastructure, cannot afford trade remedy regimes. Nor is capacity building a sufficient response. Trained officers are reportedly prone to leave for international organizations or to join the private sector (Illy, 2013). An approach that requires all African countries to have trade remedy regimes is unrealistic.

If the CFTA does not adequately cater to the trade defence requirements of less-resourced countries, these countries may resort to alternative instruments. The experience has been that African countries use import prohibitions, supplementary tariffs or voluntary export restraints, though compliance with WTO law is often questionable (Illy, 2013). Such measures can also cause inefficiencies, create scope for rent seeking and frustrate the interests of exporting countries. It is in the interests of all member states that an appropriate solution be found.

Moreover, Africa's evolving subregional structures make traditional national approaches to trade remedies increasingly ineffective. Africa's RECs are advancing their integration agenda to adopt common external tariffs and customs unions, in line with the expectations of the Abuja Treaty. Any border trade measure, such as anti-dumping or countervailing duties, has to be adopted and implemented by all members of common external tariffs or customs unions at the same time. Otherwise, the goods could easily escape the protective measure by transiting through other members, rendering impotent the remedying measures (Illy, 2013).

Getting trade remedies right in the CFTA will require regional investigating authorities. A regional approach can pool resources to ease the financial strain of supporting a remedy regime and benefit from gathering its required expertise more broadly. This would help extend trade remedies to small and less-developed African countries. Vulnerable groups and sensitive industries could then be better protected in more countries. This approach would also help ease such countries into ambitious liberalization schedules

to which they might otherwise be unable to commit, and would no doubt reduce the need for alternative and less-efficient forms of protection. It would also set up a system enabling these countries to protect themselves from more advanced international competitors.

Getting monitoring and evaluation right

Trade agreements are often criticized for failing to provide for systematic review of their impact on vulnerable communities. It is therefore recommended that provision be made in the monitoring and evaluation arrangements for periodic country reviews of economy-wide and sectoral impacts, including the effects on vulnerable groups.

A CFTA monitoring and evaluation mechanism must hence incorporate three functions. First, it must evaluate each country's compliance with the CFTA, including whether CFTA obligations are being met. Second, it must monitor progress being made with the Boosting Intra-African Trade (BIAT) Action Plan to identify successes and gaps. Third, it must monitor and evaluate how the CFTA is contributing to Africa's development goals and in particular its impact on vulnerable groups. Important in this will be the collection of gender-disaggregated data that can assess the gender impact of the CFTA, as well as the collection of data on vulnerable groups. This contrasts with the WTO Trade Policy Review Mechanism, a surveillance mechanism designed foremost for monitoring each country's compliance with WTO obligations.

A practical approach to monitoring and evaluation could usefully follow the approach of the Association of Southeast Asian Nations (ASEAN), which employed a self-assessment monitoring and evaluation "scorecard" that evaluated the progress of each country on an agreed list of priority measures. The scorecard was periodically reviewed and updated, and the findings published. The CFTA could adopt this system, agreeing on priority measures periodically to target implementation challenges and opportunities.

Beyond continental tariff liberalization: The BIAT Action Plan

Liberalization is not a panacea for intra-African trade. There are many binding constraints that limit Africa's

trade potential. Studies show that while tariff reductions from the CFTA would increase intra-African trade by 52 per cent, additional trade facilitation measures would more than double it (Karingi and Mevel, 2012). The CFTA must therefore be accompanied by supportive measures to ensure both that the opportunities of the CFTA are fully exploited, and that these gains are shared equitably. Recognizing this, the AU Heads of State and Government adopted the Boosting Intra-African Trade (BIAT) Action Plan at the same 2012 AU Assembly meeting at which it was decided to establish the CFTA. The BIAT provides the framework for much-needed flanking policies that will support the CFTA.

The BIAT Action Plan brings together priority concerns around seven priority clusters (Box 6.4). Building on previous continental programmes and frameworks, it provides a basis for addressing the well-known trade barriers faced by African countries.

BIAT activities can address the challenges faced by countries and by vulnerable subnational groups to ensure that the CFTA is win-win, and its benefits are widely shared. For instance, trade facilitation measures help informal cross-border traders enter the formal sector, and are especially important for women traders. Improved trade information can help MSMEs and smallholder farmers recognize new trade opportunities.

Trade-related infrastructure is of particular value to Africa's land-locked countries, which struggle with trade transit issues. Factor market integration can facilitate the movement of businesspeople and cross-border establishment to spread RVCs into less-industrialized neighbouring economies.

Implementing the BIAT Action Plan

Three factors constrain implementation of the BIAT Action Plan.

Lack of an institutional structure. An implementing structure has been envisaged for the BIAT as part of a Draft Strategic Framework for the Implementation of the Action Plan for BIAT and for Establishing the CFTA (AU, n.d.). However, there was no concrete follow-up by any AU member state or REC. Folding the institutional structure of the BIAT into the CFTA's should ensure the combined implementation of the BIAT alongside the CFTA and avoid institutional duplication (a proposal made in Chapter 9).

Absence of monitoring and evaluation. The BIAT Draft Strategic Framework envisaged an institutional structure for this, but these institutions were not established. Successes already achieved at the national and REC levels cannot be clearly linked to the BIAT, nor can information on the various clusters of the BIAT be

Box 6.4

Summary of the seven priority clusters of the Boosting Intra-African Trade Action Plan

Cluster	Activities
1 Trade policy	Mainstream intra-African trade in national strategies; enhance participation by the private sector, women and the informal sector; boost intra-African trade in food products; undertake commitments to liberalize trade-related services; commit to harmonize rules of origin and trade regimes; promote "Buy in Africa" and "Made in Africa"
2 Trade facilitation	Reduce road blocks; harmonize and simplify customs and transit procedures and documentation; establish one-stop border posts; adopt integrated border management processes
3 Productive capacity	Implement the programme for the Accelerated Industrial Development of Africa, African Productive Capacity Initiative and Accelerated Agribusiness and Agro-industry Initiative (known commonly as 3ADI); establish integrated trade information systems; encourage investment; establish regional centres of excellence
4 Trade-related infrastructure	Implement the Programme for Infrastructure Development in Africa (PIDA); mobilize resources for multi-country projects; pursue high-quality multi-country projects; ensure an enabling environment for private sector participation; develop innovative mechanisms (legal, financial, etc.) for multi-country projects
5 Trade finance	Improve payment systems; set the enabling environment for financial services to provide export credit and guarantees; speed up the establishment and strengthening of regional and continental financial institutions (Afrexim Bank, Eastern and Southern African Trade and Development Bank and African Trade Insurance Agency)
6 Trade information	Create interconnected centres of trade information exchange
7 Factor market integration	Operationalize existing protocols and policies; facilitate movement of businesspeople; harmonize rules on cross-border establishment; conclude agreements on mutual recognition of qualifications

monitored. However, with the AUC, ECA through its African Trade Policy Centre has recently launched an initiative to monitor progress across the BIAT clusters at the REC level. The African Regional Integration Index, which was launched by the ECA with the AUC and AfDB, also monitors progress on several dimensions of regional integration (see Chapter 2). Nevertheless, a continental framework for tracking progress would grant a better understanding of the status of implementation and help to identify gaps. BIAT and CFTA monitoring and evaluation could be combined for economies of scope.

Poor resourcing of BIAT initiatives. Funding for policy proposals is a persistent challenge in developing countries. Domestic resource mobilization presents the greatest untapped financial source of funds for development, but requires strengthened tax administration, lowered tax avoidance and reduced illicit financial flows. Tapping the private sector for certain types of trade-facilitating investments and public-private partnerships are other important modalities for generating funding for BIAT initiatives. To complement these efforts, Aid-for-Trade can be better targeted to support CFTA and BIAT implementation (Chapter 8). Aid-for-Trade in Africa has in fact been growing as a resource, more than doubling from 2006 to 2014, to over \$15 billion.

Strategic logistics management: Buttressing investments in physical infrastructure

A major objective of Africa's regional transport infrastructure is to enhance the competitiveness of its countries, particularly those that are land-locked. Improved infrastructure, both hard (physical) and soft (policy/service), would boost intra-African trade. Most regional infrastructure programmes on the continent have trade and transport facilitation aspects that deal with non-physical barriers to transport and trade.

A combination of strong cross-border infrastructure and efficient transport services is required. Africa's trade facilitation initiatives are vital to cope with the predicted increases in trade. These initiatives are in line with the provisions of the WTO agreement on trade facilitation, which deals with issues on the release and clearance of goods, border agency cooperation, and

formalities connected with import, export and transit among other things.

African regional organizations and countries increasingly recognize that investments to improve transport corridor infrastructure or construct alternative routes to the sea are necessary but not sufficient to ensure a smooth flow of goods. They also recognize that investment gains for physical infrastructure in access and mobility—particularly savings in travel time and transport costs—along regional transport corridors are undermined by non-physical barriers.

Recent studies in Burundi, Rwanda and Tanzania confirmed findings from previous research on the performance of transit corridors in Africa: that transport costs are high and delays excessive due in part to high port dwell times, numerous stops (including at weighbridges and police checkpoints) and cumbersome border-crossing procedures. The dwell time at the Port of Dar es Salaam was more than twice the time that goods spend on the road, while that of imports to Burundi was 75 per cent of the total time between the cargo discharge at Dar es Salaam and arrival at final destination in Bujumbura (Lisinge, 2017).

The studies also showed that there were more than 10 weighbridges in Tanzania that contributed to transit transport delays. These weighbridges generally had limited working hours, with some of them closing at 6 pm. There were also numerous police checkpoints, some of them too close to each other—an issue that is sensitive and associated with national security concerns (Lisinge and Gatera, 2014; Lisinge, 2017).

The desire to overcome these non-physical barriers has contributed in mainstreaming strategic logistics management and the supply chain approach not only in the continent's regional infrastructure initiatives, but also in managing existing corridors. This explains why trade and transport facilitation is a key focus of the Programme for Infrastructure Development in Africa as well as the Trans-African Highway network, and it is a major preoccupation of RECs.

Trade facilitation is a priority for Africa's trade stakeholders because they recognize that reaping the full benefits of the CFTA hinges on regular implementation of such measures. To that end, trade documents, standards and customs procedures need

to be simplified and harmonized, and should conform to international and regional regulations. The logistics of moving goods through ports, and the movement of documentation associated with cross-border trade, also have to be made more efficient. In addition, the environment in which trade transactions take place, including the transparency and professionalism of customs and regulatory environments, needs improvement.

RECs have made great strides in addressing these issues, usually in concordance with the provisions of the WTO Trade Facilitation Agreement. For instance, EAC has relevant trade-related documents such as its Treaty, Customs Management Act and tariffs on its website. Similarly, COMESA introduced the Regional Payment and Settlement System in 2012, resulting in a faster and more cost-effective transfer of funds. Several one-stop border posts are operational in Africa, including those at Chirundu between Zambia and Zimbabwe, and Cinkase between Burkina Faso and Ghana. Several such posts also exist under the framework of EAC at multiple locations between Kenya, Rwanda, Tanzania and Uganda.

In terms of the movement of goods intended for import under control, as well as formalities connected with import, export and transit, up to 11 countries

on the continent reduced the number of documents required for import and export between 2007 and 2013, and many of them are moving to electronic submission of documents (ECA, 2013b). Several countries have introduced single-window systems, including Cameroon, Ghana, Mauritius, Senegal and Tunisia. Electronic cargo management has also gained ground, including the use of cargo-tracking systems and electronic management of customs warehouses.

On the transit of goods, customs cooperation and exchange of information, and institutional arrangements, most RECs have regulatory frameworks. They have harmonized or introduced vehicle load and dimension controls, road transit charges, carrier licence and transit plates, third-party motor insurance schemes, road transport customs transit declaration documents and regional customs bond guarantee schemes. Most of these measures exceed the scope of the WTO Trade Facilitation Agreement, which does not explicitly deal with transport infrastructure. On institutional arrangements, the RECs Transport Coordination Committee and the African Corridor Management Alliance have important coordinating roles at the regional level. Several countries also have national committees on trade facilitation (ECA, 2013b; Valensisi, Lisinge and Karingi, 2016).

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Endnote

- 1 See Article 1 (2) (c) GATS.
- 2 <http://www.eac.int/integration-pillars/common-market>. Accessed on 1 June 2017.
- 3 Ibid.
- 4 http://documentation.ecowas.int/download/en/legal_documents/protocols/PROTOCOL%20RELATING%20TO%20%20FREE%20MOVEMENT%20OF%20PERSONS.pdf. Accessed on 1 June 2017.
- 5 See <http://www3.nd.edu/~ggoertz/rei/rei120/rei120.05tt1.pdf>. Accessed on 1 June 2017.
- 6 See Kategekwa, Opening Markets for Foreign Skills: How can the WTO Help? <http://www.springer.com/gp/book/9783319035475>. Accessed on 1 June 2017.
- 7 See for example Ghani and O'Connell (2014) and Balchin et al. (2016).
- 8 Such as UNCTAD, OECD, International Finance Corporation, International Trade Centre, WTO, International Organization for Standardization and ARSO.