



# REGIONAL INTEGRATION IN SOUTHERN AFRICA

Accelerating Implementation of the  
Agreement Establishing the African  
Continental Free Trade Area in Southern Africa  
by Building on the Acquis of the Free Trade  
Areas of the Regional Economic Communities



United Nations  
Economic Commission for Africa

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Publications Section  
Economic Commission for Africa P.O. Box 3001  
Addis Ababa, Ethiopia  
Tel: +251 11 544-9900  
Fax: +251 11 551-4416  
E-mail: [eca-info@un.org](mailto:eca-info@un.org)  
Web: [www.uneca.org](http://www.uneca.org)

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# Executive Summary



Regional integration and trade are considered important pathways to building peace and stability through mutual dependence, enabling economic growth through increased trade and accomplishing broad development aspirations through coordinated actions and the pooling of resources. Regional integration is a pathway to increased trade, as it helps countries to 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, while the achievements were minimal, the quest for regional integration and trade in Africa was shaped in the Lagos Plan of Action for the Economic Development of Africa (1980–2000) and the Final Act of Lagos of 1980. Indeed, in the Lagos Plan of Action, it was envisaged that all customs duties applied by member countries to other African countries (cereals, coffee, pulses, sugar, meat, maize, fish, oilseeds, rice, wheat, sorghum, tea, vegetable oils and other products) should be substantially reduced not later than December 1984. That gave new substance to the continent's domestic policy with regard to intra-African trade. While, however, the Lagos Plan of Action contained measures to facilitate trade within Africa and subsequently culminated in the establishment of an African common market, its implementation did not progress as envisaged.

One of the fundamental pillars defining regional integration is the 1991 Treaty Establishing the African Economic Community, pursuant to which the establishment of an African economic community is envisaged as the coordination, harmonization and progressive integration of the activities of the eight regional economic communities, which constitute its building blocks. The Treaty comprises a detailed plan of action on trade liberalization, the harmonization of rules and the further integration of economies within a strengthened institutional framework. It contains an ambitious six-stage road map to full economic integration, including the establishment of a customs union, a single market and an economic and monetary union. In Southern Africa, the pursuit of integration in the subregion is underpinned by the same rationale, which is the desire to move towards a more united, stronger and more resilient social, political and economic entity. The main regional economic communities driving the integration agenda in Southern Africa are the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Moreover, while it is not among the eight regional economic communities recognized by the African Union, the Southern African Customs Union<sup>1</sup> (SACU) has played an important role in driving integration and trade within the subregion. For its part, the Tripartite Free Trade Area, a joint initiative of COMESA, the East African Community (EAC) and

1 States members of SACU are Botswana, Eswatini, Lesotho, Namibia and South Africa.

SADC, spans East, Southern and North Africa, as Egypt, Libya and Tunisia are States members of COMESA. COMESA and SADC share similar objectives, namely, first, to create and maintain full free trade that guarantees the free movement of goods and services produced in the COMESA subregion; second, to enable the free movement of capital and investment supported by a more favourable investment climate in the subregions; third, to remove all tariffs and non-tariff barriers; fourth, to attain sustainable growth and development of the members; and fifth, to promote cooperation in all fields of economic activity.

In a bid to bolster the continent's economic integration agenda, at its eighteenth ordinary session, the Assembly of Heads of State and Government of the African Union also adopted a decision to establish a continental free trade area. The resulting Agreement Establishing the African Continental Free Trade Area is considered to be one of the flagships of Agenda 2063: The Africa We Want, of the African Union. The Agreement is designed, among other purposes, to create a single market and to lay the foundations for the establishment of a continental customs union. It was adopted, along with its protocols on trade in goods and services and dispute settlement, in March 2018 and entered into force on 30 May 2019 for the 24 countries that had deposited their instruments of ratification by that date. The Agreement was launched at the twelfth extraordinary session of the Assembly of Heads of State and Government of the African Union, held in Niamey in July 2019 (African Union, 2019). Trading under the Agreement commenced on 1st January 2021. As at 1 September 2023, 54 countries had signed the Agreement, while 47 had ratified it, the most recent being Mozambique (Byiers, Karkare, & Zita, 2023) (Byiers, Karkare and Zita, 2023).

Pursuant to the Agreement, eight countries – Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tunisia and the United Republic of Tanzania – were selected to start trading under the Guided Trade Initiative, which was concluded in 2022. Since that time some notable cases of trading among those countries have already been reported. There is a strong prospect that the number of countries participating in the initiative will expand to 27, and the launch of the second phase of the initiative (trade in services) is scheduled for October 2023. Furthermore, at its thirty-sixth ordinary session on 19th February 2023, the 36th Ordinary Session of the African Union Assembly of Heads of State and Government adopted three new protocols to the AfCFTA Agreement Establishing the African Continental Free Trade Area Agreement – on investment, on intellectual property rights (IPR), and on competition policy (ECA, 2023). These protocols shall enter into force 30 days after the deposit of the twenty-second 22nd instrument of ratification by Member States, as stipulated as per in the provisions of Articles 23(2) and 23(4) of the main Agreement. During the second phase of the Initiative, negotiations on protocols on intellectual property rights, investment and competition policies, and digital trade, were concluded. The protocols were adopted in February 2023 and are awaiting ratification at the national level. The protocols on women and young people in trade are at advanced stages of negotiation.

It is critical to note that the principles under the Agreement include, first, the free trade agreements of the regional economic communities as building blocks for the Agreement; and, second, the preservation of the *acquis*. Accordingly, the role of the regional economic communities is critical for the implementation of the Agreement. According to the Trade Law Centre for Southern Africa (TRALAC), the notion of the *acquis* became part of the vocabulary

on African integration during the negotiations to establish the Tripartite Free Trade Area and was adopted as a guiding principle for those negotiations (Trade Law CentreRALAC, 2021). The *acquis* was applied during all negotiations on the Agreement. Under the *acquis*, States parties are compelled to negotiate sector-specific obligations of the African Continental Free Trade Area by developing regulatory frameworks for each sector while taking into account the best practices and the *acquis* of the regional economic communities, as well as the negotiated agreement on sectors for regulatory cooperation.

Building on the *acquis* of the existing free trade areas of the regional economic communities in terms of consolidating tariff liberalization in each of those free trade areas requires States Parties to have a comprehensive understanding of coherence, or lack thereof, in terms of the trade liberalization approaches in the *acquis*. Preserving the *acquis*, however, is no easy feat in the context of the Agreement. Signé and van der Ven (2019) point out that the Agreement lacks a traditional (automatically reciprocal) most-favoured nation clause. They explain that such an approach may support the preservation of the *acquis*, but at the expense of simplicity and the streamlining of the rules. In fact, they claim that, while it may be consistent with the principle of preserving the *acquis*, the lack of a traditional most-favoured nation clause in the Agreement Establishing the African Continental Free Trade Area also risks creating a patchwork of rights and obligations that differ from one party to the other.

In a bid to highlight the complex interplay between the Agreement and the agreements on the free trade areas of the regional economic communities, the Economic Commission for Africa (ECA) commissioned the present study to promote a better understanding of the Agreement as it relates to those free trade

areas and to ensure that it is implemented effectively. The study builds on the findings of the continental-level study entitled *Governing the African Continental Free Trade Area–Regional Economic Communities Interface*, which was aimed at determining, among other things, the feasibility of leveraging the implementation mechanisms of the free trade areas of various regional blocs for the implementation of the Agreement (ECA, 2021a). In that study, an in-depth analysis was carried out on the issues pertaining to application of the principle of preservation of the *acquis*, with a focus on Southern Africa.

In undertaking the present study, primary and secondary data were applied, including information relevant to regional economic integration, market integration and intraregional trade. That information pertained, among other things, to the African Economic Community, free trade areas of the regional economic communities and the Agreement. Primary data and information sources were derived from administered included questionnaire surveys and interviews, while secondary data and information were obtained mainly from a desk review of reports, publications, academic journals and other sources relevant to the study. In terms of scope, the study was generally focused on two regional economic communities officially recognized by the African Union, namely, COMESA and SADC, while it was more specifically focused on five countries, namely, Eswatini, Malawi, Mauritius, Namibia and Zambia. Those regional economic communities and countries were assessed in respect of the opportunities arising from the implementation of the Agreement based on the *acquis* of the regional economic community to which they belong. Lastly, the data and information gathered were analysed using appropriate tools to inform the drafting of the present report.

In terms of findings, it is quite apparent that the Agreement benefited greatly from the progress made by the regional economic blocs of Africa, including those in Southern Africa, namely, COMESA and SADC, as well as the SACU arrangement. It is no wonder that, at the outset, the use of the regional economic communities was envisaged as the anchor of the Agreement, as was also foreseen under the instruments that were employed in the establishment of the African Union and the Treaty Establishing the African Economic Community. As highlighted in the conclusion of the present study, the following lessons learned through the implementation of the acquis of the regional economic communities may be used as the basis for the implementation of the Agreement by Southern African States:

- a. It is important that States incorporate their regional integration commitments into national laws to ensure that those commitments are more accessible and more easily understood, in particular by the private sector;
- b. Regional integration in Southern Africa has already contributed to gradual structural change, economic development and market integration; progress can only be intensified, however, if existing policies (such as those on monitoring or eliminating non-tariff barriers) are fully implemented;
- c. Full implementation of regional integration has the potential to unleash new opportunities for regional value chains;
- d. If fully implemented, trade facilitation measures already in existence under the regional economic communities have the potential to enhance regional integration;
- e. Policy harmonization efforts carried out by States members of the different regional economic communities operating in the SADC subregion, such as the Tripartite Free Trade Area, greatly enhance the implementation of the Agreement, as they build on the acquis of the regional economic communities, and those efforts should be accelerated;
- f. The simplification of the rules of origin should be considered, with a view to encouraging the formation of regional value chains;
- g. Adequate resources should be generated by the member States of the Regional Economic Communities themselves to support regional integration efforts;
- h. Regional economic communities and countries need to continue investing more in infrastructure to enhance trade and reduce the cost of trading across the subregion.

The study demonstrated that, considering the varying speeds at which integration within the regional economic communities is taking place (for example, the different levels and depths of the implementation of the provisions of the free trade agreement by the various members of a regional economic community) and the persistent use of non-tariff barriers, despite being prohibited in the protocols of the regional economic communities, there are lessons that should be learned regarding the anticipated accelerated implementation of the Agreement, building on the acquis of the regional economic communities. Furthermore, given the reality that implementation of the acquis within the regional economic communities has been rather slow, there is a need for deep strategizing on what can be done to make it faster under the Agreement within those same regional economic communities, as the implemen-

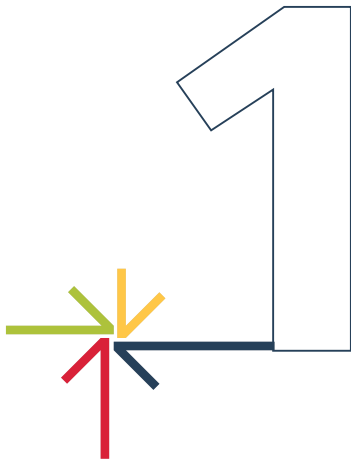
tation of the Agreement depends on their functioning of those regional economic communities. From the interviews conducted, it was determined that one point of convergence was that consideration should be made for a minimum package of functionality within the regional economic communities to be in place before the Agreement is fully implemented. That is because, under the Agreement, extensive promises have been made, especially to the private sector with regard to market and investment opportunities, and great care should be taken to ensure that the expectations of the private sector are met to a very large degree. That would require making the regional economic communities more functional first by expediting a trade-facilitating environment.

It is expected that the findings of the study will lead to enhanced understanding and awareness of the link between the Agreement Establishing the African Continental Free Trade Agreement and the agreements on the free trade areas of the regional economic communities, on the one hand, and, on the other, approaches for the effective application of the acquis

principle to foster the implementation of the Agreement and related protocols in Southern Africa. Furthermore, through the study, challenges to, and opportunities for, the realization of regional economic integration aspirations for Southern Africa have been flagged. The study is also expected to lead to increased progress in the implementation of the free trade areas of the regional economic communities and to the complementary implementation of continental and subregional free trade agreements for the accelerated realization of the objectives of the African Economic Community. Lastly, the study is expected to result in an enhanced understanding of the policy responses and measures required to accelerate market integration and trade within Southern Africa, with particular regard to the Agreement and the free trade agreements of the regional economic communities and the capacity to implement the Agreement and the existing trade arrangements in the regional economic blocs in Southern Africa.



Introduction  
and background



# Introduction and background

## A. Introduction

The objective of the present study is to inform the implementation of the Agreement Establishing the African Continental Free Trade Area in Southern Africa and assess how it can be accelerated, building on the acquis of the free trade agreements of the regional economic communities. In the present study, the findings of the continental-level report *Governing the African Continental Free Trade Area–Regional Economic Communities Interface* are built upon. That report was aimed at gaining an understanding of, among other things, the feasibility of leveraging the implementation mechanisms of various free trade agreements of regional economic communities for the implementation of the Agreement (ECA, 2021a).

In its report on the interface between the African Continental Free Trade Area and the regional economic communities, ECA found that, while priorities differ from one regional economic community to another, with a majority of them going beyond the scope of the Agreement, they could all contribute to the goals of the Agreement (ECA, 2021a). As things stand, where some regional economic communities still do not have the provisions of the Treaty Establishing the African Economic Community mainstreamed into their programmes of work, States members of the regional economic communities do not consider the provisions of the Treaty legally binding. Nevertheless, as stated in the report,

the contribution of the regional economic communities to the Agreement starts with the shared and aligned mandates of increasing intraregional trade and providing enabling environments for enterprise development and the emergence of regional value chains. Another key finding of the report that is of relevance to the present study is that, although the scale and scope of the contributions of regional economic communities to intra-African trade vary, there are common challenges, such as shortcomings in boosting domestic production and economic diversification and the implementation of complex provisions in the free trade agreements.

Furthermore, the ECA report contains recommendations for high levels of Governments on how to make the interface between those two levels most productive. For example, there is a recommendation that, for trade promotion and development to be meaningful, the elimination of import tariffs must be backed in regional economic communities through the total elimination of non-tariff barriers, as that would provide a basis for implementing the provisions of the Agreement and could be a step towards realizing the objectives of the African Economic Community. It is the same ideology contained in the Treaty Establishing the African Economic Community (see Organization of African Unity, 1991).

The present study, for which the recommendations contained in the ECA report were taken into consideration, is aimed at contributing to a deeper understanding and

appreciation of the acquis of the existing regional economic communities in Southern Africa, and how Southern African countries can build on the acquis to accelerate the implementation of the Agreement. In summary, the study is aimed at identifying the Southern Africa-African Continental Free Trade Area acquis and at guiding Southern African countries to leverage the existing successes at higher levels of integration and relating to trade and investment performance within the regional economic communities to accelerate the implementation of the Agreement. It is envisaged that, from a broader view, the study will also be helpful in informing members of other regional economic communities that have been identified as the building blocks of the Agreement about how accomplishments can be leveraged within the respective regional economic communities to accelerate the implementation of the Agreement.

## B. Background

Regional integration and trade agendas in Africa have been pursued through several interrelated and successive frameworks over the years. African integration was one of the main goals of the Organization of African Unity when it was established in 1963 (Organization of African Unity, 1963) and of its successor, the African Union, which was established in 2002. The Lagos Plan of Action and the Final Act of Lagos have also contributed to building momentum in terms of African integration and identified trade as a core element and driver of African integration. Chapter VII of the Lagos Plan of Action covers trade and finance. Under the Plan, steps towards trade liberalization are envisaged, with several milestones (see box 1).

Under the Treaty Establishing the African Economic Community, which was adopted in 1991, the establishment of an African free trade area, for which the regional economic communities would be used as building blocks, and ultimately a cus-

toms union were already envisaged. The objectives of the Community identified in the Treaty include “to coordinate and harmonize policies among existing and future economic communities to foster the gradual establishment of the Community”; and, to promote attainment of those objectives, the Community shall ensure “the strengthening of existing regional economic communities and the establishment of other communities where they do not exist” (Organization of African Unity, 1991). In addition, the Treaty features a detailed plan of action, the details of which are contained in an ambitious six-stage road map, in terms of trade liberalization, the harmonization of rules and the 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 establish an African economic community using the regional economic communities as its building blocks and to fast-track the implementation of African integration by building on the acquis of the regional economic communities, some of which were to be set up under the auspices of the Treaty. The envisaged actions for each stage (art. 6 of the Treaty) are clarified by the Organization of African Unity (OAU, 1991) and include:

- a. Strengthening of existing regional economic communities and, within a period not exceeding five years from the date of entry into force of this Treaty, establishing economic communities in subregions where they do not exist;
- b. At the level of each regional economic community and within a period not exceeding eight years:
  - i. Stabilizing tariff barriers and non-tariff barriers, customs duties and internal taxes existing at the date of entry into force of this Treaty; there shall also be prepared and adopted studies to

- determine the timetable for the gradual removal of tariff barriers and non-tariff barriers to sub-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 subregional and continental levels in all areas of activity, in particular in the fields of trade, agriculture, money and finance, transport and communications, industry and energy;
  - iii. Coordination and harmonization of activities among the existing and future economic communities.
- c. At the level of each regional economic community and within a period not exceeding 10 years, the establishment of a free trade area through the observance of the timetable 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;
  - d. Within a period not exceeding two years, the coordination 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;
  - e. Within a period not exceeding four 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 the free movement of persons, as well as the provisions of the Treaty regarding the rights of residence and establishment;
  - iv. Constituting the proper resources of the Community as provided for in paragraph 2 of article 82 of the Treaty.
- f. Within a period not exceeding five 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, and 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 coordination process of the activities of regional economic communities;
    - vi. Implementation of the final stage for the setting up of the structures of African multinational enterprises in all sectors;

- vii. Implementation of the final stage for the setting up of the structures of the executive organs of the Community.

Some of the action points embedded in the Treaty are to pursue, first, the 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; second, the adoption of a common trade policy vis-à-vis third States; and, third, the establishment and maintenance of a common external tariff and a number of provisions pertaining to the removal of barriers in the movement of persons and goods. Despite these aspirations, progress towards the achievement of the milestones

outlined in the Treaty has not proceeded as planned. For example, high tariff barriers (8.7 per cent on average) and persistent non-tariff barriers, such as cumbersome customs procedures (“thick” borders) and limited free movement of persons across Africa (for example, 38 African countries still require Africans to apply for a visa before travelling to those countries) go against the spirit of the Treaty (Fasan, 2019). Table 1 shows the varying levels among the regional economic communities in the implementation of the Treaty. Other challenges include the limited physical integration of Africa in terms of infrastructure, pockets of insecurity on the continent thwarting efforts to ensure the free movement of goods and persons, and unwillingness by States parties to cede power (national sovereignty) to a supranational body.

**Table 1**  
Achievements under regional economic communities in the implementation of the Treaty Establishing the African Economic Community

Regional economic community	Establishment and strengthening (1994–1999)	Elimination of tariff and non-tariff barriers (2000–2007)	Establish a sub-regional free trade area (2008–2017)	Establish a sub-regional customs union (2008–2017)	Establish a continental customs union (2018–2019)	Establish an African common market (2020–2023)	Establish a pan-African monetary and economic union (2024–2028)
EAC	Realized	Realized	Realized	Realized	Realized	Not realized	Not realized
ECOWAS	Realized	Realized	Realized	Realized	Realized	Not realized	Not realized
COMESA	Realized	Realized	Realized	Ongoing	Not realized	Not realized	Not realized
SADC	Realized	Realized	Ongoing	Ongoing	Not realized	Not realized	Not realized
Economic Community of Central African States	Realized	Realized	Ongoing	Ongoing	Not realized	Not realized	Not realized
Intergovernmental Authority on Development	Realized	Realized	Ongoing	Ongoing	Not realized	Not realized	Not realized
Community of Sahelo-Saharan States	Realized	Ongoing	Ongoing	Ongoing	Not realized	Not realized	Not realized
Arab Maghreb Union	Realized	Realized	Ongoing	Ongoing	Not realized	Not realized	Not realized

Source: African Union (2019).

As depicted in table 1, all the regional economic communities are yet to realize the goals of establishing a continental customs union, an African common market, and a pan-African monetary and economic union, and six regional economic communities are yet to establish a regional customs union. Five regional economic communities are in the process of setting up free trade areas, while one regional economic community, namely, the Community of Sahelo-Saharan States, is in the process of developing measures to eliminate tariffs and non-tariff barriers. Those realities show that progress towards achieving the projected milestones outlined in the Treaty has not proceeded as planned.

In line with the Lagos Plan of Action and the Treaty Establishing the African Economic Community, there was recognition, at the eighteenth ordinary session of the Assembly of Heads of State and Government of the African Union, held in January 2012, of the importance of promoting intra-African trade as a fundamental factor in achieving sustainable economic development, employment generation and the effective integration of Africa into the global economy. In that regard, the Assembly adopted a decision on boosting intra-African trade and fast-tracking the establishment of a continental free trade area. Subsequently, in June 2015, negotiations to establish the African continental free trade area were launched.

In March 2018, after 10 rounds of negotiations, 54 of the 55 States members of the African Union signed the Agreement Establishing the African Continental Free Trade Area, its protocols on trade in goods and services and dispute settlement procedures and their annexes, covering, among other issues, customs cooperation, trade facilitation, sanitary and phytosanitary measures and rules of origin. The negotiations took place under the first phase of the Agreement.

Geographically, the African Continental Free Trade Area is the world's largest free trade area, bringing together 54 of the 55 countries of the African Union and eight regional economic communities. The overall objective of the Agreement is to create a single continental market, with a population of about 1.3 billion people and a combined GDP of approximately \$3.4 trillion. The establishment of an African continental free trade area is one of the flagship projects under Agenda 2063: The Africa We Want, of the African Union, which is the long-term development strategy of the African Union for transforming the continent into a global powerhouse. The Agreement is aimed at eliminating trade barriers and boosting intra-Africa trade, including through value-added production across all service sectors of the African economy. The Agreement is also aimed at contributing to the establishment of regional value chains in Africa and stimulating investment, industrialization and job creation.

As stated in article 3, the general objectives of the Agreement are:

- a. To create a single market for goods and 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, as enshrined in Agenda 2063;
- b. To create a liberalized market for goods and services through successive rounds of negotiations;
- c. To contribute to the movement of capital and natural persons and facilitate investments, building on the initiatives and developments in the States parties and regional economic communities;
- d. To lay the foundation for the establishment of a continental customs union at a later stage;

- e. To promote and attain sustainable and inclusive socioeconomic development, gender equality and structural transformation of the States parties;
- f. To enhance the competitiveness of the economies of States parties within the continent and the global market;
- g. To promote industrial development through diversification and regional value chain development, agricultural development and food security;
- h. To resolve the challenges of multiple and overlapping memberships and expedite the subregional and continental integration processes.

In the preamble to the Agreement, it is acknowledged that the free trade areas of the regional economic communities are building blocks for the establishment of the African Continental Free Trade Area. That demonstrates the drafters' aspiration to build on the acquis of the existing regional economic communities in the implementation of the Agreement and is very much in line with the ideology enshrined in the Charter of the Organization of African Unity, the Constitutive Act of the African Union and the Treaty Establishing the African Economic Community.

The Agreement entered into force on 30 May 2019, after 24 member States had deposited their instruments of ratification in line with the Agreement. It was launched at the twelfth extraordinary session of the Assembly of Heads of State and Government of the African Union, in Niamey in July 2019. Trading under the Agreement commenced on 1 January 2021. In October 2022, the secretariat of the African Continental Free Trade Area launched the Guided Trade Initiative.

From the foregoing, it is clear that there was a vision for the African Economic Community before most of the regional economic communities were established and that, from the time that the vision was clearly articulated, the regional economic communities have continued to deepen and consolidate their respective integration agendas through the promulgation of new instruments. That vision is duly taken into account in the Agreement through the recognition of eight regional economic communities (including COMESA and SADC) and their designation as its building blocks (African Union, 2018).

One pertinent question, among others, that is answered through the present study is: has the vision for the African Economic Community been carried forward through the integration agendas of the regional economic communities, in particular, that the regional economic communities would be building blocks for the African Economic Community? In other words, have the regional economic communities been configured in such a manner that there is a strong acquis on which the accelerated implementation of the Agreement can be based? Further still, in the Agreement, the regional economic communities are specifically mentioned and reliance upon them is sought; do the trade policies and initiatives of regional economic communities also mention the Agreement? Do the States members of the regional economic communities envisage themselves contributing to the African Economic Community and the agenda of the Agreement and are they acting as such? Answers to these questions will clearly help in identifying the acquis on which Southern African countries can build for the accelerated implementation of the Agreement.

## C. Objectives of the study

The objectives of the study are to assess the regimes – or the *acquis* – of the Southern African free trade agreements to which Southern African countries subscribe and provide ways in which they can build on those regimes to accelerate the implementation of the Agreement Establishing the African Continental Free Trade Area. The study contains an assessment of the progress (or lack thereof) made in the implementation of the free trade agreements of Southern African regional economic communities in respect of the main policies and activities that have contributed to integration in Southern Africa. Also assessed in the study are the best practices and lessons that can be applied for the accelerated and complementary implementation of the Agreement.

The study is also aimed at providing an understanding of the term “*acquis*” in the context of the process of actualizing the Agreement and analysing how the objective of that *acquis* can be attained. Specifically, the study is aimed at, first, identifying areas of convergence and divergence in the instruments of the Agreement and those of the regional economic communities with a view to documenting the *acquis* on which Southern African countries can build to accelerate the implementation of the Agreement; second, identifying the extent of implementation of the instruments of the Agreement that are mirrored in the regional economic communities for purposes of informing the complementary and accelerated implementation of the instruments of the regional economic communities and the Agreement; and, third, advising Southern African countries and States members of the regional economic communities on mechanisms and modalities to hasten the implementation of the Agreement by building on the *acquis* in the regional economic communities.

## D. Analysis of the progress made towards regional integration under the *acquis* of the Southern Africa free trade agreements compared to the Agreement Establishing the African Continental Free Trade Area

### 1. Understanding the *acquis*

There are three concepts that are analysed in the present study. First, the term “*acquis*” and related terms, such as “best practices in regional integration”, are not defined in the 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 on how they would influence the related implementation of the Agreement. Second, there is an assumption that the implementation of the *acquis* and best practices of the regional economic communities will lead to the accelerated implementation 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 itself.

The use of the *acquis* principle in free trade agreements 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 and was applied to refer to the body of its laws, rules and regulations that member States must adopt and implement as part of their domestic legislation. The principle ensures that new member States align their laws with those of the European Union to promote harmonization and facilitate the functioning of the single market (Grigoleit and Tomasic, 2012).

While the principle of the *acquis* originated within the European Union, its inclusion in trade agreements, one of which is the Agreement Establishing the African Continental Free Trade Area, has gained prominence over the years. Under article 5, some of the key principles governing the Agreement include the free trade agreements of regional economic communities as building blocks for the Agreement; the preservation of the *acquis*; and the best practices of States members of regional economic communities and the African Union in the context of international conventions. The Agreement further provides that States parties that are members of other regional economic communities, regional trading arrangements and custom unions and that have attained among themselves higher levels of regional integration than under the Agreement are to maintain those higher levels among themselves.

The third and most important provision relating to the *acquis* is found in article 8 (2) of the Protocol on Trade in Goods, relating to tariff concessions, which constitutes the most important part of trade liberalization under a free trade agreement. In the article, it is stated that States parties that are members of other regional economic communities that have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in the Protocol on Trade in Goods are to maintain and, where possible improve upon, those higher levels of trade liberalization among themselves. In addition, States parties also agreed under article 18 (2) of the Protocol on Trade in Services to adopt the *acquis* principle with regard to existing best practices of regional economic communities in trade in services by providing that States parties were to negotiate sector-specific obligations through the development of regulatory frameworks for each of the

sectors as necessary, taking into account the best practices and *acquis* from the regional economic communities, as well as the negotiated agreement on sectors for regulatory cooperation. States parties agreed that negotiations on continuing the process would commence following the establishment of the Agreement, based on the work programme to be agreed by the Committee on Trade in Services. In the case of trade in services, would States be obliged to make the same commitments under the Agreement that they had made under the regimes of the regional economic communities?

The *acquis* principle is also recognized under the principles (article 5) governing the Tripartite Free Trade Area. In this context, negotiations should start from the point reached under the COMESA, EAC and SADC trade agreements. Applied to the Agreement Establishing the African Continental Free Trade Area, the *acquis* principle would mean that (tariff) concessions in both goods and services extended as part of the negotiations on the Agreement would be only among those States parties that had no preferential arrangements in place among them (Erasmus, 2021). In terms of trade and investment within the regional economic communities, this principle can be interpreted to mean that specific strategies on deeper integration, as well as other disciplines considered to be necessary for local needs, will be pursued within regional economic communities, with their own regional integration agendas (Erasmus, 2021). In other words, the *acquis* principle is to be used to consolidate gains of deeper integration at the regional economic community level while providing mechanisms for the harmonization of concessions with other regional economic communities or States parties in the context of implementing the Agreement.

## Figure I

### Visualization of the concept of the *acquis* in accelerating the implementation of the Agreement Establishing the African Continental Free Trade Area in Southern Africa

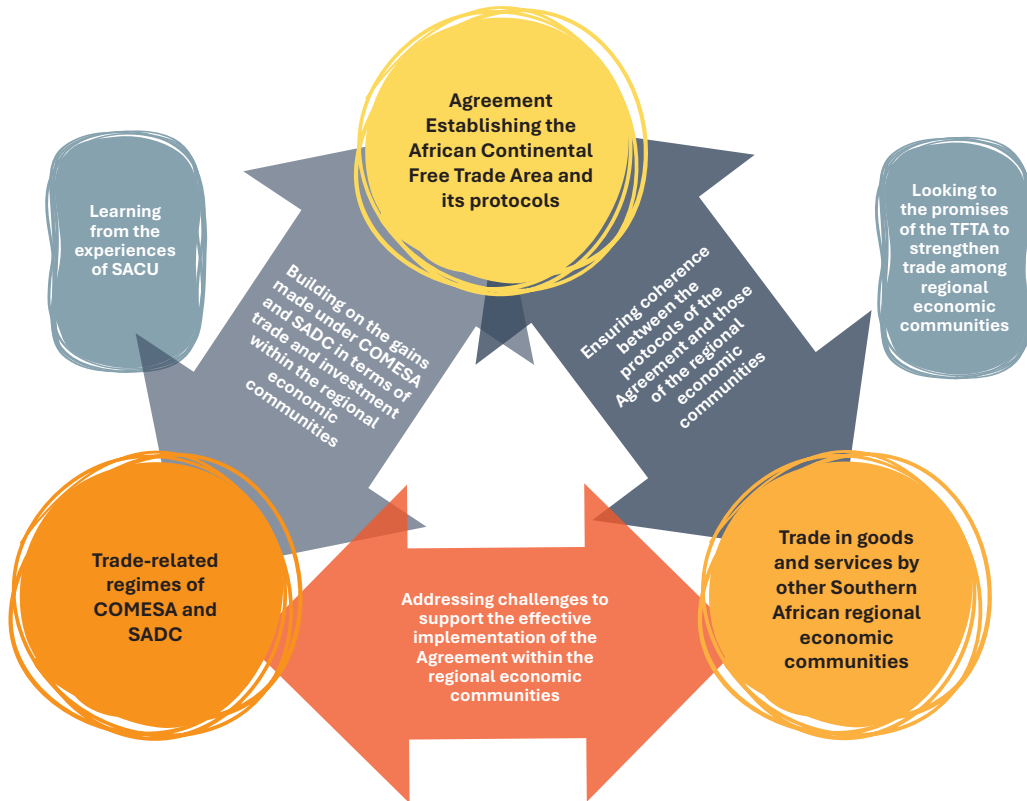


Figure I sets out a visualization of the *acquis* of the regional economic communities that can be leveraged for the effective and accelerated implementation of the Agreement Establishing the African Continental Free Trade Area. While the Agreement and the agreements under the Southern African regional economic communities complement one another, the Agreement does not take precedence over the *acquis* of the regional economic communities, as the results and degree of implementation of their policies and frameworks, and the readiness of their respective trade facilitating institutions and ecosystems determine the pace and depth of the implementation of the Agreement in the States members of the regional economic communities. The concept of the *acquis* works on the basis that, under the Agreement, the SADC and COMESA regimes relating to trade in goods and

services, among other trade-related regimes, will be built upon and strengthened, while coherence with higher levels of cooperation will be ensured. Building on the *acquis* will also require COMESA and SADC to address the long-standing implementation challenges that impede trade and investment within SADC, within COMESA and between COMESA and SADC. This will necessitate complementarity among taskforces at the national and regional economic community levels on the different trading regimes to ensure the non-duplication of tasks and the fostering of cooperation instead of competition.

The *acquis* can, however, be threatened in circumstances of relationships with third parties, that is, external trade partners. For example, States members of both COMESA and SADC have trading arrangements with third parties, such as the European

Union (an economic partnership agreement), and the United Kingdom of Great Britain and Northern Ireland (an economic partnership agreement). The present study contains an analysis of the extent to which these agreements undermine the applicability of the acquis in the implementation of the Agreement Establishing the African Continental Free Trade Area in Southern Africa. It is important to understand the main factors at play with regard to the acquis of the regional economic communities and the implementation of the Agreement. Indeed, there is the expectation that the preservation of the acquis in the implementation of the Agreement would lead to the accelerated attainment of the objective of full continental integration. There is also the assumption that intracontinental trade would increase from the current low levels.

There are, however, several variables that would affect whether the adoption of the acquis would result in full continental integration and commercially meaningful trade. Furthermore, there is an expectation that the free trade agreements of the regional economic communities will continue to exist and States parties will continue to fulfil their obligations under those agreements. It is envisaged that States parties that do not have free trade agreements will establish them and catch up with the States parties that have accelerated the implementation of the agreements under the regional economic communities. The matter relating to the external trade relations of the regional economic communities and those envisaged under the Agreement Establishing the African Continental Free Trade Area is an issue that could lead to divergence, and further analysis is required.

**Table 2**  
Acquis of regional economic communities and the Agreement Establishing the African Continental Free Trade Area

Trade area	Main provisions under COMESA	Main provisions under SADC	Main provisions under the Agreement	Areas of convergence
<b>Trade in goods</b>				
Removal of internal tariffs	Reciprocal elimination of tariffs on all products traded by member States participating in the COMESA Free Trade Area  However, owing to overlapping membership, some member States acceded to the free trade agreement with reservations	Elimination of tariffs on 85 per cent of tariff lines	Differentiated and gradual elimination of tariffs on 97 per cent of tariff lines, with 3 per cent excluded from liberalization	Gradual elimination of tariffs guided by the principle of reciprocity
Common external tariffs	No common external tariff in place, although envisaged	No common external tariff in place, although envisaged (with the exception of the common external tariffs of States members of SACU, all of which are members of SADC)	No common external tariff in place, although envisaged	Vision for the regional economic communities and the Agreement to be transformed into a customs union with common external tariffs

Trade area	Main provisions under COMESA	Main provisions under SADC	Main provisions under the Agreement	Areas of convergence
Rules of origin	Foster regional cumulation and are aimed at developing regional value chains  Threshold for value of non-originating material set	Foster regional cumulation and are aimed at developing regional value chains  Threshold for value of non-originating material set	Foster regional cumulation and are aimed at developing regional value chains  Threshold for value of non-originating material set	Both regional economic blocs share an ultimate objective and vision of driving regional economic communities and the industrialization of Africa
Sanitary and phytosanitary measures	No specific sanitary and phytosanitary standards protocol, but programmes implemented	Balancing of rights and obligations in application of sanitary and phytosanitary measures, drawing from international agreements and instruments  Specific sanitary and phytosanitary standards protocol in place	Specific sanitary and phytosanitary standards protocol in place, drawing from international agreements  Aimed at balancing rights and obligations and building capacity	Shared vision of not using sanitary and phytosanitary standards measures as disguised barriers to trade, and balancing of rights and obligations
Non-tariff barriers	Regulations on the removal of non-tariff barriers in place  Online regional reporting and elimination mechanism in place  Draws from national monitoring committees	Best endeavour to eliminate non-tariff barriers  Online regional reporting and elimination mechanism in place	Specific non-tariff barrier protocol in place, with an institutional set up  Draws from regional economic communities and national committees	Agreement in principle to remove sanitary and phytosanitary standards measures and create reporting and elimination mechanisms  Depth of commitment differs
<b>Trade in services</b>				
Services sectors covered	Four priority sectors, namely, communication, financial, tourism and transport services	Six priority sectors, namely, communication, construction, energy, financial, tourism and transport services	Five priority sectors, namely, business, communication, financial, tourism and transport services	All the services sectors prioritized under the Agreement are also prioritized under the regional economic communities, providing a good basis for convergence  There is a need to assess mutual recognition agreements between COMESA and SADC
<b>Institutional arrangements</b>				
Decision-making and policymaking	Interface of experts including senior technical and political leaders  Consensus based	Interface of experts including senior technical and political leaders  Consensus based	Interface of experts including senior technical and political leaders  Consensus based	Same path in decision-making followed under agreements of regional economic communities and the Agreement Establishing the African Continental Free Trade Area
Dispute settlement	No specific dispute settlement mechanism relating to free trade agreements in place, although there is the COMESA Court of Justice	Tribunal in place for handling disputes	Elaborate dispute settlement mechanism in place	Deeper coverage by mechanisms to handle disputes is envisioned under the Agreement, which could be leveraged by regional economic communities

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Progress made  
toward regional  
integration in  
Southern Africa



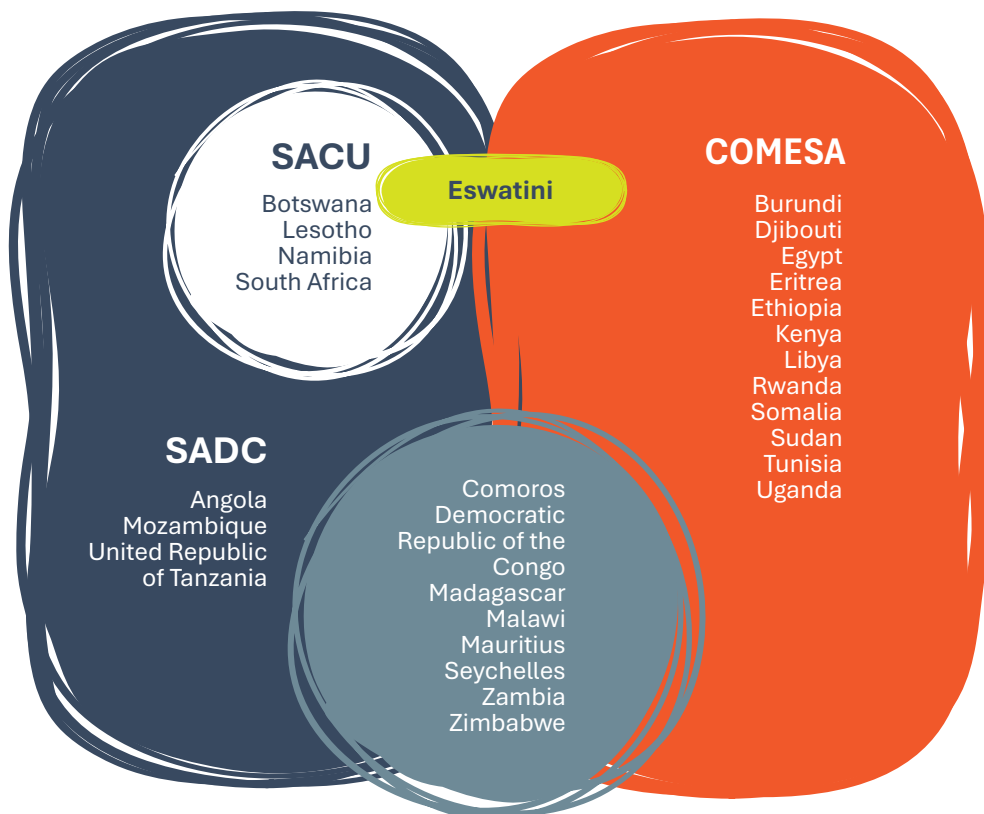
## Progress made toward regional integration in Southern Africa

Southern African countries have membership of four principal regional economic communities: SADC, SACU, COMESA, and the Tripartite Free Trade Area. Of the four regional economic communities to which Southern African countries subscribe, two are among the list of such communities recognized in the Agreement Establishing the African Continental Free Trade Area – SADC and COMESA. The third partner in the Tripartite Free Trade Area, EAC, is also included in that list, implicitly making the Tripartite Free Trade Area an acknowledged regional economic community since all its constituent members are thus recognized.

SADC is composed of 16 States members: Angola, Botswana, Comoros, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe. Five of those countries make up SACU: Botswana, Eswatini, Lesotho, Namibia and South Africa. For its part, COMESA has a membership of 21 countries, ranging from Southern to Northern Africa: Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt,

Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

It is therefore clear that Southern African countries have multiple memberships in different regional economic communities. The Agreement Establishing the African Continental Free Trade Area is conceived as a solution to the challenges arising from such multiplicity of memberships (African Union 2018) and this is probably the main reason underpinning the aspiration for the Agreement to build on the *acquis*. Identification of this *acquis* essentially begins with an understanding of the broader framework within which Southern African countries are currently pursuing their regional integration agenda, that is, their membership in regional economic communities and their commitments, obligations and vision pursuant therefrom. Figure 3 presents the membership in regional economic communities by Southern African countries, indicating, by means of overlapping boxes, their membership of multiple communities and including those States members that are not in Southern Africa.

**Figure II****Overlapping memberships of Southern African regional economic communities**

Source: author's compilation.

### A. Trade in goods: existing tariff reductions and non-tariff barriers

The Agreement Establishing the African Continental Free Trade Area has been negotiated in two phases, with trade in goods, trade in services and the dispute settlement mechanism negotiated in the first phase, while negotiations in the second phase have focused on investment, competition policy, intellectual property rights, digital trade, and women and youth in trade. Accordingly, the scope of the Agreement may be summarized as covering: trade in goods; trade in services; dispute settlement mechanism; investment; intellectual property rights; competition policy; digital trade; and women and youth in trade. The second phase protocols on investment, competition, and intellectual property rights have been concluded and

were approved by the Assembly of Heads of State and Government of the African Union at its thirty-sixth ordinary session, held in February 2023. All the Southern African countries have signed and ratified the Agreement, which follows a “framework agreement” model, with a core agreement providing a foundation that has been built upon through the two phases of negotiations.

### B. Trade liberalization in the Southern African free trade areas

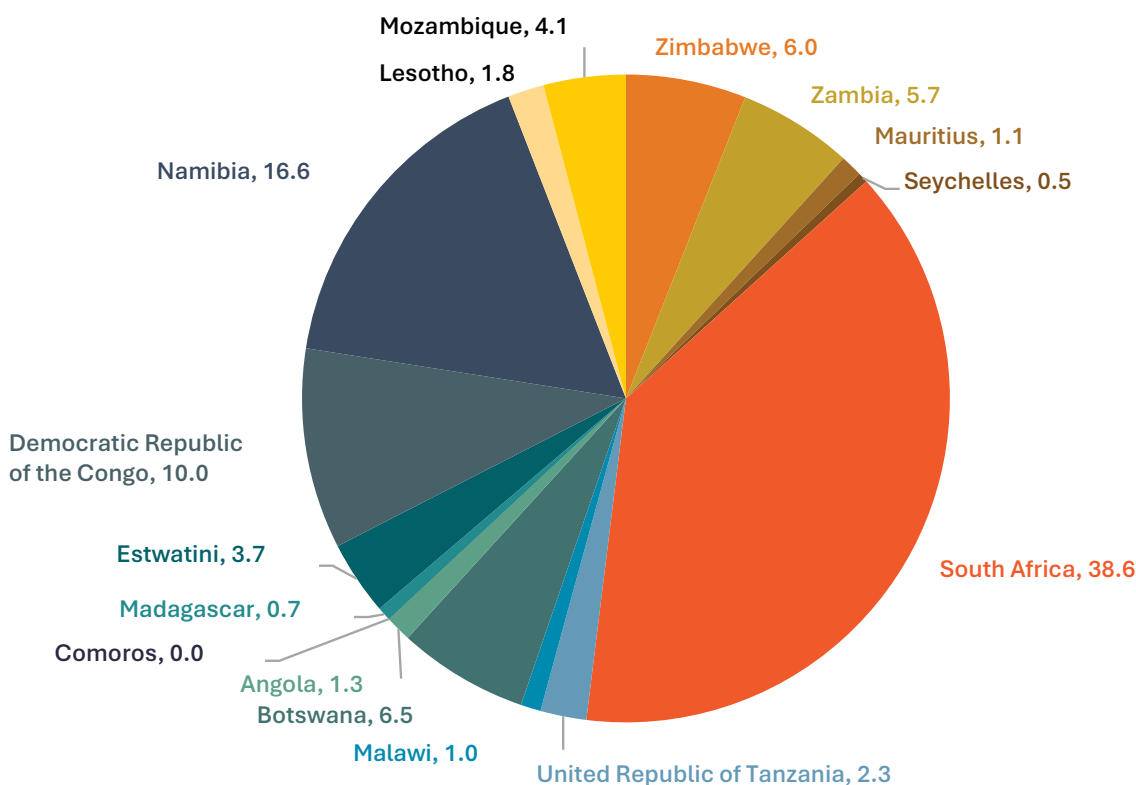
Both SADC and COMESA have in place trade regimes within their respective regional economic community which are aimed at liberalizing trade within the community and governing trade with third parties. The Protocol on Trade in Goods in the Southern African Development Communi-

ty Region, signed in 1996 and amended in 2010, is the major legal and policy instrument governing trade in SADC. The Protocol is essentially an agreement between States members of SADC on the reduction of customs duties and other barriers to trade between them in imported products: it provides for the gradual elimination of import duties on goods traded within SADC and the elimination of export taxes and quantitative restrictions. The Protocol, which came into force in 2001, is aimed at liberalizing intraregional trade by creating mutually beneficial trade arrangements, thereby improving investment and productivity in the subregion, and also eliminating barriers to trade and easing customs procedures.

Articles 27 and 28 of the Protocol provide for the continuation of existing preferential trade arrangements between the States members of SADC and between them and third States. These provisions amount in effect to recognition of the *acquis* and allow arrangements and commitments such as those under COMESA and SADC to continue. South Africa, in particular, has concluded a number of bilateral arrangements with other SADC States. At the time of the signing of the Protocol, which provides for the gradual liberalization of intraregional trade, 10 of its parties (excluding only Botswana and South Africa) had already effected tariff reductions of up to 70 per cent under the COMESA trade liberalization programme. The overlapping memberships of the various arrangements in the subregion could hamper implementation of the Protocol.

Under the auspices of the Protocol, the SADC Free Trade Area was launched in August 2008. In all, 13 of the States members of SADC (Botswana, Eswatini, Lesotho,

Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe) are implementing obligations under the Free Trade Area. The remaining three countries (Angola, Comoros and Democratic Republic of the Congo) are yet to join the Free Trade Area and have indicated their interest in so doing. The minimum conditions for implementation of the Free Trade Area were achieved in 2008, with 85 per cent of tariffs on goods zero-rated by all participating countries. Implementation is on a reciprocal basis. Since 2013, intraregional trade in SADC has been consistently above 20 per cent of the overall trade volumes of the States members of the community and growing, which may be considered a relatively good achievement compared to the pre-Free Trade Area era high of around 16 per cent (SADC, 2022). Indeed, in 2019, intra-SADC Free Trade Area trade constituted 23 per cent of its total world trade, and 81 per cent of its African trade (Gitau, 2020), with intra-SADC trade rising to 23 per cent in 2021 (African Union, 2021). The principal products at the HS2 level (in categories covered by the first two digits of the classification system of the Harmonized Commodity Description and Coding System) traded within the SADC Free Trade Area were light oils, electrical energy, diamonds, tobacco, 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 (African Union, 2021). In brief, intra-SADC trade is concentrated in minerals, precious stones and metals; manufactured products; and vegetable and animal products.

**Figure III****Share of intra-Southern African Development Community trade, 2019**

Source: SADC, 2021.

As shown in figure III above, South Africa has a 38.6 per cent share of the trade among States members of SADC. Namibia lies in second position, with 16.6 per cent, followed by Botswana, with 6.5 per cent.

Furthermore, in 2019, SADC Free Trade Area exports to and imports from the rest of Africa were valued at \$6.9 billion and \$6.5 billion, respectively, with Angola, the Democratic Republic of the Congo, Ghana, Kenya and Nigeria representing the key destinations. The principal products exported by countries participating in the SADC Free Trade Area to other African countries were raw sugar cane, goods vehicles, sulphuric acid, bituminous coal, food and beverage industry additives, polypropylene, flat-rolled iron and steel products, light oils, Portland cement and chemical products and preparation. The top products sourced by SADC Free Trade Area countries from other African coun-

tries included crude petroleum oil, copper, frozen sardines, cobalt oxides, light oils, wheat flour, medicaments, cigarettes, medium oils, and soap and organic surface-active products. To facilitate the operation of the SADC Free Trade Area, several instruments and programmes have been put in place in SADC, such as rules of origin and a simplified trade regime targeting small cross-border traders – in particular women and young people (African Union, 2021).

Where COMESA is concerned, States members have agreed on the following, among other measures: the creation and maintenance of 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 coun-

tries will attract an agreed single tariff, known as a common external tariff, in all COMESA States members. To this end, on 31 October 2000, following a 16-year period of progressive trade liberalization through the reduction of intra-COMESA tariffs, COMESA States members established a free trade area, on a reciprocal basis for the participating countries. Currently, 16 countries are participating in the

free trade area. In 2019, intra-COMESA total exports grew to \$4.7 billion, an 8 per cent rise from \$4.3 billion in 2018, with major exports including Portland cement, cobalt oxides and hydroxides, ceramic tiles, urea, quicklime, cane sugar, sesame, wheat flour, medications, sanitary towels, sacks and bags and mixtures of odoriferous substances used in the food and drink industries (COMESA, 2020).

**Table 3**

**Total intra-Common Market for Eastern and Southern Africa exports by sector (Millions of United States dollars)**

Sector	2013	2014	2015	2016	2017	2018	2019	Percentage 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	3 763.64	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
Agricultural raw materials	183.42	173.59	153.41	180.01	133.44	123.47	139.41	13
Other products not elsewhere specified	11.40	5.53	3.67	2.76	2.63	20.42	4.96	-76
<b>Total</b>	<b>12 147.49</b>	<b>10 795.37</b>	<b>10 736.94</b>	<b>8 832.09</b>	<b>9 299.25</b>	<b>10 111.06</b>	<b>10 901.39</b>	<b>8</b>

Source: COMSTAT, 2021 Annual Report.

Apart from intra-COMESA trade, the sub-region's trade with the rest of Africa is on the rise, with key trading partners including South Africa (30.6 per cent), the United Republic of Tanzania (8.8 per cent), Algeria (4 per cent), Mozambique (3.9 per cent), Morocco (3.4 per cent), South Sudan (1.17 per cent) and Nigeria (1.09 per cent) (COMESA, 2020). The above products could be leveraged to promote trade between COMESA and with the rest of Africa under the African Continental Free Trade Area regime.

Under the regime of the COMESA free trade area, tariffs have been more ex-

tensively removed than under the SADC regime, as countries are required to completely remove tariffs on COMESA-originating products as defined by the COMESA rules of origin. Under the agreed rules, individual States members of COMESA are at liberty to determine the tariff rates applied to goods originating from States that are not members of COMESA. Countries may, however, accede to the COMESA free trade area with reservations on certain products necessitated by their membership of other regional economic communities. Thus, Uganda has entered a reservation on products classified as sensitive under the EAC regime. This approach

by Uganda remains a matter of serious contention with the COMESA organs and could point to possible developments within the African Continental Free Trade Area, given the multiplicity of regional economic communities on the continent – some with deeper levels of integration than that envisaged for the African Continental Free Trade Area.

The *acquis* is also explored under the various SADC and COMESA trading relationship regimes. Since the SADC tariffs were expected to be higher than those of COMESA until at least 2006, trade between SADC members that are also COMESA members was conducted under the COMESA arrangement. The SADC Trade Protocol effectively only covers SADC members that are not also members of COMESA, since importers will clearly choose to pay the lower rates of customs duties prescribed under the COMESA regime (Erasmus, 2021). Where the Agreement Establishing the African Continental Free Trade Area is concerned, trade under this regime can take place within the regional economic communities on the basis of the already existing tariffs already accepted by members. Since the COMESA tariff regime is the one most widely used by members, its calibrations can be applied to trading within the African Continental Free Trade Area. This in turn will help to address the challenges posed by tariff implementation complexities resulting from multiple memberships, which have been noted as impediments to countries' capacity to implement trade-facilitating decisions in their respective regional economic communities.

Under the SADC Trade Protocol, States members of SADC agree to accord one another most favoured nation treatment, so as to ensure equal preferences. Currently, States members of SADC are still trading under the SADC trade regime as the implementation by member States of the Agreement Establishing the African

Continental Free Trade Area has not yet entered into full swing. There is something potentially contradictory about the inclusion of a provision that exempts member States from the obligation to extend the 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 support implementation of the Agreement as the status of “most favoured nation” is one of the principles guiding the Agreement. While the Agreement provides for exceptions to the most favoured nation status, these can only be invoked provided, first, that they do not impede or frustrate the objectives of its Protocol on Trade in Services; and, second, that they extend preferential treatment to all States parties on a reciprocal and non-discriminatory basis. The *acquis* on most favoured nation status is provided for by the Agreement under article 4 (4) of that Protocol, which states 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. A State Party may afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis”. Consequently, the flexibility granted by SADC in respecting the *acquis* under the most favoured nation provision ensures a soft landing for implementation of the Agreement.

With regard to national treatment, provisions are included to allow States members of SADC to accord preferential treatment to intra-SADC trade for such reasons as national security, the risk of serious injury to a domestic industry that produces similar or directly competitive products, and the protection of infant industries. A careful reading of article 5 of the Agreement reveals the potential for contradiction between the trading regimes under SADC and the African Continental Free Trade Area. Article 5 of the Protocol

on Trade in Services provides: “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”. Articles 24 and 15 (e) of the Protocol also grant exceptions to the national treatment principle. It is therefore important that SADC harmonize its national treatment exceptions with those of the Agreement Establishing the African Continental Free Trade Area if seamless trading is to be attained under the Area regime.

The Agreement Establishing the African Continental Free Trade Area provides for the removal of tariffs on 90 per cent of tariff lines; the designation of 7 per cent of tariff lines as sensitive and thus eligible for longer liberalization schedules; and the possible exclusion of 3 per cent of the tariff lines from liberalization. For least developed countries, as classified by the United Nations, the 90 per cent non-sensitive tariff lines will be liberalized over a 10-year period, and the sensitive tariff lines over a 13-year period. For developing countries not included in the “least developed category”, the time period for liberalization of non-sensitive tariff lines is set at 5 years and at 10 years for sensitive tariff lines.

These tariff liberalization measures are based on the application of the respective most favoured nation rates, which, in the case of customs unions such as SACU, are the common external tariff (Luke, 2023). This is an area where implementation of the Agreement Establishing the African Continental Free Trade Area and the *acquis* within the Tripartite Free Trade Area are to be tested, given the differing ambitions of liberalization. In accordance with the market integration pillar, the Tripartite Free Trade Area has a more ambitious

tariff liberalization schedule compared to that of the African Continental Free Trade Area. Whereas the levels of tariff liberalization sought for the latter ambition are 90 per cent for non-sensitive products, 7 per cent for sensitive products and a 3 per cent exclusion list, the corresponding level for the Tripartite Free Trade Area is 100 per cent tariff liberalization (except for general and specific security exemptions), of which tariff lines ranging between 60 and 85 per cent are to be liberalized upon entry into force of the Agreement Establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East Africa Community and the Southern African Development Community (Tripartite Free Trade Area Agreement) and 15–40 per cent of the remaining tariff lines are to be negotiated within a period of between five and eight years (Onyango, 2020).

The question that remains is how a balance will be struck between these different levels of liberalization and how this will be sustained in the African Continental Free Trade Area. Nonetheless, the higher level of liberalization available under the Tripartite Free Trade Area should include trading in the African Continental Free Trade Area, as it builds on the successes already achieved by States parties in making their tariff offers under the Tripartite Free Trade Area regime.

The Tripartite Free Trade Area tariff liberalization schedule is to be achieved by consolidating the tariff regimes of EAC, which, as noted above, is a customs union, and the SACU subset of SADC member States, into the Tripartite Free Trade Area in line with the principle of building on the *acquis* and subject to reciprocity. Besides the countries of EAC and SACU, several COMESA countries participating in the Trade Area have made Tripartite Free Trade Area 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 in 2013 among countries participating in the Tripartite Free Trade Area were not too ambitious. It was agreed that 60–85 per cent of tariff lines would be liberalized upon entry into force of the Tripartite Free Trade Area Agreement and the remaining 15–40 per cent would be negotiated over a period of between five and eight years. This represents a challenge for countries that have liberalized trade regimes in an equitable manner (with more than 80 per cent of their tariff lines at 0 per cent most favoured nation level) vis-à-vis the principle of building on the *acquis*. Bilateral meetings on tariff exchanges were conducted 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 and SACU and between Egypt and SACU are at an advanced stage. The process of negotiating tariff offers took longer than anticipated (Luke and Mabuza, 2018).

It is also important to note that SACU and EAC, which are both customs unions, have exchanged tariff offers averaging 90 per cent of their tariff books that are to be liberalized immediately on commencement of implementation of the Tripartite Free Trade Area Agreement. Several other member States and partner States of the Tripartite Free Trade Area have based their tariff offers on the *acquis*, indicating that they have carried over the level of tariff liberalization that they have attained under the various free trade area regimes in the specific regional economic communities to which they belong. For example, States members of COMESA and SADC, such as Madagascar, Malawi, Mauritius, Seychelles, Zambia and Zimbabwe, that have attained the highest level of tariff liberalization would harbour comparable am-

bitions for the Tripartite Free Trade Area. Accordingly, in Southern Africa, it is only the five States members of SACU which have a common *acquis* on which to base their implementation of the Agreement Establishing the African Continental Free Trade Area.

In Southern Africa, only SACU has submitted a common market access offer, while countries such as Madagascar, Malawi, Mauritius and Zimbabwe have submitted individual offers. The other countries are yet to make their submissions. From the above state of play, it could be concluded that the *acquis* relating to tariff exchanges under SADC and COMESA is already being leveraged under the Agreement Establishing the African Continental Free Trade Area, as its States parties accelerate its implementation agenda and consolidate its negotiations on tariff offers and rules of origin. At the same time, the varied speed of such implementation, and the different baselines from which it is being conducted, make it rather difficult to rely on the *acquis* to accelerate progress towards achievement of the African Continental Free Trade Area. In particular, 90 per cent of the rules of origin identified for the Tripartite Free Trade Area have been agreed upon and already listed in annex IV to the Tripartite Free Trade Area Agreement. To date, only two issues regarding the rules of origin relating to certain products in the textiles and automotive sectors remain unresolved. In addition, a manual and regulations on rules of origin have been developed to facilitate the implementation of annex IV to the Tripartite Free Trade Area Agreement (Onyango, 2020 a). The relative status of trade liberalization and application of the *acquis* of the various regional economic communities is illustrated in the table below.

**Table 4****Acquis of the regional economic communities acquis and trade liberalization programme for the African Continental Free Trade Area**

Regional economic community	Tariff reduction programme	Progress in implementation	Offer relating to the African Continental Free Trade Area
COMESA	100%	By 2023 – 100% reduction of tariffs by 16 countries and 90% reduction by 3 countries  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 liberalization of sensitive goods by 2012.  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 regional economic communities of which they are members
SACU	100%	Fully liberalized	-90% tariff lines: 100 % removed  -7 % tariff lines designated as sensitive  -3% tariff lines excluded  Offer based on the SACU common external tariff
EAC-COMESA-SADC Tripartite Free Trade Area	100% over a long period	Ongoing: Agreement not yet in force	
African Continental Free Trade Area	90%:  Least developed countries – 13 years for sensitive goods.  Non-least developed countries – 10 years for sensitive goods	Partial implementation	Not applicable

Source: Author's compilation.

The incoherences between commitments under the Agreement Establishing the African Continental Free Trade Area 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 Agreement, it was important first to define where they were in terms of regional trade arrangements and then to integrate further from that point. It was noted,

for example, that most regional economic communities did not have exclusion lists such as those envisaged for the African Continental Free Trade Area, suggesting that liberalization under the regional economic communities was more extensive than that envisaged for the African Continental Free Trade Area. In that case, the African Continental Free Trade Area regime would be less extensive than the existing acquis at the level of the regional

economic communities. SADC countries have focused on opening up among themselves (except South Africa, which has a lower than 100 per cent threshold, while offering 100 per cent to all the other countries), although now, after the transitional period, they have moved to 100 per cent among themselves within SADC.

The same holds true for the Tripartite Free Trade Area. These divergent tariff regimes mean that if there is 100 per cent tariff liberalization at the Tripartite Free Trade Area level, there would be no threat at the level of the African Continental Free Trade Area. It also raises more questions about the implication of the use by these different tariff regimes of the acquis to accelerate implementation of the Agreement Establishing the African Continental Free Trade Area. In addition to 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, sanitary and phytosanitary measures and others.

One innovation introduced in 2021 in negotiations of the Agreement Establishing the African Continental Free Trade Area was the Guided Trade Initiative. This instrument is designed to achieve its goal through matchmaking businesses and products for export and import between interested States parties in coordination with their national committees of implementation of the Agreement. The Initiative has attracted the participation of eight States parties: Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tunisia and the United Republic of Tanzania. The products earmarked for trade under the Initiative include ceramic tiles, batteries, tea, coffee, processed meat products, corn starch, sugar, pasta, glucose syrup, dried fruits and sisal fibre, in line with the Agreement's focus on value chain development (Bama, 2023).

It is anticipated that, in 2023, the Guided Trade Initiative will be expanded to cover more countries and also trade in services. The range of the Initiative, from the choice of products that it covers to the digital certificates of origin and compliance with standards, it is clear that implementation of the Agreement Establishing the African Continental Free Trade Area is building on the acquis. For example, the average annual exports by SADC of sugar (Harmonized System code 1701) for 2018–2022 amounted to \$682,758,000, compared to the average annual global imports by Africa as a whole of \$6,081 million – meaning that SADC holds a market share of 11.2 per cent in the African sugar market. Similarly, over the same period, average annual global exports of sugar by SADC amounted to \$1,203 million, meaning that 56.8 per cent sugar exports by SADC were to member countries of the African Continental Free Trade Area (Bama, 2023).

From the above paragraphs, it may be seen that, while there has been increased trade under COMESA and SADC following their adoption of liberalization regimes, there is still limited trading among partner States, and only in few products. The existing incoherences between commitments under the Agreement Establishing the African Continental Free Trade Area and those under COMESA and SADC on such matters as exclusion lists, in that, while provision is made for such a list under the Agreement, there is no explicit provision to this effect in schemes like COMESA, pose a major challenge to the conduct of trading in such products. Furthermore, the slow adoption of the Guided Trade Initiative by States members of SADC, with Mauritius being the sole party to date, is cause for major concern regarding the readiness of the countries to roll out trading under the African Continental Free Trade Area regime.

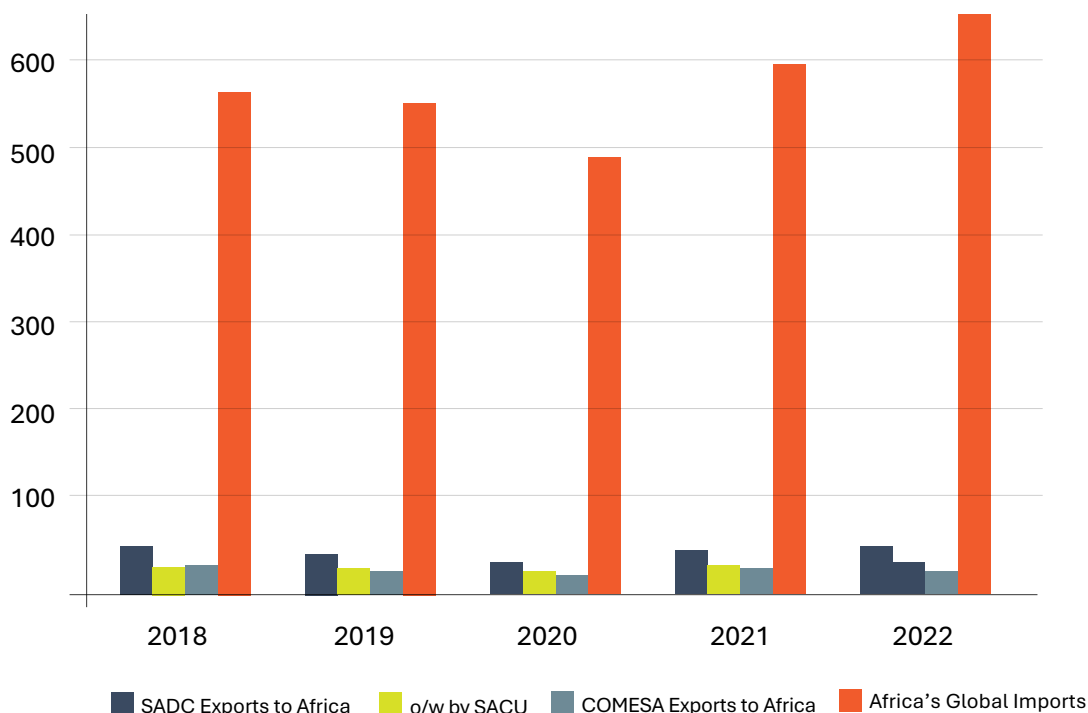
An analysis of trade figures between Southern African regional economic communities and Africa as a whole indicate that, since 2018 (year of signature of the Agreement Establishing the African Continental Free Trade Area) there has been no significant growth in exports from SADC or COMESA to the rest of Africa. In addition, the data indicate that exports by SADC to the rest of Africa are dominated by exports from SACU countries, primarily South Africa. The SADC market share in the continent's total imports declined from 9.4 per cent in 2018 to 8.0 per cent in 2022, while that of COMESA declined from 5.6 to 3.9 per cent over the same period.

This decline can partly be attributed to the coronavirus disease (COVID-19) pandemic, but is also attributable to the African level of the logistics and interconnectivity necessary to foster intra-African trade. Overall, however, the absolute figures are quite encouraging and provide a strong acquis on which the countries of Southern Africa can build to boost their exports to the rest of Africa under the auspices of the Agreement Establishing the African Continental Free Trade Area. Table 5 provides a summary of trade by the Southern African regional economic communities with the rest of Africa, represented in graphic form in figure IV.

**Table 5**  
**Trade between regional economic communities of Southern Africa and the rest of Africa over the period 2018–2022**  
**(Millions of United States dollars)**

Description	2018	2019	2020	2021	2022
SADC exports to Africa	54 397	45 195	37 564	49 855	55 231
Of which by SACU	30 573	29 304	24 204	31 619	36 837
COMESA exports to Africa	32 061	25 267	21 506	28 226	26 791
Global imports by Africa	576 777	564 657	502 222	609 289	694 524
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%

Source: UN Comtrade database (accessed 1 August 2023) and author's compilation.

**Figure IV****Trade by Southern African regional economic communities with Africa  
(Billions of United States dollars)****C. Rules of origin**

Rules of origin are the rules for determining the country of origin of goods. According to the United Nations Conference on Trade and Development (UNCTAD), rules of origin function like a passport, enabling a product to enter a free trade area and circulate without attracting a duty (UNCTAD, 2019b). The basic role of rules of origin is to determine the economic nationality as opposed to the geographical nationality of a given good. It may be argued that the *raison d'être* of preferential rules of origin is the avoidance of trade deflection.

As explained on the Trade4MSMEs platform,<sup>2</sup> the Agreement on Rules of Origin of the World Trade Organization (WTO) distinguishes two types of rules of origin:

- a. 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 WTO and the International Trade Centre;

- b. Non-preferential origin: This is not linked to trade agreements and may determine whether businesses have to comply with non-tariff require-

<sup>2</sup> See <https://trade4msmes.org/guides/rules-of-origin-3/>.

ments 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 Rules of Origin Section provides a list of WTO members that have notified their non-preferential rules of origin.

In principle, the rules of origin applied under the SADC, COMESA and African Continental Free Trade Area regimes promote cumulation within the member countries and aim to boost domestic industrial development and develop regional value chains. They all place 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 set out in product-specific rules.

The SADC rules of origin 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. Thus, instead of general rules, SADC uses product-specific rules of origin based on the so-called “list approach”, such as the value-added rule, the 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 preferential trade agreement to producers actually located in the subregion. One concern raised by this approach is that SADC rules of origin 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 approaches (Draper, Chikura and Krogman, 2016).

Furthermore, while the SADC rules of origin permit the full cumulation of origin among member States, this advantage has yet to be fully exploited because the rules are complex and more restrictive. This is because they 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 Trade (Draper, Chikura and Krogman, 2016). It is no wonder, therefore, that such countries as Malawi, Swaziland and Zambia that are members of both SADC and COMESA have in most cases preferred to use the COMESA rules of origin, whose tariff rates are on average higher than those of SADC, owing to the fact that they are more straightforward and easier to meet (Ndonga, 2021). There is a possibility that this preference may undermine the maximization of intra-SADC trade benefits.

The COMESA rules of origin are used to determine whether goods produced in the COMESA subregion are eligible for preferential treatment within its Free Trade Area. The COMESA rules of origin have five criteria and goods are considered as originating in a member State if they meet any of the following five criteria:

- a. The goods should be wholly produced in a member State;
- b. The cost, insurance and freight value of any foreign materials should not exceed 60 per cent of the total cost of all materials used in their production;
- c. Goods must attain the value added of at least 35 per cent of the ex-factory cost of the goods;
- d. Goods should be classifiable under a tariff heading other than the tariff heading of the non-originating materials used in their production;
- e. Goods must be of particular importance to the economic development of the member States and should contain not less than 25 per cent of value added.

According to UNCTAD and COMESA (2023), the limited use of trade preferences in COMESA has been attributed to the fact that the COMESA rules of origin have been under renegotiation for several years, thus causing uncertainties among economic operators and firms about the predictability of the applicable rules. The report notes that the average total use rate of preferences of EAC is far higher than that of other regional economic communities: for EAC it measures 77.9 per cent, while for COMESA it is 39.8 per cent and for SADC 25.3 per cent. This finding of a low use of trade preferences in SADC and COMESA is consistent with the existing literature and studies observing that the SADC rules of origin and related administrative procedures are overly stringent (UNCTAD and COMESA, 2023). While the COMESA rules of origin allow for full cumulation of production, unilateral digression by some member States from the value-added threshold by increasing the threshold has become a common practice. Putting the SADC and COMESA rules of origin in context, the major task for the Agreement Establishing the African Continental Free Trade Area is to ensure that its rules of origin do not cause trade deflection, by providing a loophole for exporters that want to take advantage of different tariff rates within the Area by importing products to the country with the lowest tariff for their further re-export to other States members of the Area.

The rules of origin of the African Continental Free Trade Area, just like those of SADC and COMESA, promote cumulation within the member countries and are aimed at boosting domestic industrial development and developing regional value chains. Article 6 of annex 2 to the Agreement, on rules of origin, provides that products which are not wholly obtained shall be considered to be sufficiently worked or processed (and therefore eligible for preferential treatment) when they fulfil one of the specified criteria on 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 set out in product-specific rules. There is convergence across SADC, COMESA and the African Continental Free Trade Area 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.

In line with the principle of building on the *acquis*, article 42 of annex 2, on transitional arrangements, 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: the definitions of “value added” in article 1 (x) and requirements for “their vessels” and “their factory ships” in article 5 (2); the drafting of hybrid rules in appendix IV to annex 2, on rules of origin; the drafting of regulations for goods produced under special economic arrangements and zones; the drafting of additional provisions in annex 2 on value tolerance, the absorption principle and accounting segregation; and the drafting of manuals and guidelines on the rules of origin for the African Continental Free Trade Area, among others. Some areas of divergence in the rules of origin under COMESA, SADC and the African Continental Free Trade Area include their coverage of trade fairs, goods produced in special economic zones and free zones, tolerance value thresholds for non-originating production inputs, and the extended cumulation principle, which is available under the Agreement Estab-

lishing the African Continental Free Trade Area, but not the regimes of the regional economic communities.

The rules of origin of the African Continental Free Trade Area also have to navigate the challenges of multiple rules of origin regimes which have contributed to the stagnation of intraregional economic community trade in the COMESA and SADC trading blocs. This is because these multiple rules of origin have posed problems during customs procedures for member States of both trade blocs in terms of which rules to apply. Moreover, the rules of origin of the African Continental Free Trade Area follow a single product-specific approach that applies to all States 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. This one-size-fits-all approach is problematic for the private sector, in particular micro-, small and medium-sized enterprises, which are at varying levels of readiness to comply with the cumulation requirements under the rules of origin of the African Continental Free Trade Area, and may result in uneven reaping of the benefits of the Area.

Accordingly, as States parties to the Agreement Establishing the African Continental Free Trade Area move from the design of rules of origin to their implementation, it will be important to monitor whether all States operationalize both the tariff preferences and the rules of origin. It will also be important to understand the specifics of implementation of the rules of origin protocol and tariff preferences in each country and to undertake a review of the rules of origin of the African Continental Free Trade Area, with a view to ensuring that they foster regional integration and are simple and flexible to use by the continent's economic operators. Any such review process should build on the acquis of the already existing rules of origin of the

regional economic communities, in particular those that have already proved to foster the use of trade preferences under their respective free trade area.

As demonstrated in this section, both SADC and COMESA have put in place a trade liberalization policy and system to facilitate trade within their respective regional economic community which can be leveraged in operationalizing the African Continental Free Trade Area. For SADC, given that its protocol provides for the continuation of existing preferential trade arrangements between its member States and between them and third States, this gives a big boost to other States parties to the Agreement Establishing the African Continental Free Trade Area which are not members of SADC by enabling them easily to trade with the Community under the African Continental Free Trade Area regime. With regard to COMESA, the liberalization regime of 100 per cent (irrespective of the reservations maintained by some member States on products classified as sensitive), which exceeds the cumulative liberalization threshold of the African Continental Free Trade Area of 97 per cent, will have an immense catalytic effect for the Area's trade regime within the Community. The fact that the COMESA tariff regime is the one most widely used by members will greatly facilitate implementation of the Agreement Establishing the African Continental Free Trade Area in Southern Africa. Moreover, the trading regime under the Agreement will be vital in addressing the challenge of overlapping membership, which has hampered effective implementation of the SADC and COMESA trade liberalization commitments.

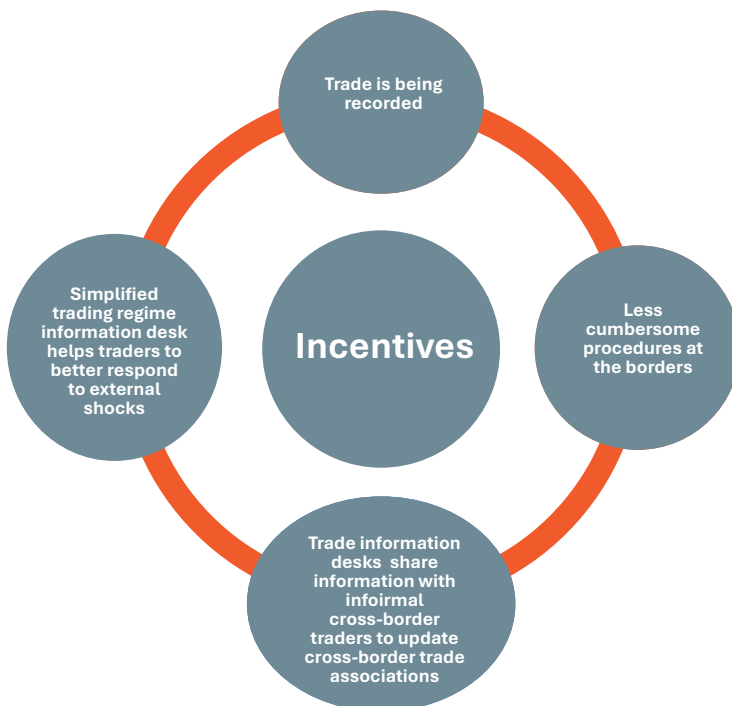
#### D. Simplified trade regime

A simplified trading regime may 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 (Trade Law Centre, 2021). The *raison d'être* for the simplified trading regime, as illustrated in figure V below, is the need 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 \$2,000) on applicable products. Traders still have to pay value added tax and excise duty, obtain immigration documents and comply with a range of standards in order to benefit from the simplified trade regimes (Luke, 2023).

**Figure V**  
**Simplified trading regime**



Source: Luke, 2023.

One of the arrangements favourable to small and medium-sized enterprises that COMESA has developed, and which could be a good practice to be emulated, is that of the simplified trade regime which was launched in 2010, recognizing that cross-border trade constitutes a significant component of trade in the subregion. The simplified trading regime aims to formalize informal cross-border trade by putting in place instruments and mechanisms tailored to the trading requirements of small-scale traders. The instruments are decentralized to border areas where informal trade is rampant, with a view to facilitating ease of access by small traders. The sim-

plified trading regime targets small-scale traders importing or exporting goods worth up to \$2,000, which are on a common list of eligible products negotiated and agreed upon by two neighbouring countries.

The simplified trading regime reduces costs for small traders and reduces the time spent crossing the border through the use of a simplified certificate of origin and a simplified customs document, along with simplified customs clearance procedures. The COMESA simplified trading regime, however, suffers from implementation weaknesses. The thresholds for goods are not harmonized across COMESA member

States: for example, Zimbabwe applies the simplified trading regime to consignments under \$1,000, while Malawi applies it to consignments under \$2,000 (Luke, 2023). Interviews with trade officers in Malawi and Zambia spotlighted this challenge and the fact that the goods covered under the regime were last reviewed in 2013 (Luke, 2023).

Efforts are also under way to set in place a simplified trading regime for SADC, with similar objectives to those pursued for COMESA and EAC. The simplified trading regime should be well worth emulating for the African Continental Free Trade Area, if it is to realize an inclusive trading regime, in other words, one that works for small-scale cross-border traders, the majority of whom are women and young people. In order to realize this goal, the Area secretariat, working in partnership with the respective secretariats of the regional economic communities, should publish lists of products eligible for the respective simplified trading regime, build the capacity of traders and customs officials in the implementation of the simplified trading regime, and publish information and guidance on the simplified trading regime, including in the languages used by the traders.

One of the key proposals by private sector associations, which is also echoed in a number of national strategies of Southern Africa countries for the implementation of the Agreement Establishing the African Continental Free Trade Area, is the need for a simplified trading regime to be set in place in the African Continental Free Trade Area which would be critical in supporting small-scale cross-border traders. As a means of maintaining the *acquis*, a system employed in the African Continental Free Trade Area of benchmarking and upgrading (in terms of its implementation by member States and by reviewing the goods covered under the regime) the COMESA simplified trading regime with the aim of ensuring its effective applicability within and beyond COMESA.

## E. Sanitary and phytosanitary measures and technical barriers to trade

Sanitary and phytosanitary 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 such safety for humans, animals and plants, sanitary and phytosanitary measures have sometimes 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 measures may include numerous documentary requirements (e.g. import and export permits, phytosanitary certificates, fumigation certificates, quality standards certificates, non-genetically modified organisms certificates), and also inspections and tests to ensure that goods conform to national regulations (Rathebe, 2015). Accordingly, all international trade agreements address themselves to this subject, providing a balance of rights and obligations among the contracting parties.

SADC has in place an instrument on sanitary and phytosanitary measures in the form of an annex – annex VIII – to the SADC Protocol on Trade. The annex 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 subregional cooperation in addressing sanitary and phytosanitary matters, including such aspects as equivalence, harmonization, and risk assessment. The annex also alludes to the use of international and subregional best practices in the area of sanitary and phytosanitary measures.

The implementation of sanitary and phytosanitary measures in SADC continues to be hindered, however, by the overlapping

and fragmented nature of the sanitary and phytosanitary control system, and also by inadequate coordination between the various authorities responsible for sanitary and phytosanitary measures and other border authorities (Rathebe, 2015). This has often contributed to overlapping documentary requirements and caused delays, increased transaction costs and uncertainty for traders. There is therefore 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.

For its part, COMESA has in place sanitary and phytosanitary regulations and has developed successive strategies in this domain. In 2007, the COMESA Council of Ministers established a sanitary and phytosanitary subcommittee under the Technical Committee on Agriculture, for the effective coordination of sanitary and phytosanitary matters at the subregional level. Subsequently, the Council of Ministers directed the COMESA secretariat to set up a sanitary and phytosanitary unit. The Council of Ministers also directed the secretariat to enhance programmes aimed at the mutual recognition of standards and sanitary and phytosanitary measures, and also to expedite the harmonization process as stipulated in the COMESA sanitary and phytosanitary regulations.

In 2019, COMESA championed a sanitary and phytosanitary measures programme working across the Tripartite Free Trade Area, the major purpose of which was to promote a harmonized risk-based regulatory environment and strengthened biosecurity systems that enhance food and nutrition security and facilitate agricultural trade, exports and investments. This programme has scored a number of achievements, including strengthening the management of standards and phytosanitary measures in the subregion through the prioritization of sanitary and phytosanitary

investments for market access; promoting subregional leadership through the coordination and collaboration of member States on sanitary and phytosanitary issues; and reducing the trading costs associated with sanitary and phytosanitary measures without reducing the effectiveness of countries' management of the associated risks (COMESA, 2019).

At the level of the African Continental Free Trade Area, annex 7 to the Protocol on Trade in Goods deals with sanitary and phytosanitary measures. This annex mirrors the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, as does the corresponding annex to the SADC Protocol on Trade. It also reaffirms the rights and obligations of States parties to apply sanitary and phytosanitary measures for the purposes of ensuring food and feed safety. The annex also sets up a sanitary and phytosanitary subcommittee for efficient implementation of the Protocol.

Effectively, therefore, both the regional economic communities and the African Continental Free Trade Area are equipped to address sanitary and phytosanitary measures, albeit to varying degrees. These variances are manageable, however, since the WTO Agreement on the Application of Sanitary and Phytosanitary Measures provides the foundation for all sanitary and phytosanitary measures at both regional economic community and African Continental Free Trade Area level. This is also conducive to some degree of convergence in sanitary and phytosanitary measures between the respective regional economic communities and the African Continental Free Trade Area, and should therefore facilitate implementation. To ensure ease in meeting the sanitary and phytosanitary requirements, States parties to the Agreement Establishing the African Continental Free Trade Area should ensure the harmonization and simplification of sanitary and phytosanitary rules, such as those relating to labelling and packaging.

Where technical barriers to trade are concerned, the SADC Protocol on Trade also includes an annex – annex VII – on such barriers. The annex on technical barriers to trade is aimed at establishing a common technical regulation framework supported by appropriate subregional structures dealing with technical barriers to trade cooperation. The annex essentially reaffirms the rights and obligations of member States in respect of technical regulations, standards and conformity assessment procedures under the WTO Agreement on Technical Barriers to Trade. It goes further, however, including provisions on a subregional technical regulation framework and structures for implementation and cooperation. The annex also envisages the establishment of a SADC accreditation service as a multi-economy accreditation body which provides accreditation services to those SADC member States which lack their own accreditation bodies or whose accreditation bodies have very limited scopes or schedules.

Under COMESA, there is no specific instrument on technical barriers to trade. Yet the COMESA subregion is estimated to lose \$74.4 million per year in the trading of agriculture raw materials alone as a consequence of policy measures on sanitary and phytosanitary protection and technical barriers to trade (COMESA, 2022). Nevertheless, discussions on technical barriers to trade are largely handled within the framework of the experts' meetings on sanitary and phytosanitary measures and technical barriers to trade. In 2009, COMESA adopted the COMESA Standards, Metrology and Conformity Assessment and Accreditation Policy. The organization has also run several programmes in the area of technical barriers to trade.

In relation to the acquis, it is noted that annex 6 to the Protocol on Trade in Goods to the Agreement Establishing the African Continental Free Trade Area deals with technical barriers to trade and, like annex

VII to the SADC Protocol on Trade, draws on the WTO Agreement on Technical Barriers to Trade. The Protocol on Trade in Goods to the Agreement also provides for areas of cooperation and specific roles for such standardization bodies in Africa as the African Organisation for Standardisation and the African Electrotechnical Standardization Commission. The Protocol on Trade in Goods calls for transparency in the application of technical barriers to trade and sets up a subcommittee on technical barriers to trade to spearhead implementation at the continental level, but, apart from a reference to “regional standardization, metrology, or accreditation bodies”, it makes no specific reference to the regional economic community bodies dealing with technical barriers to trade bodies. At the same, the Protocol on Trade in Goods to the Agreement will rely on the existing bodies for its implementation. The term “regional” in the Protocol refers to Africa-wide bodies such as the African Organisation for Standardisation and the African Electrotechnical Standardization Commission, and not to comparable bodies within the regional economic communities. This poor definition stands to limit the incorporation of such subregional bodies in the implementation of the Agreement Establishing the African Continental Free Trade Area. The SADC Protocol accords priority to institutional capacity at subregional level in the area of technical barriers to trade. Implementation under the African Continental Free Trade Area of annex IX to the SADC Protocol, concerning technical barriers to trade, draws on the practice of existing regional economic community institutions in that area.

From the foregoing, it is clear that there is an acquis on sanitary and phytosanitary measures and technical barriers to trade within the Southern African free trade areas, which may be leveraged for accelerated implementation of the Agreement Establishing the African Continental Free Trade Area. This acquis has been drawn

from WTO and adapted in the respective instruments of the regional economic communities where it has been further refined. It would furnish a strong foundation for implementation of the Agreement.

## F. Trade facilitation

Trade facilitation remains at the core of efforts to enable regional integration to achieve its intended objectives. Accordingly, the subject of trade facilitation is front and centre for both the regional economic communities and the African Continental Free Trade Area. The major trade facilitation measures put in place under COMESA are the monitoring and removal of non-tariff barriers; the harmonization of road transit charges and regulations; issuance of the COMESA carriers licence that allows commercial goods vehicles to be licensed with a single licence which is valid throughout the subregion; one-stop border posts; the subregional customs transit guarantee scheme; and the COMESA Yellow Card Scheme – a subregional third party commercial motor vehicle insurance scheme.

Like COMESA, SADC is also putting in place a subregional customs transit guarantee scheme, the regulations for which were approved by the Committee of Ministers of Trade in July 2021. The scheme is aimed at facilitating trade within and outside SADC through the issuance of a single guarantee for goods in transit in the subregion. The regulations are currently being piloted in the North-South Corridor covering Botswana, the Democratic Republic of the Congo, South Africa, Zambia and Zimbabwe. Both regional economic communities are taking strides towards full use of electronic certificates of origin.

The existence of the above trade facilitation schemes can be leveraged by the Agreement Establishing the African Continental Free Trade Area to propel its implementation within the regional eco-

nomie communities. By being integrated in the already functional trade facilitation schemes in SADC and COMESA, the African Continental Free Trade Area will have the potential to broaden the regional economic communities' trade with the rest of Africa, while at the same time consolidating their existing trade and investment achievements. This will also lead to policy coherence in facilitating trade within the regional economic communities and ultimately enhance the functioning of the regional economic communities, as measured on the barometer of the African Regional Integration Index.

It should also be noted that, in the Agreement Establishing the African Continental Free Trade Area, annex 4 to the Protocol on Trade in Goods deals with trade facilitation. In this respect, the Protocol essentially mirrors the WTO Agreement on Trade Facilitation, to which all the Southern African countries and regional economic communities already subscribe. Like the WTO Agreement, the Protocol also provides for the establishment of a sub-committee on trade facilitation, customs cooperation and transit at the level of the African Continental Free Trade Area, and for national committees on trade facilitation at the State party level. This coherence between the Area and the regional economic communities in trade facilitation policy and institutional measures is highly significant, as it demonstrates the complementarity underpinning the acquis of the Agreement Establishing the African Continental Free Trade Area. The two regional economic communities therefore remain to be assessed on their performance with regard to trading under the African Continental Free Trade Area regime, as they already have in place measures to ensure that this trading proceeds with fewer hindrances.

It is also worth noting that the same principles of trade facilitation obtain at the level of the regional economic commu-

nities and that of the African Continental Free Trade Area: simplifying and harmonizing international trade procedures and logistics to expedite the processes of import, export 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 the implementation of trade facilitation measures under the regimes of the regional economic communities and the African Continental Free Trade Area, as identified in table 6.

**Table 6**  
**Acquis of the trade facilitation instruments**

Trade facilitation instrument	COMESA	SADC	African Continental Free Trade Area
Simplified trade regime	Adopted 2004	Adopted in 2011	The Protocol on Women and Youth in Trade calls for a simplified trading regime to support women and youth in cross-border trade.
Harmonized road transit charges	The road transit charges system was introduced in 1991 and is currently being implemented by nine member States. Other related measures in place are the COMESA carrier's license (enabling commercial goods vehicles to be licensed with one licence recognized across all member States), and the harmonized axle loading and maximum vehicle dimensions.	The SADC Protocol on Transport, Communications and Meteorology was adopted in 1996, with the elimination of hindrances and impediments to movement of goods and services as one of its key objectives.	Under article 16 of the Protocol on Trade in Goods, States parties are required to take appropriate measures, including arrangements regarding transit in accordance with the provisions of annex 8 on transit.
One-stop border posts	Before 2009, there was no one-stop border post in the African continent. In 2009, Chirundu border post, between Zambia and Zimbabwe, was opened as a pilot one-stop border post within the COMESA subregion (African Union, 2018).	SADC, which comprises 16 member States, has included the creation and implementation of joint customs controls in its core mandate (African Union, 2018).	
Customs bond guarantee system	The COMESA subregional customs transit guarantee scheme is in place and is intended to facilitate the movement of goods under customs seals in the COMESA subregion and to provide the required customs security and guarantee in the transit countries.		
Third party motor vehicle insurance system	The COMESA Yellow Card, currently operational in 12 member States, is a motor vehicle insurance scheme that provides third party legal liability cover and compensation for medical expenses resulting from road traffic accidents caused by visiting motorists.	Under the Tripartite Free Trade Area, SADC has concluded a memorandum of understanding on the harmonization of compulsory third-party motor vehicle liability insurance schemes. This is also provided for under article 6 (8) of the SADC Protocol on Transport, Communication and Meteorology.	

Trade facilitation instrument	COMESA	SADC	African Continental Free Trade Area
Institutional arrangement	COMESA has supported the formation of National Non-Tariff Barriers 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 Non-Tariff Barriers.	SADC has in place a sub-regional Non-Tariff Barriers Unit, while all SADC member States have established national focal points in their respective ministries of trade to assist with the management of non-tariff barriers.	A subcommittee on trade facilitation and national committees has been up for the African Continental Free Trade Area, along with a non-tariff barriers monitoring and removal mechanism mirroring those already in place at the regional economic community level. Regional economic communities are assigned roles in the elimination of non-tariff barriers.

Source: Author's compilation.

## G. Non-tariff barriers

The SADC Trade Protocol provides for the elimination of non-tariff barriers, albeit with a proviso. As worded in the Protocol, the provision is a best endeavour obligation, with member States required to “refrain” from imposing any new non-tariff barriers. The principle that such barriers to intra-SADC trade should be eliminated is well accepted within the Protocol, however.

Under COMESA, the removal of non-tariff barriers remains a priority. To that end, in December 2014, the COMESA Council of Ministers adopted the body's non-tariff barriers regulations, which streamline the manner in which these barriers are resolved in the subregion and an online reporting mechanism has been created to capture and track the resolution of non-tariff barriers. In addition, national non-tariff barriers committees have been set up across the States members of COMESA and these committees report to a subregional committee on the elimination of non-tariff barriers.

Similarly, the African Continental Free Trade Area Protocol on Trade in Goods has provisions on the issue of non-tariff barriers. Under article 12, it provides that, “Except as may be provided for in this Protocol, the identification, categorization,

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 non-tariff barriers will be maintained – the same approach as that taken by SADC. Much like the provisions at the regional economic community level, annex 5 provides for institutional structures for the elimination of non-tariff barriers, the general categorization of such barriers in the African Continental Free Trade Area, reporting and monitoring tools, and the facilitation of the resolution of identified non-tariff barriers. Institutional structures for the elimination of non-tariff barriers identified in the annex include a non-tariff barriers subcommittee, national monitoring committees and national focal points. In addition, the annex spells out the roles of regional economic communities in the process of eliminating non-tariff barriers. An online platform for reporting and tracking such elimination has been created.

The Agreement Establishing the African Continental Free Trade Area, much like comparable instruments at the regional economic community level, provides for institutional structures, including a national focal point, a national monitoring committee and a coordination unit, for the elimination of non-tariff barriers. In addition, the Protocol provides for the general

categorization of non-tariff barriers, for reporting and monitoring tools, and for the facilitation of resolution of identified non-tariff barriers. The mechanisms envisaged for the identification and elimination of non-tariff barriers in the African Continental Free Trade Area mirror already existing mechanisms at regional economic community level and will be built on the basis of those mechanisms. Even where those mechanisms are in place, however, the persistence of non-tariff barriers has remained a major thorn in the side of the regional economic communities in Eastern and Southern Africa. In building upon the *acquis*, it is important to ensure for the African Continental Free Trade Area that the existing mechanisms are supported and enhanced with the resources (policy, human and financial) necessary for performance of their mandate to address non-tariff barriers.

## H. Trade in services

The regional economic communities and the Agreement Establishing the African Continental Free Trade Area all prioritize trade in services, with specific protocols covering the subject. The SADC Protocol on Trade in Services entered into force on 13 January 2022, following the submission, by Malawi, of its instrument of ratification in December 2021, reaching the threshold of ratifications by two thirds of SADC member States necessary for its entry into force. To date, 11 member States<sup>3</sup> have ratified the Protocol. With the entry into force of the Protocol, the lists of commitments covering the six priority sectors<sup>4</sup> and the Protocol's eight annexes<sup>5</sup> became enforceable as of 13 January 2022.

The SADC Protocol on Trade in Services provides for the denial of benefits to services and service suppliers of member States that have not yet ratified or acceded to the Protocol, meaning that even those member States that have negotiated their schedules of specific commitments but have not acceded to the Protocol will not be covered during the implementation phase. The second round will cover the remaining services sectors, in the following areas: business; distribution; education; environment; 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; 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 priority areas of the Agreement Establishing the African Continental Free Trade Area, conducive to its smoother implementation and thereby supporting the *acquis*. The SADC Protocol on Trade in Services responds to the urgent need to consolidate and build on achievements in the liberalization and regulatory harmonization of services 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 regional economic communities”. This approach will help anchor the African Continental Free Trade Area on its trade in services, in particular transport, travel and hospitality (Trade Law Centre, 2021).

For its part, COMESA prioritized and negotiated schedules of specific commitments in four priority sectors namely, communications, finance, tourism and transport. Schedules of Specific Commit-

<sup>3</sup> The following countries have not yet ratified the Protocol: Angola, Comoros, Democratic Republic of the Congo, Madagascar and United Republic of Tanzania.

<sup>4</sup> Communications, construction, energy, finance, tourism and transport

<sup>5</sup> Annexes on the following: settlement of disputes between the States parties, substantial business operations, movement of natural persons, interim arrangements relating to commitments on subsidies, financial services, telecommunication services, tourism services, and postal and courier services.

ments for 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 11 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.

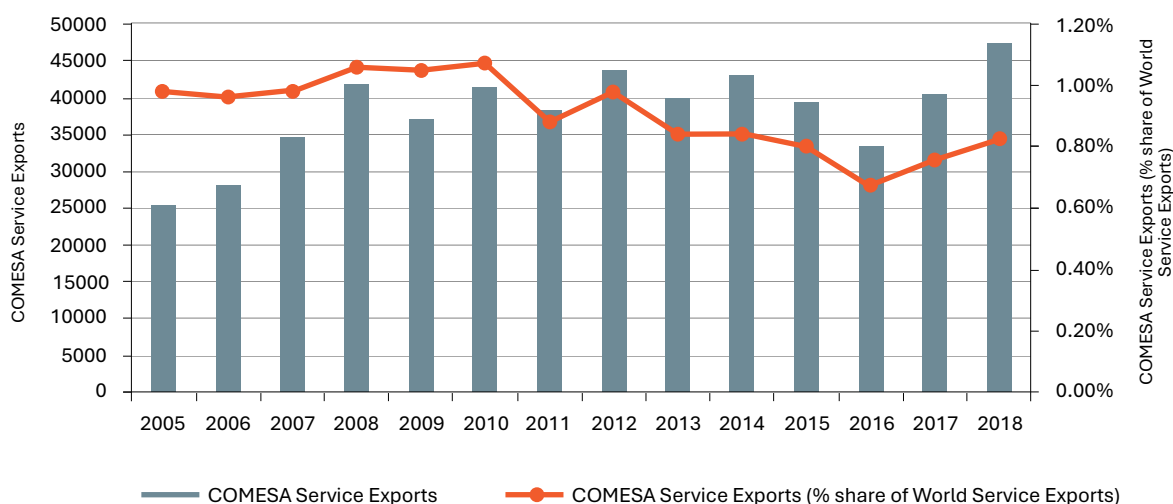
The second round of trade in services negotiations covering the three additional services sectors of business, construction and related engineering and energy-re-

lated services commenced in 2019 and is still in progress. In terms of specific commitments, most member States have liberalized the three modes of supply of the General Agreement on Trade in Services (GATS) in the four sectors.

In some sectors, however, a few member States have not liberalized cross-border services (mode 1) and commercial presence (mode 3) in certain subsectors under the four sectors. Currently, trade in services under COMESA is concentrated in transport, travel and other commercial services (COMESA, 2020).

**Figure VI**

**Exports of services from States members of the Common Market for Eastern and Southern Africa**  
(Millions of United States dollars)



Source: WTO, 2022.

As may be seen in figure VI above, the value of service exports has been on an upward trend since 2016, having slowed down between 2012 and 2015. This is likely to boost implementation of the Agreement Establishing the African Continental Free Trade Area, which makes provision for trading in services under the Protocol on Trade in Goods and Services.

Under the Agreement, trade in services negotiations have prioritized five sectors: business services, communication services, financial services, tourism services and transport services. As at April 2023, 42 States parties had submitted their schedules of commitments, 37 of which have already been verified by the African Continental Free Trade Area secretariat. An examination of the services areas covered

under SADC, COMESA and the African Continental Free Trade Area shows that there is convergence at a broad level, with some regional economic communities giving wider scope than the African Continental Free Trade Area. This wider scope will help to accelerate Area-wide trade in services by the regional economic communities and thus should be boosted.

To facilitate both the trade in goods and the trade in services, people must move. Protocols that facilitate movement of persons are therefore of utmost importance. Accordingly, both 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 trade in services sectors under the African Continental Free Trade Area were effectively cloned from the COMESA and SADC trade in services protocols, with the subsequent addition of business services. As a result of this approach, which is essentially building on the acquis of Southern Africa, the first countries to have submitted their services schedules under the African Continental Free Trade Area were actually from COMESA and SADC.

In SADC, the Protocol on the Facilitation of Movement of Persons, adopted in 2005, seeks to fulfil the objectives of the Treaty of the Southern African Development Community, 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 subregion generally among Member States.” The Protocol outlines short-term and long-term objectives that are based on three core elements, namely: visa-free entry for SADC nationals into all other SADC member States; right of establishment; and right to residence. To date, the Protocol has been ratified by five member States and is yet to enter into force.

Similarly, to facilitate immigration and the free movement of persons, COMESA has in place its Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements. The liberalization of the movement of persons is intended, in particular, to facilitate the movement of businesspersons within COMESA. The Protocol is premised on two key elements: a 90-day visa-free regime and a visa-on-arrival facility. The Agreement Establishing the African Continental Free Trade Area does not specifically address this issue through a protocol. Instead, aspects related to the free movement of businesspersons are handled under the trade in services provisions and by reference to other African Union instruments, in particular the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment. As a result, the Agreement does not cover the subject of free movement of persons in as comprehensive a manner as the regimes of the regional economic communities.

The commitments on trade in services entered into by States members of the regional economic communities are limited in scope – both at the level of WTO and within the regional economic communities themselves – but the scope of the commitments under the Agreement Establishing the African Continental Free Trade Area are much more extensive. Generally, most countries have opened up in tourism, but in the other services areas there is great variance. Where the acquis is concerned, it is difficult to make much progress for services because the sector is dealt with under domestic regulation, hence there is virtually no regional economic community acquis. Even where there has been mutual recognition between the communities, as, for example, for professional services, progress has been very slow. At the continental level, however – for example for lawyers – the problem arises of differ-

ent legal systems across the continent: French and English. The acquis for trade in services will be more difficult to attain for the purpose of accelerating implementation of the Agreement Establishing the African Continental Free Trade Area. This could be an area where the regional economic communities could work with the African Continental Free Trade Area to attain complementarity.

## I. Trade-related issues addressed by the regional economic communities

The key trade-related issues adopted by the regional economic communities are investment, competition, intellectual property rights and digital trade. While progress has already been made by the Southern African regional economic communities in those four areas, there are many differences between their respective laws and policies, as discussed in the present study, which need to be harmonized and rationalized.

### 1. Investment

Both COMESA and SADC have adopted policies on, and legal frameworks for, investment, but they differ significantly. COMESA has adopted a formal agreement establishing the subregion as a common investment area comparable to that established by the Association of Southeast Nations (ASEAN).

The SADC Protocol on Finance and Investment was adopted by the SADC Summit of Heads of State and Government in 2006. The Protocol seeks to foster harmonization of the financial and investment policies of the States parties. Its annex on investment

is aimed at the creation of a favourable climate for investment, while the regional investment policy framework furnishes SADC with a non-prescriptive vehicle necessary to attract sustainable investment and maximize the development benefits of such investment.

The SADC Investment Policy Framework of 2016 is aimed at providing an action-oriented and consensus-driven non-binding road map 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 subregion: first, a transparent and coherent investment environment; second, market access and competition; third, investment security and protection of investors' rights; fourth, responsible business and inclusive investment for development; and, fifth, promotion of subregional and international cooperation. The SADC Investment Policy Framework presents tables listing specific actions proposed under each area, for the purposes of prioritization exercises to be undertaken by member States.

An analysis of foreign direct investment inflows for selected SADC and COMESA countries indicates that there are significant variations by country; and, in some instances, even by year within the same country. For example, over the period 2020–2021, South Africa registered a spike in foreign direct investment inflows. Table 7 presents a summary of foreign direct investment inflows into selected Southern African countries for the period 2018–2022, while figure VII presents the same data in graphical form.

**Table 7**

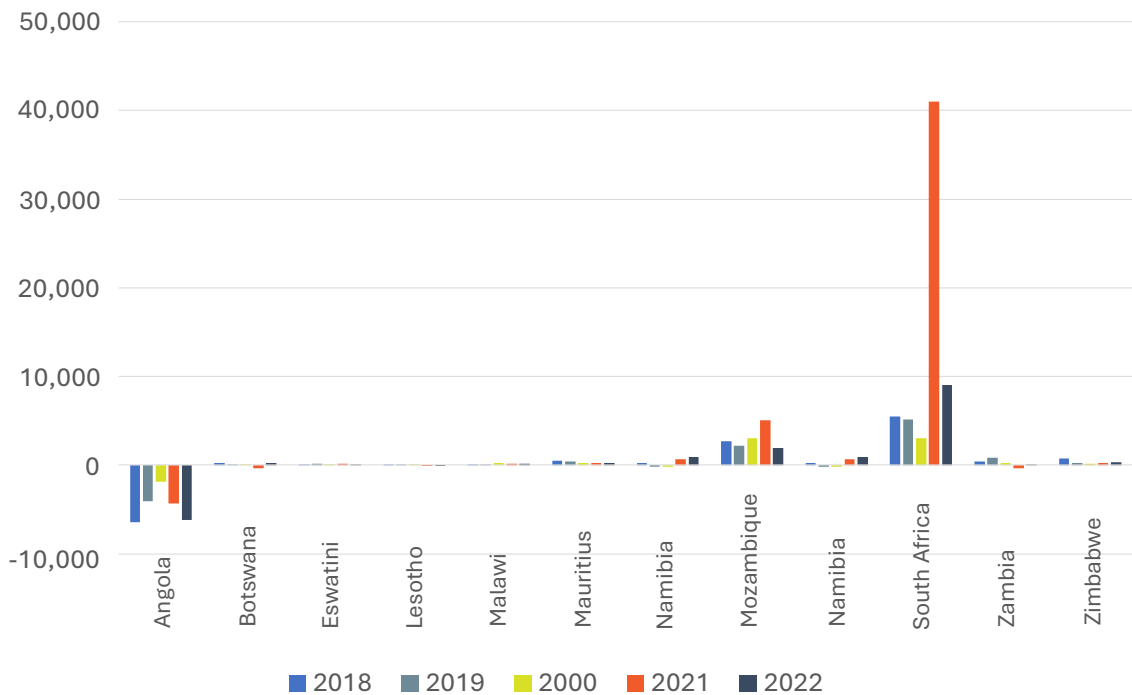
**Inflows of foreign direct investment into selected Southern African countries, 2018–2022**  
(Millions of United States dollars)

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

Source: UNCTAD, 2023a.

**Figure VII**

**Inflows of foreign direct investment into selected Southern African countries, 2018–2022**  
(millions of United States dollars)



Source: UNCTAD 2023.

Nevertheless, intra-SADC investment constitutes only a small share of the overall SADC investment inflows (African Development Bank, 2019). This proportion is likely to change, however, as African Continental Free Trade Area-related opportunities for cross-border investment expand, regional integration deepens and remaining barriers to trade are removed. The expansion in cross-border investment will also require a deepening of policy and the adoption of strategies and incentives for cross-border investment that are transformative, develop regional value chains and create jobs, in such areas as manufacturing.

Under COMESA, a common investment area has been created 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 subregion. Since its adoption in 2017, the COMESA common investment area has undergone a number of reviews, with a view to taking into consideration 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. The reviewed area is aligned with the draft pan-African investment code championed by the African Union (COMESA, 2020). This alignment is critical for the Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment (Investment Protocol), which, in turn, is informed by the Pan African Investment Code.

The Investment Protocol was adopted in 2023. It adopts legally binding commitments in such areas as investment facilitation and protection and investor obligations, to enhance rules-based investment governance and predictability on the continent. The Investment Protocol has four interrelated pillars – investment promotion and facilitation; investment protection; investors' obligations; and

other State commitments. It could form 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 pursuit of these goals, the Investment Protocol places obligations on States 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 States parties. An entire provision of the Investment Protocol (article 26) is devoted to the promotion and facilitation of investment that contributes to efforts to combat climate change.

Lastly, the Investment Protocol also contains the ingredients of a dispute resolution mechanism pursuant to which disputes between States parties, including cases of diplomatic protection under international law, shall be subject to the standard rules of the Protocol on Rules and Procedures on the Settlement of Disputes to the Agreement Establishing the African Continental Free Trade Area (article 44), while the thorny question of investor-State arbitration was left to a future agreement that was to be negotiated over the 12 months following adoption of the Investment Protocol.

There is a risk that the COMESA common investment area and the proposed SADC policy on investment may become redundant after such a long period of non-implementation by the majority of member States, and thus may not provide a soft-landing zone for the implementation of the Investment Protocol. Nevertheless, member States in the Southern Africa

regional economic communities may look to the Investment Protocol to encourage investment opportunities, in particular since it includes provisions on sustainable development absent from their own legal texts. Moreover, article 49 (3) stipulates the responsibility of regional economic communities to revise their investment laws within 5–10 years of the entry into force of the Investment Protocol, to ensure their alignment.

## 2. Intellectual property rights

It has always been argued that the protection of intellectual property rights facilitates bilateral trade. The strong protection of intellectual property rights is conducive to domestic innovation, while weak protection of such rights encourages imitation-led innovation. Intellectual property rights-driven innovation enhances the competitiveness of domestic firms and stimulates production activities, the use of new cost-saving production techniques and new product designs that, in turn, ultimately motivate trade. At COMESA, it is therefore recommended that policies be adopted to raise low levels of intellectual property rights protection in the COMESA subregion. Member States are encouraged to strengthen the components of intellectual property rights, such as their legal and political environment, and also physical property rights (COMESA, 2021).

Intellectual property rights are private rights and subject to the principle of territoriality, which means that national laws regulate the conditions for their acquisition, maintenance and enforcement, that intellectual property rights granted or protected by a State are independent of those granted or protected by other States, and that the rights conferred under each State's intellectual property law are limited to the territory of that State (United Nations, 2022).

The Tripartite Free Trade Area Agreement also provides for the future negotiation of a protocol on intellectual property rights. Intellectual property is widely regarded as a technical area that, to date, has received little attention in the regional integration agendas of the States parties to the Tripartite Free Trade Area Agreement, in spite of the fact that the world is generally seen to be moving from an industrial to a knowledge-based economy of which intellectual property is a critical component. A Tripartite Free Trade Area intellectual property agreement would primarily be an internal intra-African initiative, in that it would serve as a binding statement of the signatory countries' position on intellectual property matters. It would also serve as an important external guide for those countries when they negotiate and implement the Agreement Establishing the African Continental Free Trade Area. To ensure that it effectively complements the Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights, any intellectual property agreement adopted for the Tripartite Free Trade Area 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.

At a global level between States, international intellectual property treaties and trade agreements cover a range of intellectual property rights at varying degrees of detail and comprehensiveness. Accordingly, the treaty obligations to which the contracting parties must adhere vary to a similar extent (United Nations, 2022). The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights negotiated during the 1986–1994 Uruguay round of multilateral trade negotiations is the most comprehensive multilateral agreement on intellectual property and plays a central role in facilitating trade in knowledge and

creativity, in resolving trade disputes over intellectual property, and in providing WTO members with the latitude to achieve their domestic policy objectives (WTO, 2023).

As a legal recognition of the significance of links between intellectual property and trade and the need for a balanced intellectual property system, the Agreement on Trade-Related Aspects of Intellectual Property Rights frames the intellectual property system in terms of innovation, technology transfer and public welfare. Specifically, it covers five broad areas, namely: how general provisions and basic principles of the multilateral trading system apply to international intellectual property; what minimum standards for the protection of intellectual property rights should be provided by members; which procedures members should provide for the enforcement of those rights in their own territories; how disputes on intellectual property between WTO members should be settled; what special transitional arrangements are available for the implementation of provisions on the trade-related aspects of intellectual property rights (Mutai, 2016).

The Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights affords the States parties an opportunity to prioritize areas of comparative advantage for African countries in an international intellectual property instrument. Furthermore, it may be used to promote intellectual property rules and standards that are calibrated to the continent's level of industrialization and in line with the objectives of the African Continental Free Trade Area.

The Protocol aims to support realization of those objectives by establishing harmonized rules and principles on the promotion, protection and enforcement of intellectual property rights. To that end, it covers a comprehensive array of such rights, 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 folklore, and genetic resources. The Protocol espouses the notion of the preservation of the acquis at national, subregional and multilateral levels by providing a framework compatible with prior international intellectual property treaties.

A prominent feature of the Protocol is its development-oriented and pan-African approach, aiming to strike an appropriate balance between intellectual property protection, the advancement of public welfare and the promotion of African interests. Moreover, the Protocol places strong emphasis on technical assistance, multi-layered cooperation and capacity-building in the administration and enforcement of intellectual property rights, adopting a forward-looking perspective on emerging technologies and paying special attention to the needs and interests of micro-, small and medium-sized enterprises, and also those of women and young entrepreneurs.

Implementation of this Protocol will streamline and strengthen processes and mechanisms for the protection and enforcement of intellectual property rights across the continent. It has enormous potential to stimulate innovation, by 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 Agreement Establishing the African Continental Free Trade Area.

Notwithstanding its significance, the adopted Protocol only provides a framework agreement, with several issues, obligations and modalities for the protection and enforcement of the intellectual property

rights which it covers to be further negotiated and adopted by States parties. Clarity and guidance will be required, in particular regarding the role and mandate of the Intellectual Property Office of the African Continental Free Trade Area (article 31), especially in terms of its linkages with, and implications for, the existing regional intellectual property organizations – the

African Intellectual Property Organization and the African Regional Intellectual Property Organization.

At subregional levels, four of the eight regional economic communities in Africa – COMESA, EAC, ECOWAS and SADC – have developed intellectual property instruments, as shown in table 8.

**Table 8**  
**Policies and laws on intellectual property rights**

Name	Description
SADC subregional framework and guidelines on intellectual property rights (2018)	The framework and guidelines aim to foster cooperation on intellectual property issues within the context of industrialization and trade and by addressing the socioeconomic development and competitiveness of the SADC subregion and its transition to innovation-driven knowledge economies. Both instruments were approved by the SADC Council of Ministers at its meeting in August 2018 in Namibia (SADC, 2019).
SADC Protocol for the Protection of New Varieties of Plants (Plant Breeders' Rights)	Endorsed by the SADC Council of Ministers in 2014, the Protocol for the Protection of New Varieties of Plants (Plant Breeders' Rights) is yet to be fully ratified to enter into force (Ncube, 2021).
COMESA policy on intellectual property rights and cultural industries (2011)	The policy acknowledges that, in a knowledge-based and innovation-driven economy, intellectual property has become a major tool or catalyst in economic growth and national development, and in wealth creation for individuals, companies, countries and subregional groupings (COMESA, 2013).
EAC regional intellectual property policy on the utilization of public health-related WTO trade-related aspects of intellectual property rights flexibilities <sup>a</sup>	Overall, the EAC policy on trade-related aspects of intellectual property rights flexibilities aggregates 10 flexible trade-related aspects of intellectual property rights and obligations which partner States could view through an access-to-medicines lens (obligations which were subsequently enacted into a draft EAC protocol on trade-related aspects of intellectual property rights 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 subregion, with the expected long-term benefit of an enhanced subregional capacity for pharmaceutical production.

<sup>a</sup>EAC is still developing a comprehensive policy on intellectual property rights.

Source: author's compilation.

Apart from those under the regional economic communities, there are two organizations in Africa specializing in intellectual property rights, the African Regional Intellectual Property Organization and the African Intellectual Property Organization. The African Regional Intellectual Property

Organization aims to promote, develop and harmonize intellectual property laws and policies among its 21 member States,<sup>6</sup> in such a manner that each State retains its respective national intellectual property instruments and institutions. Members may choose to become parties to different

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

protocols on various forms of intellectual property rights, namely, patents, utility models, trademarks, industrial designs, traditional knowledge and folklore, and the new varieties of plant, copyright and related rights (Ncube, 2021).

By contrast, with its 17 member States,<sup>7</sup> the African Intellectual Property Organization has a unitary system with uniform legislation, a common office and centralized procedures, which grant intellectual property rights over its entire territory. The Organization operates under the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization, Constituting a Revision of the Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property of 1977, which encompasses patents, utility models, trade and service marks, industrial designs, trade names, geographical indications, literary and artistic property, unfair competition, layout designs, integrated circuits and plant varieties, fully in line with the International Convention for the Protection of New Varieties of Plants. The Organization serves as the intellectual property office common to its 17 member States, and registers trademarks which are valid in all member countries. It manages patent applications on behalf of its member States, granting patents valid in all 17 States. In contrast to the African Regional Intellectual Property Organization, the national intellectual property offices of the member States of the African Intellectual Property Organization perform no patent registration functions. Both the African Regional Intellectual Property Organization and the African Intellectual Property Organization should be strengthened to implement the Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights so as to address the issue of counterfeiting and to promote innovation and creativity, in particular among young people.

### 3. Competition

While some SADC member States have enacted their own laws on competition and consumer protection, others have 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 subregion, SADC signed a declaration on subregional cooperation in competition and consumer policies in September 2009. The declaration sets out a cooperation framework on competition policy for the SADC Free Trade Area that helps in streamlining international trade and supporting 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 to ensure appropriate national judicial review. Furthermore, in order to facilitate effective cooperation, in 2009, as provided for in the SADC Declaration on Regional Cooperation in Competition and Consumer Policies, the SADC secretariat established a standing committee on competition and consumer policy and law, as a forum that fostered cooperation and dialogue among competition authorities aimed at encouraging the convergence of laws, analysis and common understanding.

Fair competition among businesses is a cornerstone of free trade and is vital to the economic development of a subregion, playing an important role in promoting growth, efficiency and the alleviation of poverty. Only COMESA has established a functioning competition law and competition commission, however. The enforcement activities conducted by the COMESA Commission contribute to the regional integration agenda by ensuring that trade between member States is not frustrated

<sup>7</sup> Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal and Togo.

by anti-competitive and unfair business practices conducted by firms operating in the Common Market. The Tripartite Free Trade Area Agreement provides for member and partner States to cooperate on competition policy. Member and partner States of COMESA, EAC and SADC concluded negotiations on a protocol on competition policy in March 2022.

The resulting draft 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 and partner States and regional economic communities. It also guides member and partner States and regional economic communities on the competition and consumer protection provisions that they should have at national and regional economic community level and advises them how to set up enforcement institutions.

The policy enshrined in the adopted African Continental Free Trade Area Protocol on Competition Policy 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 African Continental Free Trade Area market. Competition is necessary to ensure the proper functioning of the market economies. It promotes efficiency and healthy competition among businesses. The effective enforcement of competition and consumer protection laws enhances the protection of consumer rights and fosters the active participation of consumers in the market.

The Protocol on Competition Policy includes definitions of such key notions as “anti-competitive business practices”, describing practices that are to be considered incompatible with the proper functioning of the market. Provisions on these practices include decisions on mergers and acquisitions and the prohibition of certain horizon-

tal and vertical anti-competitive business practices or related practices that cause market distortion. Other provisions include the establishment of an African Continental Free Trade Area 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 mergers (Elitcha, Joerensen and Teklewold, 2023).

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 enforcement of existing laws. As the Agreement Establishing the African Continental Free Trade Area effectively eliminates tariffs and non-tariff barriers between its States parties, new opportunities are created for competition across a wider continental market. The Protocol on Competition Policy will play a key role in the effort to ensure healthy competition on the continent, accelerate the reduction of consumer prices and improve business practices conducive to the socioeconomic transformation of Africa (Elitcha, Joerensen and Teklewold, 2023). The provisions of the Protocol cater for fair competition, promoting innovation and the 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 the framework of the Agreement Establishing the African Continental Free Trade Area.

The next steps to be taken in giving effect to the Protocol on Competition Policy are built into the Agreement. The Protocol establishes the Area’s Competition Tribunal as an autonomous body deciding on appeals against the decisions of the Competition Authority. The rules governing the function-

ing of the Tribunal are to be determined by the Council of Ministers (Elitcha, Joerensen and Teklewold, 2023). Under the competition policy, it has been agreed at Area level to preserve the jurisdiction of the competition authorities of the various regional economic communities. The major issue of concern is that the Protocol on Competition Policy does not include the field of consumer protection. Initially, the COMESA competition regime also had no provisions on consumer protection, after some

countries such as Egypt had resisted its inclusion. Aspects of consumer protection were added to the regime later on, however, and the African Continental Free Trade Area regime could take the same approach.

The similarities and differences between the African Continental Free Trade Area competition policy and law and those of the regional economic communities is highlighted in table 9 below.

**Table 9**  
**Competition policies and laws of regional economic communities and the African Continental Free Trade Area**

COMESA law or policy	SADC law or policy	African Continental Free Trade Area law or policy	Comment
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 on Competition Policy (2023).	Both frameworks provide modalities for ensuring fair competition and addressing anti-competitive practices.
COMESA competition policy in place <sup>a</sup>	Article 25 of the SADC Protocol on Trade	Establishes investigative body and board.	The COMESA Agency is the only active subregional agency in Africa in this area – it will take a long time before an institution is in place for the African Continental Free Trade Area and it will need to learn from the 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.  (Protocol on Trade)	Jurisdiction: anti-competitive issues arising from trade practices under the Agreement Establishing the African Continental Free Trade Area.	The jurisdiction of the African Continental Free Trade Area Protocol is subject to interpretation in the event of conflict with any subregional agreement (article 19 of the Agreement Establishing the African Continental Free Trade Area).  Article 20 of the Protocol stipulates, however, that the competition authorities of the regional economic communities shall maintain their jurisdiction in their subregions.

COMESA law or policy	SADC law or policy	African Continental Free Trade Area law or policy	Comment
New guidelines on market definition, restrictive business practices and abuse of dominance, designed to clarify interpretation of the COMESA competition regulations and rules of 2013, and also predictability	SADC declaration on regional cooperation in competition and consumer policies signed in September 2009, to prohibit unfair business practices and promote competition and cooperation in the subregion. <sup>b</sup>		

<sup>a</sup>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 Commission implements its mandate by regularly engaging and cooperating with the Member States through sensitization and advocacy programmes.

<sup>b</sup>The declaration sets out a cooperation framework on competition policy for the SADC Free Trade Area that helps to streamline international trade and support economic growth.

Source: author's compilation.

## J. Digital trade protocol

### 1. Background

In February 2020, through the influence of the AfroChampions initiative, a set of innovative public-private partnerships and major corporations in Africa, the African Union Assembly took a decision on digital trade within the African Continental Free Trade Area. The AfroChampions demanded expedited negotiations and implementation of a digital trade protocol to the Agreement Establishing the African Continental Free Trade Area in the wake of the COVID-19 pandemic, which had brought about a rise in e-commerce. Subsequently, the African Union revised its earlier position that the digital trade protocol should be negotiated during the third phase of the African Continental Free Trade Area negotiations, agreeing that they should be moved forward to the second phase, and, in July 2023, negotiations for the protocol were finalized. The protocol is now awaiting legal vetting, whereupon it will pass through the various stages of national ratification by States parties to the Agreement Establishing the African Continental Free Trade Area.

The negotiations on a digital trade protocol are taking place in a context where the global digital economy is evolving at breakneck speed, driven by a range of policies, infrastructure and different capabilities, and where Africa is playing catch-up on all fronts. Four categories are being addressed in the digital trade protocol:

- a. Market access: This category is concerned with regulating possible challenges to digital trade operations, such as customs duties, valuation and pricing, cross-border flows and digital products;
- b. Rules and regulations: This category is aimed at ensuring legal convergences that have an impact on digital trade, such as consumer protection, data protection, intellectual property rights, competition policy and tax-related issues;
- c. Digital trade facilitation: This category covers measures that seek to use digitization to facilitate trade, in such areas as transparency, digital identity, cybersecurity, e-signatures, e-authentication, e-contracts and paperless trading;

- d. Enabling issues: This category includes provisions that safeguard the structural foundations of a digital economy, such as technology infrastructure, networks, Internet access and related issues of affordability and quality.

One of the key concerns raised by the digital trade protocol to the Agreement relates to the governance of cross-border data flows. With data considered the oil of the digital economy (Singh, 2020), in the discourse on the governance of its cross-border flow economic and political concerns have been raised about the concentration of data, data sovereignty, privacy, law enforcement and national security. In the current context of data governance, countries are reflecting on the degree to which data flow is restricted, the types and modalities of such restrictions and the impact that these have on the costs of digital trade. A comparison between the digital trade protocol to the Agreement and the various national data regimes of the States parties reveals divergent approaches to the governance of cross-border data flow. The protocol provides for no prohibition or restriction of the cross-border transfer of data by electronic means (except for security reasons) if the activity is for the conduct of the business of a person of the State party. By contrast, the different data governance policies of States parties revolve around one of three modalities:

- a. Free cross-border data flow, since any restriction creates unnecessary costs for businesses and the economy while also limiting the freedom of expression of people online. Moreover, not all countries have the necessary technological capacity or infrastructure, such as data centres, to meet the localization demands mandated by their privacy laws;
- b. Regulated cross-border data flow to protect important policy objectives, such as privacy and security, and to ensure that gainful participation in digital trade relies on data governance;

- c. Restricted cross-border data flows, such as data localization provisions, requiring firms to retrieve, store, process, or more generally make any commercial use of data within a certain jurisdiction.

The above-mentioned incoherence in the handling of the cross-border flow of data shows that States parties to the Agreement have to strike a balance between regulation and prohibition of free cross-border data flows. Without such a balance between the differing modalities, the current provisions of the protocol risk undermining the capacity of the less digitally advanced African countries to build their domestic digital industry and local data centre markets.

Another key aspect of the digital protocol relates to the location of computing facilities. In a bid to circumvent this widely imposed requirement, with the exception of the need to achieve a legitimate public policy objective or protect essential security interests, the digital trade protocol prohibits a State from requiring a person of a State party to use or locate computing facilities on the territory of that State party as a condition for conducting business on that territory. While this provision may facilitate unhindered digital trade, it risks leading to inequalities in jobs, taxation rights, technology and skills transfer and data infrastructure development in countries which lack such computing facilities (De Feydeau, Menski and Perry, 2022). The provision may also be limited to achieving the protocol's objective of supporting data innovation by collaborating on data-sharing projects and facilitating the sharing of information, knowledge and technology, research and industry practices related to data innovation.

Shortcomings of the digital trade protocol to the Agreement may also be seen in the contradiction between the provision on micro-, small and medium-sized enterprises and that on the non-discrimination of digital products. Under the provision on micro-, small and medium-sized enterprises, States parties undertake to promote and facilitate

the meaningful participation of such enterprises in digital trade by supporting the development of start-ups, providing financial support, and granting preferential treatment to those enterprises in digital trade. A comparison with the provision on non-discrimination of digital products, pursuant to which States parties shall not accord less favourable treatment to digital products from one country, whether created, produced, published, transmitted, or contracted for by that country, than to those from another country, reveals contradictions given that helping micro-, small and medium-sized enterprises to be competitive may require certain safeguard mechanisms which may exempt some sensitive digital products and services from the competition.

Measures to address anti-competitive practices represent another gap in the digital trade protocol. While the protocol advocates a liberal digital trade regime, which it believes is critical to attainment of the aspirations of the African Continental Free Trade Area, it seems oblivious to the need for new ways of thinking about competition policy in Africa. The lack of measures to address anti-competitive practices, coupled with the captivity of data by digital trade monopolies in Africa, may not only create a skewed and exclusionary marketplace but also represent a huge opportunity cost in terms of the unrealized public and social value of data.

#### 4. Recommendations

An analysis of Africa's digital trade policy and system shows that the continent needs to play catch-up in order to become a competitive player in the digital economy. The analysis of the digital trade protocol to the Agreement Establishing the African Continental Free Trade Area further reveals that in order to catch up, Africa will have to run while other continents like North America, Europe and Asia keep to a walk, given their domination of digital trade. As already noted, however, the digital trade protocol still has a number of gaps and contradictions which need to be addressed if it is to create a transformative

digital trade system on the continent. To this end, the following measures should therefore be considered:

##### 1. Adoption of policies that encourage innovation in the digital space:

It is key to note that what some countries see as protectionist, others may view as necessary to safeguard certain domestic policy interests. While the digital trade protocol takes a liberal stance, it does not provide the necessary safeguards to ensure the growth of the least digitalized economies, growth that is important in order to ensure equality in the use of the opportunities arising from digitalization (Yawson, Banga and Floyd, 2022). Accordingly, if Africa is to avoid becoming a pawn of digital geopolitics, it will have to enact policies and regulatory frameworks that enable it to step up technological innovation and respond to challenges, while shaping the global discourse on the governance of the digital economy.

##### 2. Creation of a safe and reliable Afro-centric digital payment infrastructure:

Digital payments remain a perennial challenge for businesses wishing to target digital trade consumers in African markets (UNCTAD, 2019a). The digital trade protocol should put in place provisions that provide a mechanism for the establishment of a safe and reliable digital payment infrastructure that incorporates cashless transactions and the prevailing mode of e-commerce payment in Africa, namely, cash on delivery. This need should be considered during development of the proposed annex on cross-border digital payments.

##### 3. Harmonize the relationship between the digital trade protocol and the competition policy protocol:

The digital economy will produce winners and losers on a scale never before imagined. The disciplines currently

identified in the digital trade protocol would more likely benefit countries with developed digital market systems and firms that already penetrate the digital retail space. This may widen inequalities among the digital trade stakeholders. To avert this undesirable consequence, African countries need to update their respective national and subregional competition policies and legal frameworks in order to tackle **anti-competitive practices in digital trade on the continent.**

**4. Balance between local and foreign digital trade platforms:** Having locally owned digital trade platforms will play a crucial role in harnessing the potential of digital trade for the benefit of African economies and societies. This is because locally founded digital trade platforms can foster economic development, empower local businesses, increase market reach, promote digital inclusion, preserve cultural heritage and ensure data sovereignty (ITC, 2020). Accordingly, implementation of the protocol should include the adoption of measures to support the development and competitiveness of local digital trade platforms. With regard to large and foreign-owned digital trade platforms, measures should be taken to ensure increased prioritization of the listing of local products and services.

**5. Updating of labour laws to promote the rights of platform and gig workers:** While the digital economy is not creating new work, it has led to work in the traditional economy being conducted or mediated with the use of technology (Shaw and others, 2019). In order for Africa to be relevant in the digital economy, the updating of labour laws by African countries is crucial for protecting workers' rights, fostering economic growth, attracting investment, bridging the digital divide and positioning African countries competitively in

the global market. It will also enable the continent to embrace the opportunities and address the challenges presented by the digital revolution while ensuring a fair and inclusive digital future for all.

## K. Regional economic communities, the African Continental Free Trade Area and inclusivity

The debate on inclusivity in trade development has been gaining momentum in recent years. As a result of this debate programmes such as the simplified trade regime, specifically targeting small-scale cross-border traders and women and young people, have been developed in COMESA and SADC. With regard to regional integration and inclusivity, besides the simplified trade regime, the COMESA has put in place the COMESA Federation of Women in Business, whose objective is to promote programmes that integrate women into trade and development activities in Eastern and Southern Africa. A specific protocol to the Agreement Establishing the African Continental Free Trade Area on women and youth in trade is being negotiated, with the main purpose of integrating women and youth supply chain stakeholders in trade. This represents a step towards the convergence of views on the inclusivity of trade (by integrating small and informal supply stakeholders) at the levels of both the regional economic communities and the African Continental Free Trade Area.

## L. Institutional arrangements

### 1. Governing and technical institutions

The institutional arrangements for implementation of the integration agenda under the regional economic communities and the African Continental Free Trade Area basically follow the same path. They flow from technical committees or subcommittees or expert committees 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 has responsibility for both the policy and legislative aspects of integration in the regional economic communities and the African Continental Free Trade Area.

Within SADC, however, steps are being taken to have the SADC Parliament play a more prominent role, as is the case with the East African Legislative Assembly, for example. The SADC annual report for the period 2021–2022 notes that the draft agreement amending the SADC Treaty to recognize the SADC Parliament was approved by Council in March 2022 and recommended for adoption and signature by the SADC Summit of Heads and State and Government.

The African Continental Free Trade Area Negotiation Forum accorded the mandate to spearhead negotiations to the member States rather than to the regional economic communities on behalf of their members. The rules, however, indicate that the regional economic communities can participate in the negotiations and provide guidance on behalf of their members. This might have been necessitated by the varied degrees of progress achieved by the regional economic communities in consolidating their free trade areas (Onyango, 2020). Some of the communities have expressed concern about the problem that this creates for them, since they are not able to effectively participate in the African Continental Free Trade Area negotiations as members.<sup>8</sup>

## 2. Dispute settlement

COMESA has in a place the COMESA Court of Justice and most of its trade instruments incorporate dispute settlement mechanisms. SADC also has its Tribunal, which, however, has been inoperative for a long period following controversial rulings on compensation to investors by a member State (Erasmus, 2022). The SADC Protocol on Trade also includes a dispute resolution mechanism in its article 32, failing which the parties may resort to the Tribunal.

Where the African Continental Free Trade Area is concerned, the Agreement has an elaborate Protocol on Rules and Procedures for the Settlement of Disputes (largely similar to the WTO dispute settlement system). This is much more detailed than any mechanism available at the regional economic community level. The Protocol sets out a two-tier system for the consideration of disputes within the context of the African Continental Free Trade Area, along with sanctions for any breach. It also provides for a dispute settlement mechanism, in the form of both a dispute settlement panel and appellate bodies. Non-tariff barriers 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 Dispute Settlement Body”.

<sup>8</sup> Interview with Chris Onyango, Director of Trade and Customs, COMESA.



Implementation of the  
acquis at national level  
by Southern African  
free trade areas in  
consonance with the  
African Continental Free  
Trade Area regime



## Implementation of the acquis at national level by Southern African free trade areas in consonance with the African Continental Free Trade Area regime

Five countries in the Southern African subregion have been assessed in respect of the opportunities arising from implementation of the Agreement Establishing the African Continental Free Trade Area, based on the acquis of the regional economic communities to which they belong. 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 has the most complex situation. Eswatini and Namibia belong to SADC but are also part of SACU, which is a subset of SADC. Malawi and Mauritius belong to two communities, namely COMESA and SADC, and thus, where assessment of their performance is concerned, offer a more harmonized approach to the adoption of intraregional trade facilitation measures which can be leveraged by the African Continental Free Trade Area. With regard to the acquis of the regional economic communities and how this is interrelated with the African Continental Free Trade Area, it may be more significant that the States that belong to both COMESA and SADC are in a better position owing to the efforts made under the Tripartite Free Trade Area to harmonize their trade regimes, since there are some differences between the rules of origin under the Tripartite Free Trade Area and those of the two regional economic communities and the African Continental Free Trade Area.

### A. Case of Eswatini

As a member State of SACU, SADC and COMESA, Eswatini enjoys a range of economic benefits from its multiple memberships. As a member of SACU, it benefits from duty-free access to one of the continent's largest economies – South Africa – and also receives a significant share of the SACU common revenue pool that accounts for over 60 per cent of its total government revenue and 17 per cent of its GDP (Nikki, Paulina and Kirk, 2008). In return, according to the Swazi authorities, some 70 per cent of the country's exports are destined for South Africa, as one of the SACU members. Eswatini is highly integrated in all the regional economic communities, in particular SADC. In the context of COMESA, Eswatini trades under the derogation provisions. As integration efforts begin to deepen within both economic groupings, and more especially under the Agreement Establishing the African Continental Free Trade Area, Eswatini will need to continue assessing its trade policy to establish how best to optimize benefits from regional integration that promote economic growth and long-term development in the context of the ongoing development of the country's strategy and action plan for the implementation of the Agreement Establishing the African Continental Free Trade Area.

Field findings from Eswatini demonstrate that the country has had to play a delicate balancing act in order to ensure that many of its exporters retained the market that they had under the *acquis* of the regional economic communities. Eswatini was already a member of the Preferential Trade Area for Eastern and Southern Africa, which was brought into existence by a treaty signed in 1981. A protocol to the treaty provided a special status for Eswatini (then Swaziland), Lesotho and Namibia, in recognition of their membership of SACU. Namibia gained independence in 1990 and immediately started enjoying the same benefits from reciprocating the trade preferences as had the other two countries.

The Treaty for the establishment of the Preferential Trade Area for Eastern and Southern African States 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 Preferential Trade Area Treaty. Field interviews in Eswatini further indicated that, since COMESA had continued to extend derogations to Eswatini companies exporting into COMESA, Eswatini chose to remain in COMESA to preserve the *acquis* that it had been granted. Following the adoption of the EAC-COMESA-SADC Tripartite Free Trade Area, Eswatini expected that the Tripartite Free Trade Area would enable all SACU members to harmonise the trade liberalisation opportunities arising from the different groupings, based on their existing *acquis* within those groups.

As part of SACU, Eswatini has now submitted its tariff offer for the African Continental Free Trade Area, in respect only of category A goods, which constitute 90 per cent of the country's trade. SACU is now preparing to submit the category B and category C tariff offers, for sensitive goods constituting 7 per cent, and for exclusion

goods constituting 3 per cent of its trade. SACU has also embarked on a more comprehensive assessment of the tariff headings, before submitting the remaining sensitive and exclusion goods under the African Continental Free Trade Area. Consequently, through SACU, Eswatini has achieved some progress in implementing the Protocol on Trade in Goods to the Agreement Establishing the African Continental Free Trade Area through its tariff offers. Eswatini has also made progress under the Protocol on Trade in Services, following its submission of the schedules of specific commitments for trade in services.

SACU differs, however, from the other Southern African regional economic communities, in that, as it is a customs union with a common external tariff, no country can negotiate with third parties without the concurrence of the other countries, and the common external tariff provides the *acquis* on which engagement with third parties is based. Where the tariff offer is concerned, all the concerns of the five countries had to be taken into account in order to arrive at the final offer under the Agreement Establishing the African Continental Free Trade Area. Different views have been taken, however, on the rules of origin to push for under the Agreement, 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 as to whether to push for changes in the tariff headings, or to devise elaborate process-based rules relating to sugar and sugar confectionary, automobiles, and textiles and clothing.

In the interviews, the respondents argued that one key feature distinguishing the SACU trade regime from that of COMESA, SADC and the African Continental Free Trade Area is the Union's lack of rules of origin, such as those found in COMESA and SADC. Eswatini therefore hopes that

the rules of origin of the African Continental Free Trade Area will to be aligned with those under COMESA and SADC as there is expectation that the African Continental Free Trade Area can eventually be a customs union. Accordingly, Eswatini sees the African Continental Free Trade Area as providing an opportunity for it to leverage its membership of the Tripartite Free Trade Area and of SACU.

In the meantime, Eswatini and the other SACU members have asked the SACU secretariat to undertake a comprehensive study that will inform them of the implications of the SACU tariff offer to the African Continental Free Trade Area.

Another key issue for Eswatini to consider with regard to the *acquis* of the regional economic communities and implementation of the Agreement Establishing the African Continental Free Trade Area is trade in services. While respondents favour the approach taken with the African Continental Free Trade Area, where commitments are being accompanied by regulatory annexes, they are concerned that, unlike under SADC, no annexes have as yet been concluded in the African Continental Free Trade Area regime. This is in addition to the fact that SADC is negotiating businesses services in seven sectors, just as COMESA is doing. Furthermore, while discussions are ongoing under the African Continental Free Trade Area on the guided trade initiative on services, negotiations have not yet been concluded on the annex to the Agreement on regulatory frameworks. This means that there is still no clear idea of how the proposed guided trade initiative on services will work, without certain relevant regulatory frameworks on such areas as the prudential carve-out for financial services. This, therefore, creates an opportunity for measures to be put in place under the African Continental Free Trade Area to ensure a harmonized approach to implementation of the guided trade initiative on services.

## B. Case of Malawi

Malawi has been active in the regional economic communities as a founder member of the Preferential Trade Area for Eastern and Southern Africa in 1982 and subsequently of COMESA in 1993 and SADC from its inception. Malawi joined the COMESA Free Trade Area, which was launched in 2000 (ITA, 2023). Under the COMESA Treaty, all goods may be traded under preferential treatment if they satisfy the prescribed rules of origin. In principle, the SADC Free Trade Area took effect in January 2008, but Malawi, Mozambique, the United Republic of Tanzania and Zambia are still implementing their scheduled tariff phase-down. The delay by Malawi in implementation of its tariff phase-down under SADC is of particular note, since it might be seen as a red flag against the *acquis* when it comes to implementation of the Agreement Establishing the African Continental Free Trade Area.

At the subregional level, Malawi is also participating in the COMESA-SADC-EAC Tripartite Free Trade Area negotiations, while at the continental level, Malawi signed the Agreement Establishing the African Continental Free Trade Area and deposited its instrument of ratification with the African Union in January 2021. Despite the country's membership of these organizations, intraregional trade has not been a strong component of its exports.

In terms of trade performance, Malawi has seen mixed results. Its top 10 export sectors are tobacco; oilseeds; tea; coffee; 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. South Africa has been the most stable export destination over the years while Egypt, Kenya, Mozambique, the United Republic of Tanzania and Zambia are growing markets for Malawi (Mala-

wi, 2021). Malawi continues to register a trade deficit, however, which the African Continental Free Trade Area could plug. As shown in table 10 in 2019, total exports of merchandise from Malawi to the rest of Africa measured \$331,472,000, constitut-

ing 36.31 per cent of the country's exports worldwide, while its imports from the rest of Africa totalled \$802,657,000, constituting 27.3 per cent of its total imports and signifying a goods trade deficit of \$471,185,000 (ITC, 2018).

**Table 10**  
**Malawian trade in goods with the rest of Africa**  
**(Thousands of United States dollars)**

	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

Source: ITC Trade Map Data 2020.

Malawi has fully liberalized its trade under COMESA and is also fully liberalized under the SADC Free Trade Area, except for a few tariff lines, such as 2 per cent with South Africa for sensitive goods. Interviews conducted for the present study revealed that Malawi made an initial tariff offer for the African Continental Free Trade Area in 2021 and received comments from the secretariat, which the country is now revising. In submitting its offers, Malawi was guided by the need for industrial protection and revenue collection. In other words, as a means of building on the acquis, in designing its tariff offers, Malawi took into consideration the existing commitments, such as applicable rates under zero both in SADC, COMESA and WTO. Respondents from the Ministry of Trade of Malawi noted that the COMESA and SADC acquis had been helpful, enabling Malawi to gain an understanding of the opportunities and challenges that it is likely to face.

The Malawian national strategy for the implementation of the Agreement Establishing the African Continental Free Trade Area notes some of the enabling factors for the

achievement of the objectives of the Agreement 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”.<sup>9</sup> Accordingly, Malawian national implementation strategy has been crafted in such a manner that the country aims to build on the acquis of the regional economic communities in implementing the Agreement Establishing the African Continental Free Trade Area. As affirmed in an interview with technocrats in the Ministry of Trade of Malawi, the COMESA rules of origin are more liberal and easier to use for the private sector, so Malawi will continue to rely on that acquis.

Non-tariff barriers have been recorded as posing a major challenge to participation by Malawi in trade, in particular under COMESA and SADC. While the Tripartite Free Trade Area mechanism for monitoring non-tariff barriers has helped in partially

<sup>9</sup> Malawi, Ministry of Trade, Malawi Africa Continental Free Trade (AfCFTA) National Strategy 2021–2026 (Lilongwe, 2021), p. 46.

addressing and eliminating this problem, interviewees noted that there are no punitive measures available under the Tripartite Free Trade Area in the event that a member fails to eliminate non-tariff barriers. Where SADC is concerned, respondents noted that the rules of origin are too stringent and observed that similar challenges are likely to result under the African Continental Free Trade Area, whose rules of origin they consider to be equally stringent. Reliance on the *acquis* may be compromised under such circumstances, where non-tariff barriers remain an issue, coupled with overly stringent rules of origin. Moreover, like many COMESA and SADC member States, Malawi faces a major challenge posed by the logistics of moving goods across the continent.

With regard to trade with the rest of Africa, interviews revealed that the Malawi national implementation strategy focuses on market opportunities in West and North Africa through such measures as trade missions, trade fairs, the establishment of embassies, domestic work to prepare local industries to be export-led, and the boosting of small and medium-sized enterprises with potential to harness the African Continental Free Trade Area market. The strategy is also aimed at promoting the establishment of distribution networks in North and West Africa and has a strong focus on trade opportunities outside SADC and COMESA. Moreover, Malawi has been actively seeking to join the Guided Trade Initiative. This proactive stance vis-à-vis the African Continental Free Trade Area can serve as a good example to other SADC and COMESA member states in their respective efforts to implement the Agreement. Furthermore, interviews revealed that, within the regional economic communities (COMESA and SADC), Malawi ranks among the top 20 countries with low tariffs. Malawi will therefore have minimal effect on tax revenue losses, which will greatly facilitate implementation of the Agreement in that country.

Interviews were also conducted on the degree to which Malawi is prepared to embrace trade in services as one of the pillars of the *acquis* of the regional economic communities and of implementation of the African Continental Free Trade Area regime. It was observed that Malawi had submitted its services liberalization schedules under SADC, COMESA and the African Continental Free Trade Area. Respondents noted that, for SADC, the seven priority sectors covered by the schedules included finance, tourism, transport, communications, energy and construction, while under COMESA it had submitted schedules for similar areas but had also included business services.

For the African Continental Free Trade Area, enquiries revealed that Malawi had already submitted the four schedules, namely, communications, transport, tourism and business services, all of which have already been accepted. There was broad agreement, however, that Malawi expected the same challenges relating to trade in services that it had faced under COMESA and SADC. For instance, under mode 4 of GATS, there is need to accelerate the mutual recognition of qualifications which is still in process under COMESA and SADC. Sensitive to this risk, the Malawian strategy will be aimed at increasing civic education, so that the private sector knows where opportunities exist. This was confirmed by respondents from the Ministry of Trade, who affirmed the country's belief that the commitments made under the *acquis* of COMESA and SADC were stepping stones towards submission of its tariff offers on both goods and services liberalization to the African Continental Free Trade Area.

Interviews also revealed that, while the African Continental Free Trade Area offered opportunities for market access to Malawian service providers, to harness those opportunities it would be necessary to build comparative advantages for the country in such areas as business services

and the recognition of qualifications and skills (mutual recognition). The *acquis* of the regional economic communities in this area may not be achieved, however, given that member States are still negotiating mutual recognition at COMESA and SADC, in addition to the need for civic education measures to ensure that the private sector knows where such opportunities exist. In other words, implementation of the Protocol to the Agreement Establishing the African Continental Free Trade Area on Trade in Services will only be tested once the subregional regulatory frameworks at COMESA and SADC are in place, and this will ultimately shape the *acquis*.

While interviews revealed that building on the existing *acquis* at regional economic community level is of critical importance in propelling implementation of the Agreement, respondents cautioned that reliance on the *acquis* of the regional economic communities under the Protocol on Trade in Goods is a double-edged sword. According to the respondents, while the *acquis* of the economic communities will support the African Continental Free Trade Area in creating a larger market, any expansion beyond the subregion may be difficult as States such as Malawi may opt to continue applying the subregional *acquis* in those areas where it favours their trade, in particular since the rules of origin of the African Continental Free Trade Area are more stringent than those of COMESA. In particular, The Ministry of Trade affirms that, for Malawi to take full advantage of the African Continental Free Trade Area, the country will need to build on the experiences gained under the *acquis* of the regional economic communities, namely, the trade facilitation mechanisms. In addition, it will be necessary to undertake export promotion initiatives, such as the trade fairs introduced in the African Continental Free Trade Area, 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.<sup>10</sup>

The views of the respondents resonate very well with the Malawian national implementation strategy, which lists, as one of the threats: “role of RECs (SADC, COMESA, EAC and TFTA) on enforcement of AfCFTA obligations”.<sup>11</sup> The other threat to prospects of building on the *acquis* in order to accelerate implementation of the Agreement Establishing the African Continental Free Trade Area, as highlighted in the Malawi national implementation strategy, is the fact that the country’s SADC National Committee is coordinated under the Ministry of Foreign Affairs and Economic Cooperation, while its COMESA national focal point is the Ministry of Trade. Another challenge identified as working against the existing *acquis* is the logistic difficulty of moving goods between the subregions of Southern Africa and of West and North Africa.

### C. Case of Mauritius

Mauritius has been an active member of COMESA and SADC, which together cover over 68.5 per cent of the African continent. Mauritius is also participating in the COMESA-EAC-SADC Tripartite Free Trade Area negotiations. It is a services-oriented economy, with tourism and financial services providing the main driving forces of growth. The contribution of the services sector to GDP increased from 63 per cent in 2010 to 67.3 per cent in 2019, with manufacturing representing the second largest sector of the economy, contributing 17.4 per cent of its GDP in 2019 (ECA, 2021). The services sector employs most of the Mauritian workforce, providing 69 per cent of the country’s jobs, while the industrial sector (which includes the manufacturing sector, construction and mining activities)

10 Mufwa Munthali, Director of Trade, Malawi, in an interview with the author.

11 Malawi, Ministry of Trade, Malawi Africa Continental Free Trade (AfCFTA) National Strategy 2021–2026, p. 47.

represents 25 per cent of the country's employment and the agricultural sector 6.9 per cent (ECA, 2021).

In this context, tradable sectors such as manufacturing, accommodation, construction and transport could benefit immensely from the African Continental Free Trade Area, taking advantage of the easy trading environment to expand and boost their activities. Notwithstanding its membership of the Area, respondents argue that Mauritius has yet to fully realize its potential – an assertion also reflected in the country's national implementation strategy. For example, over the period 2017–2019, exports by Mauritius to COMESA only represented 12 per cent of its total exports (\$237 million), while those to SADC represented 19.2 per cent (\$381 million), mainly comprising three sectors: textiles, sugar and plastics (ECA, 2021). Conscious of this low performance and driven by the need to increase its share of intra-COMESA and SADC trade, 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.

From interviews with the private sector institutions, it can be deduced that Mauritius has a highly proactive subregional trade integration scheme which could be emulated by other States parties to the Agreement Establishing the African Continental Free Trade Area. 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, with the aim of facilitating trade and also supporting the exports processing zones (Sobhee and Bhowon, 2007). In this connection, an interview conducted with the Directorate of Trade of Mauritius indicated that the country has completely liberalized trade in both COMESA and SADC, which

means that Mauritius has a more advanced position in relation to 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 Government's willingness to liberalize its trade and investment system. According to the Mauritius Directorate of Trade, Mauritius has committed itself to implementing free trade policies in the subregion, given that regional integration has always been viewed by the country as an instrument to achieve further economic development, diversify its export base and 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 swallowing up of small economies.

True to its talk, Mauritius has shown itself to be one of the few countries in the subregion 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 private sectors. As stressed by the Directorate for Trade, the country's trade policy approach is based on trade openness and active engagement at multilateral and bilateral levels. The current policy stance is oriented towards market diversification, with a growing focus on subregional African markets, and product diversification, with a special focus on the blue economy. In addition, respondents stress that Mauritius is aiming to become a hub for trade and investment in Africa and a regional maritime hub by taking advantage of the major infrastructure of its port, linked to an overall infrastructure modernization programme, including the setting up of smart cities and a modern transportation system, smart agriculture development, and the fostering of technology-intensive manufacturing.

Where the acquis is concerned, respondents believe that, since Africa has a 97 per cent maritime transport deficit, in the sense that 97 per cent of its shipping vessels are foreign-owned, the desire by Mauritius to become a maritime hub for Africa could stimulate growth of the maritime transport sector and facilitate trade under the African Continental Free Trade Area. 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 the Area's industrial and digital trade agenda.

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 secured by taking advantage of the country's preferential access to developed markets, in particular the European Union, in the 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 and others, 2017). Nevertheless, much of this trade has been outside Africa. Furthermore, the country's main export partners are all outside Africa – such as the European Union (primarily France), which absorbs 36.1 per cent of its total exports, the United Kingdom of Great Britain and Northern Ireland (11.1 per cent) and the United States of America (10.8 per cent) (ECA, 2021).

Where imports are concerned, Mauritius imports mainly from the European Union, China and India and also has strong investment ties with all these countries. On the exports side, a similar picture is found, with Mauritius exporting principally finalized consumer goods and a limited number of raw materials (ECA, 2021). This indicates a limited integration into regional value chains, with the erosion of regional integra-

tion and reduced possibility to expand into new sectors and products.

With regard to intraregional trade performance, the major threat to the Mauritian economy in the trade relationship with SADC has been posed by imports from South Africa. Since more than 90 per cent of all imports in SADC are dominated by South Africa, trade liberalization poses a genuine threat to the local manufacturing companies sector (Baker and others, 2017).

Within COMESA, consistent derogations by such member States as Egypt, in maintaining tariffs on products which were affecting the local Mauritian manufacturing industry, remain a threat to the country's effective use of the regional integration scheme (Baker and others, 2017). Nevertheless, an interview with the Directorate of Trade of Mauritius revealed that COMESA had led to improved trade facilitation within the sub-region, lower transaction costs and greater efficiency by making it easier to source and cumulate inputs.

As stated in that submission: "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, pharmaceuticals, higher education services, jewellery and textiles and apparel for the SADC and COMESA region in general". These opportunities are expected to be replicated under the African Continental Free Trade Area. The above contextual analysis of Mauritius trade performance helps to explain the country's readiness to take advantage of the trade regime under the African Continental Free Trade Area. Mauritius was one of the first countries to implement the Guided Trade Initiative, having completed the internal processes and adopted internal rules for such implementation. Furthermore, its signature of the Agreement Establishing the African Con-

tinental Free Trade Area is in line with the country's trade policy objectives, because Mauritius is a very open economy, with 93.7 per cent of its tariff lines being duty-free and an average tariff of 1.19 per cent (ECA, 2021) – higher than the level of tariff liberalization envisaged under the African Continental Free Trade Area. Accordingly, the pursuit of further market access opportunities through the Agreement would be a positive development for the country's private sector and the Mauritian economy.

In response to the promises offered by the African Continental Free Trade Area, questions have been raised about what its acquis would be for Mauritius, given that the country has fully engaged in the COMESA Free Trade Area and in the SADC Free Trade Area and has no exclusions under SADC and COMESA, but in the African Continental Free Trade Area its tariff liberalization level is 97 per cent. Furthermore, while the goods excluded from the African Continental Free Trade Area are the same as those from the regional economic communities (applying only to sensitive goods), the situation with the African Continental Free Trade Area is different as immediate liberalization applies only to 90 per cent of the tariff lines. Mauritius has a phased period of five years. Moreover, Mauritius' submission of sensitive goods under its European Union Economic Partnership Agreement is exactly the same as its submission to the African Continental Free Trade Area.

In an interview with the Directorate for Trade, it was explained that, while Mauritius was able to liberalize fully under COMESA and SADC, it expected that, in the wider market of the African Continental Free Trade Area, some of its goods, such as cooking oil, would face stiffer competition from the more advanced producers in the wider market. Mauritius has already had experience in applying some safeguard measures for some of the goods that it considered sensitive under COMESA and

SADC. Drawing on that experience, it has excluded those same goods from trade in the African Continental Free Trade Area. Moreover, whereas Mauritius has yet to take full advantage of the potential offered by Africa as a source of raw and intermediate materials, the Area has the potential to serve as a large market for Mauritian services exports, in particular business services, which account for nearly one third of the continent's total imports of trade in services, namely, for \$42.4 billion out of the continent's \$153.1 billion (ECA, 2021).

Moreover, with regard to restrictiveness in trade in services, the World Bank's Services Trade Restrictiveness Index, which compiles 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). This makes Mauritius a relatively easier market to penetrate under the African Continental Free Trade Area trade in services regime.

In order to understand the Mauritian acquis and implementation of the Agreement Establishing the African Continental Free Trade Area it is necessary to examine the trade facilitation-related provisions in the Agreement. Interview findings revealed that the African Continental Free Trade Area regime is more protectionist than the COMESA and SADC regimes when the rules of origin are taken into account. The liberalization measures by Mauritius under the African Continental Free Trade Area do 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 African Continental Free Trade Area is likely to create stiff competition between Mauritian cooking oil producers and North African producers. The same may be said of the services sector, where the country will have to compete with more efficient countries, such as Kenya, Nigeria, and South Africa.

One key consideration put forward by Mauritius is that it is aware of the trade gains and losses associated with the African Continental Free Trade Area, as this is nothing new for Mauritius, which already experienced the same consequences from its engagement in COMESA and SADC. This clearly explains how the existing acquis of safeguard measures will be built on in the African Continental Free Trade Area to ensure that operationalization of the Area does not have a negative impact on the Mauritian economy.

Moreover, apart from the fact that Mauritius' most sensitive goods, such as sugar, have been protected and other products, such as margarine, have been excluded under the African Continental Free Trade Area regime, there are other potential benefits accruing to the country from its full-throttle ratification and implementation of the Agreement. It is estimated that, under the African Continental Free Trade Area, the removal of tariffs will increase the country's income by 0.3 per cent, while the removal of non-tariff barriers and the adoption of trade facilitation measures would lead to 3.8 and 6.9 per cent increases respectively (ECA, 2021).

A similar analysis may be seen in respect of trade, with the removal of tariffs increasing imports by 0.8 per cent and exports by 0.7 per cent by 2035, while comprehensive implementation of the Agreement – namely, the removal of non-tariff barriers and inclusion of trade facilitation reforms – would boost imports by 31.7 per cent and exports by 32.9 per cent. This minimal impact of the tariffs is mainly due to the deep preferential access already enjoyed by the country to its main African markets and, for that reason, its benefits are minimal (ECA, 2021).

In implementing the Agreement Establishing the African Continental Free Trade Area, Mauritius will also leverage the existing COMESA regulations and related mechanisms on managing non-tariff

barriers. Where potential revenue losses are concerned, owing to its membership of SADC and COMESA, Mauritius faces an average preferential tariff of 5 per cent when trading with COMESA member States and of 4 per cent when trading with SADC member States (ECA, 2021). In that context, field findings show that Mauritius is convinced that, since the other countries have a long period of adjustment for sensitive goods, this should enable the countries to mitigate the impact of liberalization under the African Continental Free Trade Area.

Another key concern for Mauritius, as revealed in the field findings, is the likelihood that its production of raw materials might be insufficient to satisfy the needs of a more developed agroprocessing industry. Accordingly, ensuring that the industry is able to obtain the necessary raw materials to operate is crucial to ensuring the competitiveness of the economy. With Mauritius currently only importing agricultural products from Egypt, Madagascar and South Africa, there are opportunities for it to source raw materials from other major agricultural producers on the continent, such as the Democratic Republic of the Congo or Zimbabwe. According to the Mauritian national implementation strategy, in order to do so, it will be necessary to work with the national sanitary and phytosanitary 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.

Where intellectual property is concerned, the Government of Mauritius believes that intellectual property rights regimes, which provide private sector incentives while maintaining public policy objectives, may also be used as a policy tool to promote private investment, entrepreneurship, competition and innovation. The African Continental Free Trade Area regime on intellectual property rights, as economic

assets, is expected to propel Mauritius towards a knowledge-based economy that embraces, among other benefits, digital technology, the Internet, and information and communications technology. The Mauritian national implementation strategy notes that Mauritius is not a signatory to key international conventions, such as the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks of 1989, which enables businesses to register, manage and protect their trademarks across 131 contracting parties; the Hague Agreement Concerning the International Registration of Industrial Designs of 1925, which allows industrial designs to be protected in multiple countries or subregions with minimal formalities, and The Patent Cooperation Treaty of 1970, which enables businesses to seek patent protection simultaneously in multiple jurisdictions. The strategy notes that the African Continental Free Trade Area represents a good opportunity to boost the country's efforts to strengthen its intellectual property regime – clearly highlighting the advantages of complementarity offered by the Area.

With regard to competition policy, the Mauritian national implementation strategy focuses strongly on building on the *acquis*. It notes: “The 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 (CCM, 2009). A review of the competition law is also under way, which will be a good opportunity to adapt the law to the outcome of the AfCFTA negotiations.”<sup>12</sup>

The Mauritian national implementation strategy has four strategic objectives, which

essentially envisage building on the *acquis*. These are: successfully implementing the Agreement Establishing the African Continental Free Trade Area; facilitating the transmission of trade information across all business players, in particular small and medium-sized enterprises; 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 the need for countries to enact domestic legislation to bring them into compliance with the commitments under the Agreement. In the enactment of domestic laws, close scrutiny must be exercised to ensure that there is no conflicting commitment with the *acquis* under the regional economic communities. The Mauritian strategy also places great emphasis on the potential opportunities deriving from the Protocol to the Agreement on Trade in Services, as, in recent years, services have become a key driving force behind the country's external trade.

From the above analysis, it is clear that Mauritius is positioning herself to harness the advantages of the African Continental Free Trade Area by building on the *acquis* relating to all areas covered by the Agreement, and the institutional arrangements available under the regional economic communities and the Area. The offers in respect of trade in goods and trade in services offers are based on the already existing offers at the level of the regional economic communities and Mauritius looks forward to leverage the mechanisms available under those communities, such as sanitary and phytosanitary controls, accreditation services, competition commissions and intellectual property rights institutions in its implementation of the Agreement Establishing the African Continental Free Trade Area.

12 International Economics Consulting, The Mauritian Strategy to Leverage Opportunities in the African Continental Free Trade Area (AfCFTA) (n.p., n.d.), p. 32.

## D. Case of Namibia

Interviews with the Ministry of Trade and SADC secretariat revealed that Namibia has customarily 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 entered into a number of trading arrangements. Namibia is a member of both SADC and SACU. The adoption of the 2002 SACU Agreement was inspired by the organization's historical legacy and a response to subregional political and economic changes during the 1990s. Namibia gained its independence in 1990 and thereupon joined SACU as a full member. The 2002 SACU Agreement alters the organization's structure and some of its operational aspects by providing for an international organization with legal personality, specific institutions, rules on decision-making, the development of common policies, and the possibility of formal dispute resolution (Erasmus, 2014). Furthermore, interviews revealed that, while Namibia had initially been a member of COMESA, it withdrew in 2003 because it was already a member of SACU. Through SACU, Namibia has been involved in a number of free trade areas and negotiations with other economic groupings and individual countries, such as the United States of America.

Like Eswatini, Namibia is included in the SACU offer that has been extended to the African Continental Free Trade Area and is aimed at acting as a stepping stone – or *acquis* – for the implementation of the Agreement Establishing the African Continental Free Trade Area. Interviews with representatives of the SADC Business Council indicated that the SADC Trade Protocol, which largely informs the subregion's position vis-à-vis the African Continental Free Trade Area, has been successful, although most of the trade has been more favourable to South Africa. This situation has been compounded by

the constant issues experienced by businesses with non-tariff barriers imposed at the borders – most of these 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 the African Continental Free Trade Area, hence affecting the *acquis*, one of the key features of trade regimes is the resolution of disputes and issues through dialogue and this has been prominent in SADC. Moreover, given that SADC lacked any form of compensation, the Adjustment Facility for the African Continental Free Trade Area is expected to be beneficial to such countries as Namibia. Accordingly, the *acquis* here is that the Agreement Establishing the African Continental Free Trade Area will help in promoting safe implementation of the tariff commitments by guaranteeing compensatory measures to Namibia.

Field interviews also revealed that one of the areas of concern for Namibia is the fact that the SADC rules of origin do not address the issue of lack of cooperation on industrialization. As a result, lack of cooperation has led to significant challenges on clothing and textiles and automobiles. Moreover, there is a concern by the Namibian private sector that, while the African Continental Free Trade Area is based on three pillars: market access, infrastructure and industrialization, more weight is placed on market access than on infrastructure and industrialization. Private sector respondents are of the view that, as a way of supporting the existing *acquis*, there is need under the African Continental Free Trade Area to ensure cooperation on rules of origin and this should be of a sectoral nature. Field findings reveal that, while the existing *acquis* at SADC may be the best starting point for the African Continental Free Trade Area, there is need for countries to be held more accountable at the level of the Area than has been the

case at SADC, both in their implementation of rules of origin and in the elimination of non-tariff barriers.

In a bid to facilitate intraregional trade, Namibia recognizes that Governments should address through the deployment of appropriately trained professionals beyond the existing one-stop border crossing posts. To that end, Namibia has made a conscious effort to sign agreements that lay the foundation 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. 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. The majority of these protocols are yet to be implemented, however, posing challenges to implementation of the Agreement Establishing the African Continental Free Trade Area and its associated protocols. At the same time, in combination all these measures form a trade facilitation system which, if implemented, can be used to bolster implementation of the Agreement in the country, while serving as a point of reference for other States parties (Nagar and Mutasa, 2017).

In the context of building on the acquis to implement the Agreement Establishing the African Continental Free Trade Area, the Namibian strategy for implementation of the Agreement highlights the following: “As Namibia is a small open economy, Af-

CFTA provides an expanded market for its goods and services. It builds on progress achieved through Namibian participation in subregional integration initiatives, the Southern African Development Community (SADC) and the Southern African Customs Union (SACU), as key stepping stones 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”.<sup>13</sup>

The strategy identifies the following as key areas for the acquis: tariff liberalization, rules of origin, removal of non-tariff barriers, standards and technical regulations, and investment and regional value chain development linked to domestic, SACU and SADC economic diversification strategies and action plans.

## E. Case of Zambia

Zambia is a member of COMESA and SADC and has liberalized its trade fully in both communities. By virtue of being a member of COMESA and SADC, it is also participating in the Tripartite Free Trade Area. Under the Agreement Establishing the African Continental Free Trade Area, Zambia falls in the category of least developed countries that are expected to attain full liberalization within 15 years. Interviews with government officials revealed that the hope that the African Continental Free Trade Area will provide Zambia an opportunity to diversify its non-traditional exports within the priority sectors and products identified in its national strategy for implementation of the Agreement Estab-

<sup>13</sup> Namibia, Ministry of Industrialization and Trade, National Strategy for Implementation of the Agreement Establishing the African Continental Free Trade Area 2022–2027 (Windhoek, n.d.), p. 11.

lishing the African Continental Free Trade Area, as the country pursues its long-term vision of being an upper-middle-income country by 2030. This is given the fact that the country's trade with African countries outside COMESA and SADC remains limited: South Africa, the Democratic Republic of the Congo and Zimbabwe accounted for more than 75 per cent of total trade annually from 2016 to 2018.

Zambian exports are highly concentrated in a few products and a narrow market base. From 2014 to 2018, copper accounted for an average of 75.6 per cent of total foreign exchange earnings, while other exports, excluding copper and cobalt, contributed an average of 25 per cent over the same period. These non-traditional exports are also dominated by a few sectors. In 2017, most (72.9 per cent) were from four subsectors: engineering (25 per cent), primary agriculture (19.3 per cent), chemicals and pharmaceuticals (14.8 per cent), and processed and refined foods (13.2 per cent). This concentration of exports in a limited number of products poses a significant challenge to harnessing the vast market opportunities presented by the African Continental Free Trade Area and might lead to the country's low share of trade under the regime (Ministry of Commerce, Trade and Industry, 2021).

Furthermore, the country's potential to diversify its exportable goods and export markets is constrained by its weak trade facilitation infrastructure and prohibitive transport costs. The available portfolio of finance for export production, export marketing and research, development and innovation in the export sector is very limited. Added to which, the country lacks the necessary capacity and institutional and legal frameworks to identify and invoke trade defence mechanisms when faced with unfair trade practices. These aspects have been identified by the Government as in need of improvement in order to ensure

the country's gainful participation under the African Continental Free Trade Area trade regime. Where services are concerned, the main imports are in the transport, travel and business sectors. In 2019, transport services accounted for 57 per cent (\$957.4 million) of total services imports, travel services 17 per cent (\$279.3 million), insurance and pension services 7 per cent, and other services, in the financial and business sectors, 25 per cent (\$323.4 million) (Ministry of Commerce, Trade and Industry, 2021).

In their interviews, representatives of the Foreign Trade Department also confirmed that the Zambian tariff phasedown schedule has been approved by the Council of Ministers of the African Continental Free Trade Area and the tariff liberalization schedules are currently being incorporated into domestic legal systems. Prior to the submission of these schedules to the African Continental Free Trade Area, Zambia held wide consultations at the national level; and its submission of these schedules is informed by its membership of the COMESA and SADC free trade areas.

Like other countries surveyed in this study, however, one of the challenges that Zambia foresees with the African Continental Free Trade Area, compared with the regional economic communities, in particular COMESA, is the complexity of the Area's rules of origin, which are seen to be more complex, given the large number of countries involved in the negotiations. It is therefore critical to examine how the rules of origin in COMESA and SADC can be harmonized with those of the African Continental Free Trade Area in order to ensure that the latter are simplified and easier for Zambian private sector stakeholders to apply.

Interviews revealed that micro-, small and medium-sized enterprises tend to favour regimes whose rules of origin are flexible

and simplified and which facilitate their access to markets with fewer delays at customs. Furthermore, micro-, small and medium-sized enterprises prefer rules of origin which offer high percentages of cumulation on manufactured products, as this enables them to source cheaper raw materials from other members and market their products competitively in the associated trading regime. This is the reason why coherence between the COMESA, SADC and African Continental Free Trade Area rules of origin should be examined in the development of implementation strategies in order to pave the way for easier application of the Area's trade regime.

Zambia also harbours expectations that the African Continental Free Trade Area will offer more opportunities to its private sector, in particular in respect of value addition, the formation of regional value chains and peer learning. According to the COMESA Secretariat and Ministry of Trade of 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 Non-Tariff-Barriers monitoring tool developed under the Tripartite and now adopted under the AfCFTA will mitigate those challenges." It is perhaps commendable that Zambia should be conscious of the challenges associated with the acquis of African Continental Free Trade Area, COMESA and SADC and that, as revealed in the interviews, the country is reviewing its national trade and investment-related laws to align them with the new African Continental Free Trade Area regime. This, it is believed, will ultimately create a supportive environment for the implementation of the Agreement Establishing the African Continental Free Trade Area.

Furthermore, Zambia believes that market access opportunities have not been fully maximized under COMESA and SADC, and

this should encourage the Zambian private sector to take advantage of the wider market under the African Continental Free Trade Area by leveraging the regimes of the regional economic communities for value addition and the formation of regional value chains. Following this approach, the Zambian Government believes the measures targeted at propelling the implementation of the Agreement Establishing the African Continental Free Trade Area at national and regional economic community level can be leveraged by its private sector to strengthen its competitiveness.

Another critical area of focus by Zambia is trade in services. Interviews with government representatives revealed that, while the Protocol to the Agreement Establishing the African Continental Free Trade Area on Trade in Services targets five priority sectors: tourism, business, finance, communications and transport, Zambia has submitted offers for the first four sectors to SADC and COMESA and is still working on submitting offers on the transport sector. It was also revealed that the slow commitment in the case of energy is due to the fact that it is a new area in which most countries need capacity-building support before developing the schedules. Nevertheless, the Zambian services tariff schedules are so consistent with those of the African Continental Free Trade Area that they have already been accepted. It is not surprising that, with regard to the African Continental Free Trade Area building on the existing acquis of COMESA and SADC, Zambia does not foresee any conflict between the regimes of the regional economic communities and the Area, since the regional economic communities have served as the building blocks for attainment of the African Continental Free Trade Area.

In fact, the Zambian national strategy for the implementation of the Agreement Establishing the African Continental Free

Trade Area has as one of its principles: “Continuity: Building on the progress achieved at the level of regional economic communities such as SADC and COMESA”.<sup>14</sup> In addition, the strategy highlights “Experience in free trade operations from COMESA and SADC”<sup>15</sup> as one of the country’s strengths as it positions itself to fully harness the African Continental Free Trade Area. Further aspects of building on the acquis relate to the strategic objective of ensuring that trade under the African Continental Free Trade Area is gender-inclusive, with regard to which the strategy identifies the relevant implementation measure as “champion introduction of a continental Simplified Trade Regime, similar to the East African Community 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”.<sup>16</sup>

Similarly, under the objective of starting trading under the African Continental Free Trade Area, 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”.<sup>17</sup> These are clear manifestations of building on the acquis of existing regional economic communities to accelerate implementation of the Agreement Establishing the African Continental Free Trade Area.

With regard to the new areas of competition in the African Continental Free Trade Area, intellectual property rights and investment, Zambia hopes to build on the

existing practices at the regional economic community level to take advantage of the related opportunities arising in the Area. For example, interviews with the Ministry of Trade of Zambia revealed that the country has a national competition agency and has been actively participating in the comparable COMESA agency – the COMESA Competition Commission – to ensure fair competition in trade and investment within COMESA. Those interviews further revealed that, since the policies of regional economic communities on investment and intellectual property rights have not been fully implemented, the corresponding policies under the African Continental Free Trade Area could open new up opportunities that they will explore. This is because, as argued by the Zambian Ministry of Trade, the African Continental Free Trade Area is a mechanism designed to deepen integration among regional economic communities and so it will only be natural that the COMESA and SADC institutions should also continue to exist, albeit in a strengthened manner thanks to the opportunities that they can leverage from the African Continental Free Trade Area.

Field findings revealed that, by ensuring that the country’s private sector harnesses the trade and investment opportunities associated with the African Continental Free Trade Area, the Zambian implementation strategy has been designed to focus on scaling up the productivity of small and medium-sized enterprises from the supply side to ensure that they are export-ready within ten years. The problematic aspect of this resolve is that Zambian micro-, small and medium-sized enterprises will have to comply with three different trade regimes, namely, SADC, COMESA and the African Continental Free Trade Area, which is not cost-effective. Moreover, the African

14 Zambia, Ministry of Commerce, Trade and Industry, National Strategy for Implementation of the Agreement Establishing the African Continental Free Trade Area (Lusaka, 2021), p. 14.

15 Ibid., p. 16.

16 Ibid., p. 43.

17 Ibid., p. 42.

Continental Free Trade Area regime will prevail in situations where the rules of origin under COMESA and SADC are lower than its rules. In order to resolve this discrepancy, there is need for capacity-building and awareness-raising campaigns in areas such as standards and packaging compliance to qualify for trading under the African Continental Free Trade Area regime.

#### **F. Views of the secretariats of the Common Market for Eastern and Southern Africa, the Southern African Development Community, the Southern African Customs Union and the private sector on implementation of the acquis**

The regional economic communities are considered an important pillar in the development of the African Continental Free Trade Area. Article 29 of the Protocol on Goods to the Agreement Establishing the African Continental Free Trade Area, on technical assistance, capacity-building and cooperation, provides: “The 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 may be found in article 27 (3) of the Protocol on Trade in Services and article 7 of annex 5 to the Agreement, on non-tariff barriers. In effect, the Agreement envisages clear roles for the regional economic communities in its implementation.

In spite of the potential benefits of the African Continental Free Trade Area, respondents in the survey drew attention to some of the risks that should be taken note of. The representative of the COMESA Directorate of Trade and Customs noted that risk that new institutions established under the African Continental Free Trade

Area might create duplication – in creating the bodies on competition, intellectual property rights and investment, due recognition was not taken of those already established by the regional economic communities. It would have been better if the African Continental Free Trade Area institutions had been given the status of apex bodies.

This oversight might, however, have a positive consequence in that the African Continental Free Trade Area can galvanize areas where regional economic communities have been slow to act, such as the free movement of businesspersons, which is vital to accelerating trade opportunities in Africa. Furthermore, the survey revealed that a major challenge on the continent is the lack of sufficient regional routes for trade to take place and scale up at the levels of both the regional economic communities and the African Continental Free Trade Area. Unfortunately, investment in the necessary hard infrastructure across the continent has been limited. It is still left to individual countries to provide such infrastructure rather than developing it at the subregional level.

In all the interviews, a real concern was manifested about competing interests on the continent, because it has been demonstrated 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: first, how can the Southern African regional economic communities integrate their production factors so as to deepen integration in the subregion, as opposed to enhancing trade with third parties? Second, how can the regional economic community secretariats or countries such as Botswana, Egypt and South Africa allay the prevalent “big brother” fears among other member States? Third, how can the

Southern African regional economic communities promote investment in smaller partner States, and not only in the dominant centres?

Moreover, respondents argued that regional integration among the regional economic communities remains a State-driven affair, with member States willing neither to cede sovereignty to a supra-national body nor to empower organs representing citizens. Amid the hesitancy by States to cede sovereignty, the private sector continues to play a key role in boosting trade and investment across the regional economic communities while engaging States in the implementation of their commitments. These are the same questions that the Agreement Establishing the African Continental Free Trade Area needs to address in order ensure its inclusive implementation by State parties.

Furthermore, from all the interviews, it also emerged that the representatives of particular interests in the regional integration process were extensively less consulted during the negotiations on the creation of the African Continental Free Trade Area. For instance, it was noted that the private sector and civil society only lobby on issues that are predetermined at the national government or subregional secretariat level, and it was emphasized that non-State entities needed to be involved in setting the regional agenda, as well as the whole process of integration. The non-State entities need to leverage existing national and subregional spaces for consultation, to ensure that they proactively contribute to the negotiations and monitoring of the implementation of the Agreement. Another key observation made during interviews is that the work on the Agreement is being driven by the African Continental Free Trade Area secretariat

rather than by member States and yet it is up to the member States to implement the protocols and decisions. A concern shared by many is that implementation will be a challenge unless States parties feel that they are driving the process and not the secretariat.

It is also the view of private sector representatives from COMESA and SADC that implementation of the Agreement will be easier for them because most of the instruments have been taken from the regional economic communities. In order to harness this advantage, the private sector is appealing for the priority sectors of the Area to be aligned with those of the regional economic communities. The Southern African regional economic communities of SADC and COMESA have established instruments that have been adopted as building blocks for the Area, without any re-inventing of the wheel. Nevertheless, in order for the Area to work effectively, collaboration and coordination with the regional economic communities are crucial, given perceptions from the respondents indicating that there is a continued lack of such coordination.

A major challenge in this regard is the fact that the regional economic communities only have observer status at negotiation rounds for the African Continental Free Trade Area, while it is the member States that are represented at the negotiation rounds for the Agreement. This also applies to sequencing meetings. The meetings of regional economic communities need to be synchronized with those of the African Continental Free Trade Area. Furthermore, views expressed by representatives of the COMESA Business Council revealed that the business community in COMESA has not had much involvement with the African Continental Free Trade

Area, neither were they involved in the negotiations of the Agreement. This shortcoming needs to be rectified if the African Continental Free Trade Area is to create inclusive opportunities among all supply chain stakeholders.

Another big challenge likely to confront the African Continental Free Trade Area is posed by the commitment to the elimination of tariffs and persistent non-tariff barriers. For example, while field findings indicated that COMESA has gone a long way towards eliminating such obstacles, private sector entities are concerned that their trade frequently faces non-tariff barriers and the arbitrary implementation of tax regimes and other non-tariff measures which hinder operationalization of the Area. Moreover, while the Tripartite Free Trade Area has online mechanisms for monitoring the non-tariff barriers, it is still the responsibility of the Governments to remove those barriers. As a starting point, and as a means of building on the existing acquis for its implementation, the Agreement should adopt many of the trade facilitation measures put in place by the regional economic communities.



Best practices in  
regional integration



## Best practices in regional integration

This present chapter details best practices from other regional economic communities in Africa and the rest of the world with lessons learned from the effective implementation of regional trade agreements and harmonization of trade regimes in those regions. These best practices are drawn from the endeavours by other regional economic communities and free trade areas to make regional integration pro-poor and pro-development, an aspiration which the Agreement Establishing the African Continental Free Trade Area can emulate in its implementation. The chapter specifically reviews best practices from the African regional economic communities, ASEAN, the European Union, and the Common Market of the South (MERCOSUR), with a view to highlighting lessons that Southern African countries can build on or replicate in order to expedite implementation of the Agreement, by building on the acquis within the regional economic communities to which they already subscribe.

### A. Adjustment measures to cater for infant industries

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,

resulting in a skewed integration agenda. A number of regional economic communities have always been conscious of this need and have endeavoured to put in place measures to allow participating countries a specific timeframe to adjust to the shocks of tariff liberalization.

One of the best examples of adjustment measures for infant industry protection may be found in SADC. Under the SADC regime, Malawi, the United Republic of Tanzania and Zimbabwe were authorized to impose 25 per cent import duties on sugar and paper products until 2015, in order to allow their industries to adjust (African Union, 2019). Moreover, Zimbabwe was granted derogation (pursuant to article 3 (c) of the Protocol on Trade) to suspend tariff phase-downs until 2014, given the difficulties that it faced in implementing its tariff commitments on sensitive products. 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 sectors to compete in SADC (Sandrey, 2013).

In addition, in 2002, COMESA also introduced an adjustment facility under which States that showed loss of revenue following the removal of tariffs under the COMESA Free Trade Area were compensated for their losses. The COMESA programme, known as the Regional Integration Support Mechanism, was intended to support member States by:

- a. Off-setting revenues losses arising from the reduction of removal of tariff barriers, which would assist Governments in undertaking the necessary fiscal adjustments;
- b. Mitigating the 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 with new obligations;
- c. Enhancing the competitiveness of industries and taking advantage of new market opportunities through support for productive infrastructures and investment in developing new products, processes and technologies.

The Agreement Establishing the African Continental Free Trade Area borrowed lessons from this best practice in adopting its own adjustment facility. The SADC adjustment measures also constitute best practices within the African Continental Free Trade Area for assessing the readiness of member States to undertake further liberalization commitments relating to sensitive and excluded products.

## B. Trade facilitating infrastructure

The role of infrastructure, comprising both hard and soft varieties – physical infrastructure and soft policy and services – in boosting intraregional trade cannot be overstated. This is because better infrastructure helps to facilitate trade by cutting down on the cost and time of movement of goods and services. The SADC Corridor Management Strategy was approved in 2008 and has served as the basic framework for cooperation and coordination in transport integration. The strategy focuses on developing legal instruments for joint governance of corridors; institutional frameworks for joint and coordinated management of transport corridors; and the prioritization and imple-

mentation of critical corridor transport and logistics infrastructure (SADC, 2021).

In a bid to facilitate intra-SADC trade, cooperation on infrastructure projects among partner States has been of key importance. 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 (African Development Bank, 2021). The bridge has since replaced the longstanding slow ferry service across the river and, as a result, lorries on subregional routes can now cross the river in a few hours or less, rather than the previous period, from three days to a week. The bridge is also able to boost trade between the two countries, as more than 250 lorries a day should be able to cross the Zambezi instead of the handful that were able to cross before (African Union, 2021). Furthermore, the opening of the Kazungula bridge also means that lorries 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 (African Development Bank, 2021). This has resulted in a reduction in transport costs, an increase in the security of cargo and the availability of an alternative route for trade to the sea for inland markets.

One-stop border posts represent another key example of trade-facilitating infrastructure between Botswana and Zambia. The Kazungula one-stop border post, which connects Botswana and Zambia, has eased congestion at border crossings and boosted trade on the continent's busiest corridor, namely, the North-South corridor that stretches from the port of Durban in South Africa to the Democratic Republic of the Congo (African Union, 2021). Accordingly, as the Agreement Establishing the African Continental Free Trade Area enters its implementation phase, States parties

should emulate this example and leverage cooperation on infrastructure to support intraregional and intra-Africa trade.

### C. Leveraging partnerships to promote the movement of persons

Under the article 104 of the Treaty Establishing the East African Community, the partner States agreed to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community. Furthermore, under article 7 of the Protocol on the Establishment of the East African Community Common Market (EAC 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. As a result, currently, EAC partner States, without discrimination, allow the free entry and exit of one another'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. This provision has also been supported by the internationalization of the East African passport, which was launched and operationalized in 2017 (African Union, 2019).

It may therefore be argued that free movement has enabled EAC to make significant progress in the area of social integration. Accordingly, in order to ensure effective implementation, the States parties to the Agreement Establishing the African Continental Free Trade Area can draw lessons from EAC and make the ratification and implementation of the African Union Protocol for Movement of Persons part of the package of instruments governing the Area. This should be tied to the Agreement ratification and implementation process.

In an endeavour to ease the movement of persons, in particular informal cross-border traders who often lack passports, from 1 January 2014, Kenya, Rwanda and Uganda began allowing the uses of their respective national identity cards as official travel documents, enabling their citizens to travel among the three countries. Under this arrangement, travellers simply 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 (Trademark Africa, 2017). In a bid to ensure inclusive intra-African trade, other States parties to the Agreement Establishing the African Continental Free Trade Area could, on a collective or bilateral process, replicate this process and cooperate in the recognition of national identity cards as travel documents.

While the SADC Protocol on Facilitation of the Movement of Persons is not yet operational, having received insufficient ratifications by member States, bilateral agreements enabling the granting of three-month visas have been explored (African Union, 2019). In the context of the African Continental Free Trade Area, where, with only 30 signatures and 4 ratifications (Mali, Niger, Rwanda and Sao Tome and Principe), the Protocol on Free Movement of Persons, Right of Residence and Establishment has still to enter into force, States parties to the Agreement can emulate SADC and negotiate bilateral agreements enabling free visas and work permits, as a temporary measure to facilitate implementation of the Agreement's provisions among themselves.

ECOWAS, like EAC, is among the regional economic communities that have 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, ratifying and fully implementing them (African Union, 2019). Unlike EAC, however, ECOWAS has

regarded 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 the ECOWAS biometric identity card (African Union, 2021). Currently, ECOWAS citizens enjoy visa-free movement within the regional economic community, a freedom supported by the conversion of national passports into ECOWAS subregional passports, which are already being used by seven partner States (African Union, 2019). Furthermore, with the signing in May 1979 of the Protocol Relating to Free Movement of Persons, Residence and Establishment, ECOWAS developed many programmes on gender, education, health, youth and women's empowerment, in order to support social integration within the subregion. It is no wonder that ECOWAS is lauded as an African regional economic community that has maintained a long-standing regime for the free movement of persons that facilitates cross-border services flows (Luke, 2023). With implementation of the Agreement Establishing the African Continental Free Trade Area threatened by limited implementation of its provisions on the movement of persons, ECOWAS can serve as the best example which can be emulated to support trading in services under the African Continental Free Trade Area regime.

#### **D. Leveraging digitalization to expedite financial payments within the Southern African Development Community**

The SADC real-time gross settlement system was developed with the major objectives of facilitating intraregional 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, 2016). As a result, the real-time gross settlement

system has facilitated intra-SADC trade by reducing the settlement of subregional financial transactions from between two and three days to 24 hours (African Union, 2019). The pan-African payment system under the African Continental Free Trade Area can therefore leverage the real-time gross settlement system to boost its efficiency in the subregion in a bid to expedite intra-African trade payments.

#### **E. Promoting industrialization within the Southern African Development Community**

SADC member States have been pursuing programmes aimed at deepening the level of regional integration through the creation of higher value tradable goods, leveraging the rich natural resource endowments of the Community's member States. The SADC integration agenda has been revised to place industrialization and trade liberalization at the forefront. This transformation has been seen as a way of realizing better value from the subregion's rich natural resource endowments, in order to raise the standards of living for citizens of the subregion and eliminate poverty (ECA, 2020). The 48-year industrialization strategy and road map (2015–2063) is aligned with Agenda 2063: The Africa We Want, of the African Union. The road map and strategy are hinged on industrial development and market integration, and infrastructure in support of regional integration. These are critical pillars which support implementation of the Agreement Establishing the African Continental Free Trade Area and which can be emulated by other regional economic communities.

#### **F. Leveraging mutual recognition agreements to promote trade in services**

In a bid to facilitate the movement of professional services, the EAC Common Market Protocol requires partner States to

harmonize and mutually recognize academic and professional qualifications, experience obtained, requirements met, and licences or certificates granted in other partner States. As of 2022, four mutual recognition agreements, covering accountants (auditing), architects (excluding the Architects' Association of Tanzania), engineers and veterinary professionals have been signed by the private sectors and professional boards of the partner States (Kago and Masinde, 2017). Furthermore, negotiations on mutual recognition agreements for lawyers and surveyors are still in progress (African Union, 2019).

This process has been further boosted by Kenya, Rwanda and Uganda scrapping work permit fees for their respective nationals seeking employment in one another's territory (Trade Law Centre, 2015). By doing this, 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. Accordingly, in order to effectively implement trade in the selected services sectors, States parties to the Agreement Establishing the African Continental Free Trade Area and private sector bodies can draw lessons from EAC in designing and implementing mutual recognition agreements. This is particularly critical, given that the African services industry has increased significantly in the light of rapid urbanization and now accounts for a growing share of GDP and employment.

### G. Cooperation in trade facilitating infrastructure

In 2015, the EAC Heads of States assented to the EAC One Stop Border Posts 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 subregion, by reducing the number of stops made at border cross-

ings. Currently, EAC has over 16 such border posts that are operational with trained personnel, and this has resulted in a significant reduction in the time taken by travellers and by lorries at the borders, cutting it from several days to between 1.5 and 30 minutes on average, respectively (EAC, 2018).

In addition to the one-stop border posts, cooperation between EAC partner States in trade-facilitating infrastructure has been evident in the construction of ports, roads and railways. For example, the Lamu Port–South Sudan–Ethiopia–Transport Corridor Programme is the largest and most ambitious infrastructure project in East Africa, bringing together Kenya, Ethiopia and South Sudan (African Union, 2021). Kenya is also building a railway from Mombasa to Malaba on the country's western border with Uganda, while the United Republic of Tanzania is taking comparable steps to link the country with Rwanda and Uganda. The United Republic of Tanzania is also constructing a standard gauge railway line covering the 2,561 km distance from Dar es Salaam to the shores of Lake Victoria, connecting the country with Kenya (African Union, 2021).

Furthermore, in 2021, Uganda signed a \$330 million agreement with the Democratic Republic of the Congo, pursuant to which the former is to build 223 km of roads in the Democratic Republic of Congo in order to improve trade between the two countries (Rogers, 2021). As of March 2022, construction of the 125-kilometre Kasindi–Beni–Butembo road in the Democratic Republic of the Congo had already commenced (Ashaba, 2022). In addition, negotiations are currently under way between Burundi and the United Republic of Tanzania on the laying of 282 kilometres of electrified standard gauge railway line that will initially connect the two countries and pass through the Democratic Republic of the Congo (Trademark Africa, 2023).

Another commendable example of trade-supportive infrastructure at the EAC level is the East African payment system. This is a cross-border system that facilitates the transfer of funds within EAC and works by ensuring that transactions are charged at the same rate as local transactions in the real time gross settlement systems of respective partner States. Currently, the participating countries are Kenya, Uganda and the United Republic of Tanzania, with Burundi, the Democratic Republic of the Congo, Rwanda and South Sudan yet to join (Monye and Monye, 2022), while EAC has already embarked on preparations for an integrated single payment system for the subregion. Given the need for infrastructure to support intra-African trade, States parties to the Agreement Establishing the African Continental Free Trade Area can draw lessons from EAC partnerships and cooperate in putting in place the much-needed infrastructure.

## H. Cooperation in tourism development

The role of tourism in promoting trade in services, generating employment for youth people and revenue for Governments cannot be overstated. For instance, the SADC tourism programme serves as a road map to guide and coordinate the development of a sustainable tourism industry in the subregion and to facilitate the removal of barriers to tourism development and growth. In a bid to promote tourism by facilitating the seamless movement of tourists, Kenya, Rwanda and Uganda, through a coalition of the willing, agreed on the issuance of a single tourist visa, with Kenya taking 40 per cent of the resulting revenues, and the rest split between Rwanda and Uganda (African Union, 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. As tourism (hotels

and restaurants, travel agencies and tour operators, and tourist guide services) has been earmarked as a priority area for the African Continental Free Trade Area under trade in services, States parties should emulate the initiative between Kenya, Rwanda and Uganda and deepen their cooperation in tourism development, in particular through the issuance of single tourist visas.

## I. Mechanisms to eliminate non-tariff barriers

In a bid to eliminate non-tariff barriers, EAC enacted its Elimination of Non-Tariff Barriers Act in 2017. The Act provides five mechanisms for the elimination of non-tariff barriers, namely, the establishment of national non-tariff barrier monitoring committees in all partner States; the establishment of subregional non-tariff barrier monitoring committees; an EAC time-bound programme for the elimination of identified and reported non-tariff barriers (launched in 2009); the elimination of non-tariff barriers by mutual agreement; and a web-based system on the elimination of non-tariff barriers (EAC, 2020). Furthermore, working in partnership with the East African Business Council, the EAC secretariat has established a mechanism to identify, monitor and resolve non-tariff barriers as they arise. EAC has also trained supply chain stakeholders in cross-border trade to identify and report non-tariff barriers directly through online or SMS-based tools (Eurallyah, 2021). As a result, to date, 230 non-tariff barriers have been resolved cumulatively (EAC, 2020).

One of the largest hurdles that will need to be surmounted in the implementation of the Agreement Establishing the African Continental Free Trade Area, if trade under the regime is to be realized, is the elimination of non-tariff barriers. While the African Continental Free Trade Area has an online portal for reporting on non-tariff barriers, it could learn lessons from EAC on simpli-

ifying the identification of such barriers, on their reporting and monitoring through use of mobile phones and on their eventual elimination. It could also borrow experiences from EAC on swift mechanisms for the elimination of non-tariff barriers by leveraging the deployment of national and subregional committees on the monitoring and elimination of non-tariff barriers.

## J. Establishing regional trade-facilitating institutions

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 the harmonization of policies, leading to the development of common trade rules, removal of barriers and the enhancement of cross-border trade, benefiting participating countries. These include institutions for providing development finance such as the Development Bank of Southern Africa for SADC and the Trade and Development Bank for COMESA. Others include the proposed SADC Development Fund and the COMESA Fund. In addition, there are key private sector institutions active in this area such as the SADC Business Council and the COMESA Business Council.

It is beneficial for African regional economic communities to put in place dedicated trade facilitation monitoring institutions so as to pave the way for seamless implementation of the Agreement Establishing the African Continental Free Trade Area.

## K. Key trade-facilitating systems

In addition to effective institutions, COMESA and SADC have put in place a number of notable systems aimed at facilitating the movement of goods and services. Prominent among these systems are the COMESA Foreign Exchange Centre, with

its subregional payment and settlement system, the COMESA virtual trade facilitation system and the communities' non-tariff barriers monitoring systems (African Union, 2019). The COMESA virtual trade facilitation system has been key in facilitating the management and monitoring of the movement of goods efficiently and in real time; while the subregional payment and settlement system has seen a reduction in transaction and operational costs and brought about a switching of relationships for trade transactions from those between commercial banks and foreign correspondents to relations between commercial banks and central banks, thus significantly cutting the cost of intraregional trade transactions among the nine implementing countries (COMESA, 2022). In addition, the Regional Customs Transit Guarantee is a customs transit regime designed to facilitate the movement of goods under customs seals in the COMESA subregion and to provide the required customs security and guarantee in the transit countries (Mokua, 2021b).

## L. Common Market for Eastern and Southern Africa Competition Commission

Established under article 6 of the COMESA Competition Regulations, under the Treaty Establishing the Common Market for Eastern and Southern Africa, the COMESA Competition Commission commenced its operations in 2013 and is mandated to ensure fair competition and transparency among economic operators in the subregion. This is achieved through monitoring and investigating anti-competitive practices of undertakings within the Common Market and mediating disputes between member States concerning anti-competitive conduct.

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. Its key achievements since its inception include the investigation of over 360 merger cases, the companies involved in which had an aggregate turnover of over \$210 billion in the Common Market, representing the amount of business generated from the Common Market. It has also investigated 40 cases of restrictive business practices in the last 10 years since its inception (COMESA, 2023). The planned competition policy and board to be created under the Protocol on Competition Policy to the Agreement Establishing the African Continental Free Trade Area can benchmark and build on these key successes in order to ensure fair competition during implementation of the Agreement.

### M. Cooperation in Internet infrastructure by the Economic Community for Central African States

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

The Economic Community for Central African States offers one of the best examples of cooperation within a regional economic community in building a trade-facilitating Internet infrastructure, as evidenced in the Community's high-bandwidth optical fibre infrastructure development programme currently under implementation, aimed at connecting all ECCAS member States with high-speed telecom infrastructure. In February 2023, under this programme,

the laying of a 935 km cable line linking the Central African Republic with the Congo and Cameroon was finalized (Kassouwi, 2023). Given that the African Continental Free Trade Area is being launched in the era of digitalization and is furnished with a protocol on digital trade, strengthened partnerships within and between the regional economic communities in the area of Internet infrastructure will go a long way towards harmonizing trading under the Area regime.

## N. European Union

Comprising 27 member States, the European Union remains one of the best examples of trade facilitation between disparate nations and has been benchmarked by many regional economic communities. In 2021, the European Union was the world's region with the highest proportion of intra-regional trade, measuring 68 per cent of its total trade (UNCTAD, 2023b). Added to which, the European Union is the world's largest trading block, accounting for about 15 per cent of world trade, worth close to 4 trillion euros (European Commission, 2022). As laid out in the following sections, a number of critical best practices can be borrowed from the European Union.

### 1. Customs Union and Common Market

Established in 1968, the Customs Union is one of the European Union's earliest achievements, requiring all European Union members to apply the same tariffs to goods imported into their territory from the rest of the world and to 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 representing 18 per cent of the world's GDP (Rasi and Wood, 2023).

The establishment of the Customs Union and the Common Market has led to in-

creased trade flows and economic growth within the European Union. It is therefore no wonder that trade in goods makes up 25 per cent of the European Union's GDP and services account for over 70 per cent. 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 European Union trade with other countries amounted to 4.3 trillion euros, accounting for 14 per cent of world trade, while up to 56 million jobs in the European Union are dependent on intra-European Union trade (Bublitz, 2018). The European Union single market provides a good case in arguing for the consolidation of regional integration. With the creation of an African customs union envisaged under the African Continental Free Trade Area, the European Union can be emulated in the policies, institutions and management of that customs union and the associated common market.

## 2. Introduction of the euro

Introduced as cash in 2002 and currently used by over 340 million European Union citizens in 20 countries, the euro has eliminated the risk of currency fluctuation and exchange costs and strengthened intra-European Union trade. It has also mitigated the impact of external shocks on the economies of the euro area 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 have the effect of undermining confidence, discouraging investment and causing economic instability. 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 European Union. For Africa with its 42 different currencies, the ultimate desire is to create a payments system that encour-

ages and facilitates increased intra-African trade by lowering the costs of having to rely on foreign currencies. The Pan-African Payment and Settlement System (PAPSS) under the African Continental Free Trade Area can act as a starting point for the creation of a common African currency.

## 3. Telephone and digital service

In 2017, following legislative enactments by the European Union Parliament, the European Union abolished roaming charges, meaning that consumers would continue to be able to use their mobile phones when travelling abroad in the European Union with no fees in addition to what they already paid at home. Furthermore, the new legislation has ensured that European Union citizens enjoy the same quality and speed of mobile connection abroad as at home. It has also resulted in a surge in mobile phone use abroad and has been hailed as a huge success. 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 (Karakas, 2016). With high roaming fees being reported over time as one of the non-tariff barriers inhibiting intraregional trade in Africa (Luke, 2023), the European Union can serve as a good example for the continent's regional economic communities in putting in place single roaming fees.

## 4. Schengen Area

The Schengen Agreement, signed on 14 June 1985, is the treaty which created the Schengen Area and led most of the countries of Europe closer to the abolition of their national borders, with the aim of building a Europe without borders. The Schengen Area remains the world's largest free travel area in the world, with some 24 million business trips and 57 million cross-border goods movements performed within the Schengen Area each year (Karakas, 2016). By easing the travel of people, the Schengen Area has

significantly decreased the trade friction between trade partners and facilitated intra-European Union trade integration. As it is the vision of the African Union to achieve a continent with seamless borders by 2063, for the management of cross-border resources and the need to facilitate easy movement of services and people, the Schengen Area provides a good best practice to emulate.

### 5. Coordinated global trade policy and negotiation of trade agreements as a bloc

The European Union trade policy owes its efficacy to its federal structure and to a common policy concept shared by the 28 Member States. The European Union has achieved a strong position by speaking with one voice on the global stage, rather than acting through a multitude of separate trade strategies. The European Union is responsible for the trade policy of the member countries and negotiates agreements for them. Speaking thus with one voice, the European Union carries more weight in international trade negotiations than each individual member would. This has promoted a coherent approach to trading with third parties – namely, other countries and subregions – and has helped to ensure the success of the European Union’s regional integration project. The regional integration project pursued by Africa continues to be severely obstructed by uncoordinated trade negotiations and the unilateral negotiation of free trade areas by individual countries with third parties, processes which challenge the integration process. In order to promote policy coherence and advance the implementation of the Agreement Establishing the African Continental Free Trade Area, the example of the European Union could be emulated.

While there is much to learn from the European Union, it is important to note that African regional economic communities and the African Continental Free Trade

Area secretariat do not have legal and enforcement powers like the European Commission. In order to achieve this aim, partner States to the Agreement should ensure the alignment of their national development plans with regional and continental development frameworks in consultation with the regional economic communities and the African Union. Furthermore, regional economic communities and their member States should facilitate and coordinate the participation of these States in the negotiation of legal instruments aimed at building a common understanding and position in consultation with the regional economic communities and the African Union (African Union, 2019).

### O. Association of South-East Asian Nations

In 2009, ASEAN signed the ASEAN Trade in Goods Agreement, furthering its commitment to an open and integrated regional trade. The Agreement is the successor to the Agreement on the Common Effective Preferential Tariff Scheme of the ASEAN Free Trade Area and entered into force in 2010. The Agreement goes beyond tariff reductions and contains specific provisions on rules of origin, non-tariff measures, trade facilitation, and sanitary and phytosanitary 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 (Economic Research Institute for ASEAN and East Asia, 2021). In 2022, the ASEAN economic ministers strategically launched negotiations to upgrade the ASEAN Trade in Goods Agreement (ASEAN, 2022).

The most significant outcome of the ASEAN Trade in Goods Agreement is the reduction of the intra-ASEAN trade tariff to zero for almost all types of goods. In consequence, to date, more than 98 per cent of all tariff lines have zero rates and more than 70 per cent of intra-ASEAN

trade is also conducted at most-favoured nation rates at zero. The Agreement has supported the creation of the ASEAN Single Window, which has led to notable achievements. For example, the Window makes possible the seamless electronic exchange of trade documents, such as certificates of origin and customs declarations, for the customs services of all 10 ASEAN member States (ASEAN, 2020). Another example is the ASEAN Trade Repository, which serves as a single information source on tariffs, regulations and administrative procedures.

Where e-commerce is concerned, the ASEAN e-commerce trustmark framework is currently being developed to promote a trusted e-commerce environment and further enhance cross-border transactions in the subregion by minimizing information asymmetry between buyers and sellers. The Association has also put in place guidelines on consumer protection in e-commerce, the aim of which 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. All these measures have enhanced the position of ASEAN in global trade, with the result 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).

Another best practice to be learned from ASEAN is the implementation of the ASEAN Free Trade Area. The Area was established in January 1992 to eliminate tariff barriers among the countries of South-East Asia, with a view to integrating the ASEAN economies into a single production base and creating a regional market of 500 million people. As a result, the elimination of tariffs and non-tariff barriers among the ASEAN members has catalysed greater efficiency in production and long-term competitiveness. Most intra-ASEAN trade consists in supplying chain-related

trade in parts and components that, in any event, mostly travel duty-free (ASEAN, 2022).

For the African Continental Free Trade Area, lessons may be drawn from ASEAN with regard to achieving industrialization by boosting regional value chains. It can therefore be argued that the decision to ensure coherence between the African Continental Free Trade Area 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 subregion. For the African Continental Free Trade Area, which is still in its infancy, some best practices from ASEAN could go a long way in supporting its effective implementation.

## P. Southern Common Market

Established in 1991 under the Asuncion Treaty with the purpose of building a common market, the Southern Common Market (MERCOSUR) is the world's fifth largest bloc, with an estimated population of 270 million inhabitants, a GDP of about \$5.1 trillion and accounting for over 50 per cent 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 on imports from non-member countries. Since its establishment, a number of outstanding best practices have been realized. For example, in June 2000 the member countries agreed to establish joint fiscal, public-sector debt and price targets, along with a process of convergence towards those targets. As a result, an ex-ante monitoring system of the convergence trajectory of each country to the stipulated targets has been established by the treasury ministers and central bank chairs of the relevant member States (Termansen, 2016). A key issue here is that MERCOSUR has gone beyond

trade to macro-economic and fiscal policy cooperation, as these have an extensive impact on the nature of intra-regional trade.

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

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. While this rule is currently being challenged by such individual member States as Argentina and Uruguay, it has helped preserve intra-MERCOSUR trade and integration, which is an important driving force of growth (Chambers, 2021). For Africa, where trade within the regional economic communities and implementation of the Agreement Establishing the African Continental Free Trade Area are being threatened by individual negotiations of free trade agreements with third parties, MERCOSUR offers a good example of how to negotiate free trade agreements with third parties as a bloc.

In conclusion, the highlighted best practices currently adopted in each of the examined individual regional economic communities may be scaled across Africa. By emulating the above-mentioned best examples, the African Union and the African Continental Free Trade Area secretariat can not only save limited resources but also help in accelerating the African integration process in general and intra-African trade and investment in particular.





Harnessing regional  
integration for the  
African Continental  
Free Trade Area



## Harnessing regional integration for the African Continental Free Trade Area

The present chapter discusses the opportunities for regional integration in Southern Africa and the associated challenges, and also considers how the subregion can leverage the African Continental Free Trade Area to deepen and widen its regional integration agenda.

### A. Opportunities for regional integration

One of the benefits of regional integration in Southern Africa is the opportunity it creates for economic integration and market development. The *raison d'être* of regional trade agreements is to provide members with preferential access to the markets of all member countries and, in so doing, to support regional trade in intermediate and final goods (UNCTAD, 2019b). In Southern Africa, economic integration has contributed to gradual structural change, economic development and market integration, with the potential of ultimately leading to large markets and economies of scale. By allowing some domestic production to be replaced by intra-regional imports, economic integration in the Southern African subregion has encouraged specialization and enhanced light manufacturing as a step towards industrialization through the joint production of goods and services (SADC, 2019). This has the potential to strengthen the political will of partner States to implementing their commitments under the SADC subregional market, while the objectives of regional trade agreements such as the Agreement Establishing the African

Continental Free Trade Area (including regional industrialization, regional structural transformation, regional economic diversification and enhanced regional trade) remain unhindered. The implementation of the Agreement Establishing the African Continental Free Trade Area in Southern Africa can be assured through the advances that it brings in economic integration and regional value chains in the manufacturing sector, among other areas.

Regional integration has also promoted the transfer of technology and expertise within Southern Africa through intra-regional economic community investments which the Agreement can harness to scale up its implementation within the subregion. Regional economic communities such as SADC and COMESA have invested in physical and digital cross-border infrastructure, in the form of transport and digital communications systems, which are fundamental to trade in the subregion (OECD, 2017). Regional integration has also included cooperation in energy, water and sanitation, meteorology and digital health tracking infrastructure, all of which have proved to be critical components of regional infrastructure during pandemics and other health crises (African Union, 2021).

Technology transfer is critical to boosting industrialization and the diversification of production. In Southern Africa, technology transfer has led to diversification in the range of goods produced within countries in the subregion and created greater possibilities for intraregional trade (SADC, 2017).

This can provide a good starting point for operationalizing the African Continental Free Trade Area, which is expected to increase intra-African trade flows and ultimately lead to potentially higher economic growth in the future. Moreover, for individual Southern African countries with higher levels of manufacturing development, the Area can play a greater initial role in leading the development of regional value chains not only in Southern Africa but also at the continental level. Furthermore, by building on the current industrialization benefits in Southern Africa, partner States can boost intra-African trade under the Agreement Establishing the African Continental Free Trade Area by increasing the economic viability of industrialization on the continent and accelerating structural transformation, with commensurate positive effects on product diversification.

Another opportunity that regional integration in Southern Africa offers to both the subregion and to the African Continental Free Trade Area is increased regional trade and investment flows. For example, in a bid to facilitate intra-regional trade, SADC has introduced digitalized certificates of origin, which have saved traders time and reduced the costs of transactions. A study by the German Agency for International Development (GIZ) indicates that, in Eswatini, for example, by using the digitalized certificates, traders have saved an estimated total of 957,354 euros and 6,315 days. By leveraging partnerships with development entities, SADC has been able to tackle eight critical non-tariff barriers on agricultural products like wine and pharmaceutical products and the elimination of these barriers has led to cost savings for the SADC private sector of approximately 20 million euros. The SADC Protocol on Trade in Services adopted in 2022 paved the ground for the liberalization of trade in six priority service sectors, namely, communications, construction, energy, financial services, tourism and transport (GIZ, 2023).

With regard to investment, the SADC secretariat has developed a model bilateral investment treaty, with a view to harmonizing such treaties across the subregion and helping member countries in designing them (OECD, 2017). The secretariat has also worked in partnership with OECD and the New Partnership for Africa's Development, to accelerate the harmonization and implementation of investment policies in the subregion. Accordingly, in its endeavour to boost trade and investment flows, the Agreement Establishing the African Continental Free Trade Area can leverage SADC in its implementation.

SADC and COMESA have also boosted infrastructure development in the subregion, such as that outlined above, with their respective regional infrastructure development master plans, designed to guide development in key infrastructure such as road, rail and ports and also to serve as frameworks for planning and cooperation with development partners and the private sector. The African Continental Free Trade Area can bolster this existing cooperation by scaling up intra-regional investments in critical trade-facilitating infrastructure through a coordinated regional investment approach.

Regional integration is also valued 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 young people in the Southern African subregion 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 (African Union, 2021). This has led to significant improvements in citizens' welfare and the social performance of the regional economic communities. For Southern Africa, the African Continental Free Trade Area is projected to create another two million new jobs, opening up new op-

opportunities in sectors with a predominance of female labour, thereby contributing to women's economic empowerment in the subregion (COMESA, 2021). Consequently, regional integration has the potential to augment the social welfare performance of the Agreement Establishing the African Continental Free Trade Area in job creation, by building on the already existing jobs and improving the welfare returns. Moreover, these new jobs, created thanks to the African Continental Free Trade Area, combined with policies that address gender barriers, will provide an opportunity to narrow the gender income gap.

Another opportunity stemming from regional integration is the promotion of policy harmonization among partner States. This is because regional integration has long been an important instrument for African Governments, enabling them to cooperate and harmonize their policies, in order to achieve sustainable development. Both in COMESA and SADC, a particular focus has been placed on the harmonization of political, financial and socio-economic policies and plans of member States, beyond just trade and investment policies. Sectoral policy harmonization plays a key role in regional integration, because it facilitates the implementation of decisions and plans by ensuring the commensurate commitment of resources (both human and financial) and time to a shared plan or policy. With the Agreement Establishing the African Continental Free Trade Area commencing its implementation in Southern Africa, policy harmonization will be critical in advancing the depth and speed of its implementation.

Lastly, another critical opportunity arising from regional integration is its potential to strengthen the voices of small countries that often face disadvantages in dealing with the rest of the world, because of their low bargaining power and high negotiation costs. Regional integration in Southern Africa has enabled the States of the sub-

region to form a common front and speak with a stronger voice, which they have used to engage the rest of the world in reshaping the global economic, financial and political systems (African Union, 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 helps such countries to overcome the obstacles caused by the relatively small size of their domestic markets by offering producers opportunities to realize greater economies of scale and benefit from the establishment of regional infrastructure (African Union, 2021). With the African Continental Free Trade Area there is immense potential to harness this collective approach by giving countries in COMESA and SADC a common front and enabling them to assert their interests from a stronger and more confident position in the global market and international economic relations.

## B. Challenges to regional integration

While strides have been made towards realization of the objectives of regional integration in Southern Africa, a number of challenges persist. These challenges, unless addressed, will also limit the effective realization of opportunities created by the African Continental Free Trade Area.

One of the core challenges is the weak productive capacities and limited economic diversification of member States of the Southern African regional economic communities. These weak productive capacities and limited economic diversification constrict the range of intermediate and final goods that can be traded and potentially inhibit the fuller development of regional value chains (UNCTAD, 2019b). For instance, as noted by OECD (2017), 10 out of the 16 countries are exporting natural or cultured pearls, precious or semi-precious stones, and precious metals in their top 10 export products. Their manufacturing exports are

also very similar, for instance, machinery and mechanical appliances. Limited diversification has led to the SADC countries being more integrated in global value chains than in regional ones, as most of the foreign value added embedded in exports comes from outside the subregion. Furthermore, it has led to unnecessary competition rather than cooperation, as evidenced by trade wars and non-tariff barriers.<sup>18</sup>

Weak production capacities have also resulted in low utilization of the available regional markets by the private sector, owing to its limited capacity to sustainably meet the product standards and volume demands. It is no wonder that intra-SADC trade is only 10 per cent of the Community's total trade, well below the level of 24 per cent in ASEAN and 68 per cent in the European Union (Chidede, 2017). This low utilization is also due to competition and the prevalence of non-tariff barriers that, in the view of some critics, are imposed by SADC member States which prioritize trade with external countries rather than invest in increasing trade at a subregional level (Mlambo and Mlambo, 2018).

Accordingly, addressing supply-side constraints and weak productive capacities is a policy imperative in Southern Africa, with the aim of boosting 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, 2019b). In order for the private sector to maximize the available opportunities, implementation of the Agreement Establishing the African Continental Free Trade Area in Southern Africa should go hand in hand with the building of productive capacities, the acceleration of structural transformation and the unleashing of the potential of the private sector in the subregion.

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 both on transport and transit costs, and also on at-the-border and behind-the-border costs. These can also be explained in terms of non-tariff measures that act as non-tariff barriers which, in Southern Africa, have raised trade and transaction costs for businesses (ECA, 2019). 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 and other domains, 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 non-tariff barriers including cumbersome domestic customs requirements and inadequate internal and cross-border infrastructure remain unresolved in both SADC and COMESA (COMESA, 2023). Non-tariff barriers 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 small and medium-sized enterprises harder, as these often lack the appropriate resources to deal with non-tariff barriers. The deepening of trade in Southern Africa, at the levels of both the existing regional economic communities and the African Continental Free Trade Area, will largely depend on the ability of partner States in the regional economic communities easily to monitor, detect and resolve non-tariff barriers.

Monocultural agro-based economies with limited value addition are another challenge to regional integration in the Southern African subregion. With the exception of South Africa, the SADC national economies

<sup>18</sup> An example of these trade wars is the refusal, reported by Eswatini, of some fellow States members of SADC to import its sugar.

are largely monolithic, produce mainly raw materials and have an urban-rural duality, with a lack of full integration of the two sectors. 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 (Mlambo and Mlambo, 2018). As they primarily play the role, in global economic structures, of producers of raw materials, produce more or less the same raw goods, and are in need of more or less the same manufactured goods, intraregional trade among them, a necessary condition for integration, is rendered 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. Similarly, Angola, Botswana and the Democratic Republic of the Congo all produce diamonds, yet none of these countries can even process them or manufacture the machinery to mine the diamond (OECD, 2017). This has led to the emergence of non-tariff barriers and trade blockages in terms of export surges, slowing down regional integration efforts. It is therefore important for the regional economic communities and States parties to the Agreement Establishing the African Continental Free Trade Area to invest in regional value chains so as to ensure diversified exports.

The pursuit of national interests has been the major obstacle to regional integration in Southern Africa and this in turn threatens effective trading under the African Continental Free Trade Area 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 general populations of the subregion. This contradicts the spirit of cooperation and unity that SADC espouses and ham-

pers the development of common values. 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 project of building peace, security and development on the continent (Chingono and Nakana, 2009).

For example, the rising waves of xenophobia, often pronounced in the Southern African subregion, underpinned by nationalist ideology, belies this notion of a common 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 subregion, but it also leads to incompatible policies which are difficult to harmonize (African Union, 2021). In order to achieve social integration and facilitate trade in goods and services, States parties to COMESA, SADC and the Agreement Establishing the African Continental Free Trade Area should address the structural issues of ceding national interests to regional interests in order to bolster the regional integration project, given also that the success of this project is largely a factor of political will.

The multiplicity and overlapping membership of regional integration schemes and mandates have proved to be a key challenge to the effective implementation of regional integration in Southern Africa. Multiple memberships constitute a real challenge in Southern Africa, in particular for the establishment of certain integration instruments such as free trade areas and customs unions (Luke, 2023). The free trade areas and customs unions are also littered with carve-outs for sensitive products that challenge the expected standards, inevitably impose a huge burden on the limited administrative and financial capacities of the States concerned and lead

to conflicting obligations (African Union, 2021). The membership of SADC countries in multiple different free trade areas has made it much harder 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 their financial obligations under integration schemes and the failure of such schemes to effectively implement their programmes, policies and projects (Luke, 2023).

While the African Continental Free Trade Area has the potential to address the multiplicity of memberships, this will also depend on the extent to which member States of the Southern African regional economic communities cease to seek membership of new regional economic communities. Desisting from such new memberships will enable the formulation of coherent regulatory policies across many sectors, such as tax, finance and investment, and the creation of an integrated market, ultimately increasing the predictability and legal certainty of entrepreneurial activity. The advancement of the Tripartite Free Trade Area and its full implementation will also go a long way towards mitigating the challenge of multiple memberships.

The slow ratification of subregional policies meant to spur growth and intraregional trade and investment flows in Southern Africa has been recognized as a challenge over the years. McNamee, Pearson and Boer (2015) argue that, while SADC is very good at developing policies aimed at encouraging subregional development; the unwillingness to quickly implement these policies is another compounding factor affecting subregional development and growth. Few countries on the continent seem to be prepared for the partial surrender and the pooling of sovereignty, which is critical to the success of any regional integration scheme. As a result, many

protocols have been signed but remain unimplemented, owing to the absence of effective sanctions against defaulting member States and weak enforcement and implementation capacity (African Union, 2021).

For example, SADC member States are very slow to ratify regional protocols, mainly because they put national interests before those of the subregion. Unsurprisingly, therefore, only two member States – Mauritius and the United Republic of Tanzania – are participating in the Guided Trade Initiative of the African Continental Free Trade Area, whose objectives, among others, are to demonstrate that the Area is functioning; and to give hope to the continent that trading under the Agreement Establishing the African Continental Free Trade Area is achievable. The Guided Trade Initiative was launched as a special initiative following the reluctance of the States parties to the Agreement to commence trading under its trading regime. At the subregional level, slow implementation has led to decisions and programmes being implemented by a handful of member States, thus reducing the potential benefits of such initiatives. In order for intraregional trade and investment to be effectively realized under the SADC, COMESA and African Continental Free Trade Area trade regimes, it is important that member States, as a matter of urgency, address the challenge of slow implementation of policies and commitments.

The Southern African 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 liberalization 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 regional economic communities. These are key aspects that must be taken into consideration by the regional economic communities in the context of implementation of the Agreement Establishing the African Continental Free Trade Area, to ensure that the Area's benefits are maximized and potential risks mitigated.

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 regional economic communities are based on intergovernmental 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 regional economic communities, since they are silent on the matter of obligations and how they should be implemented. When compared to the European integration experience and considering the current challenges faced by Africa, one major bottleneck that stands in the way of achieving deeper integration in Africa is the reluctance of the continent's States to cede sovereignty to key organs of the African Union (African Union, 2021). Giving more power to the secretariats to enforce regional commitments and to hold the States of the subregion accountable for

non-compliance could reinforce integration in Southern Africa. This should be emphasized under the structure for implementation of the Agreement Establishing the African Continental Free Trade Area.

The lack of trade-facilitating infrastructure, both hard – in terms of physical equipment – and soft – in policies and services – is one of the strongest underlying causes of the weak regional integration in Africa. Transport costs in Africa have been adjudged one of the highest in the world, with only 30 per cent of the continent's population having access to electricity, the lowest telephone penetration, at 14 per cent, compared to the world average of 52 per cent, and the lowest Internet penetration, at 3 per cent, compared to the world average of 14 per cent (African Union, 2021). Currently, shipping within Africa is more expensive than shipping from outside the subregion, and some flight connections between African countries still pass through countries outside the continent.

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. Moreover, compliance with environmental regulations and competitiveness could make African ownership even more difficult and, along some routes, the continent may also face even higher costs associated with the deployment of greener ships (UNCTAD, 2023b). Investment in infrastructure is therefore critical if regional integration schemes at the levels of SADC, COMESA and the African Continental Free Trade Area are to promote inclusive intra-African trade and investment. The closing of infrastructure gaps will in essence surmount one of the biggest obstacles to realizing the Area's full economic potential, as better transport infrastructure that makes local, national and regional journeys easier is vital for fostering trade across the continent.

Complex rules of origin have also been identified as a challenge to regional integration in Southern Africa. Rules of origin are designed to guarantee that substantial transformations are carried out on imported goods in the importing country of the free trade area before the product is traded with another member of the same free trade area and are important mostly for manufactured goods. In SADC, the rules of origin were mainly designed to protect existing industries from increased intraregional competition, in particular the textile and clothing industry in South Africa. 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 (OECD, 2017). In the absence of reforms to simplify their own rules of origin, the rules of origin promulgated under the Agreement Establishing the African Continental Free Trade Area could be applied by all member countries to facilitate the application of their existing rules of origin. The rules of origin under the Agreement offer this potential as they provide for more options and flexibilities for cumulation by States parties.

Free trade agreements with third parties have also continued to undermine regional integration in Southern Africa. For example, in the multiple trade regimes that are already in place, the European Union and most African countries have established a structured framework for their trade relations. The European Union trade arrangements are neither efficient nor appropriate, however, from a development perspective. The varying trade regimes of the European Union have the effect of fragmenting African markets, creating gaps in coverage and hard borders for European Union trade between African countries within the same customs union. This is the case, for example, in SADC, whose Economic Partnership Agreement with the European Union includes only 7 of the 16 SADC member

States that are implementing an economic partnership agreement. Other member States, such as Madagascar, Mauritius, Seychelles and Zimbabwe, are negotiating deeper Economic Partnership Agreements with the European Union under the Eastern and Southern Africa 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, rendering the harmonization of African trade policy even more difficult.

Lastly, inadequate resourcing and high donor dependency by the secretariats of the regional economic communities poses a major challenge to regional integration in Southern Africa. One major reason for the slow or failed implementation of regional projects and programmes is the lack of resources. Yet, while States have been accused of failure to commit resources to finance regional projects and programmes, sometimes these resources are simply 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 regional economic communities and the African Union. 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 (African Union, 2021; Luke, 2023). Reliance on donors distorts priorities since the donors influence what projects to finance, and also make inputs into programme design and policy formulation which then means that the regional economic communities and States are implementing donor – largely European – priorities as opposed to their own.

Furthermore, without assured resources, it is not possible to plan for the future; a problem that the African Continental Free Trade Area and regional economic communities

such as COMESA and SADC face. Currently, many regional economic communities have secretariats that are responsible for coordinating the implementation of the regional integration agenda but find it difficult to carry out their mandated responsibilities because they have weak institutional capacity, inadequate human resources and are under-resourced and heavily reliant on donor financing (Luke, 2023; African Union, 2021). During interviews of State officials, concern was also expressed that much of their time is taken up attending meetings of the multiple institutions to which their States belong. It is therefore important that States parties to COMESA, SADC and the Agreement Establishing the African Continental Free Trade Area seek alternative measures for the domestic funding of regional integration scheme so as to ensure the independence of the secretariats and their effectiveness in the delivery of their mandate.

In conclusion, the boosting of intraregional trade in Southern Africa involves much more than eliminating tariffs: it necessitates the elimination of on-the-ground constraints that paralyse the daily operations of ordinary producers and traders. Regional integration that focuses exclusively on the removal of tariff and non-tariff barriers cannot, on its own, 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 to this end 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 manner that is politically acceptable to all.

Regional integration in Southern Africa should serve as 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 States of the Southern African subregion, many of which are sparsely populated and some of which have isolated economies, make regional integration a compelling case. Africa is currently the least integrated continent, with the lowest level of economic intraregional exchange and the smallest share in world trade. For that reason, African economies need to integrate regionally to gain efficiency, exploit economies of scale and reduce the thickness of their 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.

While the operationalization of the African Continental Free Trade Area means that Africa is ready for business, more needs to be done to make the Area work and this goes beyond mere ratification of the Agreement. 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 in its rich endowment of natural resources. Reluctance to make such investment has been largely due to the perception of the continent as the world's riskiest place to do business. The high risks of doing business derive not only from the high incidence of conflicts and political instability and the lack of good governance but also from the high business costs associated with the inadequacy of transport, communications and power infrastructure (African Union, 2021). A well-designed and effectively implemented regional integration process would help to address these problems.



Conclusions and  
recommendations



## Conclusions and recommendations

### A. Conclusions

#### 1. Building on progress in the acquis of the Southern African regional economic communities

It is apparent that the African Continental Free Trade Area can benefit greatly from the progress made by the regional economic communities of Africa, including COMESA and SADC, and also the SACU arrangement. Given the presence in this part of Africa of trade facilitating infrastructure, institutions and systems, including regional economic communities which engage at a high level in intra-Africa trade, namely SADC and COMESA, the African Continental Free Trade Area will not need to start from scratch but, instead, will build on the integration agenda already under way within these regional economic communities. Furthermore, the African Continental Free Trade Area is intended to preserve the acquis in areas where regional economic communities have attained higher degrees of integration, and to scale up activities in those areas where regional economic communities require additional support to widen and deepen their intraregional trade and investment.

#### 2. Areas and measures that can be prioritized for implementation by the countries of Southern Africa, building on the acquis of the regional economic communities

From the outset, it was envisaged that the African Continental Free Trade Area would be anchored on the regional economic

communities. This was even foreseen under the instruments that set up the African Union and the Treaty Establishing the African Economic Community. While significant strides have been taken in that direction, as the process of African integration has evolved, progress has not been as swift as had been envisaged. This may change, however, when regional economic communities implement the Agreement Establishing the African Continental Free Trade Area. In the light of the experience of more advanced integration blocs in the world, this is not surprising: integration is a gradual process, not a single event.

Bearing this in mind and considering the speed at which integration within the regional economic communities is taking place – for example, the implementation of free trade agreements by all members of a regional economic community – and considering the persistence of non-tariff barriers, despite their being outlawed in the relevant protocols of the regional economic communities, there are serious lessons that should be heeded regarding the anticipated accelerated implementation of the Agreement, building on the acquis of the regional economic communities. If implementation within the regional economic communities has been slow, what can be done to make it faster for the African Continental Free Trade Area? For example, consideration should be given to having in place a minimum package within the regional economic communities before full-blast implementation of the Agreement. That minimum package

should entail safeguards and capacity-building measures to ensure, among other conditions, that supply-chain stakeholders are ready to trade under the Area's regime. The far-reaching promises made for the Area must also be borne in mind, especially regarding its prospects for the private sector, and care should be taken to ensure that those prospects are fulfilled to the extent possible.

Notwithstanding the different liberalization ambitions and time schedules relating to SADC, COMESA and the African Continental Free Trade Area, there are many areas of convergence between the instruments of the regional economic communities and the Agreement Establishing the African Continental Free Trade Area as clearly articulated in the present study. These include the gradual elimination of tariffs guided by the principle of reciprocity; the aspiration to evolve into a customs union with a common external tariff; the ultimate objective and vision of driving forward the regional economic communities and industrialization; the commitment to remove non-tariff barriers and create reporting and elimination mechanisms; the commitment to refrain from the use of sanitary and phytosanitary measures as disguised barriers to trade; the balancing of rights and obligations; similarity of their prioritized services sectors; and the promised deeper coverage of their dispute settlement mechanisms, among others. These areas of convergence should form a good basis on which to accelerate implementation. Extra attention must be paid, however, to the areas of divergence between regional economic communities and the African Continental Free Trade Area instruments, in order to pave the way for seamless implementation of the Agreement. In its current form, the Agreement largely addresses regulatory integration, given that its implementation depends on the willingness of States to honour their commitments; accordingly, the regional economic communities and the Agree-

ment itself must prioritize physical integration in order for the African Continental Free Trade Area to fulfil all its promises.

Moreover, the removal of non-tariff barriers both under the SADC and African Continental Free Trade Area trade regimes is likely to be a difficult process, as the calculation of tariff equivalents is much easier in theory than in practice and negotiations could be very complicated. In the case of SADC, restrictive import licensing, administrative delays, bureaucratic contortions, stipulations of sources of supply and prohibitions on the import of certain goods may pose serious challenges in this regard. SADC may benefit by taking a leaf out of the COMESA book and following a more practical approach to the reduction of non-tariff barriers, which in turn, could facilitate the implementation of the Agreement.

Both the COMESA and SADC free trade areas are well ahead of the liberalization schedule for the African Continental Free Trade Area, with COMESA liberalizing to the level of 100 per cent, as opposed to the 90–97 level achieved for the Area. In the case of SADC, upon entry into force of its free trade area, products were scheduled for liberalization over a longer period. As that period expired, however, countries kept asking for extensions. The SADC free trade area leaves 3 per cent of its products excluded from tariff liberalization, the same level as in the African Continental Free Trade Area. In practice, those Southern African countries that have dual membership of COMESA and SADC tend to apply the COMESA free trade area regime in general, and the SADC regime when trading with South Africa.

This highlights what needs to be done under the Agreement Establishing African Continental Free Trade Area to ensure harmonization of the removal of tariffs, to bring the Agreement into line with COMESA and SADC, as this will largely determine the extent of its implementa-

tion. Indeed, while the African Continental Free Trade Area rules and regulations are sufficiently broad in scope to allow for some deviation among non-tariff barriers and State relations, uncertainties still exist regarding overlapping memberships and the position taken by the Agreement Establishing the African Continental Free Trade Area vis-à-vis some non-tariff barriers. One issue in particular is how tariff liberalization will be applied to least developed countries and their non-least developed counterparts within customs unions. Some regional economic communities may face difficulties in resolving tariff liberalization, given that the Agreement allows least developed countries longer tariff phase-down periods – 13 years for sensitive products, as against the 10 years accorded to non-least developed countries.

In addition, it is unclear what sort of relationship the African Continental Free Trade Area will have with the recently finalized Tripartite Free Trade Area covering the three regional economic communities EAC, SADC and COMESA (Trade Law Centre, 2018). This is the reality that, through the *acquis*, the Agreement has to navigate, given the different tariff liberalization timelines for non-least developed countries, least developed countries and the countries of the Group of Seven. A mechanism for monitoring implementation of tariff offers under the Agreement and reviewing their impact on COMESA and SADC member States should be developed and effected by the countries. This will ensure a harmonized approach to the implementation of liberalization offers, both under the Tripartite Free Trade Area and the African Continental Free Trade Area.

Thus, with regard to the *acquis* principle, while the Agreement Establishing the African Continental Free Trade Area can leverage the increased intra-COMESA trade (currently at 7 per cent of the Community's total trade) and COMESA trade

with the rest of Africa (currently at 9.3 per cent) to boost trading under its own trading regime, it still has to navigate the slow implementation of the tariff reduction programme among COMESA member States. Moreover, the fact that tariffs on intra-COMESA trade have fallen significantly should ensure a soft landing for implementation of the Agreement within the regional economic community, given that one of the critical tests of the African Continental Free Trade Area is the speed at which States parties will eliminate the tariffs during actual trading under the Area's regime.

### **3. Regulatory, institutional and other measures necessary to accelerate implementation of the Agreement Establishing the African Continental Free Trade Area, building on the *acquis***

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 already embraced by the SADC Protocol on Trade in Goods. In addition, provision is also made for the implementation of intraregional trade measures, such as trade facilitation, transit trade, standards and technical regulations on trade, and monetary and financial arrangements.

One of the commendable aspects of the Agreement Establishing the African Continental Free Trade Area is its broader scope, under which States parties have negotiated similar complementary trade liberalization protocols, on such matters as the promotion of cross-border investment, protection of intellectual property rights, and competition policy, among others. By including categories of protocols similar to those of SADC, the Agreement complements, rather than waters down, the existing trade-related protocols in SADC. An important issue

for consideration by the States parties to the Agreement is the need to support operationalization of the aforementioned SADC complementary trade liberalization protocols, as, by design, the success of the African Continental Free Trade Area will depend on the functionality of the trade-related mechanisms in the regional economic communities, such as those in SADC.

It is vital to assess the efficacy of the implementation of both the COMESA and the SADC trade in goods programmes. 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 SADC Protocol on Trade in Goods, 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 that they know are not produced in the subregion for preferential treatment under the arrangement (Trade Law Centre, 2020).

The case of SACU offers an important lesson regarding what the Agreement Establishing the African Continental Free Trade Area will have 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 in trade tensions and the emergence of non-tariff barriers and threaten infant industries. It is therefore critical that the safeguard mechanisms provided under the Agreement are easily applied by SACU members during implementation of the Agreement. The Agreement could also build upon the approach followed by SACU in finding a mutually acceptable solution to such issues as addressing non-tariff barriers, promoting infant industries and others.

Other measures include those put in place to address the challenges to regional integration in Southern Africa. These challenges include encompass weak productive capacities and limited economic diversification; high non-tariff-related trade costs; monocultural agro-based economies; the pursuit of national interests in preference to regional cooperation; multiple and overlapping memberships in integration schemes; the slow ratification of regional policies; poor trade-facilitating infrastructure; complex rules of origin; free trade agreements with third parties; and inadequate resourcing and donor dependency by regional organizations. The surmounting of these challenges is imperative to unlocking the subregion's full economic potential and fostering a cohesive and prosperous Southern Africa.

## D. Recommendations

In a bid to attain these goals, the following recommendations should be explored:

- a. Incorporating commitments in national laws:** It is important that States incorporate their regional integration commitments in national laws for easier access and understanding, in particular by the private sector;
- b. Strengthening 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 intraregional trade and cooperation;
- c. Reducing 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;

**d. Promoting regional value chains:**

To foster economic integration, Southern African countries should establish regional value chains by exploring the cumulation prospects under the relevant arrangements of rules of origin of the regional economic communities and the African Continental Free Trade Area, so as to leverage each country's strengths and complementarities. This will enable them to produce a wider range of goods and services, reducing dependence on external markets and, furthermore, would be in line with the industrialization strategies of the regional economic communities;

**e. Enhancing 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;

**f. Addressing 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 regional economic communities following the creation of the African Continental Free Trade Area is to increase trade and investment with the rest of Africa, this can be boosted by halting the multiplicity of memberships and the attendant "spaghetti bowl" effect, which has been noted as one of the impediments to realization of the African

Economic Community (African Union, 2021);

**g. Accelerating policy implementation:**

Member States must commit themselves to the swift implementation of regional policies and protocols. This includes establishing effective mechanisms to hold defaulting States accountable and ensuring the timely implementation of agreed-upon programmes;

**h. Investing 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;

**i. Simplifying rules of origin:**

Harmonizing and simplifying rules of origin within the framework of the Agreement Establishing the African Continental Free Trade Area 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, coherence and greater alignment must be ensured across the relevant protocols of the regional economic communities and the Agreement;

**j. Re-evaluating third-party free trade agreements:**

Member States should assess their existing trade agreements with third parties and work towards harmonizing them with the objectives of regional integration. Ensuring consistency and coherence in trade policies will foster regional unity and integration;

**k. Ratifying and implementing the Single African Air Transport Market:**

This is pivotal to the success of the African Continental Free Trade Area, fostering economic growth by

streamlining air travel across the continent. Ratification of the Single African Air Transport Market will unify airspace policies, reduce operational costs and enhance connectivity, in turn bolstering trade, tourism and overall regional integration. Efficient air transport is a catalyst, propelling African States towards shared prosperity and breaking down barriers to commerce. Embracing the Single African Air Transport Market will entail a collective commitment to a seamless, vibrant continent-wide economy under the African Continental Free Trade Area, propelling Africa into a new era of collaboration and economic advancement;

**l. Fostering financial independence:**

Regional integration organizations, such as COMESA, SADC and the African Continental Free Trade Area secretariat, should seek alternative sources of funding to reduce donor dependency. This will enable them to set their own priorities and implement programmes that are aligned with the subregion's interests and objectives;

**m. Strengthening the incorporation of the Agreement Establishing the African Continental Free Trade Area into the legal systems of the regional economic communities through monitoring and evaluation mechanisms:**

States parties can enhance the incorporation of the Agreement Establishing the African Continental Free Trade Area by the regional economic communities through robust monitoring and evaluation mechanisms. This will involve establishing frameworks to assess progress, identify challenges and ensure effective implementation. By systematically tracking economic integration, trade facilitation and

policy harmonization, States parties can address issues promptly, foster collaboration and optimize the benefits of the Agreement within their respective subregions. Monitoring and evaluation mechanisms will thus serve as a crucial tool for reinforcing the successful implementation of the Agreement at both the national and subregional levels;

**n. Ensuring multistakeholder engagement, in particular that of the private sector, in the ongoing negotiations on the African Continental Free Trade Area and implementation of the already ratified protocols:**

Negotiations are currently in progress, including on the protocols on digital trade and on women and youth in trade, in addition to those on the pending annexes to the Protocol on Investment, the Protocol on Competition Policy and the Protocol on Intellectual Property Rights. The private sector should be involved in these negotiations so as to ensure that the challenges to its competitiveness are duly addressed and that export promotion strategies to take advantage of the African Continental Free Trade Area are developed.

A collective response to the above recommendations will require a concerted effort by all stakeholders in Southern Africa. By tackling the associated challenges and implementing these recommendations, the subregion can overcome barriers to regional integration and unlock its full potential within the framework of the African Continental Free Trade Area. The myriad challenges faced by Southern Africa in its pursuit of regional integration demand urgent attention and proactive solutions. The subregion's potential, as consolidated in the African Continental Free Trade Area, can only be fully harnessed if these obstacles are effectively surmounted. Moreover,

the complexities arising from multiple and overlapping memberships in integration schemes, the slow ratification of regional policies and the woeful state of trade-facilitating infrastructure pose substantial roadblocks to this undertaking. The intricacies of the various rules of origin, the influence of third-party free trade agreements and the debilitating reliance on external donors further compound the challenges.

Implementation of the SADC industrialization strategy and road map for the period 2015–2063 is also critical for the enhancement of regional integration in Southern Africa. This was further emphasized in the SADC subregional indicative strategic development plan for 2020–2030, whose industrial development and market integration pillar comprises efforts to achieve an industrialized regional economy that makes sustainable use of its natural resources. Thus, industrial development focusing on the priority sectors of agroprocessing, mineral beneficiation and pharmaceuticals is required, alongside the enhancement of regional technological capability and capacity through science, technology and innovation.

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 the secretariats for COMESA, SADC and the African Continental Free Trade Area should prioritize the streamlining of policies, fostering of diversified economies and enhancing of trade facilitation infrastructure. Close attention should be paid to the fact that regional economic communities go well beyond a trade and market integration agenda which

gives impetus to leveraging the acquis in the implementation of the Agreement Establishing the African Continental Free Trade Area. While the African Continental Free Trade Area is not a regional economic community, it provides a comprehensive architecture in which member States are represented and covers all legal disciplines which are critical in promoting intra-African trade. Furthermore, a shift towards genuine cooperation, a reduction in overlapping memberships and the swift implementation of ratified policies are essential. Lastly, financial independence and adequate resourcing are vital to ensuring the subregion's self-determination and effective regional integration, paving the way to a more prosperous Southern Africa.



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