MASTER THESIS

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"'Lions on the move' – Dismantling the African Continental Free Trade Area (AfCFTA): Opportunities and Challenges for boosting Intra-African trade"

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Pledge of Honesty

On my honour as a student of the Diplomatic Academy of Vienna, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

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Abstract English

Regional integration efforts on the African continent have been ongoing since the end of European colonial rule. Especially the changes to the architecture of world trade, the 'breakdown' of the Doha Development Round and the rise of new groups of emerging powers (e.g. BRICS: Brazil, Russia, India, China and South Africa) have created both opportunities and challenges for Africa's development and growth. In 1991, the Treaty of Abuja was signed and provides the overarching framework for an 'African Economic Community'. Ever since, so called 'Regional Economic Communities' were established, they have become the main economic engines, but fragment the continent. However, despite the integration effort, African intra-continental trade is the lowest in the world. Therefore, the 'African Continental Free Trade Area' was initiated. It covers all 55 African Member States of the African Union and seeks to boost intra-African trade, facilitate trade, promote sustainable development and lay the foundations for the creation of a Customs Union.

The main objective of this thesis is to introduce the reader to the economic system on the African continent and to place the newly established AfCFTA into the African framework of existing 'Regional Economic Communities'. Quantitative data analysis was undertaken to show the level of economic integration on the African continent. This author established that most of the trading is being done within the existing 'Regional Economic Communities'. Additionally, the legal study of the 'Agreement establishing the African Continental Free Trade Area' shows that the 'Regional Economic Communities' will continue to exist under the AfCFTA and will further engage in negotiations with each other. This will lead to a denser 'Spaghetti-bowl' of 'Regional Trade Agreements' on the African continent. Additionally, this thesis analyses the severe effect of 'Non-Tariff Barriers to Trade' and shows that improvement in infrastructure development, customs clearance, logistics services, etc. is necessary to fulfil the full economic potential. In addition, this author provides an in-depth discussion of the legal Agreement and concludes that the document is grossly incomplete even though it went into force in May 2019. Until today, the essential features to make preferential trade under the AfCFTA operative, namely Schedules of Tariff Concessions, Rules of Origin and Commitments in Trade in Services, have still to be agreed on.

Abstract German

Die Veränderungen in der Weltwirtschaft, das Aufstreben neuer Supermächte sowie das ‚Scheitern' der Doha-Entwicklungsagenda trugen erheblich dazu bei, dass Afrika einen neuen wirtschaftlichen Weg finden musste. Der Vertrag von Abuja aus dem Jahr 1991 beinhaltet die wesentlichen Entwicklungsschritte zur Gründung einer ‚Afrikanischen Wirtschaftsgemeinschaft'. So wurden im Laufe der Jahre ‚Regionale Wirtschaftsgemeinschaften' gegründet, innerhalb derer ein Großteil des intra-afrikanischen Handels stattfindet. Im globalen Vergleich ist der intraregionale Handel, d.h. der Handel zwischen den einzelnen afrikanischen Staaten, jedoch am geringsten. All die Bemühungen um mehr wirtschaftlichen, afrikanischen Aufschwung haben bisher nicht das erwünschte ‚Kontinent-weite' Wachstum gebracht, weshalb sich die 55 Mitgliedstaaten der ‚African Union' auf die Gründung einer ‚Kontinent-umfassenden' Freihandelszone geeinigt haben. Das Abkommen über diese ‚Panafrikanische Freihandelszone', die sogenannte ‚African Continental Free Trade Area', trat am 30. Mai 2019 in Kraft. Diese soll nun intra-afrikanischen Handel erleichtern, Zölle und Handelsbarrieren sollen eliminiert werden, die Infrastruktur verbessert und der Handel effektiver gestaltet werden.

Die vorliegende Arbeit behandelt insbesondere die Eingliederung der neu gegründeten ‚Panafrikanischen Freihandelszone' in das System der existierenden ‚Regionalen Wirtschaftsgemeinschaften'. Eine quantitative Auswertung von Handelsdaten dient dazu, die derzeitige Handelssystematik auf dem afrikanischen Kontinent näherzubringen. Die Autorin analysiert den Gründungsvertrag der ‚Panafrikanischen Freihandelszone' und stellt fest, dass die ‚Regionalen Wirtschaftsgemeinschaften' als Grundbausteine der Freihandelszone angesehen und dazu aufgefordert werden, untereinander Handelsverträge abzuschließen. Auf diese Weise wird es zu einer Multiplikation von überlappenden Freihandelsverträgen (zum sogenannten ‚Spaghetti-Bowl-Effekt') in Afrika kommen. Darüber hinaus gewinnt die Autorin die Erkenntnis, dass es weiterer Verhandlungen über Zollzugeständnisse, Ursprungsregeln sowie Abkommen im Dienstleistungsservice bedarf, um präferenziellen Handel unter der ‚Panafrikanischen Freihandelszone' möglich zu machen.

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List of Abbreviations

AB	Appellate Body
ACP	African, Caribbean and Pacific (Group of States)
AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AGOA	African Growth and Development Act
Art.	Article
ATO	African Union Trade Observatory
AU	African Union
AUC	African Union Commission
AXIS	African Internet Exchange System
B2B	Business-to-business
BIAT	Action Plan for Boosting Intra-African Trade
BRI	Belt and Road Initiative
CEMAC	Central African Economic and Monetary Community
CEN-SAD	Community of Sahel-Saharan States
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Union
DSB	Dispute Settlement Body
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EPAs	Economic Partnership Agreements
EU	European Union
FOCAC	Forum on China-Africa Cooperation
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
ibid.	ibidem (latin)/in the same place
IGAD	Intergovernmental Authority on Development
ITC	International Trade Centre

LDC	Least-Developed-Country
lit.	litera (latin)
LPI	Logistic Performance Index
MFN	Most-Favoured-Nation Principle
MS	Member States
NTB	Non-Tariff Barrier to Trade
PAeN	Pan-African e-Network
PAPSS	Pan-African Payment and Settlement System
PICI	Presidential Infrastructure Championship Initiatives
PIDA	Programme for Infrastructure Development in Africa
REC	Regional Economic Community
RoO	Rules of Origin
RTA	Regional Trade Agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SME	Small and Medium-sized Enterprise
TBTs	Technical Barriers to Trade
TFTA	Tripartite Free Trade Area
TIP	Trade Information Portal
tralac	Trade Law Centre
UEMOA	West African Economic and Monetary Union
UMA	Arab Maghreb Union
UNECA	United Nations Economic Commission for Africa
UNIDO	United Nations Industrial Development Organization
USA	United States of America
WTO	World Trade Organization

1 Introduction

The African Continental Free Trade Area (AfCFTA) initiated on the 30th of May 2019 was a historic moment for Africa. Regional integration efforts on the African continent have been ongoing for decades. The AfCFTA is the most ambitious integration initiative on the continent and aims to create a single continental market for goods and services with free movement of labour and investment. The Agreement is entirely internally Africa-driven and once fully implemented, in terms of the number of participating states, the AfCFTA will be the largest Free Trade Area (FTA) in the world.[1] If successfully implemented, the intra-African trade across the Regional Economic Communities (RECs) and the whole continent shall increase; and competitiveness and economic transformation shall improve.[2] Apart from this, the AfCFTA is also a flagship project of the African Union (AU), situated within 'Agenda 2063: The Africa we Want'. This implies that several other initiatives of 'Agenda 2063', like for example the 'Action Plan for Boosting Intra-African Trade' (BIAT), will support the realisation of the AfCFTA. This in turn leaves space for the Member States (MS) of the AU to develop the AfCFTA further and incrementally adapt to emerging challenges. It is also seen as an opportunity to unite all African states and push against boundaries on the continent.[3]

However, the term 'African Continental Free Trade Area' can be misleading. Firstly, because not all African states are negotiating with each other; rather, negotiations on trade facilitation take place on a MS level and between RECs. Secondly, because practically every MS of the AU already forms part of at least one FTA[4]; and thirdly, because there will never be a single Customs Union (CU) on the African continent. Therefore, this author[5] presumes that the AfCFTA will contribute to Africa's 'Spaghetti-bowl' of regional trade arrangements.

It was intended that trading under the AfCFTA would start on 1st of July 2020. However, as a result of the COVID-19 pandemic, that date has been postponed. A new date is yet to be confirmed by the African Union Commission (AUC). Hence, the AfCFTA is not yet operative.

[1] *Cloete, Tim. "*Africa's new free trade area is promising, yet full of hurdles." 2019, https://www.weforum.org/agenda/2019/09/africa-just-launched-the-world-s-largest-free-trade-area/, (06.04.2020).
[2] *TRALAC. "*The African Continental Free Trade Area: A tralac guide." 2019. https://www.tralac.org/documents/resources/booklets/3028-afcfta-a-tralac-guide-6th-edition-november-2019/file.html: 2.
[3] *African Union Commission. "*AU Member Countries Create History by massively signing the AfCFTA Agreement in Kigali." 2018, https://au.int/en/pressreleases/20180321/au-member-countries-create-history-massively-signing-afcfta-agreement-kigali, (22.01.2020).
[4] *Tanyi, Kenneth T.* Assessing Africa's Two Billion Populated Market by 2063: The Facts and Fallacies of a Continental Free Trade Area (CFTA): Business and Economics Journal 6/3 (2015): 1.
[5] The author of this thesis refers to herself as 'this author'.

This thesis intends to give the reader a better understanding of the complexity of intra-African trade and the challenges the continent is facing with regards to trade ties.

Hence, this paper – using a descriptive research design – aims to answer the questions: ***What** does the current economic situation on the African continent look like, **what** are the main obstacles to more intra-African trade and **what** makes African countries continue to enter into Regional Trade Agreements (RTAs) despite the fact that the African Continental Free Trade Area (AfCFTA) got established?*

In order to answer the research questions, this thesis will start with an overview of the current economic situation on the African continent. This is followed by an analysis of the intra-African trade pattern as well as of Africa's logistics performance. Subsequently, the AfCFTA is looked at from a historical perspective, the BIAT is introduced and the negotiation and ratification status are looked at. Next, the content of the 'Agreement establishing the AfCFTA' is assessed and an overview of the institutions and Annexes to the Agreement is provided. Finally, the Agreement is positioned in the international legal framework, where the 'regional trade exception' of Article XXIV GATT as well as the 'Enabling Clause' prove to be most relevant. The subsequent chapter provides an exhaustive analysis of the existing RECs and their negotiating power. In this context, the relevance of the Abuja Treaty of 1991 as the predecessor of the 'Agreement establishing the AfCFTA' is addressed. In addition, the theory of the economic 'dispute' of trade creation versus trade diversion through the establishment of RTAs is included in this thesis. Chapter 5 concerns Africa's position in world trade and the 'breakdown' of the Doha Development Round. As global superpowers exert their influence on the African continent for many years, their involvement in trade on the continent is critically examined. Finally, as a topic of interest, the last chapter deals with the need to include 'digitisation' into the AfCFTA. The Appendix of the thesis includes all data sheets relevant to understand this author's findings.

1.1 Relevance

As mentioned in the introduction, the AfCFTA must not only be seen as an FTA, but also as a flagship project of 'Agenda 2063' of the AU. Contemporary research has shown that currently a lot of misunderstanding of the implications of the AfCFTA exists, even amongst African traders. Traders must be aware of the complexity of system to date if they want to engage in business on the continent. Furthermore, this author ascertained that even some representatives

of various African countries based at the United Nations Industrial Development Organization (UNIDO) in Vienna, Austria lack understanding of the Agreement. It was recognisable that the representatives were not prepared to answer substantial questions at the ‘Africa Industrialization Day (AID) 2019’ on the 20^{th} of November 2019 at UNIDO. So, not only the topicality of the subject makes it interesting, but also the misperception of the effects of the Agreement on intra-African trade.
Additionally, this author believes that only a very limited knowledge of the AfCFTA exists in Europe. Understanding the trading regime(s) of the African continent will be necessary for European traders wanting to tap into the African market.

1.2 Methodology

This thesis builds on a descriptive research design. This method seems particularly suitable to describe the current obstacles to more intra-African trade and to assess the situation with regards to the newly introduced AfCFTA. Furthermore, using a descriptive research design is the best way of showing trends (like an increasing number of RTAs) and correlations (such as the correlation between trade and tariffs or the correlation between the Logistic Performance Index (LPI) and trade pattern).

The research includes a combination of qualitative and quantitative metrics and looks at the topic through an inter-disciplinary lens.

The quantitative component is introduced when evaluating Africa’s economic performance as well as the level of intra-African trade integration. Data and figures, published by the African Development Bank, the World Bank, the International Monetary Fund, the AU and particularly the International Trade Centre (ITC), are used to show the current economic power of RECs. Data is necessary to reveal the obstacles to more intra-African integration. In that regard, the author Takele used the LPI to analyse the effects of trade logistics on intra-African trade. Ngepah and Udeagha assessed the benefits of multi-memberships in African RTAs, using the gravity model to analyse bilateral trade flows. Similarly, the authors Candau, Guepie and Schlick focused on the effects of RTAs on bilateral trade in Africa.

The quantitative contribution of this master thesis is the analysis of trade data of the African continent for year 2018 and the compilation of an ‘intra-African trade and tariff profile’ for South Africa. The data used for the profile, which will be attached to the thesis, stems from the

‘ITC Trade Map database’, the ‘ITC Market Access Map’ as well as from the ‘ESCAP World Bank trade cost database’ and focuses on year 2019. The profile is divided into three parts: The first part gives an introduction of the respective country’s regional grouping(s), the second part looks at the country’s overall intra-African exports and imports in comparison with its respective world exports and imports; the third part shows the percentage of exports and imports that go to/stem from African countries outside the respective regional grouping as well as the tariff levied on goods. The program ‘Piktochart’ is used to present the data in graphical form.

The qualitative component supports the thematic review. However, since the ‘Agreement Establishing the AfCFTA’ only entered into force last year, the ‘project’ is still in its infancy and the academic material therefore very limited. Some authors, including Ismail or Odijie, look at the establishment of the AfCFTA from a historical perspective. Providing an insight into the history is necessary in order to understand the development of the RECs and the existing trading regime on the continent. Other authors, like Tanyi, offer research on the hindrance of more regional collaboration in the light of ‘Agenda 2063’. None of them however, have either given an overview of the content of the legal document or of the setup of the Agreement or of its incorporation into the existing system of RTAs. The information needed to fill this research gap stems from an assessment of the legal documents as well as from a six-week research internship at ‘tralac trade law centre’, located in Stellenbosch, South Africa.[6] Tralac is a public benefit organisation, which focuses on developing technical expertise and capacity in trade governance across the African continent. Its activities are anchored on the following three pillars:

1. inform stakeholders through analysis and information
2. empower individuals and institutions through partnerships
3. capacitate (marginalised) stakeholders to compete efficiently in trade policy[7]

Due to the topicality of the AfCFTA, a lot of research as well as seminars undertaken by tralac staff deal with the Agreement. However, as a result of the current COVID-19 crisis, the annual conference, which was supposed to take place from the 1st to the 4th of April 2020 in Addis Ababa, Ethiopia had to be cancelled. This author intended to travel to Addis Ababa to hold a poster presentation at the conference and will make up for the omission at the earliest opportunity.

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[6] This author was supposed to stay for 9 weeks. However, due to the COVID-19 crisis, this author had to leave South Africa at short notice.
[7] *TRALAC. “*About tralac.” https://www.tralac.org/about.html, (12.01.2020).

2 The economic potential of Africa

2.1 Changing narrative

In year 2000, the Economist magazine published an edition with the cover title 'Africa – the hopeless continent'.[8] Over the course of time, this negative narrative changed and Africa has made a shift from a hopeless continent to a continent full of opportunities and potential. McKinsey & Company's report 'Lions on the Move: The Progress and Potential of African Economies (2010)' contributed to the change in perception of the continent's economic potential. In order to best capture this positive shift, the title of this thesis follows McKinsey & Company's metaphorical caption. Moreover, the Economist further undertook studies on the continent's economies and adopted McKinsey & Company's idea. This change is also reflected in the Economist magazine's changing headlines to 'Africa rising' in 2011 and 'Aspiring Africa' in 2013 (see Figure 1). In September 2016, McKinsey & Company again upped the ante by publishing a second report called 'Lions on the move II: Realizing the potential of Africa's economies', in which the consultancy firm summarized the results of its broad investigations of African economy and trade.

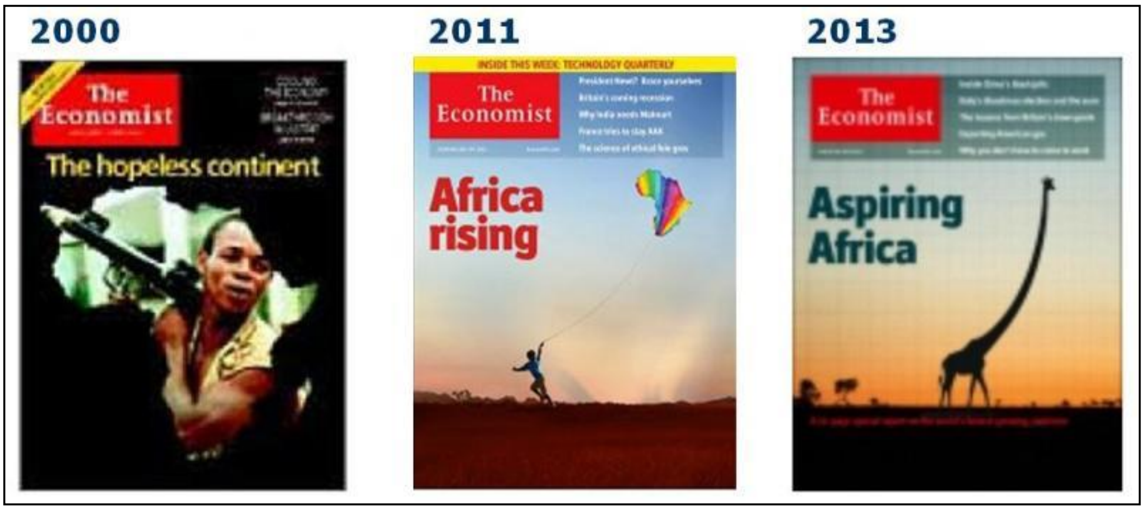

Figure 1: Changing narratives[9]

[8] *The Economist. "*Hopeless Africa." 2000, https://www.economist.com/leaders/2000/05/11/hopeless-africa, (11.02.2020).
[9] https://entrepreneurialconfluence.files.wordpress.com/2014/08/africa-economist.jpg (11.02.2020).

2.2 Economic outlook

The United Nations Economic Commission for Africa (UNECA) promotes the AfCFTA by stating that it will cover a market of 1.2 billion people and a gross domestic product (GDP) of 2.5 trillion US dollars across all African states.[10] In order to grasp the extent of the economic potential of the AfCFTA on African economies, this chapter looks at the economic situation on the continent.

(Natural) resources

Even though Africa is a continent full of valuable natural resources, its economic potential is often undermined. The continent is forecasted by the International Monetary Fund to be the world's second-fastest-growing economy to 2020. Africa's advantage is that it still has natural resources in abundance. Africa commands about 10% of the world's oil reserves, huge cobalt deposits and a vast amount of base metals. In the South African Territory alone, 40% of global gold reserves can be found. Africa's world production share of 'platinum group metals' (PGMs) in 2010 was 74%. Besides, the continent commands over about 60% of global uncultivated arable land. Additionally, the second largest and longest rivers (the Nile and the Congo) are source of life for millions of Africans. The total value of its aquaculture and fisheries sector amounts to approximately 24 billion US dollar. Moreover, the second largest forest can be found on African territory.[11]

Economic activities

Historically, the economic activities on the African continent predominantly cover agriculture and manufacturing. In that regard, the term 'industrialisation' means the shift of production factors of agriculture to manufacturing. Generally speaking, manufacturing is characterized by a high entry barrier, increasing returns of scale and imperfect competition. It profits from technological rent, which leads to a reduction of costs and price making. In comparison, agriculture shows low entry barriers, decreasing returns of scale, perfect competition and price taking. Economists state that industrialisation leads the economy away from asset-based systems running on unskilled labour towards a knowledge-based system running on skilled

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[10] *United Nations Economic Commission for Africa.* "African Continental Free Trade Area - Questions & Answers." https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers, (04.03.2020).

[11] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 137. *African Development Bank Group, ed.* African Natural Resource Center: Catalyzing Growth and Development through effective Natural Resources Management (2016): 3, 6. https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/AfDB_ANRC_BROCHURE_en.pdf, accessed March 2020.

labour. However, looking at the African continent, it can be observed that Africa's specialisations are mainly agricultural asset-based activities, using unskilled labour with limited inclusion of the economy at large. Therefore, more promotion of manufacturing is needed on the continent.[12]

McKinsey & Company concurs with this perception. Taking into account the natural resources and its future potential, the consultancy claims that Africa could double its manufacturing output, if states take action to create an appropriate business environment for manufacturers.[13] However, extensive obstacles hinder African countries to use their potential. Development and governance challenges, environmental degradation, desertification, deforestation, lack of clear national policy directions, poor investment decisions, lack of human security and a decline in formal trade are just some issues to be mentioned.[14] To overcome these vulnerabilities, African countries are advised to further diversify their economies. Governments should take steps to guarantee the future use of natural resources and at the same time improve the environment for businesses by investing in transportation and electric power infrastructure, opening the market for foreign investment or enacting laws to create a healthy and stable business environment.[15]

Growth

By contrast with the period 1995-2008, growth in Sub-Saharan-Africa has slowed down from 2015-2019. Now, fewer countries are among the top growth performers and 'borders' between middle and bottom growth performers are vanishing. The 'African Country Policy and Institutional Assessment' report states the main reasons for the economic deceleration being the meagre pace of domestic reforms and poor debt management.[16] The World Bank shares this opinion and also adds general uncertainty in the global economy as a cause of the sluggish growth performance. According to its 20th edition of 'Africa's Pulse'[17], overall growth in Sub-Saharan Africa was slow through 2019. Furthermore, regional growth is very diverse across the continent. Whereas the biggest economies – Nigeria, South Africa and Angola – have remained fragile, Sub-Saharan states in general are more robust. Thirty-seven African states have experienced growth rates of 3% and above in year 2019; foreign direct investments in Africa

[12] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 185.
[13] *McKinsey Global Institute, ed.* Lions on the move II: realizing the potential of Africa's economies (2016): in brief.
[14] *African Development Bank Group, ed.* African Natural Resource Center: Catalyzing Growth and Development through effective Natural Resources Management (2016): 3–4. https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/AfDB_ANRC_BROCHURE_en.pdf, accessed March 2020.
[15] *McKinsey Global Institute, ed.* Lions on the move II: realizing the potential of Africa's economies (2016): 24.
[16] *World Bank Group. "*Africa's Pulse: October 2019/ Volume 20: An Analysis of Issues shaping Africa'as economic future." 2019. https://openknowledge.worldbank.org/handle/10986/32480: 2.
[17] 'Africa's Pulse' is the World Bank's economic update for the region.

increased in 2018 by 11%. Besides, six of the 10 fastest growing regions in the world are located on the continent (with Ghana at the top).[18]

For the year 2020, overall growth on the continent is expected to accelerate to 4.1% with East Africa being the fastest growing region. However, several countries, such as Burundi and Comoros, record weak growth because of political instability. The growth rate in Central Africa is expected to slowly increase again due to recovering commodity prices and higher agricultural output. Growth in Southern Africa is predicted to stay stable after a modest recovery in 2017 and 2018. Nevertheless, South Africa's weak economic performance will still affect the neighbouring countries.[19]

Labour and consumption

Africa's population is growing at a fast pace and the continent's labour force is one of the youngest in the world. By 2034, the continent is expected to overtake China's or India's workforce with an expected working-age population of 1.1 billion people. By 2050, the population on the African continent is expected to reach 2.5 billion people, which will correspond to 26% of the world's working age population. African states are advised to act now to adopt measures to train people; to invest in (secondary and university) education and vocational training.[20] To promote the youth and create jobs will be one of the most difficult tasks for many African states and countries have to find ways to reduce unemployment. Data, provided by the 'International Labour Organization (ILO) Estimates and Projections Series', exhibits that the overall unemployment rate in Africa in 2019 amounted to 6.8%; Eastern Africa showed the lowest rate with 3.2% and Southern Africa the highest one with 27.2%. South Africa had the highest unemployment rate on the continent with every fourth person being out of work (28.2%), followed by Lesotho (23.4%), Eswatini (22.1%), Namibia (20.3%) and Gabon (20%).[21]

Apart from that, Africa is predicted to enjoy the fastest urbanisation rate in the world. The continent's household consumption shows a continuous growth. More than half of consumption

[18] *African Union Development Agency, and NEPAD. "*Presidential Infrastructure Champion Initiative (PICI) Report." 2020: 7. *Leke, Acha, and Landry Signé. "*Spotlighting opportunities for business in Africa and strategies to succeed in the world's next big growth market." Foresight Africa 2019, 2019. https://www.brookings.edu/research/spotlighting-opportunities-for-business-in-africa-and-strategies-to-succeed-in-the-worlds-next-big-growth-market/.

[19] *African Development Bank Group, ed.* African Economic Outlook 2019: Macroeconomic performance and prospects; Jobs, growth, and firm dynamism; Integration for Africa's economic prosperity (2019): xiii.

[20] *McKinsey Global Institute, ed.* Lions on the move II: realizing the potential of Africa's economies (2016): 1, 6.

[21] Data stems from ILOSTAT: https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page33.jspx?locale=EN&MBI_ID=2&_adf.ctrl-state=nrmh2v7uu_62&_afrLoop=10291268430102271&_afrWindowMode=0&_afrWindowId=nrmh2v7uu_59# (27.03.2020).

growth is ascribed to the expanding population, the other part stems from a rise in income. Household consumption is expected to increase further in the next years with East Africa, Egypt and Nigeria taking the lead. There is no doubt that cities will be key to realizing Africa's full consumer market potential.[22]

Business-to-business (B2B) market

Africa's B2B market is growing rapidly. Companies in Nigeria and South Africa especially are boosting the economy. Most expenditures flow into the agriculture and agri-processing sector. According to McKinsey & Company, the fastest-growing sectors will be financial services, utilities and transportation, construction, and wholesale and retail. Except for South Africa, where half of the continent's largest companies are located, smaller companies in other countries will account for most of the business spending.[23]

Looking at the global Fortune 500, which ranks firms by its revenue, no African company is listed. To accelerate growth, Africa needs to increase its number of large companies, because they are the drivers of investment, corporate tax revenue and productivity.[24]

Technological change and digital and mobile access

Currently, Africa lags the world with regards to internet penetration. Specific details may be obtained from Chapter 6.1. Even though the continent is investing heavily in technology, more financial resources need to be made available. It is clear that better penetration of the internet, as well as an increase in smartphone penetration, offers opportunities to enhance growth and productivity on the continent.

In addition, a trend in transforming various sectors, including banking, retail, health care and education, can be observed; East Africa for instance is taking the lead with regards to mobile payments on the continent. Besides, as will be discussed in detail in Chapter 6, e-commerce is growing.[25]

[22] *McKinsey Global Institute, ed.* Lions on the move II: realizing the potential of Africa's economies (2016): 8, 10.
[23] Ibid., 12–13.
[24] Ibid., 18, 21.
[25] Ibid., 7.

2.3 Defining the problem

2.3.1 Intra-African trade

Even though the continent seems to have huge potential African intra-continental trade is the lowest in the world. McKinsey & Company notes this aspect and emphasises the importance of deepening regional integration. The consultancy stresses that investors are generally more attracted to large markets. Furthermore, deeper integration will lead to the use of economies of scale and industrialisation will be boosted. Moreover, McKinsey & Company states that in contrast to large integrated markets, Africa is a patchwork of more than 50, mostly small, states and limited economic and political integration, what makes it even more crucial to move together to use the benefits of regional integration.[26]

This section examines trade data for the African continent. As the AfCFTA aims to boost regional trade integration, it is crucial to provide an overview of where we stand. The datasets and calculations can be found in the Appendices.

Source of data

The data used for the analysis stems from the 'ITC Trade Map'. Appendix 9.1 on page 94 shows which African countries have already submitted their trade data. In year 2017, 43 countries have provided their data; for year 2018, data from 32 African states is available. For the year 2019, very few countries have submitted their trade data to UN COMTRADE yet, which is why the data for 2019 does not reflect the current economic situation and is therefore omitted from further considerations.

Limitations of data

In order to make estimations for whole of Africa, the ITC uses so-called 'mirror data'. It is assumed that the reported imports by a country also reflect the reported exports by the trading partner. However, this is not accurate, because in UN COMTRADE imports are registered cif (cost insurance and freight) whereas exports are recorded fob (free on board). Furthermore, the quality of data provided by African countries varies and the same good might be recorded in different product categories by importer and exporter.[27] Additionally, informal trade as a

[26] *McKinsey Global Institute, ed.* Lions on the move II: realizing the potential of Africa's economies (2016): 24.
[27] *World Bank Group.* "Imports, Exports and Mirror Data with UN COMTRADE." 2010, https://wits.worldbank.org/wits/wits/witshelp/Content/Data_Retrieval/T/Intro/B2.Imports_Exports_and_Mirror.htm, (02.03.2020).

percentage of real GDP in Africa is not covered in official statistics.[28] Therefore, one must be aware of the deviations of actual intra-African trade.

Intra-Africa trade pattern

Appendix 9.2 on page 96 shows the value of total intra-African trade in comparison to Africa's exports to the world as well as the value of the ten most traded export goods for the years 2015 to 2018, measured in US dollar. In 2017, intra-African exports amounted to 16.6% of total exports, compared with 68.1% in Europe, 59.4% in Asia and 55.0% in America.[29] In 2018, intra-African exports were valued at 74 billion US dollars, the equivalent of about 15% of Africa's world exports. So, African countries mostly traded with the rest of the world, but not with their neighbours. Between 2017 and 2018, intra-African exports increased by only 1%, whereas the increase of intra-African exports was much higher the year before (11%). The products mostly exported within Africa were petroleum oils, gold, diamonds and electrical energy. The intra-African exports of gold declined by 26% from 2017 to 2018 and represented 10% of Africa's total gold exports to the world in 2018. Half of Africa's unprocessed tobacco exports and 54% of cane or beet sugar exports went to other African countries.

Besides, the table in Appendix 9.3 (page 98) gives an overview of the export value (USD) of the 10 most important intra-African exporters; Appendix 9.4 includes the 10 most important intra-African importers. Looking at the trading pattern of the top 10 countries, South Africa is the main intra-African exporter and importer; 34% of total African exports are from South Africa while South Africa imports 16% of all intra-African imports. Nigeria is Africa's second biggest exporter with an intra-African share of 9%. Other main intra-African exporters include Nigeria (9%), Egypt (6%), Ivory Coast (4%) and Zimbabwe (4%). The most significant importers (beside South Africa) are Namibia with a share of 8%, Zambia (7%), Botswana (6%) and the DRC (5%).

Looking at intra-African Trade in Services, the picture is likewise disillusioning. Between 2017 and 2018, Africa's services exports grew by only 5% from 106 billion US dollar to 111 billion

[28] *Riedel, Jana, and Anja Slany*. The potential of African trade integration – Panel data evidence for the COMESA-EAC-SADC Tripartite: The Journal of International Trade & Economic Development 28/7 (2019): 850–851. Informal trade in Africa is similar to other developing regions and hard to measure. According to estimates, official statistics underestimate trade by at least 40%.

[29] *United Nations Conference on Trade and Development.* "PRESS RELEASE: Economic Development in Africa Report 2019: Made in Africa: Rules of origin for enhanced intra-African trade." 2019, https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=520, (31.05.2020).

US dollar.[30] A possible reason for the weak performance is the severe restrictions on service trade in African countries.[31]

The newly established AfCFTA aims to change these trading statistics. UNECA predicts that the implementation of the AfCFTA will lead to an increase of intra-African trade by 52.3% (or 34.6 billion US dollars) by 2022 (compared to 2010 levels) by eliminating import duties and reducing Non-Tariff Barriers to Trade (NTBs) in all sectors, namely agriculture, industry and services.[32] Additionally, the establishment of the AfCFTA can lead to an increase in the real income of Africa as a whole due to the boost of exports.[33]

2.3.2 Intra-REC trade

The previous section gave an overview of total intra-African trade. This section looks at the trading pattern within the regional groupings. However, due to the overlapping membership of states to different RECs as well as the amount of bilateral trade agreements, it is hard to measure overall intra-REC trade. The general picture that emerges is that most of the intra-African trade is being done within the countries of the same regional grouping, attributed to the deeper economic integration. Depending on the economic integration of the respective REC, tariffs are either reduced or even set at zero. For an overview of the existing RECs, the economic integration and the countries in the respective grouping, see Table 1 on page 48.

According to tralac's latest information-guide on the AfCFTA, covering the year 2018, "20% of intra-Africa exports were exports among the SACU member states; 4% intra-EAC exports; 0.1% intra-CEMAC exports and 13% exports among the ECOWAS countries".[34] Half of intra-African exports are dealt within MS of the Southern African Development Community (SADC). Furthermore, "97% of intra-Africa exports by Burkina Faso, 96% by Niger, 95% by Gambia and 92% by Guinea-Bissau are exports to other ECOWAS member states. 93% of the DRC's intra-Africa exports and 94% of Eritrea's are intra-COMESA exports."[35]

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[30] The data stems from the 'ITC Trade Map'.
[31] *TRALAC.* "The African Continental Free Trade Area: A tralac guide." 2019. https://www.tralac.org/documents/resources/booklets/3028-afcfta-a-tralac-guide-6th-edition-november-2019/file.html: 24–25.
[32] *United Nations Economic Commission for Africa.* "African Continental Free Trade Area - Questions & Answers." https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers, (04.03.2020).
[33] *Valensisi, Giovanni; Robert Lisinge, and Stephen Karingi*. The trade facilitation agreement and Africa's regional integration: Canadian Journal of Development Studies 37/2 (2016): 251.
[34] *TRALAC.* "The African Continental Free Trade Area: A tralac guide." 2019. https://www.tralac.org/documents/resources/booklets/3028-afcfta-a-tralac-guide-6th-edition-november-2019/file.html: 12.
[35] Ibid., 12.

2.3.3 Selected country perspective: South Africa

As mentioned above, for the year 2019, so far only 13 African states (last update: 31.05.2020) have submitted their trade data (see Appendix 9.1 on page 94). As South Africa is the most significant intra-African importer and exporter, the country is looked at in detail. The infographic of the 'intra-African trade and tariff profile' for South Africa can be found as poster in the envelope on page 110 of the thesis. The purpose of compiling an infographic was to summarise the findings of South Africa's trade in 2019 and to publish it online.[36] The data used for the profile can be found in Appendices 9.5, 9.6, 9.7, 9.8, 9.9 and 9.10 and stems from the 'ITC Trade Map'[37].

South Africa – Africa

South Africa is member of both SADC and SACU, - SACU being a CU. 27% of South Africa's world exports and 12% of world imports went to/stemmed from other African countries. So, compared to the average export power of all African countries (15%, see Section 2.3.1), South Africa is 'doing' quite well. However, from 2018 to 2019, the overall value (USD) of the country's exports declined by 4%, amounting to 24 billion US dollar (Appendix 9.5); the value of its imports diminished by 12% from 11.55 to 10.21 billion US dollar (Appendix 9.6). The country's most important export good in 2019 was petroleum oil, which amounted to 9% of its overall Africa exports. Almost half (47%) of South Africa's intra-African imports was crude petroleum oil.

Its most important African export destinations in 2019 were Botswana, Mozambique, Namibia, Zambia, Zimbabwe, Eswatini and Lesotho (Appendix 9.7), which are all part of SADC. The main source markets were Nigeria, Eswatini, Mozambique, Namibia, Ghana, Angola and Botswana (Appendix 9.8). Only Nigeria and Ghana are not part of a REC with South Africa. Furthermore, with the exception of Nigeria and Angola, South Africa's balance of trade with its 10 main trading partners was positive. This means that South Africa imported more goods from Nigeria and Angola than it exported to these countries (Appendix 9.9).

[36] The infographic can be found here: https://www.tralac.org/resources/infographics/14443-south-africa-2019-intra-africa-trade-and-tariff-profile.html (27.03.2020).
[37] See https://www.trademap.org/Index.aspx (27.03.2020).

South Africa – Africa excluding SADC and SACU

The case of South Africa reflects the general pattern of trade on the continent, namely that most of trade is done within the respective regional arrangements (Appendix 9.10). Only 3% of South Africa's world exports (12% of intra-Africa exports) went to other African countries outside SACU and SADC. Among those export goods were Diesel goods-vehicles, bituminous coal, coiled flat-rolled iron and apples.

Imports from SACU countries entered the country duty-free whereas SADC countries (not SACU) had to pay import duties. An overview of the tariff scheme can be found in the infographic attached (see page 110). As can be seen from the infographic, South Africa's tariff regime is very complex, because the level of import duty varies. In comparison, most other African countries only have a few fixed duty levels in place (consider for instance Mozambique: duty-free, 2.5%, 5%, 7.5% and 20%). South Africa's national tariff book 2019 reveals that no import-duty is levied on more than half of all product categories (according to HS-8). However, this is not to be confused with the percentage of duty-free imports, derived from actual sales in USD. In 2019, 97.56% of goods entered the country duty-free.

One must bear in mind that South Africa is a 'bright spot' with regards to intra-African trade, because of its economic power and its good economic integration in world trade. However, as outlined above, its intra-African exports are very low and trade mainly takes place within its RECs, namely SADC and SACU. From this it follows, that South Africa, or rather SADC and SACU, shall enter into negotiations under the AfCFTA with other regional groupings, like ECOWAS or EAC, in order to serve a bigger market and to boost trade outside its existing regional grouping.

2.4 Trade facilitation

2.4.1 Non-Tariff Barriers to Trade (NTBs)

Intra-regional integration is not just about tariff reductions, but also about dismantling NTBs. NTBs concern trade barriers that are restrictions of exports or imports through mechanisms other than the imposition of tariffs. They arise from measures taken by governments or respective authorities responsible for trade. Over recent years, NTBs increased in number and therefore, the AfCFTA particularly stresses the importance of eliminating them.[38] Some

[38] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 4.

examples of NTBs are import bans, quotas, the introduction of safety regulations, customs clearance administration, certification challenges, corruption, environmental regulations or Technical Barriers to Trade (TBTs). An example of a TBT is different electrical sockets in different countries. Harmonisation of those technical standards on the African continent is crucial to further boost trade amongst African countries.

Measuring the impact of NTBs along the East African Northern Corridor

Generally, it is hard to measure the impact of NTBs on trade in Africa. The WITS (World Integrated Trade Solutions) database includes very limited data on the impact of NTBs on African trade. Only some West African states and Ethiopia are covered by the WITS database.[39] Besides, only very limited academic material exists with regards to NTBs in Africa. In 2013, Pak Susanna published a short article on the reduction of NTBs along the East African Northern Corridor, a 1,700-kilometre transport route, connecting Mombasa, Kenya and Kigali, Rwanda. Her findings are based on a study, in which a consultant for the Ministry of Trade and Industry of Rwanda took a truck ride along the East African Northern Corridor to get first-hand information of the effects of NTBs. The cost of bribes was enormous, amounting to 846.83 US dollars during the 6-day journey from Kigali to Mombasa. Additionally, the driver spent around 65% of travel time "waiting at border posts, police roadblocks, weighbridges and other stops that were necessary because of poor road conditions and mechanical problems with the truck".[40] As a consequence of the findings of the study, the government of Rwanda, in cooperation with the governments of Uganda and Kenya, undertook structural and policy reforms to reduce the number of NTBs along the Northern Corridor. Since then, the governments continue to work on reducing NTBs and on fighting corruption at roadblocks, weighbridges and border posts.[41]

AfCFTA mechanism

As part of Annex 5 of the Protocol on Trade in Goods of the AfCFTA, African states agreed to establish an African-wide mechanism for reporting, monitoring and eliminating NTBs. On the 13th of January 2020, the online tool 'tradebarriers.africa.org'[42] became operational. It is based on the online reporting mechanism, called 'tradebarriers.org'[43], established by COMESA, EAC and SADC (see Table 1 on page 48). This online system, where traders can report their incident,

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[39] For further information see: https://wits.worldbank.org/tariff/non-tariff-measures/en/country/CAN.
[40] *Pak, Susanna*. REDUCING NON-TARIFF BARRIERS along East Africa's Northern Corridor: International Trade Forum/4 (2013): 30.
[41] Ibid., 31.
[42] See https://tradebarriers.africa/home (17.05.2020).
[43] See https://www.tradebarriers.org/ (17.05.2020).

has proven to be very successful and resolved almost 700 complaints about excessive import documents, unjustified packaging requirements, import quotas, etc. It enhances transparency and is accessible to everyone. By May 2020, the newly created, continent-wide online tool of the AfCFTA shows two active complaints, reported by Gambia. Both complaints concern the denial of entry of passenger buses into Senegal. The refusal of entry violates both the ECOWAS and the bilateral protocols agreed between Senegal and Gambia.[44]
This online mechanism, funded by the German government, will greatly assist in the removal of NTBs on the African continent.[45]

2.4.2 Logistic Performance

Logistic Performance Index (LPI)
Another aspect to be considered when looking at a continent's economic performance is trade facilitation. It is also a crucial aspect to be considered in further negotiations of the AfCFTA. In that regard, the World Bank examines the logistic performance in international trade and accordingly publishes the LPI[46], which reveals the countries' challenges and opportunities for increasing trade logistics. Doing well in logistics is crucial for emergent economies as economic development can be stimulated by facilitating transport and improving service.

The latest data is available for the year 2018 and covers 160 states, of which 45 are African countries. This author has compiled a table of LPI data of African countries, which is attached in Appendix 9.11 on page 108. It is measured in 'points', with 5 points being the highest ranking and considers the following six performance areas:

- customs (efficiency, border management clearance)
- trade- and transport-related infrastructure (quality)
- international shipments (ease of arranging shipments)
- service quality assessment (logistic service)
- tracking and tracing of consignments
- timeliness (within expected delivery time)[47]

[44] See complaint number AfCFTA-000-002 and AfCFTA-000-003.
[45] *United Nations Conference on Trade and Development. "*Online tool to remove trade barriers in Africa goes live." 2020, https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2273, (17.05.2020).
[46] The data is accessible on https://lpi.worldbank.org/international/global (27.03.2020).
[47] *Arvis, Jean-François; Lauri Ojala, Christina Wiederer, Ben Shepherd, and Anasuya Raj. "*Connecting to Compete 2018: Trade Logistics in the Global Economy." 2018. https://openknowledge.worldbank.org/bitstream/handle/10986/29971/LPI2018.pdf: 8.

Takele compiled an overview of the LPI of Africa and selected comparable regions. Figure 2 below demonstrates that Africa shows the lowest overall LPI.

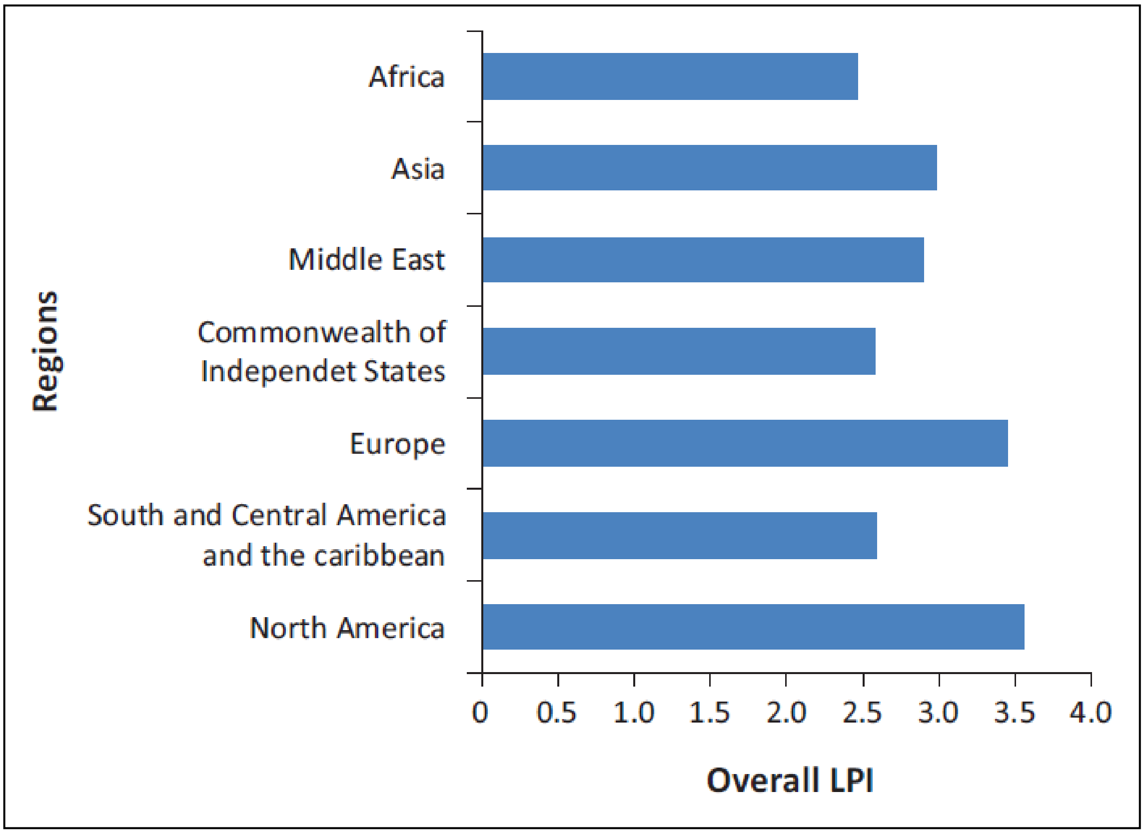

Figure 2: World region's overall LPI 2018[48]

As can be seen from Appendix 9.11, the African country that performs best is South Africa, ranked 33rd; Ivory Coast is the 2nd best overall African performer (rank 50). Eight out of the bottom-ten-performers are African states: Angola (2.05), Burundi (2.06) and Niger (2.07) are Africa's worst overall LPI performers. Regarding customs efficiency, Angola (1.57) and Burundi (1.69) are ranked 160 and 159 respectively. Concerning trade- and transport-related infrastructure, only three countries out of the bottom 15 worst performers are not located on the African continent. Also, with respect to time loss, eight out of the ten worst performers are African states (Guinea 2.04; Eritrea 2.08; Burundi 2.17, Somalia 2.20, Central African Republic 2.33, Niger 2.33, Sierra Leone 2.34, Zimbabwe 2.39). 'Logistics quality and competence' is valued a bit better in Ivory Coast (rank 37) than in South Africa (rank 39).

[48] *Takele, Tesfaye B.* The relevance of coordinated regional trade logistics for the implementation of regional free trade area of Africa: Journal of Transport and Supply Chain Management 13/1 (2019): 6.

LPI evaluation

Takele writes that in the period from 2012 to 2018, no tangible improvement was made in any of the six areas on the African continent. So, African states should improve their performance in all areas. However, according to the author, priority shall be given to investment promotion in trade- and transport-related infrastructures and to customs and border clearance improvement.[49]

Considering that Africa has 16 landlocked countries, improving efficiency at border check points can have significant impact on the economy. The lack of harmonised customs and border formalities in particular make the process tedious and expensive.[50] Additionally, as mentioned above, corrupted border procedures make transportation within Africa risky. The result is that the cost of moving goods across the continent is up to 5 times higher compared to the US.[51] Road transporters spend hours queuing at border posts and traders must undertake multiple formalities at border crossings to release and clear their goods. This causes unpredictable delivery times and makes participation in logistics chain difficult. Another point to be added is that a lot of African countries do not publish their respective tariff schemes. This leads to uncertainty and traders only get to know what they must pay when arriving at national borders. Undoubtedly, there is need for more regional cooperation. The establishment of more 'One Stop Border Posts' can be a step in the right direction and a valuable instrument to trade facilitation. Not only valuable trading time could be saved, but also infrastructure sharing would reduce the overall costs. Additionally, cooperation is needed amongst customs, immigration and other governmental agencies such as health services. The 'Trade Facilitation Implementation Guide', published by UNECE, also advocates for the introduction of pre-arrival processing and the use of electronic payment for duties and taxes. Bilateral and regional agreements on facilitating customs can further improve the transit system.[52]

Takele conducted research on the effects of LPI on intra-regional trade in Africa and found that geographical proximity contributes to the process of maximising trade flows between African countries. His research outcome reflects what one would assume; countries with longer geographical distance trade less because of the higher logistic costs. From this it follows that

[49] *Takele, Tesfaye B.* The relevance of coordinated regional trade logistics for the implementation of regional free trade area of Africa: Journal of Transport and Supply Chain Management 13/1 (2019): 7.

[50] Ibid., 2. See also *Valensisi, Giovanni; Robert Lisinge, and Stephen Karingi*. The trade facilitation agreement and Africa's regional integration: Canadian Journal of Development Studies 37/2 (2016): 242.

[51] *Dabrowski, Marek, and Yana Myachenkova.* "Free trade in Africa: An important goal but not easy to achieve." 2018. http://bruegel.org/2018/04/free-trade-in-africa-an-important-goal-but-not-easy-to-achieve/: 8.

[52] *United Nations Economic Commission for Europe.* "Trade Facilitation Implementation Guide: Overview: Border Crossing Delays." http://tfig.unece.org/contents/borde-crossing-delays.htm, (02.03.2020).

neighbouring countries have higher trade flows.[53] Overall heightened transaction costs remain a significant hindrance to Africa's regional integration.[54]

Impact on AfCFTA

The LPI reveals that the performance of African countries is concerning and needs to be improved to make the best use of resources. Based on the outcomes of the LPI, one can identify some of Africa's challenges to more regional economic integration.

The African community has realised the importance of addressing trade facilitation in negotiations of the AfCFTA. The endeavours culminated in the drafting of Annex 4 (Trade Facilitation) to the Protocol on Trade in Goods.[55] The objectives of the Annex are to "simplify and harmonise international trade procedures and logistics to expedite the process of importation, exportation and transit; and [to] expedite the movement, clearance and release of goods in transit across borders within State Parties."[56] States are encouraged to publish information to facilitate trade, such as laws and procedures for import, rules of classification of products, rates of duties and taxes or procedures of appeal. The Annex also mentions the use of information technology to expedite procedures for the release of goods[57] as well as the need to establish a 'single window' system[58]. This system enables traders to submit documentation and data requirements for importation, exportation or the transit of goods through a single-entry point to the participating national authorities and would speed up the process tremendously. In addition to this, an appropriate review and appeal system shall be established. However, even though the rules sound promising, they are all in vain if not implemented accordingly.

[53] *Takele, Tesfaye B.* The relevance of coordinated regional trade logistics for the implementation of regional free trade area of Africa: Journal of Transport and Supply Chain Management 13/1 (2019): 8.
[54] *Valensisi, Giovanni; Robert Lisinge, and Stephen Karingi*. The trade facilitation agreement and Africa's regional integration: Canadian Journal of Development Studies 37/2 (2016): 244.
[55] For an overview of the AfCFTA legal framework see Chapter 3.2.1 on page 31.
[56] *African Union Commission*. Annex to the Protocol on Trade in Goods of the AfCFTA: Annex 4, Art. 2.
[57] Ibid., Annex 4, Art. 17.
[58] Ibid., Annex 4, Art. 18.

2.4.3 Infrastructure

The LPI specifies trade- and transport-related infrastructure as one parameter for measuring logistic facilitation. As said before, Takele writes that the gap in trade- and transport-related infrastructure shall be addressed as priority. This is especially because the infrastructure gap leads to high distributional costs.[59]

As will be discussed in Chapter 5.2, starting on page 62, global superpowers, such as China and the USA, invest heavily on the African continent. However, this author believes that African states shall free up the necessary funds themselves to build up an independent infrastructure system in the long run. This author also stresses that this infrastructural gap must be urgently addressed in further negotiations of the AfCFTA, because it is clear that infrastructure development is a key driver of progress, an enabler for productivity and the 'gate' to sustainable economic growth.[60]

To boost intra-African trade, it is crucial to build a well-developed and functioning infrastructure. In particular, the 16 landlocked countries on the continent need to be affiliated to the major trade routes. However, currently there is a meagre density of highways on the continent. As can be seen from Figure 3 on page 23, only ten trans-African highways exist or are in the process of being completed. One explanation of the current situation is to look at the continent's history and the 'Scramble for Africa' during the period of the New Imperialism. For decades, Africa's infrastructure has been built to serve external trade outside the continent. Roads lead from the interior of the continent to the ports to serve the world, but not the neighbouring states.[61] As a result, huge parts of the continent are not connected to the major trade routes. This contributes to the limited intra-African economic integration and needs to be changed by means of the implementation of infrastructural projects. Some positive examples of selected projects are addressed below in more detail.

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[59] *Takele, Tesfaye B.* The relevance of coordinated regional trade logistics for the implementation of regional free trade area of Africa: Journal of Transport and Supply Chain Management 13/1 (2019): 2.

[60] *African Development Bank Group.* "Infrastructure Development." https://www.afdb.org/en/knowledge/publications/tracking-africa%E2%80%99s-progress-in-figures/infrastructure-development, (29.03.2020).

[61] *African Union*. African Continental Free Trade Area (2019), https://www.youtube.com/watch?v=zIhe6DN0hGE, accessed January 2020.

Figure 3: Trans-African Highways[62]

Presidential Infrastructure Championship Initiatives (PICI)

In 2010, the former South African president Jacob Zuma suggested establishing an initiative to build up African infrastructure in transport, energy, ICT and transboundary waterways through political championing of projects. Now, eleven projects are championed by the respective Heads of State and Government, with Cyril Ramaphosa (President of South Africa) chairing the PICI.[63] PICI projects are all regional projects that cover at least two AU MS and have regional implications. They must promote regional integration and trade in short and medium terms, have positive impact on job creation and shall contribute in achieving the overall objectives such as poverty reduction and economic growth.[64]

[62] Map stems from https://www.uneca.org/sites/default/files/images/tah_small-en.jpg (05.06.2020).
[63] *African Union Development Agency, and NEPAD.* "Presidential Infrastructure Champion Initiative (PICI)." 2019, https://www.nepad.org/programme-details/1006, (03.03.2020).
[64] *African Union Development Agency, and NEPAD.* "Presidential Infrastructure Champion Initiative (PICI) Report." 2020: 13.

In addition, all projects connect countries from at least two different RECs. The project concerning the construction of a navigational line between Lake Victoria and the Mediterranean Sea has impact on nine African states and four different RECs, namely COMESA, IGAD, EAC and SADC.[65]

Lamu Port-South Sudan-Ethiopia-Transport Corridor (LAPSSET) Program

The LAPSSET program is currently the biggest and most ambitious infrastructure project in Eastern Africa and runs under PICI and the Programme for Infrastructure Development in Africa (PIDA). It consists of seven key infrastructure projects and shall connect Kenya, Ethiopia, South Sudan and Uganda. Among those projects are the establishment of a new port at Lamu (Kenya) and the building of several interregional highways, which shall connect the three neighbouring countries (Lamu-Isiolo, Kenya; Isiolo-Juba, South Sudan; Isiolo-Addis Ababa, Ethiopia; Lamu-Garsen, Kenya). Also, crude oil pipelines shall be established as well as interregional 'Standard Gauge Railway' lines. Furthermore, the building of three Kenyan airports and three resort cities is in the planning stage.[66]

LAPSSET envisions boosting Africa's economic integration by establishing new intra-African markets and lowering the costs of transportation and logistics. According to estimates, the LAPSSET Program will contribute to a growth of 8% to 10% of GDP in Kenya.[67]

The North-South Road, Rail and related Infrastructure corridor

Another PICI project, championed by South Africa, concerns the building of a multi-modal trans-boundary and continental interconnector with the aim of connecting Cairo, Egypt and Cape Town, South Africa. In the short term, South Africa has identified four transboundary projects, amongst them are the Inga III Hydropower Project and the Beitbridge Border Post Project.[68] Generally, the project is divided into several components with various stages of development. The aim is to ensure easy and faster border crossing, which will lead to more efficiency, regional integration, more trade and cost savings in the long run. However, until now, only 'soft' projects have been identified.

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[65] *African Union Development Agency, and NEPAD. "*Presidential Infrastructure Champion Initiative (PICI) Report." 2020: 21.

[66] *Lapsset Corridor Development Authority. "*What is the LAPSSET Corridor Program?", 2020, http://www.lapsset.go.ke/#1461328856794-2dee9bba-e774, (03.03.2020).

[67] *African Union Development Agency, and NEPAD. "*Presidential Infrastructure Champion Initiative (PICI) Report." 2020: 22.

[68] Ibid., 27.

Burundi-Rwanda-Dar es Salaam rail

At the moment, Tanzania is investing a lot in the building of railway infrastructure. The first phase of Tanzania's 'Standard Gauge Railway' from Dar es Salaam to Morogoro is almost finished. In the next stages the railway network will be expanded to Mwanza in the North and connect Dar es Salaam with Lake Victoria. Furthermore, Tanzania, Rwanda and Burundi agreed on a joint railway plan to connect the two landlocked countries with the sea. Tanzania also entered into an agreement with the DRC to further expand the railway network. This will make Dar es Salaam port an important trade route in Eastern Africa.[69]

The above-mentioned infrastructure projects are just some examples of combined African effort. This author's belief is that more collaboration between African states is needed to strengthen the infrastructure. In particular the newly established institutions under the AfCFTA (see Section 3.2.2) can serve as points of exchange for African states to further integrate and work towards continent-wide infrastructure projects.

[69] *Kiruga, Morris.* "Tanzania and Rwanda in push to reshape East African logistics." 2019, https://www.theafricareport.com/21163/tanzania-and-rwanda-in-push-to-reshape-east-african-logistics/, (03.03.2020).

3 African Continental Free Trade Area (AfCFTA)

3.1 The path towards the entry into force of the 'Agreement establishing the AfCFTA'

3.1.1 'Flashback'

Regional integration efforts in Africa have been ongoing for years. When the 'Organisation of African Unity' (OAU), the precursor to the AU, was launched in 1963, the idea of a united Africa was a predominant thought. However, low levels of economic growth, political instability and the different structures of the various African states disrupted integration efforts. Later, in 1991, the Treaty of Abuja was signed and provides the overarching framework for an African Economic Community (AEC). As outlined in Chapter 4.2, the continent was 'divided' into RECs, which supported economic integration, as well as promoting peace and stability within their regions. The adoption of the treaty was remarkable because of the general backdrop of trade liberalisation during the 1990s. In 1999, the Sirte Declaration, which is the Constitutive Act of the AU, sought to speed up the implementation of the provisions of the Abuja Treaty.[70]

3.1.2 Action Plan for Boosting Intra-Africa Trade (BIAT)

The cornerstone for the AfCFTA was laid down by the AU in 2012 at a summit in Addis Ababa, Ethiopia, when the BIAT caught attention. The heads of state emphasised "that the promotion of intra-African trade is a fundamental factor for sustainable economic development, employment generation and effective integration of Africa into the global economy"[71]. De-facto, the BIAT is a separate paper, part of 'Agenda 2063' and overshadowed by the AfCFTA. It addresses the following seven priority areas:

- "Trade Policy,
- Trade Facilitation,
- Productive Capacity,
- Trade-Related Infrastructure,
- Trade Finance,

[70] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 183.
[71] *Assembly of the Union*. Decision on Boosting Intra-African Trade and fast tracking the Continental Free Trade Area (Doc. EX.CL/700(XX)): Assembly/AU/Dec.394(XVIII): 2.

- Trade Information, and
- Factor Market Integration."[72]

Also, it includes supporting data to show the scope of intra-African trade as well as tables and graphs, which demonstrates the overall direction of exports of the different RECs, the sources of imports, trade figures and so on. It is divided into three parts: first, it addresses issues affecting intra-African trade; second, it introduces the action plan; and third, it promotes the AfCFTA. The action plan outlines a programme of activities to address some of the problems identified in the first part of the document. Lastly, a road map to the AfCFTA and its architecture is introduced.[73] Overall, the BIAT stresses that the building of regional value chains and the diversification of Africa's economies are crucial efforts to boost intra-African trade. Whereas the AfCFTA is conceptualised as a time bound project, the BIAT is continuous with concrete targets to increase intra-African trade flows over a period of 10 years, from January 2012 to January 2022.[74]

3.1.3 AfCFTA negotiations

In October 2013, the Continental Task Force (CTF) on the AfCFTA, which was established to coordinate actions between the AU and the RECs and to guarantee that AfCFTA negotiations will be held within a given time frame, met for the first time. One and a half year later, in June 2015, the summit of the AU in Johannesburg, South Africa led to the launch of AfCFTA negotiations and the president of the Republic of Niger, Mr. Issoufou Mahamadou, was mandated to champion the process of the AfCFTA.[75] This was a historic moment, because it was the first time that the AU assembled to solely work on trade and regional integration efforts. Heads of state met to talk about liberalisation of Trade in Goods and Services, trade facilitation and policies, trade-related infrastructure, finance, information and market integration.[76] Since then, the Continental Task Force (CTF) on the AfCFTA held eight meetings toward the finalisation of draft modalities for negotiations.[77]

[72] *Valensisi, Giovanni; Robert Lisinge, and Stephen Karingi.* The trade facilitation agreement and Africa's regional integration: Canadian Journal of Development Studies 37/2 (2016): 240.
[73] *African Union, and Economic Commission for Africa, eds.* Boosting Intra-African Trade: Issues Affecting Intra-African Trade, Proposed Action Plan for boosting Intra-African Trade and Framework for the fast tracking of a Continental Free Trade Area (2012).
[74] *TRALAC.* "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents." 2019, https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html, (31.03.2020).
[75] Ibid.
[76] *Takele, Tesfaye B.* The relevance of coordinated regional trade logistics for the implementation of regional free trade area of Africa: Journal of Transport and Supply Chain Management 13/1 (2019): 2.
[77] *TRALAC.* "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents." 2019, https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html, (31.03.2020).

The negotiation phase was divided into two phases. The first phase was to concentrate on phasing out tariffs on 90% of goods exchanged within the continent as well as on the elimination of NTBs and the definition of RoO.[78] In December 2017, the three main documents, namely the Framework Agreement on the AfCFTA, the Protocol on Goods and the Protocol on Trade in Services as well as a built-in agenda were formally approved at the 8th Negotiating Forum (see Figure 6 on page 32). At the 5th Meeting of AU Ministers of Trade in Kigali, Rwanda, beginning of March 2018, the legal instruments were adopted.[79] Finally, on the 21st of March 2018, 44 out of 55 MS of the AU officially signed the treaty establishing the AfCFTA in a ceremony, which took place during the 10th Extraordinary Summit of the Assembly of the AU. The initial Agreement was not signed by the following states: Benin, Botswana, Burundi, Eritrea, Guinea-Bissau, Lesotho, Namibia, Sierra Leone, South Africa and Nigeria. Nigeria's Manufacturers Association lobbied the federal government not to sign the Agreement. Additionally, Nigeria feared that a continent-wide FTA might harm domestic industries and wanted to protect them.[80] One year and two months later, on the 30th of May 2019, 30 days after 22 instruments of ratification were deposited, the AfCFTA entered into force.[81]

The second phase of negotiations focuses on the elimination of tariffs related to the remaining 10% of goods as well as on investment, competition policies and Intellectual Property Rights.[82] It is expected to be completed by January 2021.

At the 32nd Ordinary Session of the Assembly of the AU, held on the 10th and 11th of February 2019, the president of the Republic of Niger, Mr. Issoufou Mahamadou, presented a report on the progress of AfCFTA negotiations. In part I of his report, he gave an overview of what has accomplished by then. Some of the accomplishments include the adoption of the Annexes to the Protocol on Trade in Goods as well as to the Protocol on Rules and Procedures on the Settlement of Disputes. He also emphasised that the modalities for tariff liberalisation regarding the Sensitive Products and Exclusion List could be agreed on. Niger's president also stated that the selected five priority service sectors are Transport, Communication, Finance, Tourism and Business services. Subsequently, Mr. Mahamadou welcomed the outcomes of consultations of Ministers of Trade, which took place on national, regional and continental levels. The Ministers

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[78] As of 13th of December 2019, Trade in Goods as well as Trade in Services negotiations have officially been concluded. However, several substantial issues are still outstanding, including Tariff Schedules, RoO, trade remedies guidelines, …

[79] *TRALAC. "*African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents." 2019, https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html, (31.03.2020).

[80] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 182, 192.

[81] *African Union*. African Continental Free Trade Area (2019), https://www.youtube.com/watch?v=zIhe6DN0hGE, accessed January 2020. *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 23 (1)..

[82] *Cofelice, Andrea*. African Continental Free Trade Area: Opportunities and Challenges: The Federalist Debate 31/3 (2018): 32. *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 7 (1).

agreed for example on the percentage for Sensitive Products (≤ 7% of total tariff lines) and the Exclusion List (≤ 3% of total tariff lines) as well as on a transitional period of 5 years for countries which require a flexibility period before the start of liberalisation of Sensitive Products. Moreover, guidelines for the development of Schedules of specific Commitments have been laid down. A further positive development was that the rules on RoO were almost finalised.[83]

In part II, Mr. Mahamadou addressed the issue of ratification of the Agreement. He stated that on average, a five-year period is needed for the ratification of an AU legal instrument and encourages MS to do so. In addition, he proposed some ideas and aspirations on moving Africa forward. In that regard, he captured the provisions of the Abuja Treaty and stressed that Africa needs to move towards the African Internal Market in order not to lose credibility in decisions that have been made years before.[84]

Finally, the report includes two Annexes, namely a 'Road Map for Finalisation of Outstanding Work on Phase I and Conclusion of Phase II' and 'Draft Guidelines for Services Negotiations under the AfCFTA Protocol on Trade in Services'. The Road Map includes a table with defined areas, the respective outstanding issues as well as activities planned and a timeframe. It sounded very promising and structured, but most of the deadlines have been postponed.[85] The AU Assembly reacted to Mr. Mahamadou's report and adopted the Road Map with a new deadline of June 2020. In addition to that, it requested the AU Ministers of Trade to submit the Schedules of Tariff Concessions and Schedules of Specific Commitments on Trade in Services for adoption and conclude Phase II negotiations.[86]

3.1.4 Operational phase

On 7th of July 2019, the operational phase was launched during the 12th Extraordinary Session of the Assembly of the AU in Niamey, Niger and the following five operational instruments shall govern the AfCFTA: RoO, the online negotiating forum, the monitoring and elimination of NTBs, a digital payments system and the African Union Trade Observatory (ATO, see Chapter 6.4). At the end of October 2019, the first meeting of the AfCFTA Council of Ministers responsible for trade took place in Addis Ababa, Ethiopia. The latest communication from the AU on the AfCFTA is included in Decision 751 (XXXIII) adopted at the 33rd Ordinary Session

[83] *Mahamadou, Issoufou.* "Report on the African Continental Free Trade Area (AfCFTA): Assembly/AU/4(XXXII)." 2019. http://archives.au.int/handle/123456789/2756: 1–4.
[84] Ibid., 4–7.
[85] Ibid., Annex I.
[86] *Assembly of the Union*. Decision on the African Continental Free Trade Area: Assembly/AU/Dec.714(XXXII) (2019): 1–3.

of the Assembly, held in February 2020 in Addis Ababa, Ethiopia.[87] In this communication, the Assembly expresses gratitude to the Government of Ghana for offering facilities for the AfCFTA Secretariat and appoints Mr. Wamkele Mene as Secretary General of the AfCFTA for a four-year term.[88]

The planned start of trading on the 1st of July had to be postponed because of the outbreak of the COVID-19 pandemic and a new date is yet to be confirmed by the AUC. In order accelerate the process, the Ministers of Trade are requested to prioritise AfCFTA Meetings and the AUC is again asked to conclude the work on negotiations on Trade in Goods, Services and RoO. Additionally, the MS are asked to prepare for the start of trading under the AfCFTA. Therefore, a template for submitting reports on the state of national level preparations shall be distributed. Moreover, Decision 751 (XXXIII) gives an outlook on the post Phase II period and states that a Phase III shall focus on an AfCFTA Protocol on E-Commerce (see Chapter 6).[89]

The communication of the AU sounds very promising. However, nothing substantial has been agreed as of now and negotiations on tariffs have not even started. Without the essential features, namely Schedules of Tariff Concessions, RoO and Commitments in Trade in Services, preferential trade under the AfCFTA is not possible (see Section 3.3.1). Some reasons for the sluggish progress are issues associated with social costs, private adjustment cost and public adjustment cost.

3.1.5 Ratification status

To date, 30 out of 55 MS[90] of the AU have signed and ratified the Agreement (see Figure 4 and Figure 5). The only country that has not yet signed the AfCFTA is Eritrea. In terms of the number of participating countries, the AfCFTA will be the largest FTA in the world since the creation of the World Trade Organization (WTO). However, it must be emphasised that trade under the AfCFTA can only start once the essential aspects of preferential trade have been finalised (see Section 3.3.1).

[87] *TRALAC. "*African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents." 2019, https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html, (31.03.2020).
[88] *Assembly of the Union*. Decision on the African Continental Free Trade Area (AfCFTA) Doc. Assembly/AU/4(XXXIII): Assembly/AU/Dec.751(XXXIII) (2020): 1.
[89] Ibid., 1–4.
[90] 55 states are recognized by the AU. The UN does not recognize Western Sahara.

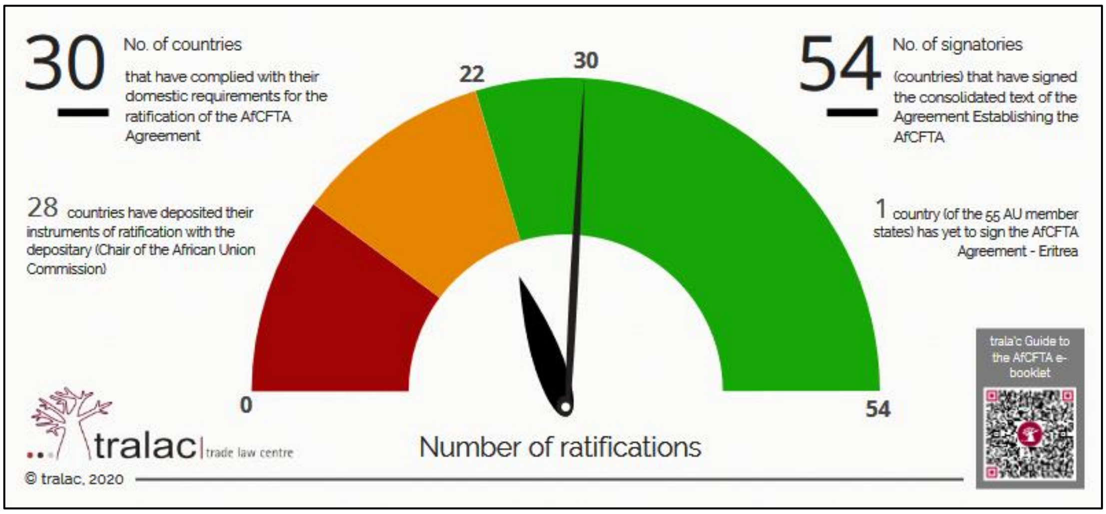

Figure 4: Ratification Barometer[91]

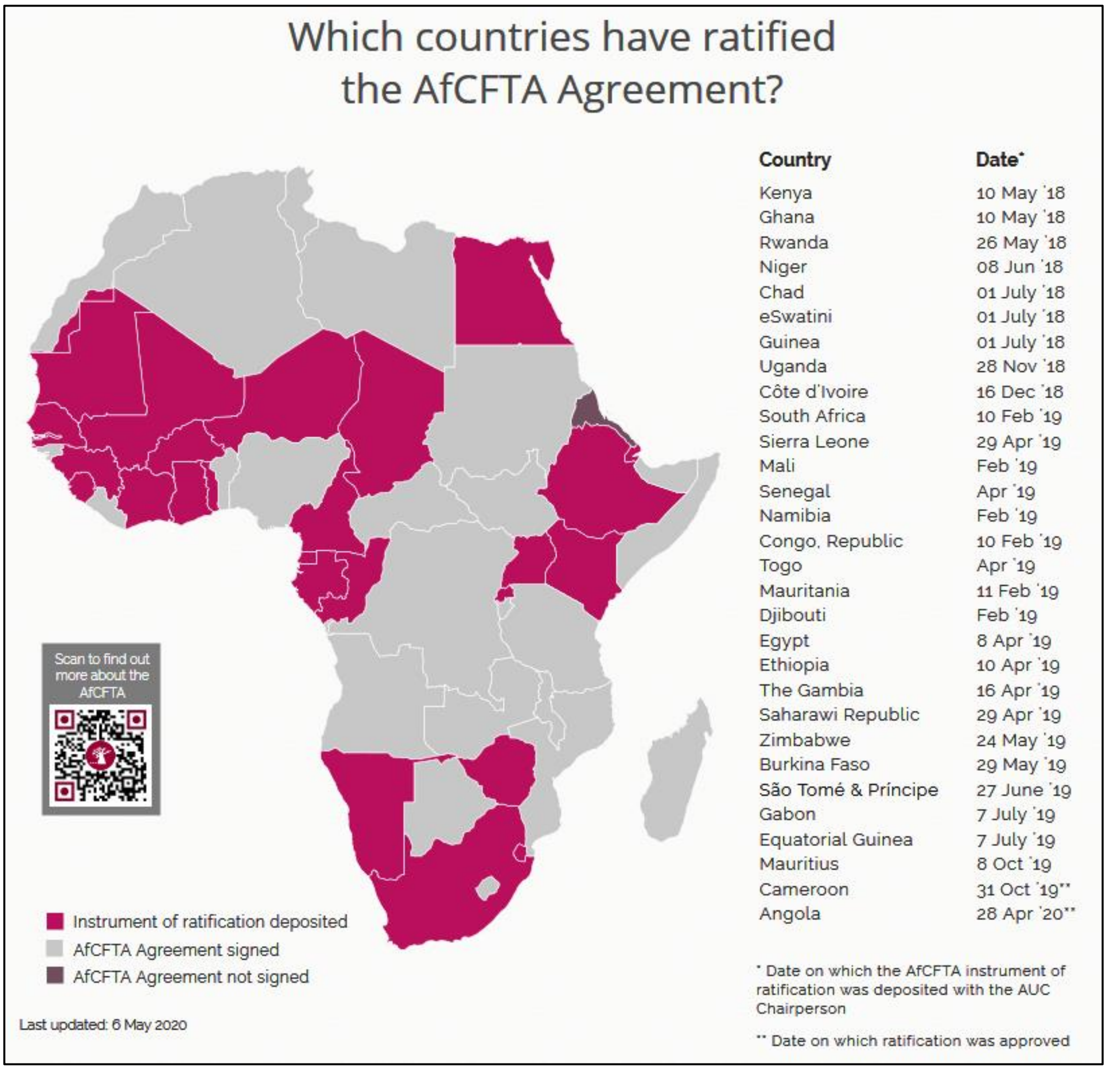

Figure 5: Country status of ratification[92]

[91] https://www.tralac.org/images/primary/13795/_thumb4/status-of-afcfta-ratification-6-december-2019.jpg (12.02.2020).
[92] https://www.tralac.org/images/primary/13795/_thumb4/status-of-afcfta-ratification-6-december-2019.jpg (12.02.2020).

3.2 The legal framework of the AfCFTA

3.2.1 Structure and objectives of the Agreement

Structure

The structure of the 'Agreement establishing the African Continental Free Trade Area' is reminiscent of the WTO umbrella Agreement. It is a framework agreement including general aspects, a Protocol on Trade in Goods, a Protocol on Trade in Services and a Protocol on Rules and Procedures on the Settlement of Disputes. After successful completion of Phase II negotiations (January 2021), a Protocol on Competition Policy, a Protocol on Investment and one on Intellectual Property Rights will be attached.[93] Till this day, this author could not get a draft of the progress of Phase II negotiations.

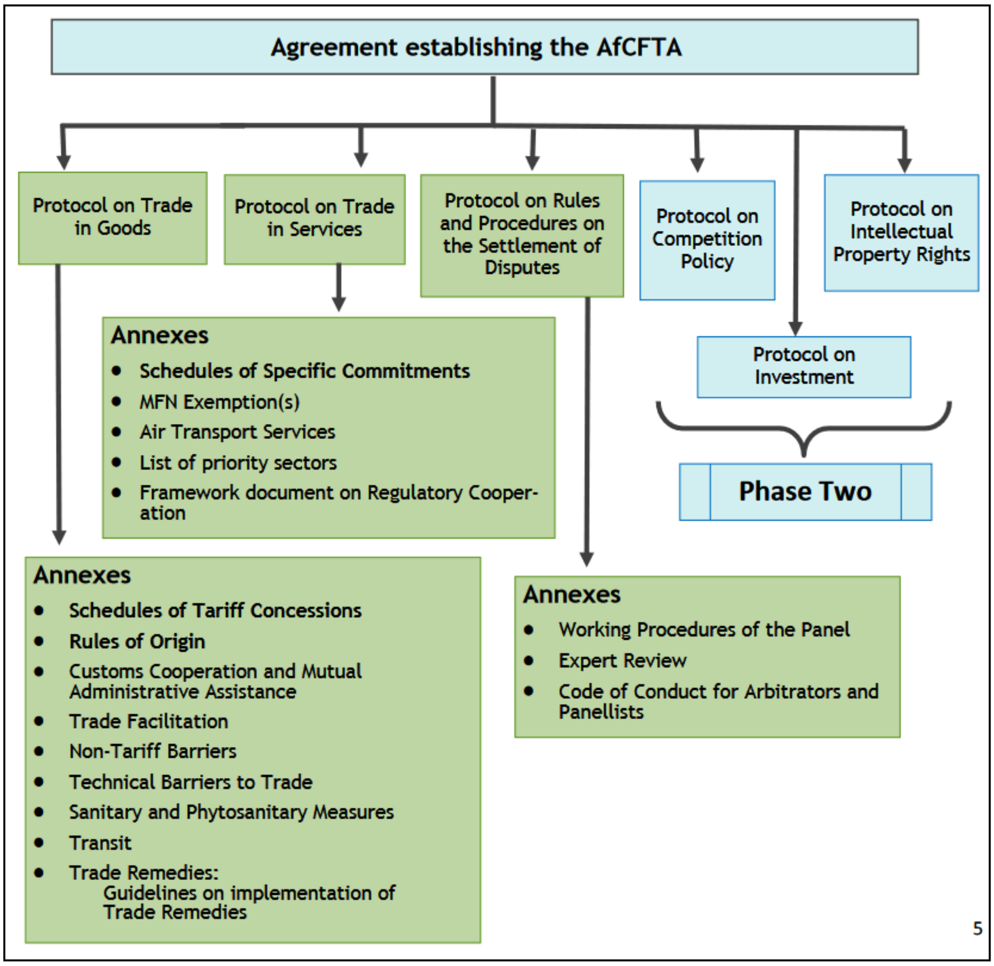

Figure 6: Components of the framework agreement[94]

[93] Compapre *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 6.

[94] *TRALAC*. "The African Continental Free Trade Area: A tralac guide." 2019. https://www.tralac.org/documents/resources/booklets/3028-afcfta-a-tralac-guide-6th-edition-november-2019/file.html: 5.

Figure 6 on the previous page gives an overview of the above-mentioned components that form integral parts of the Agreement. As can be seen from the graph, the Protocols have several Annexes in place. Each Annex focuses on one specific area and includes the respective provisions thereof. Whenever the State Parties agree on substantial provisions, the outcome is attached to the respective Annex as an Appendix. One example is the 'AfCFTA Certificate of Origin', which is attached as Appendix I to Annex 2 (Rules or Origin) to the Protocol on Trade in Goods.

Objectives

Part II of the Agreement focuses on the establishment, objectives, principles and scope of the FTA. The general objectives are listed in Article 3 of the Agreement. The aims include:

- to create a single market for goods and services
- to contribute to the movement of capital and natural persons
- to facilitate investments building
- to lay the foundations for the creation of a Continental CU
- to promote sustainable socio-economic development and gender equality
- to expand the competitiveness of the economies within the continent
- to promote regional value chains, agriculture development and food security
- to master the challenges of multiple overlapping memberships[95]

In order to meet those objectives, State Parties shall (according to Article 4) eliminate tariffs and NTBs, liberalise Trade in Services, cooperate on all trade-related areas, cooperate on customs matters and the implementation of trade facilitation measures, establish a mechanism for the settlement of disputes and establish and maintain an institutional framework for the implementation and administration of the AfCFTA.[96]

3.2.2 Institutions of the AfCFTA

Part III of the Agreement concerns the administration and organisation of the FTA. "The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA shall consist of"[97]

[95] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 3.
[96] Ibid., Art. 4.
[97] Ibid., Art. 9.

- the Assembly,
- the Council of Ministers,
- the Committee of Senior Trade Officials,
- the Secretariat,
- the Dispute Settlement Mechanism (see Section 3.2.3) and
- Technical Committees.

The Assembly, the highest decision-making body of the AU, comprising all AU heads of state, has the power to adopt interpretations of the Agreement on the recommendation of the Council of Ministers. Additionally, it shall provide guidance on the AfCFTA as well as on the BIAT.[98]
The Council of Ministers shall consist of the Ministers responsible for Trade and is responsible for reporting to the Assembly through the Executive Council. Furthermore, the Council of Ministers, which shall meet twice a year, is the operative body as its task is to ensure the implementation and to take appropriate measures for the promotion of the objectives of the Agreement. Apart from this, it can establish and supervise ad hoc or standing committees and working groups, make regulations or issue directives.[99]
The Committee of Senior Trade Officials shall consist of Permanent or Principal Secretaries and shall among other tasks implement the decisions of the Council of Ministers, develop programmes and action plans for implementing the Agreement, ensure functioning and development of the AfCFTA and – if required – establish Technical Committees. The RECs shall be present in the Committee in an advisory function.[100]
The Secretariat, an autonomous institutional body with independent legal status, with the task of administering and coordinating the implementation of the AfCFTA, was established in Accra, Ghana. It is functional since 31st of March 2020, funded by the AU and its role is still to be determined by the Council of Ministers.[101] On the 19th of March 2020, Mr. Wamkele Mene was appointed as the first Secretary General of the Secretariat (see 3.1.4).

In addition, the Protocols of the AfCFTA establish various Technical Committees, which shall assist with the implementation of the Agreement. Amongst those are a 'Committee on Trade in Services' as well as a 'Committee on Trade in Goods'. The Committees again have the power to establish various sub-committees, such as the 'Rules of Origin Sub-Committee', the

[98] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 10.
[99] Ibid., Art. 11.
[100] Ibid., Art. 12.
[101] Ibid., Art. 13.

‘Technical Barriers to Trade Sub-Committee’, the ‘Trade Remedies Sub-Committee’ or the ‘Sub-Committee on NTBs’.

Strengthening the governance system

The institutional framework of the AfCFTA forms a compromise between the classical arrangements of a stand-alone FTA and the AfCFTA as a flagship project of the AU under ‘Agenda 2063’[102] with the Assembly of the AU as the highest institution.

As set out above, the Agreement called on the establishment of a Secretariat with legal status, which shall be independent of the AU, but governed by the political bodies of the AU, namely by the Assembly of the AU and the Executive Council. This aspect is to be criticised. In ‘using’ the institutional umbrella of the AU, its disputed decision-making mechanism, such as the rules of consensus, is taken over as well. Even though the ‘Agreement establishing the AfCFTA’ states in Article 14 (1) that decisions on substantive issues are to be taken by consensus, matters on which no consensus can be reached, shall be referred to the Assembly.[103] The Assembly of the AU in general makes its decisions by consensus (two-thirds quorum), but where consensus cannot be reached, decisions are made by a two-thirds majority vote by MS.[104]

Additionally, the institutional role of the Pan-African Parliament is completely left aside within the AfCFTA. The Pan-African Parliament was established in 1991 through the Abuja Treaty. Its task was to ensure that all peoples of Africa are fully involved in the economic development of the continent.[105] This institution could act as an advisory and monitoring body. Different actors, like civil society or representatives of various branches, could use the Pan-African Parliament as a forum for dialogue, confrontation and exchange.[106]

Moreover, it is suggested to also use the institutional architecture of the AfCFTA on a regional as well as on a national level. The different RECs have different – and sometimes conflicting – institutional structures. Rationalizing and harmonizing those different structures will help in achieving the objectives of the AfCFTA.[107]

[102] *TRALAC*. “The African Continental Free Trade Area: A tralac guide.” 2019. https://www.tralac.org/documents/resources/booklets/3028-afcfta-a-tralac-guide-6th-edition-november-2019/file.html: 6.
[103] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 14 (2).
[104] *Organization of African Unity*. CONSTITUTIVE ACT OF THE AFRICAN UNION (2000): Art. 7.
[105] *Organization of African Unity*. Treaty establishing the African Economic Community: Abuja Treaty (1991): Art. 14.
[106] *Cofelice, Andrea*. African Continental Free Trade Area: Opportunities and Challenges: The Federalist Debate 31/3 (2018): 34.
[107] Ibid., 34.

3.2.3 Protocol on Rules and Procedures on the Settlement of Disputes

The Protocol on Rules and Procedures on the Settlement of Disputes of the AfCFTA exhibits vast similarities with ‘Annex 2: Understanding on Rules and Procedures governing the Settlement of Disputes’ of the WTO umbrella Agreement. So far, African governments have not litigated against each other. Hence, no jurisprudence for guiding trade policy exists. Therefore, the initiation of this formal dispute settlement mechanism is a landmark achievement and a totally new instrument of intra-Africa trade.

Scope of Application

According to the legal definition in Article 1 litera e of the Protocol, a “dispute means a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations”.[108] The law explicitly addresses states as parties to the dispute. The proceeding starts when the Complaining Party requests consultations under Article 7 of the Protocol. Once a proceeding is initiated, the party shall not invoke another forum for dispute settlement on the same matter.[109] The mechanism aims to provide security and predictability to the regional trading system. Furthermore, it shall preserve the rights under the Agreement and clarify existing provisions in accordance with rules of customary international law, including the Vienna Convention of the Law of Treaties of 1969. The overall objective shall be to achieve a satisfactory settlement of the respective dispute for all parties involved.[110]

Dispute Settlement Body (DSB) and proceedings

The AfCFTA dispute settlement system is modelled on the WTO model. According to Article 5 of the Protocol, the DSB shall be composed of representatives of the State Parties. It shall have the authority to:

- “establish Dispute Settlement Panels and an Appellate Body;
- adopt Panel and AB reports;
- maintain surveillance of implementation of rulings and recommendations of the Panels and Appellate Body; and
- authorise the suspension of concessions and other obligations under the Agreement”[111].

[108] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Protocol on Dispute Settlement, Art. 1.
[109] Ibid., Protocol on Dispute Settlement, Art. 3.
[110] Ibid., Protocol on Dispute Settlement, Art. 4.
[111] Ibid., Protocol on Dispute Settlement, Art. 5.

So, from this provision it follows that it consists of the DSB and an Appellate Body (AB). The DSB shall have its own Chairperson, which shall be elected by the State Parties. It shall meet as often as necessary and its decision shall be made by consensus.[112] So far, the AfCFTA does not clarify what is meant by 'consensus'. Clarification will be needed in the future. This author believes that the term 'consensus' will be understood as 'reversed' or 'negative' consensus in the sense of WTO law and will only apply in the dispute settlement system. This will mean that for example Panel Reports are 'automatically' adopted unless there is consensus against adoption. In WTO law, "at the three mentioned important stages of the dispute settlement process (establishment, adoption and retaliation), the DSB must automatically decide to take the action ahead, unless there is a consensus not to do so"[113].

Whenever a dispute arises between State Parties, they shall recourse to consultations with the objective to come up with an amicable resolution of the dispute. Where this cannot be achieved, any party may refer the matter to the DSB, after having notified the other parties involved and request the establishment of a Dispute Settlement Panel. The Parties might also use arbitration[114] or at any time resort to good offices, conciliation or mediation. The adoption of Panel Reports follows the proceeding in terms of Article 19 (4) of the Protocol:

> "Within sixty (60) days from the date the final Panel report is circulated to the State Parties, the report shall be considered, adopted and signed at a meeting of the DSB convened for that purpose, unless a Party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report."[115]

The AB shall hear appeals against Panel reports. It is a permanent institution composed of seven members, which are appointed for a four-year term and can be reappointed once. They shall not be affiliated to any government.[116] Whenever the Panel or the AB concludes that a measure is inconsistent with the Agreement, it shall make recommendations to bring the measure into conformity with the Agreement. Furthermore, it may make suggestions to best implement the recommendations.[117] State Parties are obliged to fully implement the recommendations and

[112] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Protocol on Dispute Settlement, Art. 5.
[113] *World Trade Organization.* "WTO Bodies involved in the dispute settlement process: Decision-making in the DSB." https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c3s1p1_e.htm, (05.04.2020).
[114] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Protocol on Dispute Settlement, Art. 6.
[115] Ibid., Protocol on Dispute Settlement, Art. 19.
[116] Ibid., Protocol on Dispute Settlement, Art. 20.
[117] Ibid., Protocol on Dispute Settlement, Art. 23.

rulings of the DSB. "Compensation and the suspension of concessions or other obligations are temporary measures available to the aggrieved Party in the event that the accepted recommendations and rulings of the DSB are not implemented within a reasonable period of time."[118] All in all, the rules on compensation and suspension of concessions are very detailed and shall not worsen the relationship between the conflicting parties.

Intergovernmental approach

As mentioned above, only State Parties can revert to the Dispute Settlement Process under the Protocol. However, de-facto most trade transactions involve private entities. Under the Protocol, the rights of private entities could only be protected if a State Party, able to show that its rights have been violated, would bring a claim. This leads to a lot of discussion. Prof. Erasmus for example generally welcomes the newly established mechanism. But he writes that the classical inter-governmental approach is not suitable for addressing the contemporary needs of globalisation and trade anymore. What can be seen currently is that African governments do not sue each other under the existing legal instruments of the RECs. Therefore, it is questionable if states will use the instrument under the AfCFTA. He also positively states that some RECs, including COMESA, ECOWAS and EAC have already granted private parties standing before regional courts. The consequence was that private parties were entitled to remedies after the breach of a trade agreement. Lastly, he stresses that protection on a continental level is needed so that private entities can claim remedies on their own without the involvement of their respective states.[119]

Other aspect: Trade Remedies

Prof. Erasmsus continues his arguments. He writes that "most international trade disputes involve trade remedies and safeguards; for example, when goods are dumped in foreign markets at prices below cost, when exported goods are subsidized, or when new trade liberalization obligations result in an upsurge of imported goods and cause injury to domestic industries."[120] These aspects were taken up in negotiations of the AfCFTA. As can be seen from Figure 6 on page 32, the AfCFTA includes an Annex on Trade Remedies with various regulations. The issue is that disputes arising under this Annex often include technical rules and proof through the use of trade data. So far, only Egypt, Morocco, Tunisia and South Africa facilitate the

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[118] *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Protocol on Dispute Settlement, Art. 25.
[119] *Erasmus, Gerhard. "*Dispute Settlement under the AfCFTA." 2018, https://www.tralac.org/publications/article/13136-dispute-settlement-under-the-afcfta.html, (04.03.2020).
[120] *Erasmus, Gerhard. "*Will disputes under the AfCFTA Agreement be less "political"?", 2020, https://www.tralac.org/blog/article/14455-will-disputes-under-the-afcfta-agreement-be-less-political.html, (06.04.2020).

implementation of trade remedies according to the rules.[121] Therefore, all other African states are advised to provide means for the implementation of technical rules.

As mentioned before, so far African states were reluctant to sue each other. One will have to wait to see if the AfCFTA brings change towards the settlement of international disputes. A more transparent and consistent dispute settlement system will lead to more governance and certainty. However, if states will not use the newly established system for the settlement of disputes, State Parties will continue to find 'political solutions', whatever they will look like.

3.3 The international legal framework (WTO)

3.3.1 Article XXIV GATT 'regional trade exception'

International economic law, namely the WTO provisions, should be regarded as a framework within which states can trade. From a WTO legal point of view, the AfCFTA is to be classified as a tool to preferential liberalisation in the sense of Article XXIV 'General Agreement on Tariffs and Trade' (GATT) and Article V 'General Agreement on Trade in Services' (GATS). The key characteristic is that the parties to a preferential trade agreement offer each other more favourable treatment in trade matters than they offer to other trading partners. So, the 'regional trade exception' allows MS to adopt measures that would otherwise be WTO inconsistent.[122]

Article XXIV GATT contains the provisions for the establishment of RTAs, a tool of economic integration, which is often referred to as the 'theory of the second best'. Regional arrangements are an exception of Article I GATT, the Most-Favoured-Nation Principle (MFN Principle).[123] The principle says that it is not allowed to discriminate between trading partners. So, a favour granted to one state must be granted to all other WTO members.
Generally, depending on the level of integration, the following 'forms' of the exception – preferential liberalisation – can be defined:

[121] *Erasmus, Gerhard.* "Will disputes under the AfCFTA Agreement be less "political"?", 2020, https://www.tralac.org/blog/article/14455-will-disputes-under-the-afcfta-agreement-be-less-political.html, (06.04.2020).
[122] *van den Bossche, Peter, and Werner Zdouc.* The law and policy of the World Trade Organization: Text, cases and materials. 3rd ed. (Cambridge University Press, 2013): 672, 674.
[123] Developing countries can also use the 'Enabling Clause' to enter into regional arrangements. For more details see Section 5.1.1.

- Free Trade Areas (FTAs): elimination of quantitative trade restrictions and customs tariffs against each other's goods, retention of individual MS barriers against third countries
- Customs Unions (CUs): FTA, common external tariff/uniform import tariffs, common quota restrictions
- Common Markets (CMs): CU, full factor mobility, deeper regulatory framework
- Economic Unions: CM, monetary union, policy harmonisation

It follows from the wording that the AfCFTA is to be classified as FTA in the sense of Article XXIV (5) litera b GATT read in conjunction with Article XXIV (8) litera b GATT. The FTA in legal terms is defined as follows:

> "A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories."[124]

Accordingly, an FTA aims to lessen limitations on exchange and annual duties between states. MS retain the right to set tariffs against the imports from third-party countries individually.[125] Undoubtedly, the AfCFTA covers more customs territories, namely the whole African continent, including some RECs, which form CUs and aims to dismantle tariff- as well as NTBs. Furthermore, from the conditions laid down in Article XXIV (8) litera b GATT, it follows that the AfCFTA must eliminate substantially all barriers and discrimination to trade between the parties. Considering that Phase I of the negotiation process focuses on phasing out tariffs on 90% of goods, the criteria to cover 'substantially all the trade' (=internal dimension) is met.

Article XXIV (5) litera b GATT concerns the external dimension and states the requirements as follows:

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[124] *Uruguay Round*. General Agreement on Tariffs and Trade: GATT (1986): Art. XXIV (8) lit. b.
[125] *Enaifoghe, Andrew, and Raquel Asuelime*. Southern African Regional and Economic Integration: The Free Trade Zone Strategy for South Africa?: Journal of African Union Studies 7/2 (2018): 89.

> "With respect to a free-trade area (…) the duties and other regulations of commerce (…) shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be".

Hence, it follows that the terms of access for non-members must not be worse than before the Agreement went into effect.[126] In addition to this, an FTA is expected to move closer together and to evolve into a CU in the course of time.[127]

Notification

International economic law obliges states to notify the WTO of newly agreed regional trade arrangements. The 'Committee on Regional Trade Agreements' was established to consider regional agreements under the Transparency Mechanism for RTAs. According to the WTO RTAs Database[128], as of 6th of April 2020, 303 RTAs are in force. This author searched the database, but did not find any notification with regards to the AfCFTA. Notwithstanding that, the AfCFTA is mentioned in various information webpages of the WTO and listed as a new development of multilateral plurilateral agreements.

3.3.2 Preferential trade: minimum requirements

The principles that shall govern the AfCFTA are similar to the principles of the WTO system. This short section gives an overview of the minimum standards that must be met for the AfCFTA to be categorised as a preferential trading regime. WTO law sets the rules for preferential trade in the above-mentioned Article XXIV GATT (see Section 3.3.1). Generally, state parties' negotiations must culminate in a Schedule of Concessions. Furthermore, Rules of Origin (RoO) must be agreed and states must set basic rules for Trade in Services.

Schedule of Concessions and Commitments

MSs specific commitments are listed in the Schedule of Concessions. The commitments are usually about tariff reductions, but often include different kinds of other commitments made during negotiation rounds. For Trade in Goods, they contain the maximum tariff levels.

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[126] Source: The conclusion follows from this author's legal understanding and a subsumption of the elements of the AfCFTA to the criteria laid down in the GATT.
[127] *Enaifoghe, Andrew, and Raquel Asuelime*. Southern African Regional and Economic Integration: The Free Trade Zone Strategy for South Africa?: Journal of African Union Studies 7/2 (2018): 95.
[128] The database can be reached online via https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx (05.06.2020).

Concerning agricultural products, the concessions and commitments cover tariff rate quotas, limits on export subsidies and domestic support.[129] Whereas tariffs are negotiated, price based, usually transparent and 'WTO-legal', quotas, import or export licences or other measures in the sense of Article XI GATT are opaque. This author's opinion is that as tariffs are lowered, governments resort to NTBs as a mean to provide protection to domestic producers.

The respective provisions of Schedules of Tariff Concessions can be found in Annex 1 to the Protocol on Trade in Goods. However, it is only written that the Schedules shall, once adopted, be appended to this Annex 1. So far, the Schedules are still outstanding.
A positive aspect is that more substantial content could be agreed with regards to NTBs. The AfCFTA aims to tackle this problem in Annex 5 to the Protocol on Trade in Goods. Article 3 of Annex 5 (Non-Tariff Barriers) includes the general categorisation of NTBs, which are

- "Government participation in trade and restrictive practices tolerated by Governments;
- Customs and administrative entry procedures;
- Technical Barriers to Trade;
- Sanitary and Phytosanitary Measures;
- Specific limitations; and
- Charges on imports."[130]

In order to shift away from NTB-related activities and to develop accurate working procedures, a 'Sub-Committee on NTBs', a NTB Coordination Unit as well as National Monitoring Committees and National Focal Points shall be established.[131] The institution shall coordinate the elimination of NTBs, identify issues, define the process of elimination, and provide services and reports and so on.
Appendix 2 to Annex 5 includes the procedures for the elimination of NTBs. MS shall firstly exhaust the existing NTB elimination channels on a regional level before expressing concern on a AfCFTA level. In the case that no agreement can be reached on a REC level, states can proceed to the continent-level and submit a detailed description of the manner regarded as NTB. In a further step, the responding state shall notify its response to the Secretariat. If the matter is

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[129] *World Trade Organization*. "Members' commitments." 2020, https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm, (31.03.2020).
[130] *African Union Commission*. Annex to the Protocol on Trade in Goods of the AfCFTA: Annex 5, Art. 3. Appendix 1 to Annex 5 lists potential sources of NTBs for each category.
[131] Ibid., Annex 5, Art. 4, Art. 6.

not satisfactorily resolved for both parties, an independent expert serving as a Facilitator can be addressed to settle the dispute.[132]

This author wants to positively emphasise that Appendix 2 to Annex 5 includes detailed provisions regarding the settlement of a 'dispute' with regards to NTBs. The provisions even include time limits for terminating the proceedings.

Concerning TBTs, Annex 6 to the Protocol on Trade in Goods must be looked at. The Annex's aim is to "apply to standards, technical regulations, conformity assessment procedures, accreditation, and metrology in the State Parties"[133]. Moreover, Annex 7 includes provisions regarding Sanitary and Phytosanitary (SPS) Measures.

RoO

In addition to the adoption of Schedules of Concessions, states must agree on RoO. The purpose of RoO is to attribute each product to one country of origin. Often, this can be very complex, especially when raw materials 'travel' through the world and are processed in manufacturing plants scattered across the globe. On a global level, a clear distinction must be made between the general WTO Agreement on RoO, non-preferential RoO (MFN trade) and preferential RoO. African states need to come up with their RoO, which must also conform to the general disciplines of Annex II of the Agreement on RoO of WTO law. Once adopted, they must be notified to the Secretariat and published on the WTO RTA database.[134]

As stressed above, the negotiations on RoO of the AfCFTA have not been finished yet, but are quite progressed. Annex 2 to the Protocol on Trade in Goods includes in forty-two Articles and four Appendices the provisions for RoO. "The purpose of this Annex is to implement provisions of the Protocol on Trade in Goods concerning Rules of Origin and to ensure that there are transparent, clear and predictable criteria for determining eligibility for preferential treatment in the AfCFTA."[135] Article 5 and 6 address the criteria that must be fulfilled in order for a product to be considered as originating from a MS. The Annex also deals with some points of conflict, like for example the treatment of packing, the separation of materials or the legal classification of accessories, spare parts and tools. Furthermore, it includes the provisions for issuing Certificates of Origin. Details are included in the Appendices.

[132] *African Union Commission*. Annex to the Protocol on Trade in Goods of the AfCFTA: Annex 5, Appendix 2.
[133] Ibid., Annex 6, Art. 2.
[134] *World Trade Organization. "*Rules of origin." 2020, https://www.wto.org/english/tratop_e/roi_e/roi_e.htm, (31.03.2020).
[135] *African Union Commission*. Annex to the Protocol on Trade in Goods of the AfCFTA: Annex 2, Art. 2.

Rules on Trade in Services

Lastly, the African states need to agree on basic rules on Trade in Services. As Ms. Guillin writes, on a global scale, Trade in Services is growing faster than Trade in Goods and it can be observed that negotiations about services harmonisation are even more challenging. This is due to the special characteristics and various modes of services.[136] Article I GATS differentiates between the following four modes of services trade:

- cross-border trade
- consumption abroad
- commercial presence and
- temporary movements of natural persons.

The AfCFTA incorporated the four modes of supply in Article 2 (2) in conjunction with Article 1 litera p of the Protocol on Trade in Services. Additionally, the usual rules on National Treatment, MFN Treatment, security exceptions, transparency, mutual recognition and so on are inserted in the Protocol. Overall, the structure and content of the Protocol on Trade in Services reminds on the GATS. However, what is missing is specific rules on Trade in Services. They shall be attached as Appendices to the Annexes of the Protocol. African states have missed the deadlines to present their outcomes so far.

[136] *Guillin, Amélie.* "Preferential Trade Agreements and Services." https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_6apr11_e.htm.

4 Regional integration on the African continent

4.1 Article 19 'Agreement establishing the AfCFTA'

Regional integration in Africa has a long history and dates back to the colonial era. The various RECs (see Chapter 4.3), that fragment the continent, have been the main economic engines for many years. One must at all stages keep in mind that the AfCFTA does not aim to dismantle those existing RECs; rather it views the RECs as building blocks of the AfCFTA and aims to deepen integration amongst them. Article 19 of the Agreement builds the 'bridge' between the RECs and the AfCFTA, and also between the previous Chapter 3 and this Chapter 4 on regional integration on the African continent. Article 19 on the 'Conflict and Inconsistency with Regional Agreements' reads as follows:

> "(1) In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement.
> (2) Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves."

From this Article, it is apparent that the AfCFTA is connecting the existing RECs. Therefore, it seems essential to focus on the development of the current African economic system and on the current situation in this chapter.

4.2 The Abuja Treaty of 1991, a predecessor of the AfCFTA

In 1991, the Treaty of Abuja, set the cornerstone for the establishment of the AEC[137] and provided a step-by-step approach towards more regional integration. It was designed as a 'bottom-up' initiative, starting at sub-regional levels to gradually establishing a continental market.[138]

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[137] *Organization of African Unity*. Treaty establishing the African Economic Community: Abuja Treaty (1991): Art. 2.
[138] *Musila, Jacob W.* The Intensity of Trade Creation and Trade Diversion in COMESA, ECCAS and ECOWAS: A Comparative Analysis: Journal of African Economies 14/1 (2005): 120.

One of the objectives, laid down in Article 4 (1) of the Agreement, was to promote economic development. The treaty called on strengthening the existing RECs and the establishment of further RECs.[139] It also asked the MS to liberalise trade through the abolition of customs duties and NTBs in order to create FTAs at the level of each REC.[140] Additionally, the treaty envisioned both the establishment of a common external tariff[141] and of a common market[142] on the continent.
According to the Treaty of Abuja, the community should have been established in six stages over a transitional period of a maximum of thirty-four years. The first stage should have dealt with strengthening the existing RECs, the third with the creation of FTAs and the fifth with the establishment of common markets.[143] The integration process should have culminated in the establishment of CUs[144] as well as in the achievement of free movement of people on the African continent.[145]

However, the objectives set forth in the Abuja Treaty have not been reached and all deadlines have been missed since its establishments. Also, it should be borne in mind that since 1991 the existing RECs have developed at a different pace.[146] This is partly due to the diverse levels of national development as well as of the limited finance available to boost infrastructure. Another aspect that might have contributed to the 'failure' of the treaty was that it pre-dated the establishment of the WTO in 1994, as the creation of the WTO changed global trade law significantly (consider '2001 Doha Development Round' or 'Enabling Clause' (see Chapter 5.1)).

4.3 Regional Economic Communities (RECs)

4.3.1 Current situation

The cornerstones for some RECs were laid long before the Treaty of Abuja was adopted; the SACU for instance was established in 1910 during colonial times. One year later, in 1911, the EAC was formed.[147] Since then, several RTAs have been set up and today, all MS of the AU

[139] *Organization of African Unity*. Treaty establishing the African Economic Community: Abuja Treaty (1991): Art. 4 (2) lit. a.
[140] Ibid., Art. 4 (2) lit. d.
[141] Ibid., Art. 4 (2) lit. g.
[142] Ibid., Art. 4 (2) lit. h.
[143] Ibid., Art. 6.
[144] Ibid., Chapter V.
[145] Ibid., Chapter VI.
[146] *Valensisi, Giovanni; Robert Lisinge, and Stephen Karingi*. The trade facilitation agreement and Africa's regional integration: Canadian Journal of Development Studies 37/2 (2016): 240.
[147] *Adegoke, Yinka. "*African economies will outperform global growth in 2020 despite a lag from its biggest countries." 2020, https://qz.com/africa/1783714/african-economies-to-watch-in-2020-debt-and-climate-crisis/: 358, (12.01.2020).

are part of at least one RTA and more than 20 RECs exist on the African continent. Table 1 below gives an overview of the most important African RECs. Some regional arrangements, such as CEMAC, UEMOA or SACU are complete subsets of bigger RTAs. Only three countries, namely Cape Verde (ECOWAS), Algeria (UMA) and Mozambique (SADC), belong to only one grouping. All other African countries are part of at least two RTAs, with Kenya being involved in four regional arrangements.[148] A 'Spaghetti-bowl' of overlapping regional arrangements is evident (see Figure 7).

In addition to that, it is notable that a REC does not necessarily have a Free Trade Agreement in place, and even where it does, the regional integration of the respective RTA can be very different.

RTA	**Member States**	**Market Integration**
Arab Maghreb Union (UMA)[149]	Algeria, Libya, Mauritania, Morocco, and Tunisia	FTA not operational
Community of Sahel-Saharan States (CEN-SAD)[150]	Benin, Burkina Faso, Central African Republic, Chad, the Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, the Gambia, Ghana, Guinea-Bissau, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, the Sudan, Togo and Tunisia	FTA not yet established
Common Market for Eastern and Southern Africa (COMESA)[151]	Burundi, the Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Somalia, Sudan, Eswatini, Seychelles, Tunisia, Uganda, Zambia and Zimbabwe	FTA (not all states), common market, CU (not operational)
East African Community (EAC)[152]	Burundi, Kenya, Rwanda, South Sudan, Uganda and Tanzania	FTA, CU, common market
Economic Community of	Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of	FTA postponed

[148] *Ngepah, Nicholas, and Maxwell Chukwudi Udeagha*. Supplementary Trade Benefits of Multi-Memberships in African Regional Trade Agreements: Journal of African Business 20/4 (2019): 507. *Tanyi, Kenneth T.* Assessing Africa's Two Billion Populated Market by 2063: The Facts and Fallacies of a Continental Free Trade Area (CFTA): Business and Economics Journal 6/3 (2015) *Admassu, Samuel*. An empirical analysis of the trade-creation effect of African regional economic communities: Empirical Economics 56/3 (2019): 846.
[149] https://www.uneca.org/oria/pages/amu-arab-maghreb-union (13.02.2020).
[150] https://www.uneca.org/oria/pages/cen-sad-community-sahel-saharan-states (13.02.2020).
[151] https://www.uneca.org/oria/pages/comesa-common-market-eastern-and-southern-africa (13.02.2020).
[152] https://www.uneca.org/oria/pages/eac-%E2%80%93-east-african-community (13.02.2020).

Central African States (ECCAS)[153]	the Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe	
Central African Economic and Monetary Community (CEMAC)	Cameroon, Central African Republic, Chad, Congo, Gabon and Equatorial Guinea (all part of ECCAS)	Monetary Union is operating, but not the CU
Economic Community of West African States (ECOWAS)[154]	Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo	FTA, CU, common market, aiming for a Monetary and Economic Union
West African Economic and Monetary Union (UEMOA)	Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo (all part of ECOWAS)	FTA, CU, Monetary Union
Intergovernmental Authority on Development (IGAD)[155]	Djibouti, Ethiopia, Eritrea, Kenya, Somalia, the Sudan, South Sudan and Uganda	still no FTA in place
Southern African Development Community (SADC)[156]	Angola, Botswana, the Comoros, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Eswatini, Tanzania, Zambia and Zimbabwe	FTA (without Angola and the Democratic Republic of the Congo)
Southern African Customs Union (SACU)	Botswana, Lesotho, Namibia, South Africa and Eswatini (all part of SADC)	FTA, CU
Tripartite Free Trade Area (TFTA)	COMESA, EAC and SADC (27 MS)	Not yet in force

Table 1: Selected Regional Trade Arrangements

[153] https://www.uneca.org/oria/pages/eccas-economic-community-central-african-states (13.02.2020).
[154] https://www.uneca.org/oria/pages/ecowas-economic-community-west-african-states (13.02.2020).
[155] https://www.uneca.org/oria/pages/igad-intergovernmental-authority-development (13.02.2020).
[156] https://www.uneca.org/oria/pages/sadc-southern-african-development-community (13.02.2020).

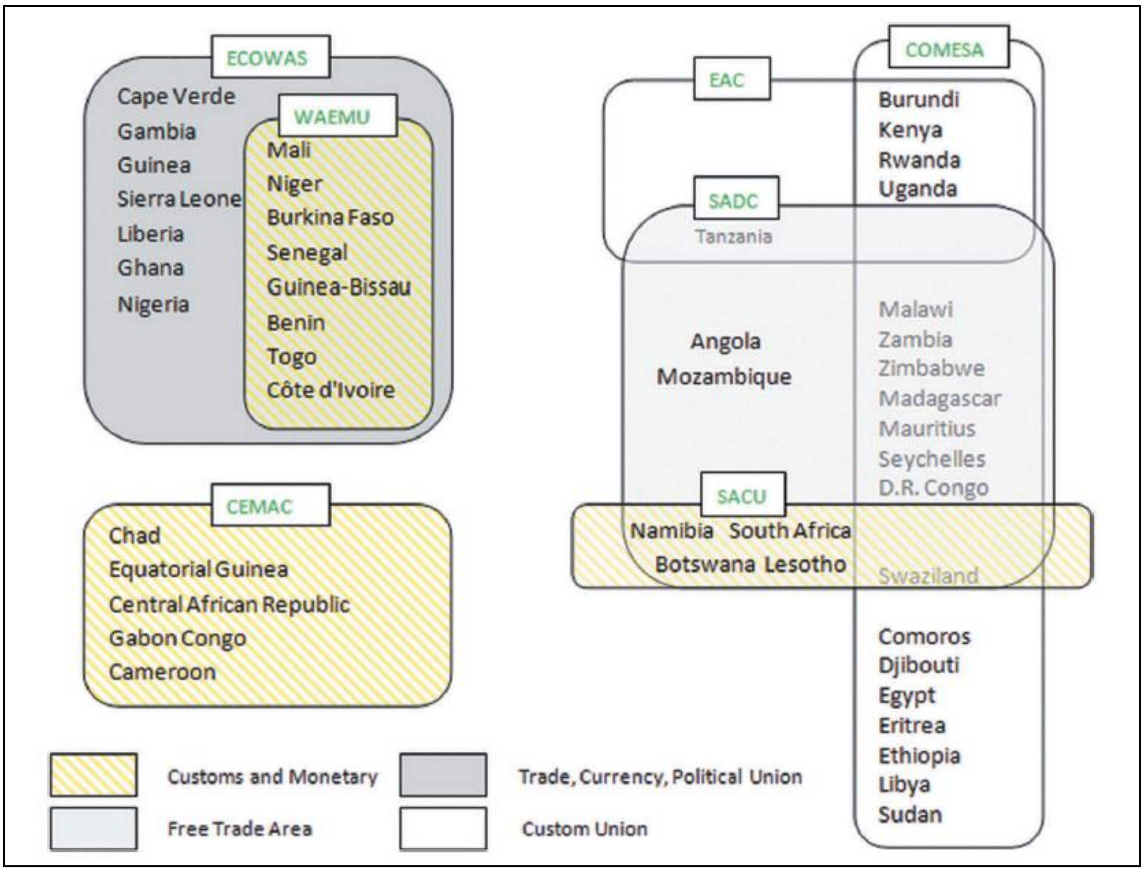

Figure 7: 'Spaghetti-bowl' of RTAs[157]

4.3.2 Tripartite Free Trade Agreement (TFTA)

Except for the AfCFTA, the latest development of a regional arrangement concerns a 'coalition' of the heads of state of SADC, EAC and COMESA. They launched negotiations for the TFTA in 2015, which builds on the same structure as the AfCFTA, in Sharm El Sheikh, Egypt. Originally, it was agreed that all outstanding negotiations on tariffs, RoO and trade remedies would be concluded over a 12-month period. However, due to negotiation challenges, the states could not meet the deadline of June 2016. Therefore, the commencement of Phase II negotiations, which shall deal with Trade in Services and other trade related matters, has been postponed pending the conclusion of Phase I outcomes.

[157] *Candau, Fabien; Geoffroy Guepie, and Julie Schlick*. Moving to autarky, trade creation and home market effect: an exhaustive analysis of regional trade agreements in Africa: Applied Economics 51/30 (2019): 3307.

As of April 2020, 24 out of 27 MS have signed the Declaration; the signatures of Libya, Eritrea and South Sudan are still outstanding. The Agreement requires 14 ratifications to enter into force.[158]

An analysis of the TFTA would require a separate thesis and is outside the scope of this paper. Nonetheless, it is noticeable that SACU and EAC are pushing the negotiation process forward. In this context, Riedel and Slany write that the EAC is the most advanced REC "whose market is fully liberalised with only remaining tariffs in a few service sectors"[159]. Especially the biggest economies of those regional arrangements, South Africa and Kenya respectively, are intent on expanding their markets.

4.3.3 Building blocks of the AfCFTA

The AU officially only identifies the following eight RECs as building blocks of the AfCFTA:

ECCAS, ECOWAS, EAC, SADC, COMESA, UMA, CEN-SAD and IGAD.[160]

Africa's oldest CU, the SACU is not recognised, as it is a subset of SADC (see Figure 7). Contrary to expectations, those eight RECs shall remain in place and the AfCFTA will provide an enhanced connectivity between them. To emphasise again, the AfCFTA is not intending to dismantle the RECs; but rather, to encourage the successful implementation of deeper regionalism in Africa.[161]

Potential problems arising from negotiations between RECs

Based on this fact, this author asks the question: how will African trade proliferation negotiations develop under the AfCFTA? One issue is that a state from one REC cannot simply enter into tariff negotiations with a state from another REC. Three significant implications arise: Firstly, taking South Africa and Kenya as examples. South Africa is part of SACU, which forms a CU and therefore has a common external tariff. On the other hand, Kenya is part of the EAC, which also has a common external tariff. From this it follows that South Africa and Kenya cannot simply agree on reducing tariffs. Therefore, the only possible solution is that the respective RECs, namely SACU and EAC, enter into negotiations.

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158 *TRALAC.* "SADC-EAC-COMESA Tripartite Free Trade Area Legal Texts and Policy Documents." https://www.tralac.org/resources/by-region/comesa-eac-sadc-tripartite-fta.html, (08.04.2020).

159 *Riedel, Jana, and Anja Slany*. The potential of African trade integration – Panel data evidence for the COMESA-EAC-SADC Tripartite: The Journal of International Trade & Economic Development 28/7 (2019): 844.

160 *African Union*. Agreement establishing the Continental Free Trade Area: AfCFTA (2019): Art. 19.

161 *Tanyi, Kenneth T.* Assessing Africa's Two Billion Populated Market by 2063: The Facts and Fallacies of a Continental Free Trade Area (CFTA): Business and Economics Journal 6/3 (2015): 2.

The second implication concerns states, such as Angola, that are not part of any trade arrangement. Even though Angola is part of SADC, it has not signed the SADC-FTA. However, Angola has ratified the Treaty of Abuja, which includes a progressive approach towards more regional integration, starting with the strengthening of the existing RECs, the creation of FTAs and the establishment of CUs within the RECs (see Chapter 4.2.). So, according to the stepwise integration process of the legal document, Angola will sign the RTA in the future. Moreover, SADC will integrate further and at some point form a CU. For now, this author's understanding is that under the AfCFTA, Angola must enter separately into negotiations with other RECs as it does not form part of the SADC-FTA. However, while doing so, Angola must consider the interests of the SADC-FTA as the country will at some stage join the SADC-FTA, which again will move to a CU.

The third implication is for states that are part of a REC with an FTA in place, but have not ratified the AfCFTA yet. Nigeria, part of ECOWAS (CU), for instance is very reluctant in ratifying the Agreement, as the largest economy in Africa 'does not need' the AfCFTA in the same way other African economies 'need' it. This raises the question of how ECOWAS can start to negotiate tariffs with other RECs, when not all of its own MS have ratified the AfCFTA.

'Variable geometry'

Another aspect, which is often overlooked is that the 55 African states are very different from each other. They exhibit distinct political and socioeconomic structures and are at different stages of development. A suggestion was to make use of 'variable geometry' to meet the needs of all states. The term originates from EU integration, where it was used to describe the differentiated level of integration. "It acknowledges that, particularly since the EU's membership almost doubled in under a decade, there may be irreconcilable differences among countries and that there should be a means to resolve such stalemates."[162] 'Variable geometry' would give African countries the chance to move in their own speed towards more intra-African integration. One possibility would be to grant longer time periods to African LDCs to adapt to the agreed tariffs for certain products. However, this author believes that making use of 'variable geometry' would further decelerate the implementation process. Looking back in history and the diverse development of the existing RECs, this author opines that instead of making use of 'variable geometry', more 'pressure' is needed on the continent to move closer together, dismantle obstacles between the African states and support those countries, that need assistance.

[162] *EUR-Lex.* "Glossary of summaries: 'VARIABLE-GEOMETRY' EUROPE." https://eur-lex.europa.eu/summary/glossary/variable_geometry_europe.html, (15.04.2020).

4.4 Trade creation versus trade diversion

4.4.1 The Theory

Following on from Chapter 3.3 on WTO law, the conflict of trade creation versus trade diversion arises due to the formation of CUs and that the African continent will continue to be highly fragmented. This topic needs further discussion.

To start with, regional integration can be of economic, political or physical nature. This section focuses on the economic component. In 1962, the economist Balassa Bela defined the following conditions for economic integration: a state of affairs and a process. 'A state of affairs' means the absence of numerous forms of discrimination between national economies and 'a process' is defined as actions designed to abolish discrimination between economic units belonging to different states.[163]

The economist Jacob Viner investigated the effects of trade arrangements and published his findings in the paper 'The Customs Union Issue' in 1950. According to the theory, trade diversion in this sense means that due to the formation of a CU, trade is diverted from a more efficient trading partner towards a less efficient one. So, after the conclusion of the regional arrangement, the states are forced to shift to a less efficient trading partner of the respective regional grouping. Trade creation in contrast means that more goods are traded within the grouping, because the cost of goods decreases due to the elimination of tariffs and NTBs. This improvement leads to more efficiency, lower prices, more consumer spending and even more trade flows.[164]

4.4.2 Arguments for and against trade liberalisation

In general, WTO law confers the advantage of economic integration and trade liberalisation even when the respective RTA only incorporates a small number of WTO MS (for the size of RECs see Table 1 on page 48).

[163] *Balassa, Bela*. The Theory of Economic Integration (London: Allen & Unwin, 1962).
[164] *Viner, Jacob*. The Customs Union Issue: Carnegie Endowment for International Peace (1950).

Advantages of trade liberalisation

Many arguments for and against preferential trade liberalisation exist. This author believes that the African RTAs are one of the rare tools available to strengthen economic ties between countries. Looking at the positive aspects, the authors van den Bossche and Zdouc explain the benefits of regional trade arrangements as follows:

> "At a regional level, it may be possible to achieve a degree of trade liberalisation which may be out of reach at a global level. It has been argued that trade liberalisation will occur more quickly if it is pursued within regional trading blocs, and that trade liberalisation achieved at a regional level may serve as a *stepping stone* for trade liberalisation at the multilateral level at a later time. Also, regional trade liberalisation may create significant economic growth within the region concerned, which can, in turn, generate more trade with the rest of the world. It is not clear, however, whether, regional trade agreements *divert* rather than *create* trade."[165]

In addition to that, RTAs increase competition and boost economies of scale. They can also stimulate foreign and domestic investment. Furthermore, the argument of better overall allocative efficiency is often raised. The author Soja adds rapid and equitable improvement with regards to administrative efficiency, political democracy and representation, cultural identity, preservation of natural environment, stimulating creativity and motivating innovation to the list of positive aspects of preferential trade liberalisation.[166]

Mainstream economists argue for trade liberalisation, using the argument of the most efficient allocation of resources. Some neo-Listians, including Ha-Joon Chang and Erik Reinert, would support the AfCFTA because of its massive market size. As examples, one must bear in mind that countries with relatively small populations, such as Rwanda and Uganda are not able to promote large-scale manufacturing. Therefore, List argued to unify those small countries to support the creation of a bigger and industrialised market. Neo-Listians follow this view and support the establishment of a large internal market in order to gain from increasing returns.[167]

[165] *van den Bossche, Peter, and Werner Zdouc*. The law and policy of the World Trade Organization: Text, cases and materials. 3rd ed. (Cambridge University Press, 2013): 674.
[166] *E. W. Soja*, Regional Planning and Development Theories in *International encyclopedia of human geography*, eds. Rob Kitchin and N. J. Thrift (Amsterdam: Elsevier Ltd., 2009): 260.
[167] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 185.

Disadvantages of trade liberalisation

One negative aspect is that RTAs promote inter-block rivalry. This increases the risk of unequal bargains and compliance costs. Considering the African continent, compliance with RoO might lead to high adaption costs because of the administrative expenditure. Also, RTAs might be used as a deflection of scarce negotiating resources and make multilateral liberalisation harder for fear of preference erosion. Furthermore, as the 'Spaghetti-bowl' is getting denser, the system gets more complex and might lead to obscurities.

Identification of winners and losers

Whenever talking about trade liberalisation and the AfCFTA, not only the advantages and disadvantages must be thought of, but also the question of winners and losers arises. We not only have to analyse winning and losing states, but also identify winning and losing stakeholders, like consumers, manufacturers, governments and labour. Consumers win in terms of price reductions due to tariff reductions in an FTA. However, they also represent the labour force of a state and cheaper imports in an FTA might come at the expense of domestic industries. A weakening domestic sector has a negative impact on employees and therefore on consuming behaviour.[168]

This author has not found any detailed analysis of winners and losers of the AfCFTA. The only author to address this issue is Andrea Cofelice, who suggests that the most positive outcome is expected for Small and Medium-sized Enterprises (SMEs).[169]

Thus far, the AfCFTA has been promoted by UNECA's calculations, such as that the implementation of the AfCFTA will lead to an increase of intra-African trade by 52.3% by 2022 (compared to 2010 levels) or that the AfCFTA will lead to a gain estimated at 16.1 billion US dollars which shall be felt by all African citizen but especially favouring women and young people.[170] However, definite winners and losers are not yet identified. This aspect was addressed at the 'Africa Industrialization Day (AID) 2019' at UNIDO. MS asked to look at the development of the private sector and public-private partnerships. The query was resumed in the joint statement of the AUC, UNIDO and UNECA, where it says that "special emphasis shall be placed on agriculture, infrastructure, energy – including renewable energy and energy efficiency, SME development, innovation, quality infrastructure, technology transfer, product

[168] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 184.
[169] *Cofelice, Andrea*. African Continental Free Trade Area: Opportunities and Challenges: The Federalist Debate 31/3 (2018): 32–33.
[170] *United Nations Economic Commission for Africa.* "African Continental Free Trade Area - Questions & Answers." https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers, (04.03.2020).

diversification, trade capacity building, industrial policy, special economic zones and industrial parks"[171].

4.4.3 Trade creation and protectionism in Africa

One of the main reasons why the AfCFTA received so much attention was that it was initiated at a time of general decline of global involvement in trade matters. On a global scale, a backlash against free trade and trade liberalisation as well as an increase in trade restrictions may be observed. Mr. Wamkele Mene addressed this issue in his opening speech as Secretary General and said that the backlash is partly the outcome of unequal distribution of the benefits of international trade and a lack of shared and inclusive growth.[172]

Studies on trade creation in Africa

Overall, a lot of research has been done about African RTAs and their trade creation effect. Due to the different economic integration of the various RTAs, the trade creation effect varies within the regional grouping. Carrère conducted a study, using an augmented gravity model and found that in the 1990s, the RTAs of Sub-Saharan Africa clearly increased intra-regional trade. However, in the first years of their existence, the increase was mainly attributed to trade diversion. The UEMOA and SADC could generate net trade creation over the forthcoming years. Furthermore, the author stresses that the development of monetary unions creates more intra-regional trade.[173] According to Musila, who investigated the trade creation effect in COMESA, ECCAS and ECOWAS, the latter regional grouping records the highest level of trade creation.[174]

A study undertaken by Ngepah and Udeagha looked at possible trade benefits of membership of more than one RTA. First of all, the study shows that all CUs observed reduced their common external tariff from the period 1995-2004 to the period 2005-2014. A clear correlation between a reduction in tariffs and an increase in the flow of imports and exports in the respective regional arrangement could be seen.[175] RTAs that decreased their tariffs to a greater extent had a bigger

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[171] *African Union Commission; United Nations Industrial Development Organization, and United Nations Economic Commission for Africa. "*Joint Statement of the AUC, UNIDO, UNECA: Africa Industrialization Day, 20 November 2019: Positioning African Industry to Supply the African Continental Free Trade Area (AfCFTA) Market." 2019: 5.

[172] *Wamkele Mene. "*Statement of H.E. Mr. Wamkele Mene on the occasion of swearing-in as the Secretary General of the AfCFTA Secreteriat." 2020: 5.

[173] *Carrère, Céline*. African Regional Agreements: Impact on Trade with or without Currency Unions: Journal of African Economies 13/2 (2004): 228–229.

[174] *Musila, Jacob W.* The Intensity of Trade Creation and Trade Diversion in COMESA, ECCAS and ECOWAS: A Comparative Analysis: Journal of African Economies 14/1 (2005): 133.

[175] *Ngepah, Nicholas, and Maxwell Chukwudi Udeagha*. Supplementary Trade Benefits of Multi-Memberships in African Regional Trade Agreements: Journal of African Business 20/4 (2019): 509–510.

increase in intra-regional exports and imports. Furthermore, the authors showed that significant trade benefits of multiple RTA memberships for African countries exist. An increase in the number of RTAs a country belongs to also leads to an increase in supplementary trade benefits. Even though the results vary within the regional grouping, the overall conclusion holds. Therefore, the authors argue for complete continental African integration in order to best exploit intra-African trade benefits. Lastly, they state that retaining artificial trade borders hampers intra-African trade.[176]

In contrast to the findings of Ngepah and Udeagha, the authors Candau, Guepie and Schlick argue that (in comparison to the period 1950-1990) contemporary RTAs only have limited effects. They cite the redistribution effects between MS as the reason. Additionally, they stress that most of the trade benefits have been exhausted already and more ambitious programs are needed.[177] While the terms of trade (ToT) of one country improves, it happens at the expense of another one.[178] This ‘Standard Trade Model’ can be represented by the following graph:

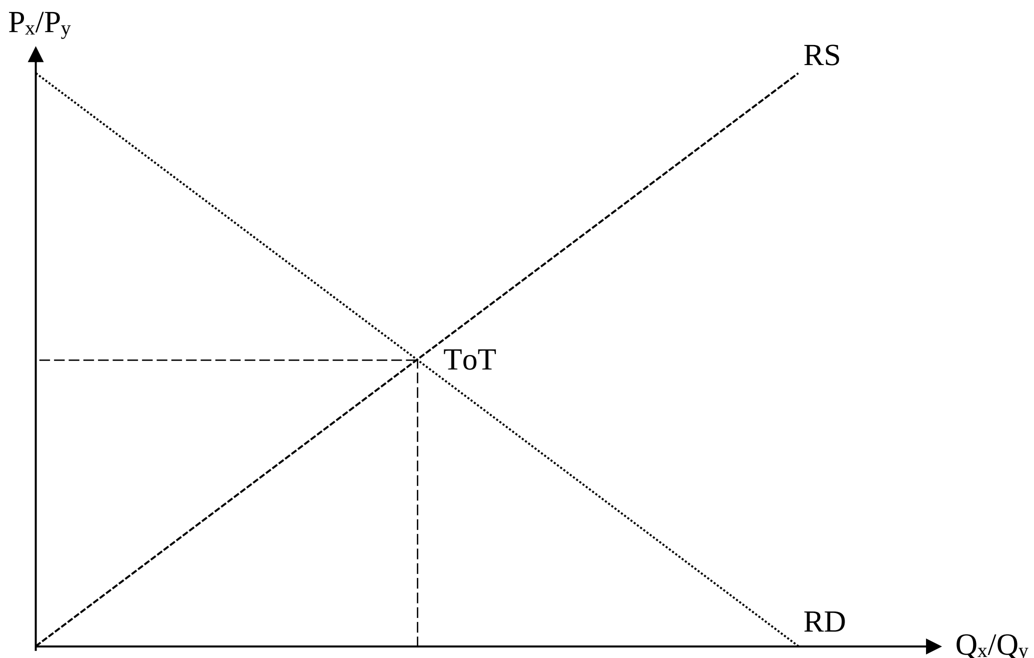

Figure 8: Standard Trade Model

The terms of trade (ToT) is defined as the relative price of the export goods in relation to the price of the import goods. It shows how the benefits are distributed between countries. Generally

[176] Ibid., 519–520.
[177] *Candau, Fabien; Geoffroy Guepie, and Julie Schlick*. Moving to autarky, trade creation and home market effect: an exhaustive analysis of regional trade agreements in Africa: Applied Economics 51/30 (2019): 3298.
[178] Ibid., 3294.

speaking, the higher the terms of trade (ToT), the better for a country and the worse for the trading partner.

Another interesting aspect is Candau's, Guepie's and Schlick's finding on the impact of the content of the respective Agreements. They establish that rules of RTAs that go beyond the typical WTO provisions (capital mobility, competition, …) are trade promoting.[179] Based on this, this author stresses that MS of the AfCFTA must endeavour to negotiate more detailed, specific rules in the Annexes of the Agreement.

4.5 Industrial policy coordination

The term 'industrial policy coordination'

One aspect that is often omitted when addressing regional integration is industrial policy coordination. This author argues that all measures aiming to facilitate trade must go hand in hand with adjustments of industrial policies. Odijie concentrates on the adjustment of industrial policy coordination in relation to the AfCFTA. He defines industrial policy coordination as "an intended attempt by the government of a defined territory to catalyse the development and growth of domestic firms or sectors or to promote structural transformation"[180]. Policies can be of different nature and are mostly supported by protectionism. The suspension of trade with more experienced firms shall give domestic firms the chance to increase productivity through learning-by-doing.[181]

Concrete measures of industrial policy coordination

Michael E. Odijie states that regional integration often creates coordination problems in developing countries, and these will be even bigger on a continental scale. Therefore, he argues that the movement of trade policies from the state level to the regional level of CUs shall be accompanied by an equivalent movement of industrial policies. In order to make a CU work, it is necessary to take joint actions. At the moment, regional organisations that carry out trade liberalisation policies move trade policies from the state to the regional level, but industrial policies remain in the competency of state authorities.[182] One solution often stated is the notion of a 'national sensitive list'. This is a list of products in which countries can exclude certain

[179] *Candau, Fabien; Geoffroy Guepie, and Julie Schlick*. Moving to autarky, trade creation and home market effect: an exhaustive analysis of regional trade agreements in Africa: Applied Economics 51/30 (2019): 3299.
[180] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 184.
[181] Ibid., 184–185.
[182] Ibid., 187.

products from free trade or on which they can impose high tariffs in order to protect the domestic industry. Looking at the AfCFTA, the Agreement focuses on the elimination of tariffs from 90% of traded goods. This might leave space for states to protect the remaining 10% of goods.[183] Such an exclusion list might solve the problem of national industrial policy, but leads to other issues that must be considered.

Problems might arise from the ‘sameness’ of industrial policies of states. Arguments exist in favour as well as against the promotion of the ‘same’ state policies. If neighbouring states pursued the same strategies, more firms would emerge. This does not raise concerns as long as all states also subsidise the same sectors. Issues might arise if one state changes its policies.

Odijie says that the REC s under the AfCFTA are wise to avoid ‘sameness’ of industrial policies and encourages states not to use protectionist policies against each other. A negative example is Nigeria’s national protection of cement. Other ECOWAS countries followed Nigeria’s policy and enacted industrial policies to promote their national cement industries. Some of these countries did not control the resources for this capital-intensive sector, foreign firms did not invest as expected and in the end Nigeria took advantage of this situation setting up, factories in the respective neighbouring countries.[184] To avoid such outcomes, regional organisations should guide their respective countries on the selection of their products for national protection.[185]

Overall, Odijie stresses that “the AfCFTA will aid industrial policy in countries with small markets by providing a large market, which is an essential component of successful industrial policies”[186]. In that regard, he concurs with Friedrich List and his followers (see Section 4.4.2). Additionally, Odijie concludes that “the inclusion of an institutional mechanism for policy coordination in the AfCFTA process is important”[187]. Currently, no such programme exists. It is necessary to establish a mechanism to deal with continent-wide industrial policy measures as well as promoting industrialisation in general. It would be wise to establish a separate body, focusing on industrial policies for Africa and set aside the institutions established within the AfCFTA.

[183] *Odijie, Michael E.* The need for industrial policy coordination in the African Continental Free Trade Area: African Affairs 118/470 (2019): 187.
[184] Ibid., 191.
[185] Ibid., 188.
[186] Ibid., 182.
[187] Ibid., 183.

5 Africa's place in world trade and the interference of global superpowers

5.1 'Special and Differential Treatment' Provisions

5.1.1 'Enabling Clause'

In 1947, when the GATT was signed, no remark was made regarding developing countries. The 'Special and Differential Treatment' Provisions were only introduced much later. By now, many WTO Agreements contain special provisions with the option for developed MS to treat developing countries more favourably than other WTO MS. Such special provisions include for example longer time periods for implementing Agreements, support in capacity-building, measures to increase trading opportunities, or support in implementing technical standards.[188]

In 1979, the 'Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries', often referred to as 'Enabling Clause', was adopted. It forms an integral part of the GATT 1994 and reads as follows:

> "1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.
> 2. The provisions of paragraph 1 apply to the following:
> a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences,
> b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;

188 *World Trade Organization.* "Special and differential treatment provisions." https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm, (14.04.2020).

c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;

d) Special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries."[189]

Paragraph 2 litera a: Generalized System of Preferences (GSP)

Paragraph 1 of the decision above allows a derogation from the MFN Principle of Article I GATT. Paragraph 2 includes several provisions of different nature, all aligned to boost the economies of developing countries.

Paragraph 2 litera a of the 'Enabling Clause' is the legal basis for the 'Generalized System of Preferences' (GSP). Under the GSP, developed countries offer non-reciprocal preferential treatment to products originating in developing and least-developed countries.[190] From this it follows that developed countries can 'discriminate' between trading partners without violating Article I GATT (MFN Principle).

Paragraph 2 litera c: Regional or global arrangements

In addition to that, the provision above can be used as a legal basis to form regional arrangements. Paragraph 2 litera c permits regional and global arrangements among developing countries in goods trade. This implies that trade arrangements cannot only be arranged under the 'regional trade exception' of Article XXIV GATT (see Section 3.3.1), but also under the 'Enabling Clause'. The conditions that must be met are less demanding and less specific. In fact, paragraph 3 litera a of the 'Enabling Clause' only requires that any differential and more favourable treatment is "designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties"[191]. To give an example, the treaty establishing the COMESA was notified to the WTO under the 'Enabling Clause'.

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[189] *Contracting Parties*. Decision of 28 November 1979 (L/4903).

[190] *World Trade Organization*. "Special and differential treatment provisions." https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm, (14.04.2020).

[191] *Contracting Parties*. Decision of 28 November 1979 (L/4903).

5.1.2 The ‘breakdown’ of the Doha Development Round

In 2001, the Doha Development Round changed the architecture of world trade. China acceded to the WTO, the BRICS-countries[192] economic performance received more attention and one of the key aspects at that time was to support and enhance the trading outlook of developing countries. African states benefited from this 4th Ministerial Conference in Doha and the high demand of African commodities led to a higher growth rate in the first years of the new millennium.[193] However, in 2003, the dramatic developments in world trade, and tensions about access to the agricultural markets led to the collapse of the WTO Doha Round Ministerial Meeting in Cancún, Mexico. Since then, the Doha Development Round has not brought to a conclusion.[194]

In 2015, at the 10th WTO Ministerial Conference in Nairobi, the Ministers adopted a declaration, in which they decided on the Doha Development Agenda (DDA) as follows:

> “30. We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organization.”[195]

The result of this ‘weak commitment’[196] was that Africa had to find a new place in WTO negotiations and to work even harder towards an individual strategy. The African group became an important participant in the African, Caribbean and Pacific (ACP) Group of States as well as an important player in the Least-Developed-Country (LDC) group. Additionally, it supported the ‘Cotton 4 Group’ of countries (Benin, Burkina Faso, Chad and Mali) as well as the ‘Small and Vulnerable Countries’ (SVEs). Considering that, Africa could influence many of the

[192] BRICS is an acronym for the countries Brazil, Russia, India, China and South Africa.
[193] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 123.
[194] Ibid., 124.
[195] *10th WTO Ministerial Conference*. Nairobi Ministerial Declaration: WT/MIN(15)/DEC (19.12.2015), https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm, accessed April 2020.
[196] Author’s opinion.

negotiations in the WTO. However, regarding multilateral negotiations on a global basis, the African continent is an insignificant player.[197]

To summarise those developments, the 'breakdown' of the Doha Development Round contributed to more regional collaboration and slowly paved the way for the AfCFTA.

5.2 The interference of global superpowers

5.2.1 EU-Africa: EPAs

One aim of the AfCFTA is to boost Africa's position in global trade negotiations. Referring to that, Cofelice states that the consolidation of African regionalism can prove decisive in developing adequate negotiation power vis-à-vis commercial partners such as an ever more significant China or the EU.[198] However, even though Africa strives for more intra-continental collaboration and common power, the external influence must be considered.

The historical connection between Europe and Africa
It is notable that the European Union (EU) enters Economic Partnership Agreements (EPAs) more and more with African countries and RECs.[199]
Historically, some European states have a close relationship with African countries due to colonialism. As early as the creation of the GATT in 1947, the United Kingdom granted trade preferences (=Imperial Preferences) to its colonial countries. The European Economic Community of 1957 (Treaty of Rome) granted preferences to its own MS under the conditions laid down in Article XXIV of the GATT. Thus, the MS could enter into RTAs with African states that were previously colonised. In 1975, the Lomé Convention, in which the members of the European Economic Community extended trade benefits and aid to their former colonies, was adopted. It allowed non-reciprocal preferences for most exports from ACP countries into the European Economic Community. From 1996 to 2000, the EU was granted a waiver for the Lomé convention at the WTO. Waivers are granted by the General Council according to the procedures set out in Article IX (3) of the 'Agreement Establishing the WTO'. The Lomé

[197] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 125–126.
[198] *Cofelice, Andrea*. African Continental Free Trade Area: Opportunities and Challenges: The Federalist Debate 31/3 (2018): 33.
[199] The WTO database lists for instance the EU-SADC FTA of 2016, the EU-Ghana FTA of 2016 and the EU-Eastern and Southern Africa States Interim EPA of 2012.

convention was changed in 2000 to the Cotonou Agreement, due to conflicts with international trade law. The waiver was extended until 2007.[200]

One must bear in mind that in the enlargement of the EU most of the 'newcomers' did not share the burden of responsibility for the former colonial relations. As the new MS do not share the same history of colonial rule, they also do not have the same interest in granting development aid to African states. This situation led to a debate within the EU to change the traditional trade and aid relationship towards a reciprocal one. Since year 2000, the EU entered into EPAs that offer complete trade liberalisation with the ACP country group.[201] The countries that did not sign an EPA, had to apply the less beneficial GSP arrangements (=tariff reductions), or in the case of LDCs the 'Everything but Arms' system (=duty-free and quota-free market access to all products, except arms and ammunitions).[202] Now, trade with ACP countries amounts to more than 5% of EU imports and exports. This makes the EU a major trading partner for ACP countries. Overall, "only 10 products account for roughly 60% of export value in the case of ACP preferences"[203].

According to the European Commission, the EPAs aim at contributing, "through trade and investment, to sustainable growth and poverty reduction"[204]. Additionally, the EPAs intention is "to support trade diversification by shifting ACP countries' reliance on commodities to higher-value products and services"[205]. To sum up, from a perspective of the EU, the EPAs with African states aim to boost economic growth on the continent. However, as will be discussed below, from an African perspective, the EPAs must be looked at critically.

Selected regional EPAs

With the passing of Regulation MAR No. 527/2013, the EU put pressure on African countries, by withdrawing the market access regulation benefits for those countries that have not ratified an EPA. The EU negotiated with individual RECs and even within those RECs it did not deal

[200] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 127–128.

[201] The legal foundation was laid by the Cotonou Agreement.

[202] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 128–129.

[203] *Admassu, Samuel*. An empirical analysis of the trade-creation effect of African regional economic communities: Empirical Economics 56/3 (2019): 847.

[204] *European Commission*. "Economic partnerships: EU trade policy and ACP countries." 2020, https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/, (20.05.2020).

[205] *European Commission*. "Economic partnerships: EU trade policy and ACP countries." 2020, https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/, (20.05.2020).

with all member countries of a respective regional arrangement. For example, the negotiations with COMESA took place with only 11 of the 19 MS.[206]

Another EPA was concluded between the EU and SADC. The timing for the start of negotiations was of particular importance, because in autumn 2014 Botswana, Namibia and Eswatini had lost their preferential access for their exports of beef, fish and sugar to the market of the EU due to a deadline set by MAR No. 1528/2007.[207] This Agreement became the first regional EPA in Africa to be fully operational in February 2018. The difficulty arises when looking at the content of a specific EPA. The EU-SADC EPA for instance is a very detailed 2,118-page document, including rules on all trade related matters from RoO to dispute settlement.[208] The former South African Minister of Trade and Industry Dr Rob Davies addressed this issue and expressed his concern as follows:

> "Our overriding concern remains that conclusion of the separate EPAs among different groupings of countries in Africa that do not correspond to existing regional arrangements will undermine Africa's wider integration efforts. If left unaddressed, such an outcome will haunt Africa's integration project for years to come."[209]

Different regional groupings negotiate EPAs with different objectives, rules, tariffs and so on. This complexity hampers African integration and contributes to more difficulty when it comes to negotiations under the AfCFTA.

As a result, the African countries need to find a way of incorporating the EPAs into their regional arrangements. They should dismantle trade barriers within the continent before reducing tariffs with the EU. The risk of favourable treatment being granted to a number of EU-originating imports compared to similar African products, must be limited. As a negative example, one can think of cereal imports from the EU into ECOWAS. Tariffs applied on cereals from the EU would be significantly lower than on those imported from non-ECOWAS African countries.[210]

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206 *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 130.
207 *Davies, Rob*. The SADC EPA and Beyond: GREAT insights Magazine 3/9.
208 For more details see *European Union, and SADC EPA States*. ECONOMIC PARTNERSHIP AGREEMENT between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part: L 250/3 (16.09.2016), https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf, accessed April 2020.
209 *Davies, Rob*. The SADC EPA and Beyond: GREAT insights Magazine 3/9.
210 *Mevel, Simon; Giovanni Valensisi, and Stephen Karingi*. The EPAs and Africa's regional integration: BRIDGES AFRICA 4/6 (2015): 15.

To conclude, this author believes that African countries should initially liberalise trade within the continent before opening their market to the rest of the world. The authors Mevel, Valensini and Karingi developed the following five policy recommendations to deal with EPAs in future:

- First, to sequence trade liberalisation between Africa and the EU and within Africa itself, considering the AfCFTA;
- second, to harmonize the provisions within the different EU-Africa EPAs;
- third, to expand MFN provisions to all African states;
- fourth, to allow African countries to preserve hard-fought policy space to boost development;
- and fifth, to support trade facilitation measures, considering the BIAT.[211]

5.2.2 USA-Africa

'African Growth and Development Act' (AGOA)

In 2000, the USA, under former President Clinton, adopted the first 'African Growth and Development Act' (AGOA), granting Sub-Saharan Africa unilateral trade preferences into their large market until 2025. Since its inception, five amendments have been passed by Congress. These include technical amendments and time extensions. Using the EU Agreements as an example, the USA included some provisions in the 'AGOA Extension and Enhancement Act 2015' that require reciprocity from AGOA beneficiaries. From an African country perspective, the Amendment Act puts pressure on them, as the Act says that the President of the USA may initiate an out-of-cycle review of whether a beneficiary is making progress in fulfilling the requirements. Furthermore, the Act grants the President the power to terminate, suspend or limit the application of duty-free access in the event that a country does not act in accordance with the requirements.[212] What can be seen from the AGOA is that the original good intentions to provide non-reciprocal tariff preferences into the large American market turned into a tool to increase the export of American products, investment and influence into Sub-Saharan Africa. In 2018, Africa's exports under the AGOA to the USA amounted to almost 61 billion US dollars.[213]

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[211] *Mevel, Simon; Giovanni Valensisi, and Stephen Karingi*. The EPAs and Africa's regional integration: BRIDGES AFRICA 4/6 (2015): 16.
[212] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 132–133.
[213] Data stems from the 'ITC Trade Map'.

USA-Kenya FTA

In February 2020, President Donald Trump and Kenyan President Uhuru Kenyatta declared their intention to negotiate a bilateral FTA. Just one month later, Mr Trump notified Congress of his intention to conclude an Agreement. Bearing in mind that Kenya is part of the EAC, which forms a CU, the conclusion of a bilateral FTA with the USA would appear as if the EAC was not a functioning CU.

Interestingly, China has unsuccessfully tried to negotiate an FTA with the EAC block since 2016. The conclusion of a USA-Kenya FTA therefore counters China's influence on the African continent.

MS of the AfCFTA, as well of the EAC CU, feel deceived by Kenya's solo action, because they were not informed of Kenya's plan to start bilateral negotiations with the USA. Kenya defends its action by saying that it wants to permanently secure the benefits of the AGOA. Currently, more than 70% of Kenya's exports to the USA enter the country duty-free under the AGOA until the programme expires in 2025. From Kenya's point of view, it is now wise to negotiate a comprehensive FTA in order to maintain the beneficial position. However, the EAC CU Protocol requires its MS to comply with certain rules before concluding trade Agreements with third states. Interpretation of the legal rules is needed, because it is not clear whether Kenya needs to convey its plans to the Secretary General of the EAC or simply notify the EAC MS of the bilateral Agreement. To date, no details of possible content of the FTA have been published.[214]

In addition to this, a trade Agreement between the USA and Kenya could have significant repercussion for future trade Agreements between the USA and African states. This author's concern is that a conclusion of a bilateral trade Agreement between the USA and Kenya would hamper intra-African trade and slow down the implementation process of the AfCFTA even more. Kenya will most likely tighten its trade relationship with the USA rather than putting effort into boosting the commercial relationship with its neighbours. Additionally, this author fears more economic and political American influence on the African continent, which would further disrupt the intra-African integration process. In the worst case, the American influence could lead to conflicts with China's interests on African soil. The author Ana Swanson shares

[214] *Caporal, Jack.* "Going Solo: What Is the Significance of a U.S.-Kenya Free Trade Agreement?", 2020, https://www.csis.org/analysis/going-solo-what-significance-us-kenya-free-trade-agreement, (18.04.2020).

the concern and writes that the Agreement is a “step partly designed to counter China’s influence in Africa”.[215]

5.2.3 China-Africa

The African market – an opportunity for China

The greatest influence of all nations is exercised by China, which has been an active superpower on the African continent for many years. In the mid-1960s, it provided half of the loans received by Africa. In the following years, China financed various infrastructure projects on the African continent. The Chinese engagement on the African continent is ascribed to President Xi Jinping, who suggested that its inadequate infrastructure was the biggest bottleneck to Africa’s development. The continent needed to invest between 130 and 170 billion US dollars per year to close the infrastructure gap, but African countries were coming up between 68 and 108 billion US dollars short.[216] The Chinese state is now eager to step in to narrow the infrastructure gap. Since the formation of the ‘Forum on China-Africa Cooperation’ (FOCAC) in 2000, the involvement of China on the African continent increased dramatically. China made commitments to opening up its market, granted infrastructure support and offered generous debt relief.[217]

Trade data China-Africa

In recent years, China has become an important trade partner for Africa and Africa’s exports to China are continuously increasing in value. The economic development of China has created an opportunity for Africa to diversify its exports and to export its commodities at higher prices. Bearing in mind that Africa still has natural resources in abundance, the Chinese are very interested in acquiring alumina, cobalt, coltan, copper, iron and oil from Africa.[218]

Data from the ‘ITC Trade Map’ shows that Africa’s exports to ‘Greater China’[219] amounted to more than 76 billion US dollars in 2018; and Africa imported products from ‘Greater China’ worth more than 95 billion US dollars. In comparison, Africa’s exports to the EU (EU-28) in

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[215] *Swanson, Ana.* “U.S. to Start Trade Talks With Kenya to Counter China’s Influence.” 2020, https://www.nytimes.com/2020/02/06/business/economy/trump-kenya-trade-talks.html, (18.04.2020).
[216] *Shephard, Wade.* “What China Is Really Up To In Africa.” 2019, https://www.forbes.com/sites/wadeshepard/2019/10/03/what-china-is-really-up-to-in-africa/#320118bf5930, (22.04.2020).
[217] *Ismail, F. A.* Advancing Regional Integration in Africa through the Continental Free Trade Area (CFTA): Law and Development Review 10/1 (2017): 135.
[218] *Shephard, Wade.* “What China Is Really Up To In Africa.” 2019, https://www.forbes.com/sites/wadeshepard/2019/10/03/what-china-is-really-up-to-in-africa/#320118bf5930, (22.04.2020).
[219] ‘Greater China’: mainland China, Hong Kong, Macau and Taiwan.

2018 added up to more than 166 billion US dollars. Africa imported goods to the value of around 180 billion US dollars from the EU (EU-28).[220]

FOCAC Summit 2018 and China's 'Belt and Road Initiative' (BRI)

At the most recent FOCAC Summit, held in Beijing in September 2018, China and Africa stressed that they want to further tighten their cooperation. As a result, China made loan and investment commitments of 60 billion US dollars for the period 2018-2021.[221] A large portion of the financial assistance shall address Africa's large infrastructure deficit. Subsequently, in July 2019, a 'Belt and Road Fund for Africa' was set up, providing 1 billion US dollars to be spent on infrastructure, high-technology and e-commerce projects (see also Chapter 6, starting on page 75).[222] Thus, the Chinese strategy seems to have a longer view. China relies on alternative financing modalities that build on direct investment. The very comprehensive Chinese 'Belt and Road Initiative' (BRI), which was firstly announced in 2013, is the best example of this strategy. Even though the heart of China's BRI remains in Asia, this superpower has significant impact as a financer on the African continent. The map below demonstrates which countries have signed BRI Agreements with China (shown in brown).

Figure 9: Countries that have signed BRI agreements[223]

[220] Data stems 'ITC Trade Map'.
[221] *The Economist Intelligence Unit Limited, ed.* BRI BEYOND 2020: Embracing new routes and opportunities along the Belt and Road (2019). https://www.bakermckenzie.com/-/media/files/insight/publications/2019/11/bri-beyond-2020.pdf?la=en, accessed February 2020.
[222] Ibid., 8.
[223] Ibid., 3.

The superpower China gradually adopts 'Memoranda of Understandings' with African countries on infrastructure developments, such as road, rail and port building, energy, logistics,… In fact, the vast majority of big projects in Africa currently are being built and engineered by the Chinese. Some examples of the Chinese influence are the 1.5 billion US dollars railway project that connects Nairobi and Mombasa in Kenya, the 12 billion US dollars Coastal Railway in Nigeria, the 4.5 billion US dollars Addis-Ababa-Djibouti Railway or the 11 billion US dollars megaport and economic zone at Bagamoyo.[224]

The other perspective

However, in recent years, concerns have been raised with regards to Chinese investments on the African continent. African states bury themselves in large amounts of infrastructure-induced debt, which they will never ever be able to pay back. To give an example, the Nairobi-Mombasa railway project, which was 80% Chinese-financed, went four times over Kenya's budget. Nigeria had to renegotiate the contract, as they were not able to fulfil their obligation to pay back the debt. Tensions arise, because China increasingly takes ownership when loans are not paid back within a certain time limit.[225]

To conclude, this author opines that the Chinese interaction on the continent should not be seen as an 'Act of Charity', but rather as a strategic plan to have further access to Africa's natural resources and boost their own economic benefit.

[224] *Shephard, Wade.* "What China Is Really Up To In Africa." 2019, https://www.forbes.com/sites/wadeshepard/2019/10/03/what-china-is-really-up-to-in-africa/#320118bf5930, (22.04.2020).
[225] Ibid.

6 The AfCFTA and the 'Digital Economy'

6.1 Africa's need to adopt digital technology

> "Africa's Continental Free Trade Area will positively impact the [digital trade] sector, since it creates huge potential for cross-border e-commerce. The quantity and quality of supply is very different from one country to another, presenting a wealth of market opportunities for online entrepreneurs. E-commerce platforms can also play a role in logistics and payment solutions to enable this cross-border trade."[226] (Jeremy Hodara, Co-CEO, Jumia.com[227])

We now face a fourth industrial revolution where the nature of value creation is changing fundamentally. Value is generated more by services than by industry and the greatest growth is seen in digital or digitally delivered services. It is clear that the wheels of international trade are powered by the internet. Contracts are transacted online, documentation and logistics are digitally driven, suppliers offer their goods online,… The internet is needed in almost all transactions and therefore it is crucial for all African states to board the digital bandwagon.[228]

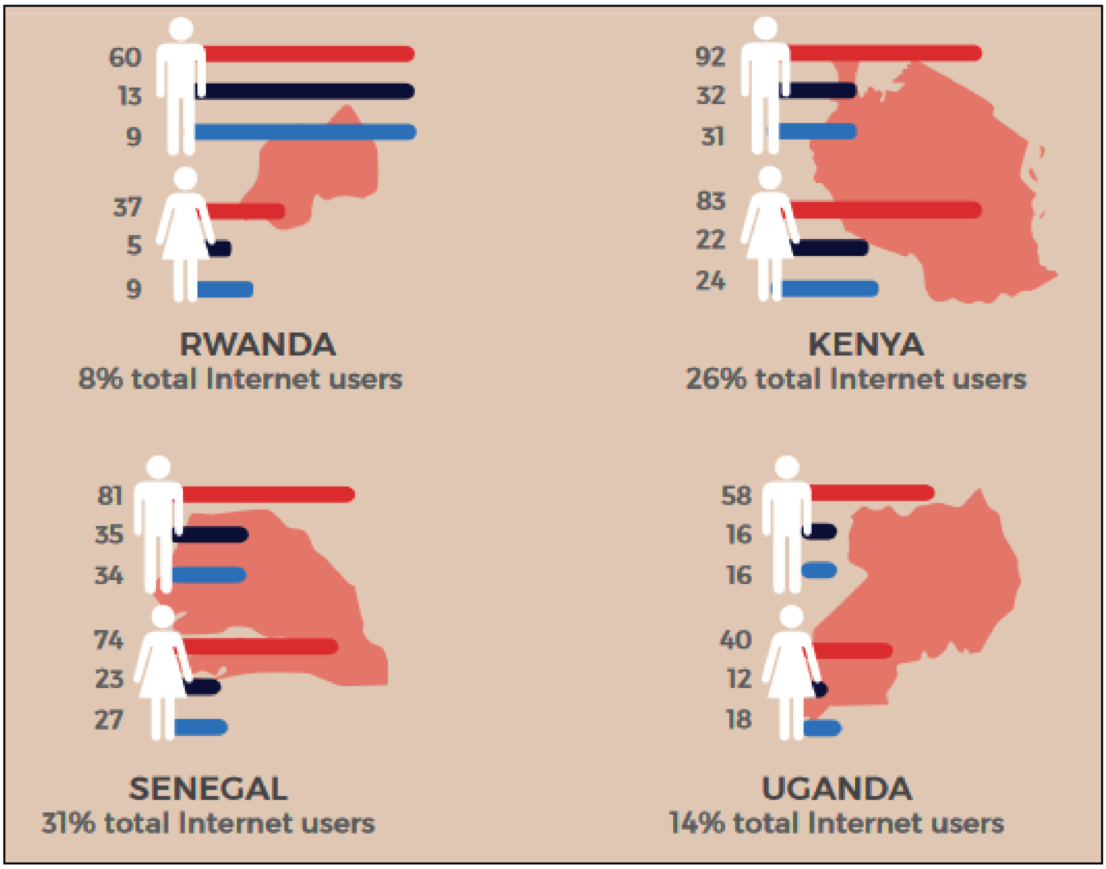
Internet penetration in Africa

According to the Alliance for Affordable Internet (A4AI), Africa still has the most expensive internet in the world. The Alliance defines affordable internet access as "1GB of mobile prepaid data of 2% or less of average monthly income"[229]. The report reveals that only 10 out of 45 African countries tracked have affordable internet. In Africa, 1GB of data costs an average person around 7.1% of their monthly income.[230] In comparison, in Asia an average person pays around 2.7% of their monthly income for using data[231] and in the Americas 1.9% respectively.[232] High internet costs are the result of the lack of competition and availability. In many African states the markets for internet connectivity are dominated by just one or a few players, which

[226] Jeremy Hodara, *On the potential for e-commerce in Egypt and Africa*, interview by Oxford Business Group, August 08, 2018.
[227] Jumia.com is Africa's first e-commerce 'unicorn'.
[228] *John Stuart,* The digital economy in Africa: Africa's Digital Connectivity Dividend in Waiting in *The African Continental Free Trade Area and the Digital Economy*, ed. TRALAC (2020): 10.
[229] *Alliance for Affordable Internet.* "Affordability Report 2019: Regional Snapshot: Africa." 2019. https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/AR2019_Africa-Regional_Screen_AW.pdf.
[230] Countries with affordable internet are Algeria, Botswana, Cabo verde, Egypt, Gabon, Mauritius, Namibia, Nigeria, Sudan and Tunisia.
[231] *Alliance for Affordable Internet.* "Affordability Report 2019: Regional Snapshot: Asia." 2019. https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/AR2019_Asia-Regional_Screen_AW.pdf.
[232] *Alliance for Affordable Internet.* "Affordability Report 2019: Regional Snapshot: Americas." 2019. https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/AR2019_Americas-Regional_Screen_AW2.pdf.

gives them the economic power to charge higher prices. When any scarce resource is demanded, prices can be set at a higher level.

A survey of 10 selected African countries, undertaken by 'After Access'[233], reveals that Rwanda (8%) and Mozambique (10%) have the lowest internet penetration (see Figure 10 below) even though Rwanda has 95% of its population covered with 4G/LTE services. In comparison, South Africa performs much better, with 50% of the population using the internet. The digital divide results from social and historical inequalities and digital exclusion is primarily an issue of poverty. Furthermore, Figure 11, presenting the reasons stated as 'barriers to mobile ownership', shows that the main obstacle is the cost of mobile phones. This is especially an issue in Mozambique, Ghana and Uganda. In addition, down to the present day, people, especially in Rwanda and Kenya, state that they do not have electricity at home to charge their phones. In addition, the findings demonstrate that there is a correlation between mobile phone penetration/internet usage and GNI per capita.[234]



[233] The survey was undertaken by ICT Africa in Africa, DIRSI in Latin America and LIRNEasia in South East Asia.
[234] *Alison Gillwald,* Digital Connectivity needed to underpin the African Continental Free Trade Area in *The African Continental Free Trade Area and the Digital Economy*, ed. TRALAC (2020): 14.

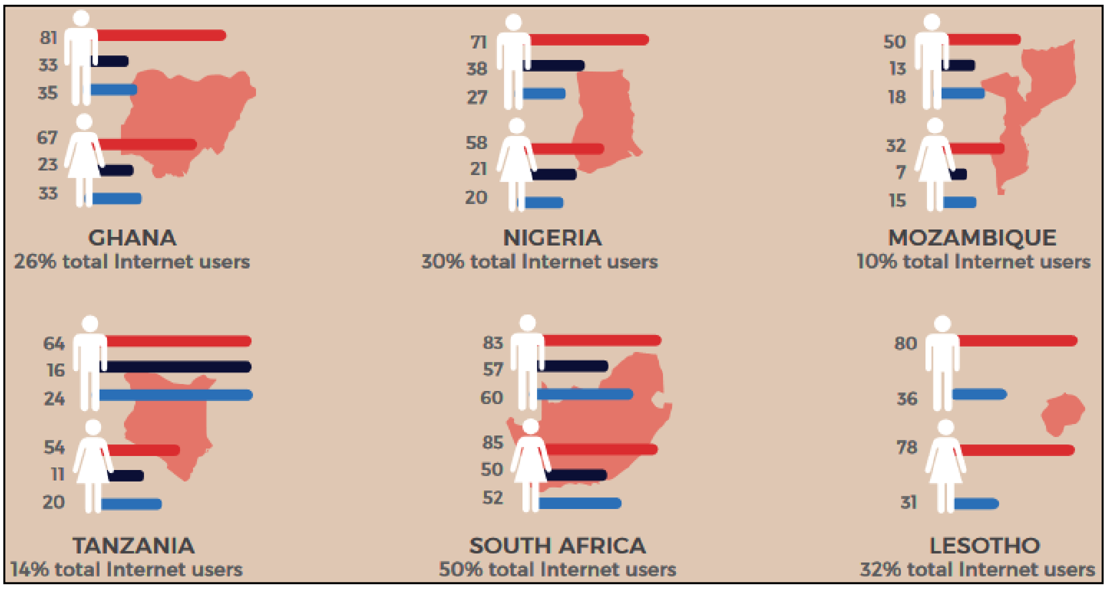


Figure 10: Internet penetration of 10 selected African countries (red: percentage of mobile owners, black: percentage of Internet users, blue: percentage of mobile users with a smartphone[235]

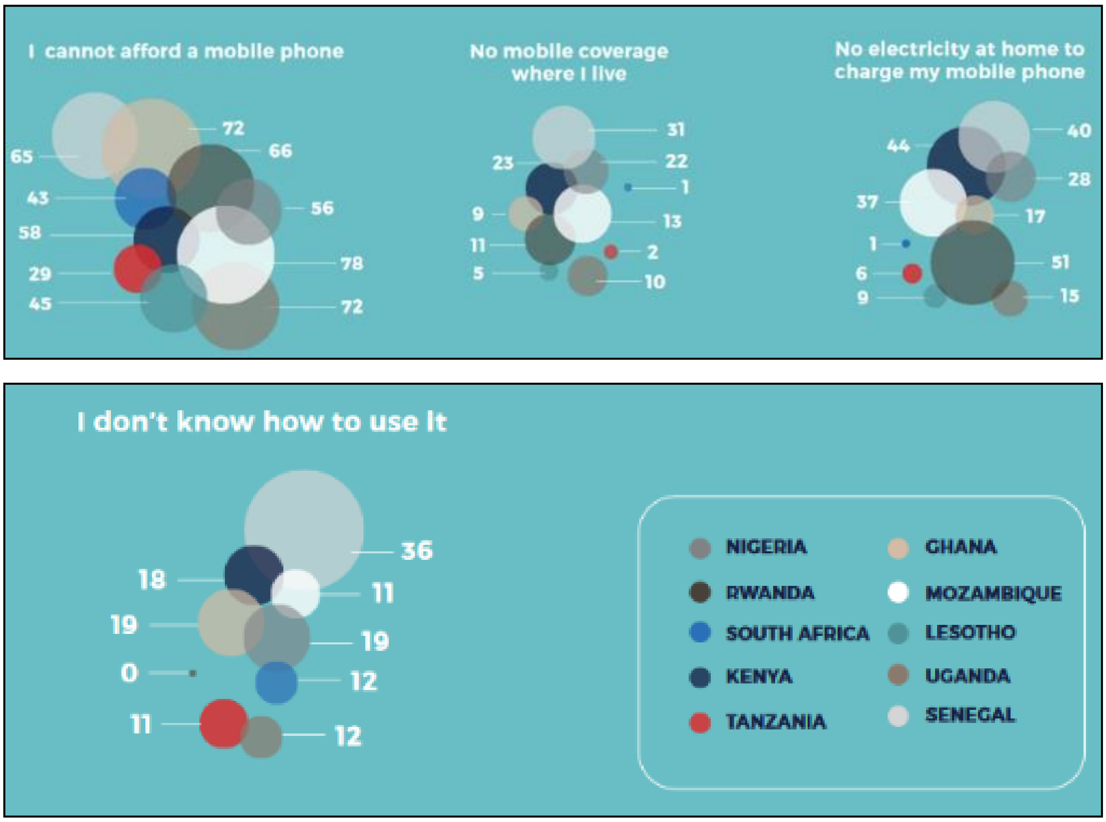


Figure 11: Barriers to mobile ownership[236]

[235] *After Access.* "THE INSIDE INTERNET STORY OF AFRICA, ASIA AND LATIN AMERICA: MOBILE AND INTERNET USE IN THE GLOBAL SOUTH HAS NO 'ONE-SIZE-FITS-ALL' APPROACH." https://afteraccess.net/wp-content/uploads/After-Access-Website-layout-r1.pdf.
[236] Ibid.

Countries and regions that are unable to participate in this 'digital revolution' will be left behind and confined to low value-added production. The positive aspects of digitalisation, such as e-commerce, reduced transaction costs and barriers to cross-border trade, improved logistics, etc. are manifold and if harnessed would lead to more trade on the continent. Additionally, digitalisation particularly opens opportunities for marginalised groups, such as rural citizens and – very often – women.[237]

This said, it is necessary for the success of the AfCFTA that the digital economy as well as its risks are recognised and reflected. Policymakers can encourage the development of the digital economy and digital trade through the AfCFTA.

The African Leapfrog Index (ALI)

In 2019, 'The Fletcher School at Tufts University' examined the connection between the promotion of technology and growth in the following six African countries: Egypt, Ethiopia, Kenya, Nigeria, Rwanda, and South Africa. The assumption was that acceleration potential for African regions "lies in the rapid spread of mobile digital technology, which would help the region *"leapfrog"*: compress the process of economic development by harnessing technological innovation to overcome its many challenges."[238] They analysed the "levers for harnessing digital technologies to facilitate development and inclusive growth, from the ease of creating digital jobs, to the resilience of governance and infrastructure, to overall foundations of digital potential"[239]. The research resulted in introducing the 'African Leapfrog Index' (ALI), which draws at the primary levers, split into the following categories:

- "jobs enabled by digital platform;
- institutional drivers necessary for digital success; and
- the foundational digital potential of the country."[240]

The following questions (see Figure 12) have been asked in the three respective categories:

[237] *TRALAC, ed.* The African Continental Free Trade Area and the Digital Economy (2020): 4.
[238] *The Fletcher School at Tufts University.* "The African Leapfrog Index." 2019, https://sites.tufts.edu/digitalplanet/research/ali/, (21.05.2020).
[239] Ibid.
[240] Ibid.

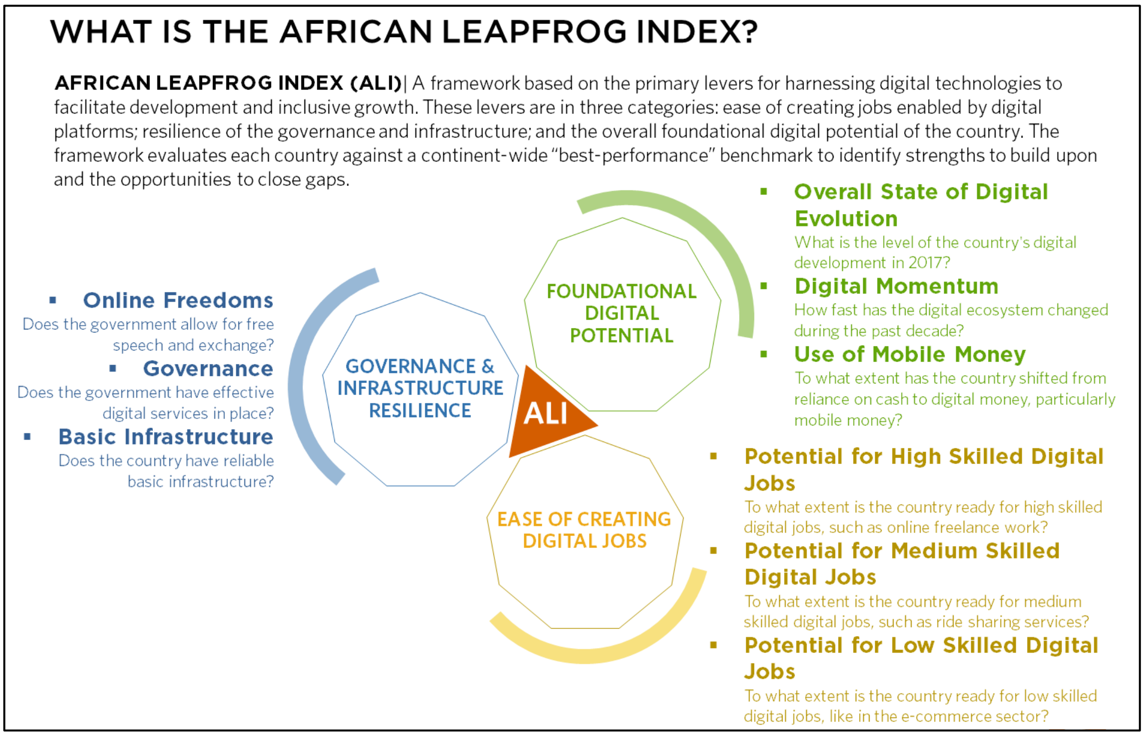


Figure 12: The African Leapfrog Index[241]

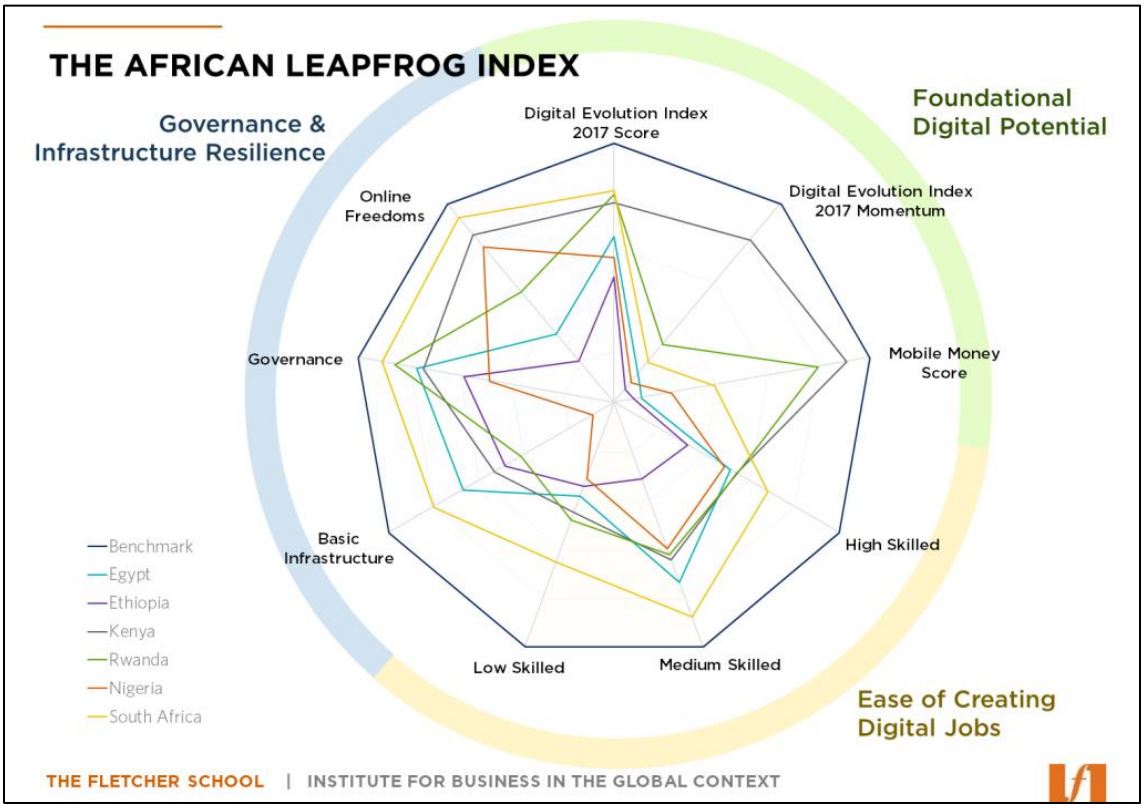


Figure 13: African Leapfrog Index Results[242]

[241] *The Fletcher School at Tufts University*. "The African Leapfrog Index." 2019, https://sites.tufts.edu/digitalplanet/research/ali/, (21.05.2020).
[242] Ibid.

The outcome shows that the six countries examined have different profiles with various strengths and opportunities for growth in 'leapfrogging'.
'The Fletcher School' evaluated the Index and respectively derived recommendations for the six African countries to develop a more balanced leapfrog profile. As can be seen from Figure 13, Kenya should for instance make improvements in the category 'Ease of Creating Digital Jobs' while South Africa must prioritise the boosting of 'Foundational Digital Potential'.[243]
To elaborate on all six countries would go beyond the scope of this discussion. What can be seen from the Index is that exact areas of action can be determined. It would be recommendable to consider such outcomes in further negotiations of the AfCFTA as concrete actions could be derived from it.

The building of digital infrastructure: Global involvement

Since 2015, steady progress has been made in the building of digital infrastructure. Undersea cables connecting Africa to the rest of the globe have been installed and terrestrial fibre optic networks have been set up. A functioning and efficient infrastructure is necessary to boost the economy of the continent.[244]
One such project for example concerns the launching of a satellite by the Rwandan government and the UK company OneWeb, that provides broadband access to rural areas. The objective being to grant rural schools in Rwanda access to the internet.[245] Another project concerns the establishment of the South Atlantic Cable System (SACS), connecting Luanda, Angola with Fortaleza, Brazil. The map below shows the current submarine cables connecting African states and connecting Africa with the rest of the world.

[243] *The Fletcher School at Tufts University. "*The African Leapfrog Index." 2019, https://sites.tufts.edu/digitalplanet/research/ali/, (21.05.2020).
[244] *John Stuart*, The digital economy in Africa: Africa's Digital Connectivity Dividend in Waiting in *The African Continental Free Trade Area and the Digital Economy*, ed. TRALAC (2020): 11.
[245] Ibid., 11.

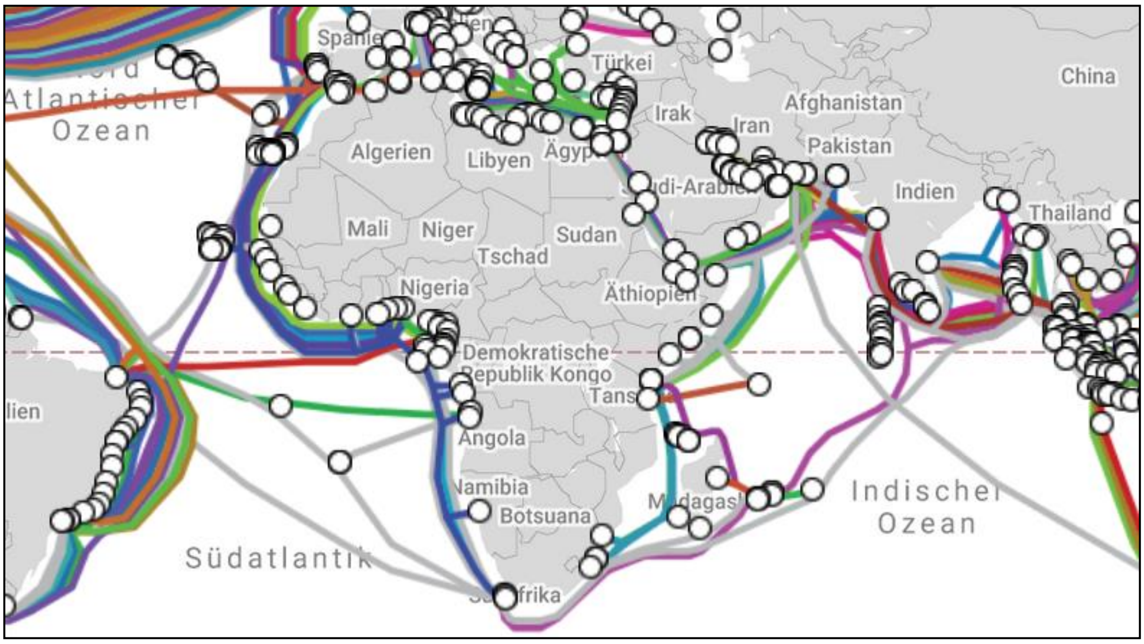


Figure 14: Submarine Cable Map[246]

6.2 The effort of the AU

Programmes and projects

The AU has launched several projects to support digitalisation and intra-African integration on the continent. The most promising programmes that focus on building infrastructure for trade in Africa are PIDA, Accelerated Industrial Development for Africa (AIDA) and the BIAT. PIDA has the aim to extend the fibre optic connectivity on the continent.

An additional project brought into being by the AU is the African Internet Exchange System (AXIS) Project, which operates under PIDA and aims to establish and upgrade regional and national internet exchanges. This will not only reduce the costs of trade and improve trading potential, but also support regional integration and ultimately lead to the creation of new industries, which in return will lead to employment creation and the reduction of poverty.[247] Currently, the AXIS Project is funded by the EU-Africa Trust Fund and the Government of Luxembourg.[248]

[246] https://www.submarinecablemap.com/#/ (07.02.2020).

[247] *African Union Commission.* "African Internet Exchange System (AXIS) Project Overview." https://au.int/en/african-internet-exchange-system-axis-project-overview, (07.02.2020).

[248] *African Union Commission.* "AUC Convenes the Pan African e-NETWORK (PAeN) Assembly of Parties: Press Release." 2018. https://au.int/en/pressreleases/20181214/auc-convenes-pan-african-e-network-paen-assembly-parties.

In addition, along with the AfCFTA, the Pan-African e-Network (PAeN) Project, a joint undertaking by the AUC and the Government of India, is crucial for boosting intra-African trade through digitalisation. The main goal of PAeN Project is to help with capacity building and its focus lies on 'e-applications and services in Africa'. The Project's components are multifold and include the establishment of undersea cable and satellite connections, university education and the connection of tele-health facilities.[249]

The 'digital strategy' of the AUC

The AUC prepared a 'Draft Digital Transformation Strategy for Africa (2020-2030)' and established the overall objective of this strategy as follows: "To harness digital technologies and innovation to transform Africa's societies and economies to promote Africa's integration, generate inclusive economic growth, stimulate job creation, erase the digital divide and eradicate poverty to secure the benefits of digital revolution for socio-economic development."[250] The draft includes a SWOT analysis to better assess the internal strengths and weaknesses, policy recommendations and proposed actions. It encourages states to develop and implement national/regional and sectorial/continental digital strategies, to implement cyberspace policy and legislations, to establish capacity development programmes and to create strategies for optimal utilisation of scarce resources.[251]

Financial aspect: Pan-African Payment and Settlement System (PAPSS)

Another aspect that must be considered is that the financial services necessary to support regional trade are all digitally driven. In July 2019, the African Export-Import Bank (Afreximbank), together with the AU, launched the Pan-African Payment and Settlement System (PAPSS). The current situation is that cross-border payments in Africa involve a third currency, such as the US dollar or the Euro. This system makes transactions quite costly and slows down the process. The PAPSS therefore will enable traders to make cross-border transactions in their own currencies, which will lead to expected savings of more than 5 billion US dollars on transaction costs per annum. A smooth implementation of the PAPSS will be a critical factor for the success of the AfCFTA.[252]

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[249] *African Union Commission. "*AUC Convenes the Pan African e-NETWORK (PAeN) Assembly of Parties: Press Release." 2018. https://au.int/en/pressreleases/20181214/auc-convenes-pan-african-e-network-paen-assembly-parties.

[250] *African Union Commission. "*African Internet Exchange System (AXIS) Project Overview." https://au.int/en/african-internet-exchange-system-axis-project-overview: II. B., (07.02.2020).

[251] *African Union Commission*. Draft Digital Transformation Strategy for Africa (2020-2030): VII. A.

[252] *TrendsNAfrica. "*The Pan-African Payment and Settlement System (PAPSS) launched." 2019, http://trendsnafrica.com/2019/07/12/the-pan-african-payment-and-settlement-system-papss-launched/, (07.02.2020).

6.3 Integrating provisions on ‘digitalisation’ into the AfCFTA

This chapter has shown that there are already various projects under way to further extend digital access on the continent. However, the ‘Agreement establishing the AfCFTA’ does not contain a chapter on ‘digitalisation’ itself. The Secretary General of the AfCFTA, Mr. Wamkele Mene, addressed this omission and emphasised that “the global economy is on the brink of a new industrial revolution, driven by new-generation information technologies such as the Internet of Things, cloud computing, big data analytics, robotics and additive manufacturing”[253]. He opines that the 4th Industrial Revolution will most likely impact on the AfCFTA in a way that Africa has not fully contemplated. Following this, he asks: “How is Africa preparing herself for the 4th Industrial Revolution, in the context of the AfCFTA?”[254]

In its latest report on the ‘Digital Economy’ (incorporating rules on that aspect into the Agreement) tralac suggests that it is crucial for the success of the AfCFTA that this topic will be addressed in future negotiations. Intra-African trade could be facilitated by including provisions concerning the following matters:

- digitising customs
- making e-signatures/e-certificates valid
- harmonising policies regarding cyber-security
- enabling e-commerce
- providing data and trade statistics
- liberalising financial services (fintech)

The establishment of Trade Information Portals (TIPs)

Another aspect concerns the establishment of a centralised ‘one-stop-shop’ Trade Information Portal (TIP)[255]. A TIP is an online portal that includes information on major importers and exporters, governmental trade agencies, general and specific documentary requirements, market opportunities and trade statistics.[256] The system clearly facilitates trade, but for now it is only being used on a country level. It will be necessary in future to expand that system, firstly to all

[253] *Wamkele Mene. “*Statement of H.E. Mr. Wamkele Mene on the occasion of swearing-in as the Secretary General of the AfCFTA Secreteriat.” 2020: 6.
[254] Ibid., 6.
[255] Some African countries, such as Botswana, Kenya, Lesotho, Rwanda, Tanzania, Uganda and Zimbabwe do have TIPs in place.
[256] *John Stuart,* Particular issues in digital economy: Leveraging the Trade Information Dividend for Africa in *The African Continental Free Trade Area and the Digital Economy*, ed. TRALAC (2020): 22.

African states, then to the RECs and finally on a continent-wide level. Currently, three RECs, namely the EAC[257], the COMESA[258] and the ECOWAS are in the process of establishing TIPs. "The EAC Trade Information Portal (TIP) gives access to step-by-step guides on licenses, pre-clearance permits and clearance formalities for the most traded goods within, to and from the East African Community (EAC)."[259] Nevertheless, one must bear in mind that keeping those TIPs up-to-date requires a lot of effort and financial funds. The existing TIPs are donor-funded as well as technically supported by the ITC. They can only become self-funded when their user base and trust grows.

6.4 Establishing the African Union Trade Observatory (ATO)

Many of the databases and statistics provided by African countries are out of date and do not reflect the current situation. Apart from this, a lot of African states do not provide trade data to UN COMTRADE nor do they have statistical authorities in place reporting direct trade data. To improve this situation, the African Union Trade Observatory (ATO), a continental initiative aimed to collect data and make it available, was recently established. The ATO falls under the architecture of the AfCFTA and is located within the Department of Trade and Industry/AUC. The AUC is responsible for mobilising resources for the cost of the ATO staff, the ITC shall serve as a technical partner and the EU Commission committed itself to grant 4 million euro for the implementation of the ATO. Africa's RECs will assume key roles in collecting data from MS and in channelling that data and information to the ATO.[260]

Functions and responsibilities of the ATO

At tralac's 2019 annual conference, the trade advisor of the Department of Trade and Industry of the AUC Mr. Mureverwi, held a presentation on the ATO. He specified the main functions of the ATO as follows:

- "Collect trade and trade-related qualitative and quantitative data and information from Member States and other sources
- Analyse trade and trade-related data and information, focusing on emerging issues such as regional value chains

[257] See https://tradehelpdesk.eac.int/ (05.06.2020).
[258] See http://comstat.comesa.int/ (05.06.2020).
[259] *East African Community.* "Regional Trade Information Portal." https://tradehelpdesk.eac.int/, (10.02.2020).
[260] *Mureverwi, Brian*. The African Trade Observatory: tralac Annual Conference (2019): 12–13, https://www.tralac.org/documents/events/tralac/2801-tralac-annual-conference-presentation-african-trade-observatory-brian-mureverwi-auc-march-2019/file.html, accessed February 2020.

- Establish a data base for African trade that is used to publish and disseminate information on intra-African trade
- Monitor and evaluate the implementation process and impact of the AfCFTA and the BIAT
- Provide relevant and detailed trade and trade-related information for the private sector"[261]

In addition to this, he gave an overview of the competencies of the ATO and added that the data and information provided by the ATO will include:

- "Merchandise trade flows at the most detailed level including rates of utilization of intra-Africa tariff preferences
- customs duties (applied, preferential and bound rates)
- Rules of Origin of intra-regional preferential rates at the product level
- Non-tariff measures (NTMs) including information on various market regulations
- Trade remedies taken by countries
- Internal taxes including VAT, excise tax and others
- Commodity prices and exchange rate indicators and
- Trade-related performance indicators including growth rates, market shares, market concentrations and regional trade integration indexes"[262]

[261] *Mureverwi, Brian.* The African Trade Observatory: tralac Annual Conference (2019): 4, https://www.tralac.org/documents/events/tralac/2801-tralac-annual-conference-presentation-african-trade-observatory-brian-mureverwi-auc-march-2019/file.html, accessed February 2020.
[262] Ibid., 5.

7 Conclusion

This thesis has provided an in-depth analysis of the current economic situation on the African continent. Data analysis has helped to show the trading patterns on the continent. Additionally, the background knowledge needed to grasp the extent of the AfCFTA has been included. Furthermore, the thesis has pointed up various topics associated with the AfCFTA. Each chapter comprises a critical view of the respective topic.

In summary, it can be stated that African intra-continental trade is the lowest in the world and most of African trade takes place between the MS of the respective RECs. As can be seen from the LPI, states must focus on the elimination of NTBs, because their negative impact on trade is of much more concern than the current tariffs.
In addition, this thesis has elaborated on the African system of regional trade arrangements and the 'evolution' of the AfCFTA. In short, the prospects of the AfCFTA promise to accelerate a new era of industrialisation and business opportunities towards the realisation of 'Agenda 2063: The Africa we Want'.[263] The main objective of the AfCFTA is to create a single continental market for goods and services with free movement of labour and investment. With this in mind, the AUC, UNIDO and UNECA delivered a joint statement at the 'Africa Industrialization Day (AID) 2019', in which they emphasised that the creation of a continental market allows companies to benefit from economies of scale, reduce the cost of production as well as the cost of doing business across borders.[264] Also, in the long run, it shall pave the way for a CU, harmonize and facilitate trade, enhance competitiveness and reallocate resources. Furthermore, industrial exports are expected to diversify and a move away from commodities like oil and minerals is predicted. In the end, the AfCFTA shall bring together all 55 MS of the AU, covering a market of more than 1.2 billion people and a combined GDP of 2.5 trillion US dollars.[265] In addition, in the long run, the implementation of the AfCFTA feeds directly into other African aspirations such as the development of a single African passport. This would further enhance trade and ease the movement of people across the continent.[266]

[263] In 2016, the United Nations General Assembly adopted Resolution A/RES/70/293, which proclaimed the period from 2016 to 2025 as the 'Third Industrial Development Decade for Africa (IDDA III).
[264] *African Union Commission; United Nations Industrial Development Organization, and United Nations Economic Commission for Africa. "*Joint Statement of the AUC, UNIDO, UNECA: Africa Industrialization Day, 20 November 2019: Positioning African Industry to Supply the African Continental Free Trade Area (AfCFTA) Market." 2019: 3.
[265] *United Nations Economic Commission for Africa. "*African Continental Free Trade Area - Questions & Answers." https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers, (04.03.2020).
[266] *African Union*. African Continental Free Trade Area (2019), https://www.youtube.com/watch?v=zIhe6DN0hGE, accessed January 2020.

However, contrary to expectations, the AfCFTA does not intend to dismantle the existing RECs, but rather sees them as building blocks to greater integration. The RECs will continue to exist and African states, which are not yet part of the same REC, will enter into trade negotiations. This will lead to a denser ‘Spaghetti-bowl’ of RTAs on the African continent. Considering that, this conclusion points to the fact that the AfCFTA is attempting to connect Africa’s various RECs.

During her research internship in South Africa, this author was often confronted with specific questions on the implementation of the AfCFTA. Traders and companies, especially from Southern Africa, approached tralac with questions regarding tariffs, RoO, border processes, online forms and so on. There were simply no answers to all those questions, especially because the AfCFTA is not yet operative.
Trading under the AfCFTA was scheduled to start on 1st of July 2020. As mentioned above, that date had to be postponed as a result of the COVID-19 pandemic. A new date has yet to be confirmed by the AUC. Irrespective of that, this author believes that meeting the ‘original’ deadline would not have been possible. According to current knowledge, nothing would have happened by the beginning of July, as even Phase I negotiations have not concluded and the requirements for preferential trade arrangements under the AfCFTA are therefore not established. The countries have not yet started to negotiate tariffs and the RoO are still outstanding as are the Schedules of Specific Commitments in Trade in Services. The consequence is that intra-African trade will continue under MFN rules and the existing REC arrangements.[267]

This thesis has identified several opportunities and challenges that need to be overcome. The AfCFTA opens space for academics to conduct research in various fields. Further research is needed regarding the ramifications of the AfCFTA on poverty in Africa. The statistics at the moment are as follows: even though the percentage of people living under extreme poverty (=less than 1.90 US dollar per day) declined from 54% in 1990 to 41.1% in 2015, the actual number of people in poverty increased from 278 million in 1990 to 416.4 million in 2015. This numerical increase is caused by the rapid population growth in the last decades.[268] For the future,

[267] *Erasmus, Gerhard.* “How will the AfCFTA enter into force, be implemented, and be completed?”, 2020, https://www.tralac.org/publications/article/14320-how-will-the-afcfta-enter-into-force-be-implemented-and-be-completed.html, (04.03.2020).
[268] *World Bank Group.* “Africa's Pulse: October 2019/ Volume 20: An Analysis of Issues shaping Africa'as economic future.” 2019. https://openknowledge.worldbank.org/handle/10986/32480: 2.

it would be interesting to observe statistical changes in the number of people living in poverty and the level of implementation of the AfCFTA.

Apart from this, further research is also required on the interlinkage between human rights and trade liberalisation in Africa. When the AfCFTA principles are progressed and implemented, the overall economic productivity on the continent will improve. In the long run, it will be necessary to adopt appropriate policies to ensure that social welfare is equally distributed throughout the continent. The groups most vulnerable to trade liberalisation through the AfCFTA must be identified and their food security protected. Additionally, research about the impact of the AfCFTA on different economic and social rights in Africa will be necessary.[269]

Additionally, further investigation is needed regarding the impact of increased intra-African trade and climate change. More economic productivity on the continent will almost inevitably lead to higher carbon emissions. The overall objective of the AfCFTA to increase intra-African trade should not be at the expense of the climate.

This author also wishes to address one further issue which will have significant impact on the world economy and trade, namely the Corona Virus scourge. As Mr. Wamkele Mene said in his opening speech when 'swearing-in' as Secretary General, we live in a period of unprecedented challenges, the crisis has ravaged global economic activity and has materially adverse impact on global capital markets. We will face disrupted trade and disrupted global supply chains. Nevertheless, according to Mr. Wamkele Mene, African states must see the AfCFTA in those difficult times as an opportunity to reconfigure supply chains, reduce reliance on non-African states and to expedite the establishment of regional value chains.[270] At the moment, one can only speculate on the impact of COVID-19 on trade on the African continent. Further investigations will be needed to grasp the extent of the virus and its ramifications on the AfCFTA.

As a final remark, this author stresses that the implementation of the AfCFTA will be challenging and costly. African countries are very different from each other, and the lack of common standards will make the realisation of a single African market difficult. Those different standards result in increased costs. Other than that, the sluggish progress of negotiations does not give this author grounds for optimism for future implementation. From an outsider's point of view, no substantial progress has been made in recent months. Since beginning of the year

[269] *Cofelice, Andrea*. African Continental Free Trade Area: Opportunities and Challenges: The Federalist Debate 31/3 (2018): 34.

[270] *Wamkele Mene.* "Statement of H.E. Mr. Wamkele Mene on the occasion of swearing-in as the Secretary General of the AfCFTA Secreteriat." 2020: 5.

2020, it seems that negotiations have been deadlocked. If Africa really has the intention of making the AfCFTA a success, it must start to go into detail regarding the particular products that shall be traded under the Agreement and to approach each other in order to find mutual solutions. The MS need to find a common way of combining trade liberalisation, industrial development and infrastructure development. They must see the AfCFTA as an opportunity. Thus, this author believes that the success of the AfCFTA will depend on political will and pressure. Certainly, there is no shortage of ideas and programmes at the continental level intended to address the challenges African economies face. The legal documents, as well as the strategies, show that there are ambitious goals, but all the efforts will be in vain if not fully implemented.

In essence, the tools are prepared, it is now up to politicians to use them.

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9 Appendix

9.1 ITC data availability for Africa[271]

Countries and Territories	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Africa										
Algeria										
Angola										
Benin										
Botswana										
British Indian Ocean Territory										
Burkina Faso										
Burundi										
Cabo Verde										
Cameroon										
Central African Republic										
Chad										
Comoros										
Congo										
Congo, Democratic Republic of the										
Côte d'Ivoire										
Djibouti										
Egypt										
Equatorial Guinea										
Eritrea										
Eswatini										
Ethiopia										
French Southern and Antarctic Territories										
Gabon										
Gambia										
Ghana										
Guinea										
Guinea-Bissau										
Kenya										

[271] ITC Trade Map; red: no data, green: reporting data, yellow: mirror data; last update: 31.05.2020.

Lesotho										
Liberia										
Libya, State of										
Madagascar										
Malawi										
Mali										
Mauritania										
Mauritius										
Morocco										
Mozambique										
Namibia										
Niger										
Nigeria										
Rwanda										
Saint Helena										
Sao Tome and Principe										
Senegal										
Seychelles										
Sierra Leone										
Somalia										
South Africa										
South Sudan										
Sudan										
Sudan (before 2012)										
Tanzania, United Republic of										
Togo										
Tunisia										
Uganda										
Western Sahara										
Zambia										
Zimbabwe										

9.2 Intra-African trade: Africa's exports to Africa and the world[272]

Product code	Product label	Africa's exports to Africa						Africa's exports to world					
		Value in 2015	Value in 2016	Value in 2017	Value in 2018	Growth 2016-2017	Growth 2017-2018	Value in 2015	Value in 2016	Value in 2017	Value in 2018	% of world 2017	% of world 2018
'TOTAL	**All products**	**70 196 970.00**	**65 600 003.00**	**73 040 736.00**	**73 970 674.00**	**11%**	**1%**	**373 659 120.00**	**341 071 718.00**	**422 982 741.00**	**499 191 181.00**	**17%**	**15%**
'2709	Petroleum oils and oils obtained from bituminous minerals, crude	6 295 549.00	5 400 407.00	5 740 729.00	8 399 219.00	6%	46%	106 375 562.00	82 131 481.00	115 573 004.00	155 784 949.00	5%	5%
'2710	Petroleum oils and oils obtained from bituminous minerals (excluding crude); preparations containing ...	4 131 318.00	3 305 804.00	3 787 918.00	5 990 619.00	15%	58%	15 557 396.00	11 434 090.00	15 728 949.00	21 338 174.00	24%	28%
'7108	Gold, incl. gold plated with platinum, unwrought or not further worked than semi-manufactured ...	2 405 840.00	4 105 653.00	3 939 652.00	2 897 008.00	-4%	-26%	13 786 103.00	24 051 741.00	28 492 368.00	30 110 902.00	14%	10%
'7102	Diamonds, whether or not worked, but not mounted or set (excluding unmounted stones for pick-up ...	2 731 122.00	2 551 462.00	1 342 927.00	1 553 114.00	-47%	16%	10 018 943.00	11 326 696.00	10 397 532.00	12 161 563.00	13%	13%
'2716	Electrical energy	1 034 019.00	1 386 689.00	1 411 018.00	1 518 089.00	2%	8%	1 127 426.00	1 406 612.00	1 427 076.00	1 563 432.00	99%	97%
'2711	Petroleum gas and other gaseous hydrocarbons	2 459 902.00	2 037 420.00	2 420 405.00	1 436 619.00	19%	-41%	26 369 818.00	19 140 383.00	24 531 279.00	26 196 056.00	10%	5%
'2603	Copper ores and concentrates	376 566.00	648 921.00	1 025 384.00	1 259 239.00	58%	23%	1 633 765.00	1 743 249.00	1 833 251.00	1 867 572.00	56%	67%

[272] ITC Trade Map, own calculations.

'8704	Motor vehicles for the transport of goods, incl. chassis with engine and cab	1 339 719.00	964 002.00	970 502.00	1 142 866.00	1%	18%	2 716 377.00	2 952 643.00	3 167 838.00	3 653 057.00	31%	31%
'2401	Unmanufactured tobacco; tobacco refuse	1 099 983.00	1 089 729.00	1 025 485.00	1 065 089.00	-6%	4%	2 120 344.00	2 227 036.00	1 961 359.00	2 129 562.00	52%	50%
'1701	Cane or beet sugar and chemically pure sucrose, in solid form	860 658.00	983 765.00	1 156 939.00	1 044 370.00	18%	-10%	1 596 031.00	1 723 115.00	2 083 090.00	1 938 133.00	56%	54%

9.3 Africa's top 10 exporters[273]

Exporters	Exported value in 2015	Exported value in 2016	Exported value in 2017	Exported value in 2018	Growth 2016-2017	Growth 2017-2018	% of Africa 2018
Africa Aggregation	**70 196 970.00**	**65 600 003.00**	**73 040 736.00**	**73 970 674.00**	**11%**	**1%**	
South Africa	23 627 731.00	21 373 257.00	23 300 563.00	25 037 844.00	9%	7%	34%
Nigeria	7 016 447.00	4 674 636.00	4 946 374.00	6 994 947.00	6%	41%	9%
Egypt	3 328 111.00	3 413 380.00	3 642 785.00	4 747 401.00	7%	30%	6%
Côte d'Ivoire	3 301 157.00	2 639 561.00	2 888 330.00	2 852 136.00	9%	-1%	4%
Zimbabwe	2 479 138.00	2 645 043.00	2 660 834.00	2 607 716.00	1%	-2%	4%
Ghana	548 087.00	1 733 308.00	2 036 076.00	2 561 870.00	17%	26%	3%
Namibia	2 539 702.00	2 021 612.00	2 239 905.00	2 409 766.00	11%	8%	3%
Morocco	2 184 214.00	2 285 669.00	2 267 835.00	2 292 910.00	-1%	1%	3%
Angola	1 376 964.00	1 622 061.00	1 713 426.00	2 195 787.00	6%	28%	3%
Kenya	2 462 129.00	2 311 502.00	2 164 137.00	2 132 427.00	-6%	-1%	3%

[273] ITC Trade Map, own calculations.

9.4 Africa’s top 10 importers[274]

Importers	Imported value in 2015	Imported value in 2016	Imported value in 2017	Imported value in 2018	Growth 2016-2017	Growth 2017-2018	% of Africa 2018
Africa Aggregation	**69 319 412.00**	**59 529 756.00**	**64 315 461.00**	**70 774 290.00**	**8%**	**10%**	
South Africa	9 211 664.00	8 031 618.00	8 543 003.00	11 551 940.00	6%	35%	16%
Namibia	5 529 950.00	4 684 648.00	4 558 997.00	5 422 967.00	-3%	19%	8%
Zambia	4 852 414.00	4 275 179.00	5 130 915.00	4 980 997.00	20%	-3%	7%
Botswana	5 711 820.00	4 767 679.00	3 865 475.00	4 506 765.00	-19%	17%	6%
Congo. Democratic Republic of the	2 589 953.00	2 430 527.00	2 575 369.00	3 318 626.00	6%	29%	5%
Zimbabwe	3 000 674.00	2 747 009.00	2 506 584.00	3 129 226.00	-9%	25%	4%
Côte d'Ivoire	2 244 303.00	1 799 847.00	1 956 433.00	2 516 886.00	9%	29%	4%
Egypt	1 782 509.00	1 812 743.00	1 870 299.00	2 154 282.00	3%	15%	3%
Mozambique	2 658 919.00	1 754 448.00	1 867 414.00	2 059 297.00	6%	10%	3%
Kenya	1 520 774.00	1 382 295.00	1 939 783.00	2 033 240.00	40%	5%	3%

[274] ITC Trade Map, own calculations.

9.5 Intra-African trade: South Africa's exports to Africa and the world[275]

Product code	Product label	South Africa's exports to Africa					South Africa's exports to world			
		Value in 2017	Value in 2018	Value in 2019	Growth 2018-2019	% of Africa 2019	Value in 2017	Value in 2018	Value in 2019	% of world 2019
'TOTAL	**All products**	**23 300.56**	**25 037.84**	**24 057.07**	**-4%**		**88 267.96**	**94 421.53**	**90 235.68**	**27%**
'2710	Petroleum oils and oils obtained from bituminous minerals (excluding crude); preparations containing **...**	1 542.56	1 828.43	2 115.42	16%	9%	2 390.53	2 651.59	3 017.35	70%
'8704	Motor vehicles for the transport of goods. incl. chassis with engine and cab	826.06	981.20	907.82	-7%	4%	2 959.25	3 473.12	3 530.20	26%
'2716	Electrical energy	645.10	553.48	739.34	34%	3%	645.10	574.17	739.34	100%
'2610	Chromium ores and concentrates	579.53	604.97	556.85	-8%	2%	2 048.39	1 920.28	1 954.70	28%
'2601	Iron ores and concentrates. incl. roasted iron pyrites	112.96	188.86	432.38	129%	2%	4 785.01	4 224.77	5 743.36	8%
'2701	Coal; briquettes. ovoids and similar solid fuels manufactured from coal	529.88	670.63	362.30	-46%	2%	5 744.78	6 238.25	4 838.97	7%
'8703	Motor cars and other motor vehicles principally designed for the transport of persons. incl. **...**	381.77	397.15	329.02	-17%	1%	5 660.16	6 105.16	6 681.55	5%

[275] ITC Trade Map, own calculations.

'8431	Parts suitable for use solely or principally with the machinery of heading 8425 to 8430. n.e.s.	310.23	328.28	318.87	-3%	1%	386.65	435.98	404.02	79%
'7208	Flat-rolled products of iron or non-alloy steel. of a width >= 600 mm. hot-rolled. not clad. **...**	266.30	417.12	296.78	-29%	1%	281.13	469.71	314.41	94%
'8708	Parts and accessories for tractors. motor vehicles for the transport of ten or more persons. **...**	263.54	283.04	263.31	-7%	1%	675.38	690.42	645.42	41%

9.6 Intra-African trade: South Africa's imports from Africa and the world[276]

Product code	Product label	South Africa's imports from Africa					South Africa's imports from world			
		Value in 2017	Value in 2018	Value in 2019	Growth 2018-2019	% of Africa 2019	Value in 2017	Value in 2018	Value in 2019	% of world 2019
'TOTAL	**All products**	**8 543.00**	**11 551.94**	**10 213.71**	**-12%**		**83 030.76**	**93 423.91**	**88 119.96**	**12%**
'2709	Petroleum oils and oils obtained from bituminous minerals. crude	3 321.20	5 757.25	4 799.30	-17%	47%	6 416.55	10 828.16	8 832.68	54%
'3302	Mixtures of odoriferous substances and mixtures. incl. alcoholic solutions. based on one or ...	381.22	356.32	353.33	-1%	3%	571.34	574.23	558.32	63%
'2711	Petroleum gas and other gaseous hydrocarbons	286.91	366.39	335.92	-8%	3%	327.34	426.82	424.16	79%
'7108	Gold. incl. gold plated with platinum. unwrought or not further worked than semi-manufactured ...	300.13	274.38	323.47	18%	3%	300.97	277.11	327.66	99%
'1701	Cane or beet sugar and chemically pure sucrose. in solid form	209.89	224.03	273.03	22%	3%	474.46	306.94	302.64	90%
'2716	Electrical energy	161.82	234.04	259.76	11%	3%	161.82	234.04	259.76	100%
'7102	Diamonds. whether or not worked. but not mounted or	166.57	216.24	193.67	-10%	2%	515.10	649.11	562.97	34%

[276] ITC Trade Map, own calculations.

	set (excluding unmounted stones for pick-up **...**									
'6203	Men's or boys' suits. ensembles. jackets. blazers. trousers. bib and brace overalls. breeches **...**	137.99	163.84	177.04	8%	2%	288.41	333.11	333.97	53%
'4907	Unused postage. revenue or similar stamps of current or new issue in the country in which they **...**	68.56	169.48	152.86	-10%	1%	291.28	1 243.67	1 122.11	14%
'3824	Prepared binders for foundry moulds or cores; chemical products and preparations for the chemical **...**	137.94	128.73	134.43	4%	1%	316.86	353.42	338.60	40%

9.7 List of top 10 importing markets from Africa for a product exported by South Africa[277]

Importers	Exported value in 2015	Exported value in 2016	Exported value in 2017	Exported value in 2018	Exported value in 2019	Compound growth rate 2015-2019	Growth 2018-2019	% of world exports	% of Africa
World	80 265.37	74 110.82	88 267.96	94 421.53	90 235.68	3.0%	-4%		
Africa Aggregation	23 627.73	21 373.26	23 300.56	25 037.84	24 057.07	0.5%	-4%	27%	
Botswana	4 127.02	3 712.23	3 840.23	4 076.99	4 093.22	-0.2%	0%	5%	17%
Mozambique	2 321.26	2 263.07	2 890.79	3 255.67	3 678.11	12.2%	13%	4%	15%
Namibia	4 152.01	3 530.67	3 567.81	3 564.08	3 589.88	-3.6%	1%	4%	15%
Zambia	2 300.45	2 079.92	2 246.90	2 427.81	2 114.29	-2.1%	-13%	2%	9%
Zimbabwe	2 012.22	1 997.56	2 089.83	2 340.09	1 978.30	-0.4%	-15%	2%	8%
Eswatini	1 255.12	1 154.07	1 284.85	1 379.61	1 339.97	1.6%	-3%	1%	6%
Lesotho	1 177.61	1 139.46	1 346.12	1 320.83	1 328.58	3.1%	1%	1%	6%
Congo. Democratic Republic of the	1 020.87	782.50	879.51	1 276.61	1 053.44	0.8%	-17%	1%	4%
Kenya	652.13	556.61	712.84	755.99	788.17	4.9%	4%	1%	3%
Tanzania. United Republic of	525.33	442.18	451.55	440.38	476.65	-2.4%	8%	1%	2%

[277] ITC Trade Map, own calculations.

9.8 List of top 10 supplying markets from Africa for a product imported by South Africa[278]

Exporters	Imported value in 2015	Imported value in 2016	Imported value in 2017	Imported value in 2018	Imported value in 2019	Compound growth rate 2015-2019	Growth 2018-2019	% of world exports	% of Africa
Africa Aggregation	9 211.66	8 031.62	8 543.00	11 551.94	10 213.71	3%	-12%	12%	
Nigeria	3 030.67	2 069.89	1 714.59	3 805.40	3 513.69	4%	-8%	4%	34%
Eswatini	1 098.74	1 046.89	1 222.67	1 213.85	1 286.87	4%	6%	1%	13%
Mozambique	818.06	690.54	895.38	987.04	916.63	3%	-7%	1%	9%
Namibia	508.90	415.55	839.36	1 082.00	904.08	15%	-16%	1%	9%
Ghana	14.54	13.12	62.66	649.87	638.51	157%	-2%	1%	6%
Angola	1 344.20	1 271.42	1 340.24	1 242.56	563.74	-20%	-55%	1%	6%
Botswana	427.55	411.27	421.28	456.31	451.65	1%	-1%	1%	4%
South Africa	210.50	361.91	331.38	376.22	427.21	19%	14%	0%	4%
Lesotho	270.24	291.86	310.72	291.28	281.38	1%	-3%	0%	3%
Mauritius	180.18	156.95	172.83	217.02	241.65	8%	11%	0%	2%

[278] ITC Trade Map, own calculations.

9.9 South Africa's trade balance[279]

Exporters	Imported value in 2019	Exported value in 2019	total trade	% of Africa total trade	Trade Balance
World	88 119.96	90 235.68	178 355.64		2 115.72
Africa Aggregation	10 213.71	24 057.07	34 270.79		13 843.36
Mozambique	916.63	3 678.11	4 594.74	13%	2 761.48
Botswana	451.65	4 093.22	4 544.87	13%	3 641.57
Namibia	904.08	3 589.88	4 493.96	13%	2 685.81
Nigeria	3 513.69	448.77	3 962.46	12%	**-3 064.91**
Eswatini	1 286.87	1 339.97	2 626.84	8%	53.11
Zambia	210.81	2 114.29	2 325.11	7%	1 903.48
Zimbabwe	173.98	1 978.30	2 152.28	6%	1 804.33
Lesotho	281.38	1 328.58	1 609.95	5%	1 047.20
Congo. Democratic Republic of the	43.53	1 053.44	1 096.97	3%	1 009.91
Angola	563.74	434.38	998.11	3%	**-129.36**

[279] ITC Trade Map, own calculations.

9.10 List of top 10 importing markets from Africa excl. SACU and SADC for a product exported by South Africa[280]

Importers	Exported value in 2015	Exported value in 2016	Exported value in 2017	Exported value in 2018	Exported value in 2019	Growth rate	% of Africa excl. SACU/ SADC
World	80 265.37	74 110.82	88 267.96	94 421.53	90 235.68	-4%	**3%**
Africa excl SACU and SADC Aggregation	3 167.31	2 771.08	3 020.46	3 283.95	2 868.58	-13%	
Kenya	652.13	556.61	712.84	755.99	788.17	4%	27%
Nigeria	649.30	438.38	429.58	450.14	448.77	0%	16%
Ghana	344.21	334.63	352.61	365.55	346.24	-5%	12%
Uganda	137.08	121.59	141.52	166.65	131.56	-21%	5%
Senegal	107.17	119.09	117.37	140.00	107.07	-24%	4%
Mali	58.65	63.96	79.37	73.54	89.78	22%	3%
Côte d'Ivoire	69.92	113.30	109.47	120.55	89.49	-26%	3%
Egypt	119.99	207.92	180.45	205.24	84.01	-59%	3%
Djibouti	46.89	53.29	93.08	109.50	66.86	-39%	2%
Ethiopia	81.00	70.05	64.30	120.27	64.67	-46%	2%

[280] ITC Trade Map, own calculations.

9.11 LPI of African countries (5=highest)[281]

Country	Overall LPI	Overall LPI rank (world)	% of highest performer	Customs	Rank (world)	Infrastructure	Rank (world)	International shipments	Rank (world)	Logistics quality	Rank (world)	Tracking and tracing	Rank (world)	Timeliness	Rank (world)
South Africa	3.38	33	100.00	3.17	**34**	3.19	36	3.51	22	3.19	39	3.41	35	3.74	34
Côte d'Ivoire	3.08	50	87.63	2.78	51	2.89	56	3.21	45	3.23	37	3.14	49	3.23	71
Rwanda	2.97	57	83.11	2.67	64	2.76	65	3.39	29	2.85	60	2.75	86	3.35	61
Egypt. Arab Rep.	2.82	67	76.80	2.60	77	2.82	58	2.79	73	2.82	63	2.72	89	3.19	74
Kenya	2.81	68	76.38	2.65	67	2.55	79	2.62	99	2.81	64	3.07	56	3.18	79
Benin	2.75	76	73.65	2.56	82	2.50	83	2.73	83	2.50	98	2.75	87	3.42	57
Mauritius	2.73	78	72.93	2.71	59	2.80	59	2.12	151	2.86	59	3.00	63	3.00	99
São Tomé and Principe	2.65	89	69.58	2.71	57	2.33	106	2.42	121	2.65	84	2.78	81	3.01	97
Djibouti	2.63	90	68.79	2.35	113	2.79	60	2.45	118	2.25	135	2.85	72	3.15	85
Burkina Faso	2.62	91	68.24	2.41	100	2.43	95	2.92	60	2.46	106	2.40	124	3.04	95
Cameroon	2.60	95	67.15	2.46	90	2.57	76	2.87	63	2.60	87	2.47	118	2.57	142
Mali	2.59	96	66.93	2.15	133	2.30	109	2.70	88	2.45	107	3.08	54	2.83	119
Malawi	2.59	97	66.73	2.43	94	2.18	126	2.55	105	2.68	82	2.67	94	2.98	102
Uganda	2.58	102	66.30	2.61	76	2.19	124	2.76	78	2.50	99	2.41	123	2.90	110
Tunisia	2.57	105	66.06	2.38	107	2.10	133	2.50	115	2.30	123	2.86	71	3.24	70
Ghana	2.57	106	65.88	2.45	92	2.44	90	2.53	109	2.51	95	2.57	106	2.87	115
Comoros	2.56	107	65.53	2.63	72	2.25	113	2.49	116	2.21	138	2.93	68	2.80	120
Morocco	2.54	109	64.80	2.33	115	2.43	93	2.58	103	2.49	101	2.51	112	2.88	114
Nigeria	2.53	110	64.48	1.97	147	2.56	78	2.52	110	2.40	112	2.68	92	3.07	92

[281] The World Bank LPI Dataset.

Zambia	2.53	111	64.24	2.18	129	2.30	108	3.05	54	2.48	103	1.98	158	3.05	94
Congo. Rep.	2.49	115	62.53	2.27	123	2.07	138	2.87	64	2.28	127	2.38	125	2.95	103
Algeria	2.45	117	60.94	2.13	138	2.42	96	2.39	122	2.39	113	2.60	103	2.76	124
Togo	2.45	118	60.92	2.31	119	2.23	116	2.52	111	2.25	134	2.45	120	2.88	112
Congo. Dem. Rep.	2.43	120	60.11	2.37	108	2.12	132	2.37	127	2.49	100	2.51	114	2.69	133
Sudan	2.43	121	60.08	2.14	136	2.18	125	2.58	102	2.51	96	2.51	115	2.62	139
Chad	2.42	123	59.65	2.15	134	2.37	104	2.37	125	2.62	86	2.37	127	2.62	138
Gambia. The	2.40	127	58.97	2.08	141	1.82	155	2.71	87	2.21	142	2.81	73	2.71	131
Madagascar	2.39	128	58.47	2.32	118	2.16	128	2.19	146	2.33	118	2.61	102	2.73	128
Guinea-Bissau	2.39	129	58.38	2.01	144	1.78	159	2.53	108	2.28	126	2.78	80	2.86	116
Mauritania	2.33	135	56.02	2.20	128	2.26	112	2.19	145	2.19	144	2.47	119	2.68	134
Equatorial Guinea	2.32	136	55.45	1.91	151	1.88	151	2.88	62	2.25	133	2.13	149	2.75	126
Lesotho	2.28	139	53.75	2.36	110	1.96	145	2.21	140	2.03	154	2.37	129	2.70	132
Senegal	2.25	141	52.71	2.17	130	2.22	118	2.36	128	2.11	149	2.11	150	2.52	145
Liberia	2.23	143	51.73	1.91	152	1.91	149	2.08	155	2.14	148	2.05	155	3.25	69
Somalia	2.21	144	50.87	2.00	145	1.81	157	2.61	100	2.30	121	2.23	140	2.20	157
Guinea	2.20	145	50.54	2.45	93	1.56	**160**	2.32	132	2.07	152	2.70	91	2.04	**160**
Gabon	2.16	150	48.90	1.96	148	2.09	136	2.10	153	2.07	151	2.07	153	2.67	135
Central African Republic	2.15	151	48.33	2.24	126	1.93	148	2.30	135	1.93	157	2.10	151	2.33	156
Zimbabwe	2.12	152	47.14	2.00	146	1.83	154	2.06	156	2.16	147	2.26	137	2.39	152
Libya	2.11	154	46.57	1.95	149	2.25	115	1.99	159	2.05	153	1.64	**160**	2.77	123
Eritrea	2.09	155	45.75	2.13	137	1.86	152	2.09	154	2.17	146	2.17	145	2.08	159
Sierra Leone	2.08	156	45.37	1.82	155	1.82	156	2.18	147	2.00	156	2.27	134	2.34	154
Niger	2.07	157	45.03	1.77	157	2.00	142	2.00	158	2.10	150	2.22	141	2.33	155
Burundi	2.06	158	44.76	1.69	159	1.95	146	2.21	139	2.33	117	2.01	156	2.17	158
Angola	2.05	159	44.03	1.57	**160**	1.86	153	2.20	143	2.00	155	2.00	157	2.59	140

10 Infographic: South Africa intra-African trade and tariff profile