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Assessment of interface between 'the African Continental Free Trade Area and Regional Economic Communities' in Africa

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THESIS APPROVAL PAGE

The thesis titled Assessment of interface between the African Continental Free Trade Area and Regional Economic Communities in Africa by Mr. Habtamu Wedajo is approved for degree of Master of Laws (LLM)

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ACRONYMS

ADB	Africa Development Bank
AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AfCFTA-NF	African Continental Free Trade Area Negotiating Forum
AFC	African Financial Community
AIPO	African Intellectual Property Organization
AMOT	African Union Ministers of Trade
AMRII	African Multidimensional Regional Integration Index
AMU (UMA)	Arab Maghreb Union
ARIPO	African Regional Intellectual Property Organization
AU	Africa Union
AUDA-NEPAD	African Union Development Agency
AU/Dec	Africa Union /Decision
AUC	African Union Commission
AMU	Arab Maghreb Union
BIAT	Boosting Intra-African Trade
CAR	Central African Republic
CEMAC	Central African Economic and Monetary Community
CEN-SAD	Community of Sahel-Saharan States
CFA	Chartered Financial Analyst
CFTA	Continental Free Trade Area
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
CU	Custom Union
DSB	Dispute Settlement Body
EAC	East African Community
ECA	Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States

FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
LDCs	Least Developed Countries
MFN	Most-Favored-Nation
NEPAD	New Partnership for Africa's Development
NTBs	Non-Tariff Barriers
OAU	Organization of African Unity
PTA	Preferential Trade Areas
RECs	Regional Economic Communities
RFTAs	Regional Free Trade Agreements
RTAs	Regional Trade Agreements
SACD	South African Development Community
SACU	Southern African Customs Union
SDNs	Staff Discussion Notes
STO	Senior Trade Officials
STE	State trading enterprises
TFA	Trade Facilitation Agreement
TFTA	Tripartite Free Trade Area
UNCTAD	United Nation Commission on Trade and Development
UNECA	United Nations Economic Commission for Africa
WAEMU (UEMOA)	West African Economic and Monetary Union
WAMZ	West African Monetary Zone
WTO	World Trade Organization

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ABSTRACT

AU member states established the AfCFTA to unite all the African countries under a single continental market and increase intra-African trade. In order to boost trade between African states, assist sustainable economic development, and promote integration among them, the AfCFTA aims to address the challenges of multiple and overlapping memberships in regional economic communities. Achieving the goal of African trade integration requires strong support from all African countries, coordination and collaboration between various economic groups, and a comprehensive legal framework to strengthen AfCFTA's relationships with REAs.

Therefore, this study examines the interface between AfCFTA and RECs, analyzes the specific provisions envisaged for the governance of AfCFTA and RECs in the AfCFTA agreement, whether the current legal framework is sufficient to regulate their relationship, and the issue related to the regulation of the AfCFTA interface with regional economic communities and how the problem is addressed.

CHAPTER ONE

1.1. Research Background

African countries use a variety of socio-economic strategies to achieve continental chain development and promote long-term socio-economic growth as part of the African Union. Various strategic plans and organizations, such as the 1979 Monrovia Strategy, the 1980 Lagos Plan of Action and the 1991 Abuja Treaty, have been adopted by African countries to this end. In addition, other regional economic communities have emerged, in which a large number of African countries participate.

The African economic integration initiative followed the creation of the African Economic Community (AEC) in the remarkable agreement signed in Abuja in 1991, and the terms of the treaty stipulated that the REC should serve as a building block of the AEC.[1]

To realize the vision of continental integration, African leaders and governments agreed to establish the African Continental Free Trade Area at the 18th Regular Conference held in Addis Ababa in January 2012.[2] Accordingly, the African Continental Free Trade Area Agreement was opened for signature at the 10th African Union Summit held on March 21, 2018 in Kigali, Republic of Rwanda.[3]

The general objectives of the ACFTA, stated in Article 3 of the agreement, are to expand intra-African trade, create a unified marketplace for goods and services, promote the free movement of people, capital and investment, promote sustainable economic development and strengthen integration among Africans countries to create a continental customs union; address overlapping membership challenges in regional economic arrangements; Promote comprehensive socio-economic and industrial development.[4]

As the AfCFTA is one of the African Union's efforts to integrate Africa into a market area in order to increase trade between African partners, understanding the interactions between the

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1 UN Economic Commission for Africa (UNECA), 'Governing the interface between the African Continental Free Trade Area (AfCFTA) and RECs' Free Trade Areas (RFTAs): Issues, Opportunities and Challenges' (2020) Available at https://archive.uneca.org/sites/default/files/uploaded-documents/RTD/2020/

2African Union, 'Continental Free Trade Area' (African Union) , available at https://au.int/en/ti/cfta/about

3 Assembly of the African Union, 'Declaration 1(X)' (Extraordinary Session, 21 March 2018, Kigali, Rwanda) Ext/Assembly/AU/Decl.1(X)

4 Agreement Establishing The African Continental Free Trade Area, 21st March 2018, Rwanda Kigali, art 3.

different economic categories within Africa and the AfCFTA is vital to an effective integration process.

The regulation of the relationships between different economic groups through a comprehensive legal system is important for economic integration. In Africa there are various systems and legal texts that govern ‘the link between RECs and the AEC, including the historic Lagos Program of Action, the African Union Constitutional act and also the Protocol on the Relations between RECs and the AEC.’[5]

The interface between RECs and AEC is enshrined in the treaty establishing the African Economic Community.[6] The Abuja Treaty states that the RECs' actions have to be coordinated and harmonized in order for the AEC to be founded and that they will eventually be integrated into the African Common Market.[7] Accordingly, the protocol on the relations between the AEC and also the regional economic communities requires that the regional economic communities take steps to revise their agreements in order to establish a connection with the community.[8] In relation to the AU and the AEC, the AEC Treaty states that the AEC is a fundamental component of the AU.[9]

The Protocol on relations between the African Economic Community and Regional Economic Communities; targets to formalize, consolidate, and promote close cooperation among RECs and between them and hence the AU via the coordination and harmonization of their policies, actions, programs, and activities alto gather areas and sectors.[10] The Protocol also provides a framework for coordinating the exertion of RECs to create a contribution to the achievement of the aspirations of the Constitutive Act of the African Union and also the covenant of African Economic Communities.[11]

5 Supra note 1

6 Treaty Establishing the African Economic Community (signed June 3, 1991) , Article 88

7 Ibid

8 Protocol on Relations between the African Economic Community and Regional Economic Communities (signed February 25, 1998), art 5.

9 Abuja treaty, article 98

10 Oppong, R.F., 'Redefining the relations between the African Union and regional economic communities in Africa' (2009) 6

11 Ibid

The RECs' constitutional agreements contain clauses that cover their interactions with other RECs and the AEC, which add to the legal framework of the relationship protocol. The founding treaties of the REC acknowledge the AEC's existence and intend to support its objectives with regard to interactions with the AEC. The agreement, however, does not specify how they should or must interact with the AEC.

The link between the AfCFTA and the REC, which is vital to the process of economic integration of the African continent, is the main theme of this paper. The AfCFTA agreement recognizes the Free Trade Areas of the Regional Economic Communities (recs) as building blocks for the establishment of the African Continental Free Trade Area (AfCFTA) and seeks to address the issues of diverse and conflicting trade regimes to create policy coherence. [12] The protocols of the agreement also detail the RECs' role in putting AfCFTA into practice. The agreement forms the basic rule for managing multiple trade regimes of regional economic communities. Article 19 of the AfCFTA Agreement addresses the coordination between AfCFTA and other African RECs, specifically focusing on resolving any conflicts or inconsistencies that may arise between the AfCFTA agreements and existing regional trade agreements within Africa.[13]

Despite the fact that the AfCFTA agreement establishes basic principles for the interaction between the AfCFTA and the REC in Africa, States parties that are members of other REAs and have achieved among them a higher level of regional integration than the AfCFTA agreement retain such higher level among themselves.[14] The agreement clearly does not provide the means to govern regional economic communities that have reached a higher level of regional integration among them. The other problem is that not all regional trade agreement policies have been integrated into Africa's continental free trade area. In such cases, the agreement does not provide a clear means to regulate when policy areas do not appear to be included in the continental free trade area. In addition, the agreement does not provide for the means that RECs did not recognize as building blocks of AfCFTA regulated under the agreements.

12 Abuja Treaty, preamble Para 6&10

13 UNECA, Governing the Interface between the African Continental Free Trade Area and Regional Economic Communities Free Trade Areas: Issues, Opportunities and Challenges, A Final Revised Draft Report (2020) p 52. see also art 19(1) of AfCFTA agreement.

14 AfCFTA Agreement (supra note 4) Art 19(2)

1.2. Statement of the problem

African countries establish the Continental Free Trade Area to boost trade and sustainable economic development and strengthen integration between African countries. The AfCFTA agreement aims to accelerate the process of regional and continental integration by addressing the complex and overlapping issues of membership in Africa's various regional trade agreements.[15] The agreement provides for the basic rule for the governance of multiple trade regimes of Regional Economic Communities.

Indeed, although the agreement provides basic rules for the administration of several trade regimes of regional economic communities, not all policy areas of regional trade agreements are included in the African Continental Free Trade Area. A challenge in regulating the interface between AfCFTA and REAs is the lack of clear rules or protocols regarding the relationship between the African Continental Free Trade Area and pre-existing regional economic communities. Another issue is the status of the relationship between the African Continental Free Trade Area and other regional trade agreements in Africa that are not recognized as part of the African Continental Free Trade Area.[16]

This study attempts to examine the interface between ACFTA and REC, the governance of multiple regional trade agreements in Africa; issues related to the status of regional trade agreements within the framework of the African Continental Free Trade Area, and the lack of a specific agreement or protocol govern the process of absorbing REAs in the African Continental Free Trade Area.

1.3. Literature Review

To find works by other authors and materials related to the interface between AfCFTA and the Regional Economic Communities in Africa, the author conducted an unreserved search. To the extent of my reading goes I found some literature on the interface between AfCFTA and RECs.

Africa is full of regional economic communities.[17] 'Due to political, economic, and strategic considerations, numerous African countries are members of multiple Regional Economic

15 AfCFTA Agreement Art 3

16IMF Staff Discussion Notes (SDNs),(2020), The African Continental Free Trade Area: Potential Economic Impact and Challenges, p 18, available at, https://www.imf.org//media/Files/Publications/SDN/2020/English/SDNEA2020004.ashx

17 Oppong, R.F (supra note10) 5

Communities (RECs). This results in a complex and interconnected network that poses challenges in decision-making for states, community officials, individuals, and corporations. The presence of multiple RECs and the resulting overlapping memberships create a complicated patchwork that adds complexity to the decision-making process.'[18] Therefore, the studies that have already been done mostly dealt with the issue of different memberships and how they affected integration procedures. This section will review some academic literature on the interface between AfCFTA and REC.

The United Nations Economic Commission for Africa (UNECA) conducts studies on the governing interface between AfCFTA and RECs, multiple memberships, and its effect on the AEC objectives being met. The study focuses on the primary economic challenges that emerge when efforts are made to establish connections between RECs, FTAs, and the AfCFTA.[19] The study also examines the meaning and basic understanding of Article 19 of the Agreement.

Oppong, Richard Frimpong in his studies of 'redefining the relations between the African Union and regional economic communities in Africa mainly focused on 'How do the RECs interact with one another, the AU, and the AEC?'[20] Therefore, his research is mainly concerned with the institutional linkage of REC to AU and AEC.

Vusi Gumede in his studies of the African Continental Free Trade Agreement, and the future of Regional Economic Communities attempted to analyze the relationships among the varied free trade areas in Africa, particularly the possible interface between the AfCFTA and also the FTAs of the RECs and other relevant issues like the TFTA, customs unions, and monetary communities.[21]

Most of the above-discussed study concerned the way multiple trade regimes of RECs are governed by AfCFTA in terms of existing policies. But, the study clearly not covers how the

18 Ibid

19 United Nations, Economic Commission for Africa (2021-11) Governing the African continental free trade area regional Economic communities' interface. Addis Ababa: © UN. ECA, available at https://hdl.handle.net/10855/46717" , P 87

20 Oppong, R.F(supra note 10) 9

21 Vusi Gumede, 'The African Continental Free Trade Agreement and the future of Regional Economic Communities' (2021) Journal of Contemporary African Studies 39(3), 470-483, DOI: 10.1080/02589001.2020.1852198, 12.

interface between the AfCFTA and RECs is governed when policy areas of regional trade agreements aren't included in the African Continental Free Trade Area, and the status of Regional Economic Communities recognized as building blocks of the Continental Free Trade Area agreement and regional trade agreements in Africa that haven't been recognized as building blocks of the AfCFTA. This paper tries to fill existing literature gaps.

1.4. Research Questions

The research questions that are going to be addressed in this thesis are:

A. What is the relationship between the AfCFTA and the RECs from the stage of the AfCFTA agreement establishment?

B. What's the status of Regional Economic agreements under the African Continental Free Trade Area agreement, and how can they be compatible?

C. Does the AfCFTA Agreement contain provisions to regulate the relationship between the AfCFTA and the REA in a clear, effective, and harmonious manner?

D. Does the African Free Trade Area (AfCFTA) have any particular guidelines or mechanisms to facilitate the inclusion of regional trade agreements in Africa?

E. What are the challenges in managing the interface between the AfCFTA and the regional economic community?

1.5. Objective of the study

1.5.1. General Objective

The overall aim of the research is to analyze the interaction between the African Continental Free Trade Area (AfCFTA) and Regional Economic Communities (RECs) in Africa. The study seeks to identify and propose potential solutions to address the challenges associated with governing the relationship between the AfCFTA and RECs.

1.5.2. The specific objective

- To assess the role of regional economic communities in the establishment of AfCFTA,
- To evaluate the status of African regional economic communities under the Continental Free Trade Area Agreement,
- To identify the interface between the AfCFTA and RECs.

- To assess the legal framework or instruments governing the interface between ACFTA and RECs, and
- To identify challenges in the governance of the interface between the AfCFTA and RECs in Africa

1.6. Methodology of the study

The research method deals with the techniques and procedures utilized by the researcher to gather and analyze data. It contains research design and sources of data. The researcher used a doctrinal research method to analyze and interpret legal rules relevant to the research topic. The author will use both primary and secondary sources of data. Primary sources like agreements, treaties, protocols, and declarations in relation to the research topic. Secondary sources including Books, journals, articles, unpublished materials, reports, newspapers, and different internet resources are employed to conduct this research. Finally, the researcher uses a qualitative approach to clarify concepts and the information obtained via data collecting.

1.7. Significance of the Study

The work focuses on evaluating the interaction between the African continental free trade area and regional economic communities in Africa, where the findings of this effort serve to address current integration gaps. The studies will identify the function of RECs in AfCFTA institutions and the issue and challenge in governing the interface between ACFTA and RECs by evaluating the agreements, rules, protocols, policies, and declarations. The studies also point to the importance of a strong interface between the AfCFTA and regional trade agreements in the continental trade integration process. Furthermore, it'll also be able to show the status of the regional trade agreements in Africa under the continental free trade area. Moreover, it can serve as a basis for further research on similar themes.

1.8. Scope of the Study

The research is limited to assessing how the African Continental Free Trade Area and African Regional Economic Communities interact. The studies evaluate the existing agreements, rules, protocols, declarations, and other materials written on an interface between ACFTA and RECs in Africa. Discussions on the regimes governing the interface between the ACFTA and RECs are a part of the thesis.

1.9. Limitations

This study focuses on how the AfCFTA and the REC interact, as well as the difficulties in governing the relationship between the continental free trade area and the African REC. Owing to the AfCFTA's lack of operationalization, it is challenging to evaluate how the continental free trade area and RECs interact in practice. The absence of formal access to the relevant literature can be another restriction, as existing studies mostly concentrate on the problem of numerous memberships and their impact on the integration process.

1.10. Organization of the Research

The research is organized into four chapters. Chapter one deals with the background of the study and the essential structure of the paper's Literature review, the statements of the problem, objectives, significance of the study, the method, the scope, and limitations of the study.

Chapter two discusses the African continental free trade area and regional economic communities in Africa. This chapter mainly addresses the contribution of RECs to the AfCFTA establishment process and AfCFTA negotiations, and the role of RECs in supporting AfCFTA implementation and structures. In addition, the chapter will discuss the scope and principle of the AfCFTA negotiations, as well as the status of regional trade deals under the Continental Free Trade Area Agreement.

Chapter three discusses the analysis of the legal framework that governs the interface between the AfCFTA and the RECs. The legislative frameworks controlling the interaction between the AfCFTA and the RECs, as well as its difficulties, are thoroughly explained in this chapter.

Chapter Four is the last part in which the author winds up the findings of the study and forwards recommendations for solving identified challenges in the course of the study.

CHAPTER TWO

African continental free trade area and regional economic communities

2.1. Overview of African Economic Integration

Trade integration allows countries to specialize in the production of goods and services, increase productivity and growth, promote structural change by participating in knowledge and technology, and stimulate the manufacture of new goods.[22] A large free trade zone will raise the continent's economic transformation prospect, increase intraregional trade, attract foreign direct investment, and develop regional supply networks, all of which are critical for the continent's economic transformation.[23]

In comparison to other continents, intra-African trade is quite low.[24] Africa's trade integration has long been impeded by outdated border and transport links, as well as a tangle of diverse legislation covering a huge number of markets. Governments have frequently established trade barriers to protect their markets from the regional competition, making trading with close neighbors more expensive than trading with countries far away.[25]

The aspiration to establish a unified African political and economic unification has persisted since the period of Pan-Africanism movements. From the Pan-Africanism movement through the African Union moment, there have been several intellectual movements at the world and continental levels, as well as various actions performed to achieve the objective of the political and economic integration of Africa.

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22 IMF, Regional economic outlook, Sub-Saharan Africa: A new shock and little room to maneuver (International Monetary Fund, 2019) , p 39 ,Available at https://www.imf.org//media/Files/Publications/REO/AFR/2019/April/English/sreo0419.ashx

23 Ibid

24 Thomas D, 'What You Need to Know about the African Continental Free Trade Area' (African Business, 12 July 2022) , available at , https://african.business/2022/02/trade-investment/what-you-need-to-know-about-the-african-continental-free-trade-area/

25 Ibid

Several pan-African organizations have worked continuously to deepen economic, social and political cooperation and integration in Africa in order to realize the continent's long-term vision of political and economic integration.[26] Various colonial cross-border agreements, such as the African Financial Community (CFA) zone, which included the West African CFA franc and eventually merged into the West African Economic and Monetary Union (WAEMU) in the area of ECOWAS; Central African CFA franc in the Central African Integrated Economic and Monetary Union (CEMAC) in the ECCAS region; Similarly, the South African Customs Union (SACU) and its associated common currency area continue to support the regional integration agenda so far.[27]

The United Nations' Economic and Social Council established the Economic Commission for Africa (ECA) in 1958 as part of its efforts to foster sustainable development in Africa.[28]

In the 1960s, the ECA proposed the formation of sub-regional blocs in Africa with the aim of sustainable growth, good governance, and advancing global collaboration for the development of Africa.[29] The main objective of the ECA is to offer technical assistance by conducting research and evaluating policies to enhance the capabilities of organizations that promote regional integration, including the African Union, regional economic communities, and member nations.[30]

The Organization of African Unity, the predecessor of the African Union, was built for further social and economic progress alongside coordinating and strengthening unity among African countries.[31] The AfDB plays a crucial role in assisting with the economic growth and progress of the continent by providing financial resources and expertise to support development projects.[32]

To attain economic integration of African continent and encourage regional economic cooperation, a number of strategic plans have been suggested by the Organization of African Unity and Africa experts.[33] The most noteworthy of these plans include the Monrovia Strategy of

26 UNECA, History of Africa’s Regional Integration Efforts , https://archive.uneca.org/oria/pages/history-africa’s-regional-integration-efforts

27 Supra note (26)

28 Ibid

29 Ibid

30 Ibid

31OAU Charter, Article II (1) (a), (b) and (e)

32 Ibid 27

33 Kwaku Danso. “The African Economic Community: Problems and Prospects.” Africa Today, vol. 42, no. 4, Indiana University Press, 1995, p 34, Available at http://www.jstor.org/stable/4187065

1979, the Lagos Plan of Action of 1980, and the Abuja Treaty of 1991, which was ratified by the entire continent.

‘Under the 1979 Monrovia Declaration, the member states independently and together restructure their economic and social techniques, and programs to reap fast socio-economic change and to line up a robust domestic and intra-African basis for a self-sustaining, self-reliant improvement and economic advancement.’[34]

The Lagos Plan of Action was adopted in 1980 at the Organization of African Unity Extraordinary Summit in Lagos, Nigeria, where it was launched as a special action of the Organization and a crucial element in the history of local integration in Africa.[35] In addition to reinforcing the OAU's commitment to establishing an African Economic Community by the year 2000, the Lagos Plan of Action also reaffirmed the OAU's commitment to strengthening existing regional economic communities (RECs) and developing new ones to support the sustained social, cultural, and economic growth of the African continent.[36]

The OAU Heads of State and Government approved the Abuja Treaty in June 1991, which established a separate agreement for the implementation of the Lagos Plan of Action and the Lagos Final Act.[37]

The Abuja Treaty, which defines the future of the continent by establishing an African Economic Community, is the most significant agreement on collaboration, coordination, and convergence of economic, social, and political aspects in Africa.[38] Its goal is to create a framework for growing, mobilizing, and utilizing African resources both material and human in order to help the continent become self-sufficient. Furthermore, it presents a comprehensive timeline for African economic and political integration. The creation of a single African market is the ultimate goal of the treaty that founded the African Economic Community. The agreement calls for trade liberalization by removing non-tariff trade barriers and import and export tariffs among

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34 Assemble of Head of State and Government, 'Sixteenth Ordinary Session' (Monrovia, Liberia, July 1979) AHG/ST. 3 (XVI) Rev.1. See also Treaty Establishing the African Economic Community (Abuja, Nigeria: 3 June 1991), preamble para 7.

35 Supra note 26

36 Abuja Treaty, preamble Para 8

37 Supra note 26

38 Ibid

its participants in order to establish a free trade zone.[39] As the plan for Africa's economic integration, the 1991 Abuja Treaty Establishing the African Economic Community (AEC) calls for the establishment of the AEC in six phases of varying lengths, phased out over a 34-year period from 1994 to 2028, with the Regional Economic Communities (RECs) serving as the Community's building blocks.[40] It was planned for the development of an African Customs Union through the union of the Customs Unions of the RECs to launch trade and market integration at the continental level in the fourth stage.[41]

The Road Map for the Creation of the CFTA, which specifically recognizes the essential function of the RECs as the cornerstones of continental integration in Africa, was agreed during the 18th Session of the Assembly of AU Heads of State and Government Summit.[42]

These strategies consist of the following: "the consolidation and deepening of the African Common Economic structure, the harmonization of Tripartite and other regional FTAs/intra-REC economic plans, the creation of TFTA of the REC and CU, the establishment of continental-level CU through the emergence of Common external tariffs (CET), the formation of a continental common market, and strengthening of RECs."[43]

The African Union had adopted a range of steps to fulfill the Abuja Treaty's goals. The Protocol on Relations between the AEC and therefore the RECs, adopted in 1998 to supply an institutional structure to coordinate relations between the AEC and also the RECs, strengthen the RECs, promote cooperation among them, and accelerate stage 5 of the Abuja Treaty for the establishment of an African common market, is one such measure.[44] Later on, an agreement between the AU and the REC that focused on the REC's relations with the AU took the place of this earlier one.[45]

39 Abuja Treaty, article 4(2)d

40 Fajana, F., 'Preparedness of the Different AU-recognized Regional Economic Communities (RECs) for the Continental Free Trade Area (CFTA)' (ATPC-UNECA/AUC, page 1, https://unctad.org/meetings/en/Presentation/ditc-ted-09032016-accra-paper-Fajana.pdf, see also Abuja treaty article 6(1)

41 Abuja treaty article 6(2)d

42 F. Fajana,p1

43 Ibid art 6(2)(a-f)

44 Sebahizi, P., 'Fast-tracking the Continental Free Trade Area: Regional Economic Communities (RECs) as Building Blocks' (unpublished manuscript, p. 4).

45 Ibid

‘The Sirte Declaration of 1999 stated that the RECs would serve as the foundation of the AEC, and the OAU Heads of State and Government emphasizes the need to shorten the Abuja Treaty usage periods in order to strengthen and solidify this position'.[46] In addition, the African Union (AU) called for the establishment of a monetary institution to speed up and advance the goals of the OAU constitution and the Abuja treaty, particularly those connected to African economic integration.[47]

The Accra Declaration was ‘received in July 2007 by the AU Meeting, with the targets to quicken the financial and political integration of the African continent, to make the United States of Africa.’[48] The program contains an action plan for the Moratorium on the Recognition of RECs in 2006 to quicken African integration and recognized 8 RECs.[49]

To speed unity, integration, and working together among the regional economic communities in order to achieve the ultimate aim of the AEC, African Ministers of Integration acknowledged the Minimum Integration Programme at the Fourth Conference on May 9, 2009.[50] The programme outlines the structural and budgetary obstacles to the Abuja Treaty's implementation as well as a plan for removing them.

In July 2009, the Minimum Integration Arrange and its Activity Arrange were created as a part of focusing and accelerating the RECs' progress toward the establishment of the AEC.[51]

The AU Summit determined at its 18th Ordinary Session that the CFTA must be based on the best practices in RECs FTAs and Acquis of the RECs FTAs, and it approved a Road Map requiring that the RECs complete their FTAs before the CFTA discussions start.[52] The EAC-COMESA-SADC Tripartite FTA and the four other AU-recognized RECS (ECOWAS, CEN-SAD, ECCAS, and UMA) are to negotiate a parallel FTA and conclude it by 2014.[53]

‘Under the theme "Boosting Intra-African trade," the 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union, which was held in Addis Ababa, Ethiopia,

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46 Ibid p5

47 Ibid

48 Ibid

49 Ibid

50 Ibid

51 Ibid p6

52 F. Fajana,(supra note 40)

53 Ibid

in January 2012, made significant decisions to enhance trade integration in Africa.'[54] The Assembly endorsed a plan to establish a continental free trade area (CFTA), which is anticipated to be operational by the end of 2017.[55]

Overall, the RECs served as the backbone of the establishment of the AfCFTA, by conducting, managing and participating in negotiations at the negotiation level based on their knowledge and guiding principles for FTA negotiations and establishment, as well as providing the basis for the governance of the CFTAs principles and structure.

2.2. African Continental Free Trade Area (AfCFTA)

Following the decision to create an African Continental Free Trade Area (AfCFTA) made by the African Union's Assembly of Heads of State and Government at the 18th Ordinary Session, the Summit in January 2012 also approved the Boosting Intra Africa Trade (BIAT) Action Plan, which identifies seven clusters: trade policy, trade facilitation, productive capacity, trade-related infrastructure, trade finance, trade information, and factor market integration.[56]

During the Twenty- Fifth Ordinary Session of the African Union's Assembly of Heads of State and Government, held in Johannesburg, South Africa from 14 to 15 June 2015, the African Union 'launched concessions for the establishment of the Continental Free Trade Area, aimed at integrating Africa's requests in conformity with the aims and principles embodied in the Abuja Treaty. '[57] The Heads of State and Government showed their commitment to hastily establishing the CFTA by urging AU Ministers of Trade to prepare for the start of CFTA negotiation by 2015.[58]

ACFTA was subsequently ratified at the 10th extraordinary summit of the African Union Assembly of Heads of State and Government, which took place on March 21, 2018, in Kigali,

54 Assembly/AU/11(XXV) annexed I p2, preamble Para 1

55 Ibid

56 AU, Update on the Continental Free Trade Area (CFTA), page 2, available at, http://au.int/sites/default/files/newsevents/workingdocuments/12582-wd-update_on_the_report_on_the_continental_free_trade_en.pdf

57 AfCFTA agreement, preamble Para 2, see also International Trade and Economics Series, (June 2016), African Continental free Trade Area , p 9,Avaliable at https://www.tradeeconomics.com/wp-content/uploads/2019/07/Africas-continental-Free-Trade-Area-min.pdf

58 Assembly/AU/11(XXV) annexed I p2, preamble Para 2

Rwanda.[59] In Kigali, 44 African countries signed the agreement; at present, 54 African countries, with the exception of Eritrea, have signed the agreement. 46 of the 54 signatories had presented their ratification documents with the chairman of the African Union Commission as of February 19, 2023, thereby becoming state parties to the agreement.[60]

The AfCFTA, which unites 55 African economies with a combined GDP of $3.4 trillion and a population of 1.3 billion people, is the largest free trade area since the World Trade Organization was founded in terms of geographical size and the number of participating nations.[61]

2.2.1. Objectives of AfCFTA

The overall objectives of the AfCFTA are to strengthen integration between African countries by establishing a continental customs union, establish a single market for goods and services, facilitate the free movement of people, capital, and investments, and increase intra-African investment and increase intra-African trade by coordinating trade liberalization and facilitation regimes and instruments across the Regional Economic Communities (RECs) and throughout Africa in general.[62]

To meet these objectives, States parties must cooperate on investment, intellectual property rights, and competition policy; gradually eliminate tariffs and non-tariff barriers to goods trade; liberalize trade in services; cooperate on customs issues and the implementation of trade facilitation measures; establish and maintain an institutional framework for enforcing trade facilitation measures; and establish and maintain a mechanism for resolving rights disputes.[63]

The AfCFTA tend to provide a uniform regulatory structure in areas already covered by sub-regional preferential trade areas (PTAs), such as the COMESA, EAC, ECOWAS, and SADC, thereby reducing segmentation of markets brought on by multiple sets of regulations.[64]

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59 AfCFTA Agreement

60 Tralac, 'Status of AfCFTA Ratification' (20 February 2023) (Accessed 5 April 2023 15:16:07 GMT).

61 World Bank, The African Continental Free Trade Area: Economic and Distributional Effects (2020) Washington, DC, World Bank, doi:10.1596/978-1-4648-1559-1, License, Creative Commons Attribution CC BY 3.0 IGO, p 1.

62 AfCFTA Agreement , Art 3

63 AfCFTA Agreement , art 4

64 Thomas D (supra note 24)

Additionally, the agreement presents a potential to control policy areas essential to economic integration that are often regulated in trade agreements.[65]

The successful implementation of the FTA is projected to have far-reaching impacts on various aspects such as the overall trade volume within the FTA, trade performance of individual Member States, and the equitable distribution of trade income among members. Additionally, it is anticipated to unlock substantial economic opportunities, generate positive welfare outcomes, stimulate robust economic growth, and effectively alleviate poverty in Africa. As a result, if the agreement is fully implemented by 2035, real income could increase by 7%, or $450 billion; the volume of global trade would have increased by about 29% from its current levels; trade with interior African countries would have increased by more than 81 percent; and trade with non-African countries would have increased by 19%.[66] Pursuant to the World Bank, the agreement could assist 30 million people in escaping extreme poverty and 68 million in escaping moderate poverty.[67]

In addition to the overall positive effects of the arrangement on the continent, it is necessary to address the imbalance in costs and benefits between nations and regions in terms of trade creation, trade diversion, and trade deflection due to the varying economic development levels in Africa.[68] To this end, the agreement stipulates various CFTA implementation phases for various degrees of member-state economic development.

2.2.2. Scope of ACFTA

The African Continental Free Trade Area Agreement (AfCFTA) is a multilateral agreement that regulates ‘trade in goods and services trade, investment, intellectual property rights, and competition policy’ in Africa.[69] AfCFTA's scope is much broader than that of REC trade agreements because it incorporates ‘intellectual property rights and state trading enterprises (STEs),’[70] which are not completely or at all addressed at the level of some of the regions. Only

65 Ibid

66 Ibid

67 Ibid

68 UNECA,(2020),Governing the Interface between the African Continental Free Trade Area and Regional Economic Communities Free Trade Areas: Issues, Opportunities and Challenges , p 8

69 AfCFTA Agreement (supra note 4) art 6

70 Ibid, art 4(c) and Protocol on Trade in Goods , article 25

one sub-regional PTA, the East African Community (EAC), includes intellectual property rights, and no sub-regional PTA covers State trading enterprises (STEs).[71]

On the other hand, there are also policy areas that are covered by RECs but do not fall within the AfCFTA policy area. State aid (subsidies) covered by EAC, COMESA, SADC and CEMAC, environmental regulations covered by EAC, COMESA, ECOWAS and CEMAC, labor market restrictions covered by EAC and COMESA, and government procurement regulation by EAC are all areas of policy that the RECs cover but the AfCFTA does not.[72]

2.2.3. Negotiations on AfCFTA and the role of RECs

AU Heads of State and Government initiated negotiations to establish the CFTA in June 2015 at the 25th Ordinary Session of the AU Assembly in Johannesburg, South Africa.[73] The AfCFTA negotiations are scheduled to take place in two phases during the 25th regular session of the African Union in June 2015.[74] The first phase of the round focused on negotiations on trade in goods and services, and the second round focused on negotiations on investment, intellectual property rights, and competition policy. Digital trade and women and young people in the trade are also in phase two.[75]

Trade in goods and services have two distinct legal instruments and were negotiated in two different ways in the first round of AfCFTA negotiations.[76]

Negotiations on trade in goods covered tariff liberalization, NTBs, rule of origin, trade facilitation, customs cooperation, harmonization, transit and transit facilities, trade remedies,

71 World Bank,(2020) (supra note 61) p2

72Ibid

73 AU, Press Release N°05/ 2015, The African Union Assembly launches the Continental Free Trade Area (CFTA) negotiations

74 Assembly/AU/11(XXV)

75 Pettinotti, L., Hasham, N., & Naliaka, L., 'Intellectual property and women’s economic empowerment in Africa' (2023) ODI Brief , p. 2.

76 Report to the Specialized Technical Committee on Trade, Industry and Minerals: Progress on the AfCFTA for the period from May 2016 to December 2018, AUC/DTI/AfCFTA/STC/Rep/D, page 1, available at https://au.int/sites/default/files/newsevents/workingdocuments/35970-wd-ti23937_e_progress_report_on_the_afcfta-_may_2016_to_dec._2018.pdf.

safeguards, standards, technical barriers to trade, sanitary and phytosanitary protection, dispute settlement and institutional agreements.[77]

The REC's tripartite FTA negotiations on trade in goods serve as an important pillar for the CFTA negotiations, and draw lessons from the experience of tripartite free trade agreements regarding the challenges of negotiating a trade agreement that involves numerous parties with diverse interests and different developmental stages are involved.[78] For example, the approach to rules of origin in the tripartite FTA negotiations between EAC, COMESA, and SADC is product-specific and only around 25% of product types have agreed rules of origin.[79] Unlike the TFTA's RoO negotiations, the CFTA takes a different, simpler approach.[80]

The FTAs of the RECs, on which the CFTA is to be based, had various degrees of success and experience in their efforts to liberalize trade in goods. In order to apply the Acquis reservation principle, the CFTA should try to employ the best intra-regional trade liberalization techniques. The higher degrees of trade liberalization that States Parties who are also members of other RECs have attained among themselves must be preserved and, whenever appropriate, improved upon.[81]

'State Parties agreed to cut tariffs on 90% of the goods traded among themselves in equal annual installments until they are removed within five years for non-Least Developed Countries (LCDs) and ten years for Least Developed Countries (LDCs) under the Phase One Protocol on Trade in Goods.'[82] Tariffs will be removed on an additional 7% of "Sensitive" items in 10 years for non-LDCs and 13 years for LDCs.[83] In order to provide flexibility for State Parties with specific sensitivities, the remaining 3% of "Excluded" products will keep existing tariffs; however, they will be subject to review every five years.[84]

The trade-in services negotiations, which began in June 2018, are focused on five key industries: financial services, transportation, telecom/information technology, professional services, and

77 Protocol on trade in goods, art 3

78 F. Fajana,(supra note 41), page 2

79Ibid p3

80Ibid

81Protocol on Trade in Goods , article 8(2)

82 AU Summit 2023: Powering trade through AfCFTA, available at https://www.un.org/africarenewal/magazine/february-2023/au-summit-2023-powering-trade-through-afcfta

83 Ibid

84 Ibid

tourism.[85] The benefits of service liberalization are not limited to the services industry and are advantageous to all other economic activity that depends on services.[86]

While the REC FTA acquis was expected to establish trade in services liberalization similar to trade liberalization in goods, but there was no agreement on trade in services in the tripartite FTA that could serve as a reference point in CFTA negotiations.[87] However, both tripartite RECs and non-tripartite REC member RECs have service development and trade liberalization programs, and these programs formed the basis of the CFTA negotiations on trade in services.[88] The RECs established a regulatory body for services trade liberalization and some Member States' experiences from the service sector at the WTO assist in the liberalization of the trade in services.[89]

RECs are dedicated to promoting the free movement of people within their regions and have adopted protocols to support this movement, helping to launch a common passport to better integrate their laboratory into our professional services market, and guaranteeing the REC the freedom of capital transfer, the professional income of foreign workers, and equal treatment.[90] The Secretariat, working with State Parties, RECs, and partners, shall coordinate the provision of technical assistance in service trade liberalization.[91]

The AfCFTA Agreement, Protocol on Trade in Goods, Protocol on Trade in Services, Protocol on Rules and Processes for the agreement of dispute resolutions, and its additions and supplements were all the results of phase one negotiations.[92]

The Investment, Competition, and Intellectual Property Protocols have been concluded and approved by the 36th Regular Session of the African Union's Assembly of Heads of State. [93]

85 World Bank,(2020)(supra note 61) p15

86 Ibid

87 F. Fajana,(supra note 40), P6

88 Ibid p5-6

89 Ibid

90 Ibid88, P5

91 Protocol on trade in service ,art 27(3)

92 TralacBlog, AfCFTA Phase II and III Negotiations – Update, https://www.tralac.org/blog/article/15090-afcfta-phase-ii-and-iii-negotiations-update.html

93 A new era of trade in Africa , The African continental free trade area (AfCFTA) secretariat, available at https://au-afcfta.org/?jet_download=12848

This round of negotiations on digital trade and on women and young people in trade is currently underway.[94]

The AfCFTA is concerned with promoting facilitating and regulating intra-African investment to support Africa's transformation and sustainable development, as expressed in Agenda 2063.[95] Investments have a significant impact on the host country's wider social, environmental, and human rights spheres in addition to producing profits for their shareholders. As a result, the aim of the investment negotiations was to liberalize investment flows and remove investment restrictions between countries, taking into account the positive and negative effects of investments in the host country.

Every African country has signed at least one BIT, and each of the eight RECs that serve as the framework for the AfCFTA has at least one document that is either directly or indirectly related to investment.[96] The SADC, COMESA, ECOWAS, and EAC are significant regional organizations that have taken action to support the harmonization of the investment laws and policies of their member states through the adoption of various investment guidelines, protocols, and treaties.[97] Therefore the basis for the CFTA investment negotiations was the experience gained by each member state through participation in numerous multilateral investment frameworks at global and continental levels, Pan-African Investment Code, national investment laws, as well as various investment guidelines, protocols, and treaties issued by RECs.

The main objective of the adopted investment protocol is to promote a favorable investment climate in the member states by creating a fair, transparent, accountable continental investment regulatory framework that is predictable and mutually beneficial and which aims to promote the development of a dynamic and competitive private sector economy.[98]

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94 Ibid

95 Max Mendez-Parra, 'AfCFTA investment negotiations, Notes on concepts' (May 2020) 16, available at https://set.odi.org/wp-content/uploads/2020/06/AfCFTA-investment-training-notes-concepts.pdf

96 Rwatida Mafurutu, 'The AfCFTA Investment Protocol: preparations for the negotiations and expectations' (9 Dec 2021), available at https://www.tralac.org/blog/article/15456-the-afcfta-investment-protocol-preparations-for-the-negotiations-and-expectations.html, last accessed 13. Apr. 2023 21:00:36 GMT

97 Ibid

98 Ayele, Y., Belete, M. and te Velde, D.W. (2022) 'The AfCFTA Protocol on Investment: issues and potential impacts'. London: ODI, p11

The Protocol also requires member states to support recognized protection standards such as NT, MFN, and non-expropriation without compensation.[99] These requirements are subject to exceptions that protect the regulatory discretion of contracting states.[100]
With respect to existing or future bilateral and regional investment agreements between Member States, the Protocol obliges Member States to terminate existing BITs concluded with each other within five years of the entry into force of this Agreement and also prohibits Member States from signing new BITs between them to optimize them the continent's investment landscape for African investors.[101] While there is no direct obligation to terminate or review investment agreements with third parties, the Protocol recommends considering the requirements therein when negotiating and reviewing existing IIAs with those third parties. . [102]

In a free market, laws and policies promoting competition and consumer protection safeguard the rights of consumers, improve market efficiency in each market and strengthen the competition among businesses in every business.[103] The guiding principles of MFN and NT, on which the CFTA agreements would likely be based, will help in establishing an effective CFTA competition policy.[104]
The regional regulatory frameworks and institutions that govern competition served as models for the formation of the CFTA competition policy. Some RECs have adopted policies relating to competition, such as the East African Community (EAC) Community Competition Act, the Southern African Development Community (SADC) Treaty's provision for an enforcement cooperation network, the SACU Treaty's promotion of cooperation in the enforcement of competition law and policy, and the ECOWAS Regional Competition Policy Framework.[105] The

99 UN Economic Commission for Africa, "Deepening the AfCFTA (16 March 2023): celebrating the adoption of new protocols on investment, intellectual property rights, and competition policy," UNECA, Accessed on 17 May 2023 17:15:00 GMT). Available at: https://www.uneca.org/stories/%28blog%29-deepening-the-afcfta-celebrating-the-adoption-of-new-protocols-on-investment%2C.

100 Ibid

101 Ibid

102 ibid

103 World Bank,(2020)(supra note 61), page 145

104 F. Fajana, p9

105 Ibid 95, p146

ECOWAS Regional Competition Policy Framework has been a good basis for creating the CFTA's competitiveness policy.[106]

The primary aim of the recently adopted Competition Policy Protocol is to eradicate anti-competitive behaviors and other restrictive practices in order to enhance market effectiveness and promote inclusive economic growth.[107] Its objective is to safeguard the benefits of trade liberalization by preventing any negative impact caused by anti-competitive practices. The Competition Protocol will have a significant role in promoting fair competition across Africa, leading to reduced consumer prices and fostering improved business practices that contribute to the socio-economic transformation of the continent.[108]

The AfCFTA Competition Tribunal is established under the protocol as an independent entity to hear appeals against the AfCFTA Competition Authority's rulings; in the future, the Council of Ministers will establish the procedures for the tribunal's operation.[109]

Regional organizations such as the Pan-African Intellectual Property Organization and the African Regional Intellectual Property Organization, as well as regional cooperation in intellectual property management, supported the AfCFTA negotiations on intellectual property rights, and a continental regulator could help harmonize regulation and policy to implement measures.[110]

The Protocol on Intellectual Property Rights acknowledges the significant importance of intellectual property in stimulating innovation and driving economic progress, particularly in a global economy that heavily relies on knowledge-based industries.[111] African nations have invested in building domestic intellectual property laws and are signatories to a number of international agreements.[112] The objective is to facilitate the realization of the AfCFTA objectives by establishing unified regulations and principles that promote, safeguard, and enforce intellectual property rights.[113] The Protocol upholds the notion of honoring existing agreements

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106 F. Fajana, p9

107 UN Economic Commission for Africa, "Deepening the AfCFTA (16 March 2023)(supra note 99)

108 Ibid

109 Ibid

110 Ibid

111 Ibid

112 Ibid

113 Ibid

at national, regional, and global levels by offering a framework that aligns with previous international intellectual property treaties.[114]

The Protocol places significant importance on providing technical support, fostering comprehensive collaboration, and enhancing capabilities in the management and enforcement of intellectual property rights.[115] It takes a proactive approach towards emerging technologies and gives special consideration to the requirements and interests of micro, small, and medium-sized enterprises, as well as women entrepreneurs and young entrepreneurs.[116]

Negotiations are currently underway on digital trade and on women and young people in trade. Regional Economic Blocks (RECs) could play an important role in data protection and enforcement, particularly in harmonizing laws and pooling resources to support enforcement in underperforming countries.[117] From the RECs, SADC and ECOWAS mandate their member states to set up a data protection authority to combat data breaches and their enforcement. This is the only binding regional privacy agreement in effect in Africa to date.[118]

Therefore, the AfCFTA digital trade Protocol can build on current principles under the AU Convention on Cyber Security and Personal Data Protection regarding enabling the free movement of data within regions, consistent with REC member states' interest in ensuring security and privacy protection, supporting a single global internet, cooperating on cyber-security, protecting the personal information of consumers and protecting against fraud, and defining generally accepted principles.[119]

Therefore, the scope of CFTA negotiations includes negotiations on trade in goods and services, investment, intellectual property rights, competition policy, digital trade, and women and youth in trade. The first and second phases of the discussions are largely completed and Negotiations on digital trade and women and youth in trade are currently ongoing.

114 Ibid

115 Ibid

116 Ibid

117 Banga, Karishma; Macleod, Jamie; Mendez-Parra, Max; (2021-04), Digital trade provision in the AfCFTA: What can we learn from South-South Trade Agreements? Addis Ababa. © UN. ECA, https://hdl.handle.net/10855/43949, Decision Ext/Assembly/AU/Decl.1(XII) of 5 January 2021

118 Ibid

119 Ibid

The AfCFTA negotiation supportive units are the Assembly of Heads of States and Government, African Union Ministers of Trade (AMOT), Committee of Senior Officials, AfCFTA-Negotiating Forum (NF), Stakeholders Participation, Technical Working Groups (TWGs), and Continental Task Force. The AfCFTA-Negotiating Forum (AfCFTA-NF), Senior Trade Officials (STOs), and African Union Ministers of Trade (AMOT) are the institutions involved in the negotiations.[120] The CFTA Negotiation Forum was created by the Assembly and is made up of officials from the African Union member states and eight regional economic communities recognized by AU.[121]

The AUC will serve as the CFTA Negotiating Forum's secretariat and organize technical and administrative support for the negotiations.[122] Based on the agreed-upon scope of discussions, the Commission shall create background materials and documents as input for the CFTA Negotiation Forum.[123] The AUC will work actively with the RECs, the ECA, and the AfDB in order to perform this duty and to organize the activities of every organization participating in the negotiations.[124]

2.2.4. Principle of AfCFTA

When negotiations for an African Continental Free Trade Area (CFTA) began, a set of negotiating principles were adopted that served as the basis for the tripartite free trade area (TFTA) process and introduced a hybrid model for the negotiation modalities of both State's parties and non-state parties guiding the negotiation process.[125] This contradicts initial

120Report to the Specialized Technical Committee on Trade, Industry and Minerals: Progress on the AfCFTA for the period from May 2016 to December 2018, AUC/DTI/AfCFTA/STC/Rep/D (African Union Commission, page 1), available at https://au.int/sites/default/files/newsevents/workingdocuments/35970-wd-ti23937_e_progress_report_on_the_afcfta-_may_2016_to_dec._2018.pdf.

121 The 1st Meeting of the Continental Free Trade Area Negotiating Forum (CFTA-NF),available at https://au.int/fr/node/21011, last accessed, 4 Apr. 2023 09:52:06 GMT

122 Assembly/AU/11(XXV) Annex III, p 4

123 Ibid

124 Ibid

125Common Market for Eastern and Southern Africa, Special Report, Dr. Chris Onyango, Director of Trade and Customs COMESA Secretariat, https://www.comesa.int/wp-content/uploads/2020/09/Tripartite-FTA-is-ideal-for-strengthening-AfCFTA.pdf expectations that RECs would speed up the process.[126] The principle was later adopted in the AfCFTA in Article 5 of the agreement. Therefore, the AfCFTA agreement is governed by the following principles:

The AfCFTA is a member-driven Free Trade Area (FTA) in which all decisions by States Parties and AfCFTA institutions are made on a consensus basis. This means that new AfCFTA legal instruments will be concluded through negotiations involving all African Union (AU) member states and will only be adopted once they have reached a consensus on their content.[127] As the participating countries have different backgrounds and different political needs, these negotiations may take some time.[128] According to the AfCFTA, all participating countries must agree on the text of a new AfCFTA protocol and its annexes before it can be adopted.[129]

The AfCFTA protocol on trade in goods and services gives member states flexibility in case of disagreements. Two or more Contracting States may grant each other preferences aimed at achieving the objectives of the Protocol between themselves, provided that these preferences are also granted to the other Contracting States on an equal footing.[130]

The AfCFTA Negotiating Forum has mandated that member states lead the negotiations, and the RECs can participate in the discussions and advise on behalf of their members. Hence, the CFTA-NF has established a distinct separation between the position of Member States and RECs.[131]

The AfCFTA builds on the acquis of the existing REC free trade agreements, i.e. on what already exists. According to this concept, negotiations must start where trade negotiations arrived, and REC FTAs would continue to exist and function under their own legal frameworks.[132] The acquis concept is also mentioned in the interpreting clauses of Article 19(2) of the AfCFTA Agreement. The adoption of this principle was recognized in the protocols on

126 Ibid

127 Gerhard Erasmus(23 Jan 2023), The AfCFTA Principles and the promotion of the Interests of Women

128 Ibid

129 Ibid

130 Art 4(3) AfCFTA Protocol on Trade in Goods. See also Art 4(3) AfCFTA Protocol on Trade in Services.

131 Ibid

132 Gerhard Erasmus (2021), AfCFTA Parallelism and the Acquis, available at https://www.tralac.org/blog/article/15085-afcfta-parallelism-and-the-acquis.html

trade in goods and services.[133] The AfCFTA agreement does not repeal, change or eliminate the rights and obligations of the contracting states under pre-existing trade agreements with third parties.[134] The AfCFTA is also subject to the principle of best practice in the RECs, in States Parties and in international conventions binding on the African Union.[135]

The variable geometry principle is a concept that first emerged in the EU integration process, meaning that integration is progressing at different speeds.[136] Besides the EU, the concept of variable geometry gained attention after the collapse of the Doha Development Agenda in the WTO system and other integration initiatives due to the difficulty in reaching consensus among WTO member states.[137]

It is challenging to liberalize trade simultaneously throughout African nations due to their diverse levels of development. As a result, the flexible geometry principle is crucial for minimizing the short-term costs of liberalization by adapting the various levels of economic growth and commitment or giving more time to implement agreed trade and other commitments to the integration agenda.[138]

Under the variable geometry principle, States are free to decide the speed of their integration process and have the choice of accepting or rejecting various agreements implementing the legal contract.[139] This will make it possible for many countries to join the free trade area, but it will also make it more difficult for them to fully realize their goals by the predicted date.[140]

The "variable geometry" approach, which is also the basis of the AfCFTA, enables issues and agreements to be "decomposition" and handled in stages, further adjusting the agreement's structure and outcomes. The progressive trade agreement methodology of the AfCFTA makes

133 Art 8(2) AfCFTA Protocol on Trade in Goods. See also Art 18 AfCFTA Protocol on Trade in Services.

134 AfCFTA, art.18(3)

135 AfCFTA art 5(I)

136Afrononomicslaw.org, Variable Geometry of African integration and AfCFTA, p1, available at https://www.afronomicslaw.org/2019/06/28/variable-geometry-of-african-integration-and-afcfta, Last accessed 10 Apr. 2023 06:58:34 GMT

137 (Afrononomicslaw.org)136

138 Ibid

139 Ibid

140 Ibid

variable geometry clear, and it is mentioned in several of the AfCFTA's sections. Articles 6, 7, and 29 of the Protocol on Trade in Goods encourage flexibility in the AfCFTA's implementation.

AfCFTA agreements also include the most favored nation principle (MFN). The most-favoured-nation approach basically means that any trade advantages granted to one contracting party must be extended to all other contracting parties. Pursuant to Article 18 of the Agreement, the Contracting States grant each other mutual preferences in the implementation of the AfCFTA Agreement, which are no less advantageous than those offered to third parties.[141] Therefore, in implementing the AfCFTA, States Parties must grant each other benefits no less favorable than those accorded to third parties on a reciprocal basis.[142]

The reciprocity principle, which stipulates that agreements between member states apply to other contracting states on a reciprocal basis, was recognized in the AfCFTA agreement. Even while "reciprocity" would be acknowledged and is incorporated in several of the AfCFTA's provisions, the Article 5 Principles of the agreement clearly incorporate flexibility and SDT.[143]

Despite the criticisms of variable geometry and flexibility contained in the AfCFTA Agreement, State Parties made a deliberate choice to adopt the principle of Special and Differential Treatment (SDT), which ultimately gives national governments an abundance of room to change direction in order to sequence pro-development policies in a way that enables them to achieve clearly defined national policy objectives.[144]

The AfCFTA offers special and differential treatment in a number of ways, expanding upon customary special and differential treatment to provide place for a fresh, modern, and guided by rules system for special and differentiated treatment.[145] Depending on the level of economic development of the member states, the trade agreement will have different effects on them. In order to reduce the impact of larger economies on smaller ones, the agreement provides for a

141 Art 18(1) AfCFTA agreement, see also Protocol on Trade in Goods article 4(1)

142 AfCFTA Agreement (supra note 4) art.18(1)

143 Kuhlmann, K., 'The African Continental Free Trade Area: Towards a New Legal Model for Trade and Development' (2020) 51 Geo. J. Int'l L. 4, 757-758, p 770

144 Eghosa Ekhator (September 19, 2020), AfCFTA: An emergent concept of 'Lex Mercatoria Africana'? Afronomicslaw, Available at https://www.afronomicslaw.org/2020/09/19/afcfta-an-emergent-concept-of-lex-mercatoria-africana, Last accessed 10. Apr. 2023 07:14:25 GMT

145 Kuhlmann, K., p 770

differentiated liberalization period.[146] Special consideration is given to the least developed nations. Due to experience from the largest growth of industrial products and a transitional period for liberalization, this differential treatment may result in more advantages for smaller economies.[147]

While the AfCFTA's special and differentiated treatment provisions are very broad, partner states are expected to face issues associated with such treatment, such as inadequate administration, an absence of clarification, and inadequate mechanisms for monitoring and sharing best practices.[148]

State Parties shall provide flexibility to other State Parties at different degrees of economic development or that have distinctive specificities as acknowledged by other State Parties, in order to achieve the AfCFTA's goal of ensuring comprehensive and mutually beneficial trade in products.[149] ‘The AfCFTA follows a novel RTA model in that it is a "progressive" or "incremental" trade agreement, with commitments and negotiating rounds staggered across time and tailored to the interests and capacities of the negotiating parties.’[150]

The AfCFTA agreement accepted the substantial principle and emphasized the importance of providing large economic opportunities for African countries. Implement protectionist measures initially to protect strategic industries, improve the business environment for investors, and strengthen investment in digital transition, as well as other socioeconomic measures. For example, prioritize strategic sectors in national investment plans, establish simplified trading regimes, and invest in trade-related infrastructure, and fund education and training to improve workers' skills.

The AfCFTA provides for regular reviews of the agreement, which are presently planned to occur every five years, as well as the chance to negotiate additional instruments that will afterwards be a part of the agreement.[151]

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146 ALBERT, T. (2019): The African Continental Free Trade Agreement: Opportunities and Challenges. Geneva: CUTS International, Geneva. P19

147 Ibid p20

148 Ibid

149 Kuhlmann, K., p771, See also Protocol on Trade in Goods, art. 6.

150 Ibid p 758

151 Ibid p771, see also arts. 8(3) and 28(1) of Agreement establishing AfCFTA

The AfCFTA agreement included the principle of national treatment, which prohibits discrimination between domestic and imported goods. When it comes to market access, the national treatment principle ensures fair competition between domestic and imported goods and at the same time helps to reduce trade barriers overall for equal treatment. The principle of national treatment ensures fair competition between domestic and imported goods in terms of market access, the removal of all trade restrictions on grounds of fairness and the need to remove all restrictions on the ability of domestic goods to compete with imported goods in the market.[152]

The agreement also expressly mentions sustainable development in its design, evoking wording from the WTO's Preamble, and include sustainable and inclusive socioeconomic development, gender equality, and food security, all of which are aligned with Agenda 2063's Sustainable Development Goals.[153] It is comparable to the TFA of the WTO, which provides for gradual implementation of commitments and adapts them to the requirements and capacities of the various states.[154]

Overall, the structure and approach of the AfCFTA point to a transition to a more formalized and advanced strategy for putting SDT into practice. The implication is that the AfCFTA is moving away from a defensive mindset. This is evident through its incorporation of varied approaches, such as variable geometry, a personalized and distinct approach, and a focus on incremental regulation based on African law established through the RECs. Instead, the AfCFTA is embracing a more normative strategy that enables for the utilization of substantive law to drive progress and bring about meaningful changes.[155]

2.2.5. AfCFTA Implementation Conditions and the Function of RECs

The AfCFTA will be implemented in phases, depending on member states' and leaders' dedication to seeing it through, and also on their ability and willingness to organize and bring together trade policy at the national, regional, continental, and international levels.[156] The African

152 Matthias Herdegen, Principles of International Economic Law (Oxford University Press, 2013).

153 Ibid, see also AfCFTA Agreement arts. 3(e $ g)

154 Ibid

155 Ibid

156 AU, 'Conditions For Success In The Implementation Of The African Continental Free Trade Agreement' (African Union, 2020), Available at, https://au.int/en/documents/20200209/conditions-success-implementation-african-continental-free-trade-agreement

Union's Action Plan to Boost Intra-African Trade identifies seven main action clusters that member states must strengthen through the effective implementation of activities and programs.[157] Factor market integration, trade policy, trade facilitation, procedural capacity, infrastructure related to trade, trade financing, and trade intelligence are among the activities of the clusters.[158]

The African Union adopted "Year of AfCFTA: Acceleration of the African Continental Free Trade Area Implementation" as its 2023 theme.[159] The objective is to increase political commitment, speed up the AfCFTA's implementation, and fully benefit African citizens in order to achieve Agenda 2063's aspirations and objectives.[160]

The AfCFTA Guided Trade Initiative is helpful in introducing commercially viable trade mechanisms under the AfCFTA. Its specific objectives are to enable the economic viability of trade under the AfCFTA Guided Trade Initiative, to test the operational, institutional, and legal and trade environment in the AfCFTA framework, and to encourage African economic actors.[161] Eight States Parties were involved in the initiative: Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia.[162]

‘The AfCFTA Guided Trade will prioritize trade in services, specifically in areas such as tourism, transportation, business services, communication services, financial services, transportation services, and tourism and travel-related services, with the aim of improving implementation and fostering greater inter-regional and intra-African trade for enhanced economic development.’[163]

157 African Trade Policy Centre of the Economic Commission for Africa and World Trade Organization, 'Promoting connectivity in Africa: The role of Aid for Trade in boosting intra-African trade' (World Trade Organization, p. 12), available at https://www.wto.org/english/tratop_e/devel_e/a4t_e/promotingconnect17_e.pdf

158 Ibid

159 AU Summit 2023: Powering trade through AfCFTA, available at https://www.un.org/africarenewal/magazine/february-2023/au-summit-2023-powering-trade-through-afcfta

160 Ibid

161 The AfCFTA Updates(2022), The AfCFTA Guided Trade Initiative, available at https://au-afcfta.org/2022/09/the-afcfta-guided-trade-initiative/(Accessed on 22 May 2023 21:26:08 GMT)

162 Ibid

163(AU Summit2023)159

RECs are essential to the implementation of Agenda 2063, including the AfCFTA, and also serve as an economic basis for African integration.[164] Effective collaboration between RECs and the AfCFTA Secretariat is necessary to ensure that AfCFTA outcomes are consistent with past regional progress in trade integration and projections for the future.[165]

'The year-long initiatives will reinforce collaboration among Member States, RECs, AU institutions, the private sector, development partners, and other stakeholders to mobilize and implement measures that will enhance intra-African trade.'[166] The AfCFTA will leverage the advancements made by the 8 Regional Economic Communities (RECs) in their customs unions, free trade zones, and other trading agreements, as it implements the agreement.[167]

The AfCFTA Secretariat, the African Union Commission, and the Regional Economic Communities (RECs) have been tasked with developing a cooperative framework to improve program and activity complementarity and alignment in order to facilitate the successful implementation of the AfCFTA.[168]

Therefore, RECs play a crucial role in the implementation of the AfCFTA Agreement by offering institutions and structures that support intra-African trade, such as trade facilitation using their current tools and mechanisms, removing trade barriers, and encouraging the use of their nontariff barrier (NTB) reporting mechanism.[169] In addition, by supporting the training and development of national customs administrations to implement AfCFTA regulations, they will continue to play an important role in areas other than trade and economic integration, such as governance, mobility, health and other related topics.[170] They will be instrumental in mediating disputes arising from AfCFTA implementation to ensure that these disputes do not impede AfCFTA implementation and application.[171]

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164 AU,(2020)156, p14

165 Pan African Chamber of commerce, AfCFTA: Why regional support is crucial for effective implementation, https://www.pacci.org/afcfta-why-regional-support-is-crucial-for-effective-implementation/ available at

166 AU Summit2023)159

167 Ibid

168 Ibid

169 Bisong A, 'ECOWAS and the role of the RECs in AfCFTA implementation' (2020) The African Continental Free Trade Area: From agreement to impact – Volume 9, Issue 1, p. 24.

170 Ibid

171 Ibid

2.2.6. Institutions established to facilitate the implementation of AfCFTA.

The African Continental Free Trade Agreement (AfCFTA) is made up of four key institutions that will be responsible for guaranteeing the project's success. The four main institutions of the AfCFTA are the Assembly of the AU, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat.[172]

The Assembly will supervise and direct the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT), on the advice of the Council of Ministers, and will have the sole authority to adopt interpretations of the Agreement.[173] The adoption of an interpretation must be decided by a majority of the participants.

The Council of Ministers is in charge of ensuring that the Agreement is implemented and enforced properly, as well as taking all necessary actions to further the AfCFTA's objectives.[174] On behalf of the Council of Ministers, the AU Executive Council will provide a report to the Assembly.

The Committee of Senior Trade Officials shall be composed of Permanent or Principal Secretaries, or other officials designated by each State Party, and shall be responsible for ensuring the implementation of the Council of Ministers' decisions; developing programs and action plans for the implementation of the Agreement; and monitoring and ensuring the proper functioning and development of the AfCFTA in accordance with its provisions.[175]

The Secretariat will be a functionally autonomous organization inside the African Union system with its own legal personality, separate from the AU Commission, and funded from the AU's total annual budgets.[176] The Council of Ministers of Trade will determine the Secretariat's tasks and responsibilities.[177]

'The African Union Development Agency-NEPAD (AUDA-NEPAD) is conducting a series of studies aimed at generating relevant knowledge and data to support and enhance Member States' capacity and skill to implement the AfCFTA, particularly with regard to strengthening strategic policy alignment and coherence, ensuring top quality, and supporting the upcoming African

172 AfCFTA Agreement (4) Art 9

173 AfCFTA Agreement (4) Art 10

174 Ibid art 10

175 Ibid art 12

176 Ibid art13

177 Ibid

Union's AfCFTA secretariat, with a focus on implementation in line with Agenda 2063 development aspirations and in support of the upcoming African Union's.'[178]

The RECs provide institutions and mechanisms that assist intra-African trade as well as institutional representation and advising role in the Committee of Senior Trade Officials.[179]

2.2.7. The legal status of RECs under the African Continental Free Trade Area

The African Continental Free Trade Area (ACFTA) enters into force 30 days after member nations delivered the Chairperson of the African Union Commission (AUC) with 22 instruments of ratification.[180] After 22 member nations handed their instruments of ratification to the AUC Chairperson, the ACFTA agreement went into force on May 30, 2019.[181] As a result, on May 30, 2019, the ACFTA agreement became legally binding and went into effect.

The ACFTA secretariat will coordinate the agreement in order to create an autonomous institutional body with its own legal personality inside the African Union. The ACFTA secretariat collaborates with the AU Commission and its departments, and the commission provides support until the secretariat is fully operational.

Regional economic communities play a significant role in the development of inter-African trade. The AfCFTA treaty emphasizes the important role of the RECs Free Trade Areas in the AfCFTA program by asserting that the RECs' Free Trade Areas would be the AfCFTA's building blocks.[182] The concept is that the RECs, with their extensive experience in political and economic integration in Africa, would contribute their knowledge and lessons learned to the development of the AfCFTA.[183] They are contributing throughout the negotiating process by sharing their institutional, legal, technical, issue-to-trade, and regional cooperation experiences.

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178 African Union Development Agency (AUDA-NEPAD)(2020), Conditions for Success in the Implementation of the African Continental Free Trade Agreement, p 4, Available at https://au.int/en/documents/20200209/conditions-success-implementation-african-continental-free-trade-agreement, (Accessed on 6 May 2022 12:12:24 GMT)

179 Article 12 (5) of the AfCFTA Agreement

180 AfCFTA Agreement (4) art.23(1)

181 AU, 'Decision on the Launch of the Operational Phase of the AfCFTA' (12th Extraordinary Session of the Assembly, 7 July 2019, Niamey, Niger) Ext/Assembly/AU/Dec.1(XII).

182 AfCFTA Agreement (4) Art 5

183 Erasmus G, 'The meaning of building blocks for African integration is defined by the applicable legal instruments and subsequent practice' (2022), available at https://www.tralac.org/blog/article/15546-the-meaning-of-building-blocks-for-african-integration-is-defined-by-the-applicable-legal-instruments-and-subsequent-practice.html, (accessed on 5 May 2022 08:48:23 GMT)

Today, the African continent has multiple economic communities, and practically all African countries are members of several regional economic communities. Presently, in spite of various regional economic communities in Africa, only eight are recognized as Pillars of the AEC. Hence, only eight regional Economic communities bestowed the status of building blocks beneath the AfCFTA agreement. The status of the AfCFTA's relationship with other African regional trade agreements that have not been recognized as AfCFTA building blocks is unclear.

One of the purposes of the AfCFTA is to promote continental economic integration by resolving the challenges of numerous African economic group members. Aligning state members' overlapping regional groups with their AfCFTA treaty responsibilities will need effort and commitment.[184] Therefore, clarifying the status of African regional trade agreements that aren't recognized as AfCFTA building blocks is crucial to the continent's economic integration.

The aforementioned regional economic communities, as well as others that are not recognized by the AU as AEC building blocks, contribute to economic integration and growth for their members and the African continents as a whole.

Sustainable economic development and promotion of the development agenda are all aided by regional integration. There's an exertion toward economic integration at the regional and continental levels in Africa. Many African countries have been organized as members of one or more regional or sub-regional organizations to promote socioeconomic growth and increase integration among member governments, further addressing concerns of public governance, security, and other political situations.

Besides regional agreements, efforts are being made to create continental economic cooperation between African countries. There are still many obstacles to be overcome and severe problems that need to be addressed despite the efforts made to attain continental integration in Africa. These are issues of reality that conflict with the goal of regional integration enshrined in treaties, protocols, and instruments. Many African countries are members of multiple regional or sub-regional integrations, which may compete, clash, or overlap. The existence of a development gap between African countries, poverty, a lack of infrastructure and contemporary communication, a

184 Prince Nwafuru, "Are the RECs building or stumbling blocks to the success of the AfCFTA, Available at https://nairametrics.com/2022/04/28/are-the-recs-building-or-stumbling-blocks-to-the-success-of-the-afcfta/, (Accessed on 6 May 2022 08:23:09 GMT)

lack of financial facilities, a lack of port and customs quality, and political instability is also a fundamental obstacle to African regional integration.[185] Another issue is that African RECs are not fundamentally centered on financial integration; however, all RECs have political will.

The commitment of RECs and their members was important in overcoming such obstacles to regional and continental economic integration. At the national, regional, and continental levels, the RECs and member state coordinate and harmonize trade policies in accordance with the agreements, protocols, various declarations, and decisions relating to African economic integration.

The existences of a strong interface between economic communities guided by legal frameworks are also fundamental for economic integration. As a result, effective economic integration is inconceivable to imagine without solving legal framework issues related to the interface between economic communities. To accomplish viable economic integration in Africa nearness of strong relationships between RECs, AEC, AfCFTA, and AU are inevitable.

185 United Nations, Economic Commission for Africa, African Union Commission, and African Development Bank. "Assessing regional integration in Africa ARIA IX, Next steps for the African continental free trade area." Addis Ababa, © UN. ECA, 2019. https://hdl.handle.net/10855/42218.

CHAPTER THREE

ANALYSIS OF THE LEGAL FRAMEWORKS MANAGING THE INTERFACE BETWEEN THE AFCFTA AND RECS

3.1. Analyzing the legal frameworks govern the linkage of the AFCFTA and RECs

The existence of a solid linkage between different economic groups upheld by legal systems is vital to accelerating economic integration in progress. In order to achieve economic unification in Africa, the African Union (AU), regional economic communities (RECs), African Economic Community (AEC), and African Continental Free Trade Area must all work together, and their linkage must be explicitly defined and governed by the legal framework.

The protocol on the relationship between the AU and RECs governs the interface between the African Union and Regional Economic Communities. The protocol aims to formalize, consolidate and promote the close cooperation between the RECs and the AU through the cooperation and adjustment of their programmes, measures and conditioning in all areas and sectors and to provide a framework for cooperation in the conditioning of the RECs to offer in their involvement in the implementation of the founding acts of the African Union and the AEC Treaty alike.[186]

The linkage between the Regional Economic Communities and African Economic Community is governed by the protocol on the relation between the AEC and RECs'.[187] Its purpose is to provide guidelines for managing the relationship between the AEC and RECs, ensuring the alignment and coordination of their strategies, policies, programs, and activities.[188]

When it comes to the AEC and the AU, the AEC Treaty explicitly states that the AEC is a vital component of the AU,[189] and also the Treaty, as well as the protocols approved under it, will become part of the AU Charter.[190] The provisions of the AU Constitutive Act shall prevail over

186 Oppong, R.F,(2009) 6, see also Protocol on Relations between the African Union and the Regional Economic Communities, art 3(a ,b)

187 Protocol on relations between the African Economic Community and the Regional Economic Communities ,25 day of February 1998,Ethiopia Addis Ababa, Art 2

188 Ibid, Preamble Para 6

189 Abuja treaty, art 98(1)

190 Ibid art 99

any provisions of the AEC Treaty that are inconsistent or in contradiction.[191] Hence, there are treaties and protocols that govern the relationship between the African Union (AU), regional economic communities (RECs), and African Economic Community (AEC).

Since the AfCFTA aims to create a free market on the African continent, effectively managing its relationships with regional trade agreements will be crucial to attaining its intended objectives. AfCFTA members are signatories to various RECs and organized under different regional integration frameworks and were members of one or more regional or sub-regional organizations to promote socio-economic development, strengthen integration between member states, and resolve issues of public administration, security, and other political situations.

Multiple memberships at once, duplication and burdensome compliance requirements of several trade agreements, and difficulty fulfilling contributions and other responsibilities to all its RECs.[192] The same traded product may have varying regulations in its country of origin and destination, which could hinder the enforcement and standardization of trade laws.[193]

The AfCFTA agreement has a number of goals, one of which is to speed up regional and continental integration by addressing issues with the membership of various African regional economic groupings that have not yet been resolved. The agreement preserves state parties' right to govern inside their borders, as well as their flexibility in pursuing legitimate policy goals such as public health, safety, the environment, public morality, and the social protection of multiculturalism.[194]

The agreement also consolidates existing rights and obligations of member states from other agreements they are party to and recognizes the Free Trade Areas of the Regional Economic Communities (RECs) as building blocks for the creation of the AfCFTA.[195]

As explained in the second chapter of this paper, the principles of the preservation of the acquis and best practices in the RECs, in the State Parties, and in International Conventions binding the African Union have been accepted under article 5 of the AfCFTA agreement. Article 19 the agreement further acknowledges that members of other regional economic communities, regional

191 AU Constitutive Act, article 33(2)

192 UNECA (2020)13,p50

193 Ibid

194 AfCFTA Agreement (4) Preamble Para 9 & 10

195 Ibid

trading blocs and custom unions that have achieved higher levels of regional integration among them than those stated in this Agreement will maintain those higher levels among themselves.[196]
Article 8 of the Protocol on Trade in Goods and article 18 of the Protocol on Trade in Services both recognize the need of preserving the acquis of the current REC FTAs and best practices within the RECs.

Article 3 of the agreement aims on the one hand to solve the multiple memberships of RECs in order to accelerate the regional and continental integration processes, on the other hand the agreement preserves the best practices and the existing legal body in the RECs according to Articles 5 and 19 of the agreements. Therefore, it is unclear how the preservation of REC best practices is intended to align with the goal of resolving multiple memberships in RECs.

To ensure institutional consistency, officials from the REC Secretariats participated in the negotiation process, and the RECs will be represented in the Committee of Senior Trade Officials as advisors.[197] For the implementation of the Protocol on trade in goods and services, the Secretariat of AfCFTA in collaboration with RECs, will coordinate and offer technical support and capacity building in trade and trade-related problems. [198]

3.2. Articles in the AfCFTA Agreement that govern relations with African RECs

Examination of the provision of AfCFTA agreements is necessary to understand the connection between AfCFTA and RECs. The agreement contains basic rules for controlling several trade regimes of regional economic communities. Clause 19 of the agreement governs the CFTA's interaction with Africa's regional trade agreements by addressing incompatibilities or inconsistencies between the AfCFTA and other intra-African trade instruments.

In the event of any conflict or difference between AfCFTA and RECs, the AfCFTA prevails unless otherwise stated within the AfCFTA agreement.[199] Additionally, the agreement acknowledges that regional economic communities that have successfully achieved higher levels of integration among their member states should maintain and sustain those higher levels of

196 AfCFTA agreement , art 19(2)

197 AfCFTA Agreement (4) Art 12(5)

198 Ibid, art 29(1) and Protocol on Trade in services art. 27(3)

199 AfCFTA Agreement art 19(1)

integration.[200] However, the agreement's provisions on how to resolve conflicts between the various regional economic communities that have achieved a high level of integration are unclear.

In order to apply the provision of Article 19 of the AfCFTA Agreement, it is important to understand the terminology used in this article. Although the term "regional trade agreement" is included in Article 19 clause, it is not defined in the AfCFTA agreements.[201] Therefore, it's unclear whether the word "any agreements" refers to specific RECs recognized as building blocks or comprises all the continental regional trade agreements.

The word "conflict and inconsistency" is another idea of the contest. Since neither the term conflict nor inconsistency is defined in the AfCFTA, it appears that they are interchangeable.[202] Despite the fact that the term "conflict" might be interpreted as "legal conflict," a State Party's conduct may be in conflict with multiple jurisdictions.[203] The term "inconsistent" refers to a lack of agreement between components as well as incompatibility with another fact or opinion.[204] Therefore, it is unclear whether the term consists of the same meaning or is different.

Another question is whether "disputes and inconsistencies" should refer to all continental regional economic communities, regional trade agreements and customs unions or simply to RECs recognized as building blocks.

Another point to consider is the statement "higher levels of regional integration". The word "high level of regional integration" isn't defined in the agreement. The topic is whether a higher level of regional integration should be limited to RECs recognized as building blocks or should encompass all continental regional economic communities, regional trading agreements, and customs unions.

Additional concerns involve the policy area, which is covered by RECs but not included in the policy area of the AfCFTA. State aid (subsidies) covered in EAC, COMESA, SADC, and CEMAC, environmental regulation covered in EAC, COMESA, ECOWAS, and CEMAC, labor

200 Ibid art 19(2)

201 UNECA (2020),(13)p53

202 Ibid

203 Ibid

204 Ibid

market limitations covered in EAC and COMESA, and public procurement regulation in EAC are all areas of policy that the RECs cover but the AfCFTA does not.[205]

While article 19 of the agreement establishes a framework for the governance of a variety of regional trade regimes, it does not specify how policy areas of regional trade agreements that are not part of the African Continental Free Trade Area are governed. Since the AfCFTA is a continental Organization established to manage the continent's common market, to effectively administer the continental economic integration process across the continent, rules encompassing all policy areas of RECs and the AfCFTA are required.

205 World Bank,(2020)(61)17

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

African political and economic integration would be a long-term vision. A variety of socio-economic development efforts within the African Organization have been launched in an attempt to achieve continental unity.

The AfCFTA agreement paves the way for an integrated African economy. The ultimate purpose of the agreement is to enhance intra-Africa trade. The agreement intends to create a standardized regulatory framework that will help to decrease market diversity created by several legal systems in various economic groups. The agreement also gives Africa the opportunity to control policy areas crucial to economic integration that is usually regulated in trade agreements but are now unresolved in most of the continent's PTAs.

Depending on member states' and leaders' willingness to carry it out, in addition to their willingness to organize and integrate trade policies at the national, regional, continental, and international levels, the agreement will be implemented in stages. The negotiation process shall be governed by the principles set forth in Article 5 of the Agreement.

The Agreement is made up of four key entities that will be responsible for guaranteeing the implementation's success. 'The African Union Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat are the four core institutions of the AfCFTA.'[206] Officials from the REC Secretariats are engaged in the negotiating process to guarantee institutional continuity, and the RECs will be represented in the Committee of Senior Trade Officials as advisers.

The AfCFTA Agreement aims to create a single continental market, making it vital to examine the connection between regional economic communities (RECs) and the AfCFTA. Understanding this relationship is crucial for achieving the agreement's objectives and effectively implementing the AfCFTA.

In the AfCFTA, the importance of RECs Free Trade Areas is emphasized, and it is stated that these regions will serve as the AfCFTA's cornerstone. Despite Africa's numerous economic zones, only eight RECs are recognized as AfCFTA building blocks. The AfCFTA does not

206AfCFTA Agreement art 9

explicitly state how other regional trade agreements in Africa that are not regarded as building block will be handled by the continental agreement. While addressing issues relating to overlapping memberships of multiple economic communities is essential for continental integration, establishing the guidelines for how African regional trade agreements that aren't recognized as building blocks will be governed under the AfCFTA will also help with continental integration.

The AfCFTA agreements contain provisions that define how the RECS and the various trade regimes of the AfCFTA interface. However, it is necessary to clarify the provisions of Article 19 of the Terms and Conditions. It should also be clear how preserving REC best practices could be effective with the objective of resolving multiple REC membership.

Additional concerns relate to the policy area, which is covered by RECs but not covered by the AfCFTA's policy area. While the agreement's provision provides a framework for the governance of a multiplicity of regional trade regimes, it does not indicate how policy areas covered by regional trade agreements but not covered by the AfCFTA's are regulated under AfCFTA. As a result, developing rules that cover all RECs policy areas is necessary in order to control the continent's economic integration effectively. The integration process for existing RECs into the AfCFTA is also not clearly outlined in the agreement. Addressing these issues is essential for effective implementation of the AfCFTA.

4.2. Recommendations

The African Continental Free Trade Area (AfCFTA) is a significant initiative that seeks to establish a unified market across the African continent. To achieve this ambitious goal, the AfCFTA utilizes existing regional economic communities (RECs) as building blocks. One of the key challenges the AfCFTA faces is the issue of overlapping memberships within these RECs. The AfCFTA agreement aims to address this challenge by providing rules for the governance of multiple trade regimes within the African RECs. However, despite the efforts made by the AfCFTA, challenges still exist in managing the relationships between the AfCFTA and RECs. To ensure the success of the AfCFTA and establish a strong relationship with the RECs, the study findings indicate that additional regulations are necessary to govern the relationship between the African Continental Free Trade Area (AfCFTA) and the existing Regional Economic Communities (RECs). The following recommendations are intended to address the problem identified in the study:

The AfCFTA should develop clear and comprehensive specific rules or protocols that govern the relationship with RECs. These rules should outline the areas of policy that are not covered by the AfCFTA and provide guidance on how these areas will be addressed. The rules should provide guidance on the scope and content of AfCFTA agreements, ensuring that there are no gaps in policy coverage within the continental free trade area. This will ensure a consistent and harmonized approach to regional and continental integration

The proposed rules should also address the issue of dual membership in RECs, which can create challenges and conflicts. This means clarifying how the AfCFTA will handle situations where countries are members of multiple RECs. The rules should aim to align the resolution of dual membership with the reservation of the best practices of RECs, ensuring that the interests and commitments of member states are effectively managed and support the objectives of the AfCFTA.

To ensure clarity and effective coordination in the continental integration process, the proposed rules or protocols for the African Continental Free Trade Area (AfCFTA) should clearly define the status, institutional links, and role of regional trade agreements that are not considered building blocks of the AfCFTA. This will help establish a clear understanding of the relationships and responsibilities of all parties involved and ensure that they align with and support the objectives of the AfCFTA. The rules should also provide guidance on how the clauses in the AfCFTA agreement that regulate the relationship between the AfCFTA and RECs should be interpreted. This will help avoid any ambiguity or confusion regarding the implementation and enforcement of these clauses, promoting consistency and coherence in their application. By clarifying the interpretation of these clauses, potential conflicts or misunderstandings can be avoided, and a common understanding can be established.

As the AfCFTA aims to create a common continental market, policies or regulations should outline the process of integrating existing RECs into the AfCFTA. A clear roadmap for the gradual harmonization of trade rules, regulations, and procedures among different RECs should be established. This should include provisions for the gradual absorption of RECs into the continental common market and the phasing out of redundant or conflicting agreements. The rules should also address the fate of RECs once the continental common market reaches the desired level, ensuring a smooth transition and avoid any disruptions or conflicts between existing RECs and the AfCFTA. This will ensure that existing RECs are effectively aligned with the continental common market and can contribute to the overall integration process.

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