CHAPTER 1: Introduction

1. BACKGROUND AND CONTEXT

Regional integration is a strategy that has been recommended to, and embraced by African countries as the key to improved trade performance and economic development. Apart from such functional considerations, there has also been an important political aspect to the drive for integration which has its roots in the shared sense of identity felt by many African states and their leaders. The current process of regional integration on the continent dates back to the Lagos Plan of Action of 1980[4]. It is based on eight Regional Economic Communities (RECs) which are to form the building blocs of the African Economic Community as set out in the June 1991 Treaty Establishing the African Economic Community (hereinafter Abuja Treaty)[5]. Each of these RECs is already engaged in a trade liberalization and regional integration process, with the ultimate goal, as stated in the Abuja Treaty, being the formation of a common market and an African Monetary Union. However, the slow progress at overall integration and the worsening food security situation in the continent led African leaders to single out the agricultural sector for fast track creation of an African Common Market for agricultural products without prejudice to the objectives of the Abuja Treaty.

Economic integration can take place at various levels and speeds and under different institutional mechanisms depending on the goals and initial conditions of the members. The classical linear schema of economic integration sees countries moving along a continuum from preferential trade area, free trade area, customs union, common market, to economic and monetary union[6]. Economic integration schemes rarely follow such neat categories in practice. A common market for agriculture, for example, does not require the de jure adoption of common agricultural policies, but market pressures arising from integration can promote de facto policy convergence. Indeed, policy harmonization may well be needed to make trade integration work.

The problems of earlier integration efforts have been attributed to a number of causes, notably: high costs due to trade-diversion, limited trade gains due to structural and administrative barriers, fiscal concerns regarding the loss of tariff revenue, fears regarding loss of national sovereignty, perceived inequities in the sharing of benefits, lack of broad support from the private sector and civil society and lack of political will. The creation of a common market for agriculture should take into account the causes of previous failures and identify ways to ensure that the greatest possible gains from integration are achieved.

[4] ***Lagos Plan of Action for the Economic Development of Africa, 1980 – 2000***, adopted by the Second Extraordinary Session of the Assembly of Heads of State and Government of the OAU, Lagos, Nigeria, 29 April 1980. Available at: http://www.uneca.org/itca/ariportal/docs/lagos_plan.pdf

[5] See Chapter 3 below for a further discussion of the African Economic Community

[6] In a preferential trade area countries lower tariffs (customs duties or charges of equivalent effect) on trade with each other while retaining their original tariffs against the rest of the world. In a free trade area (FTA), members go a step further and eliminate tariffs on trade among themselves. In a customs union, members eliminate tariff barriers among themselves and adopt a common external tariff, eliminating the need for rules of origin. A common market goes beyond a customs union in removing barriers to the movement of factors of production (capital, labour). Full economic and monetary union involves, in addition, harmonization of other policies such as foreign exchange and social policies

There is considerable optimism that the new open approach to regionalism may have greater success[7]. Open regionalism – as opposed to the previous import-substitution schemes – minimizes the costs associated with trade diversion by keeping external barriers low. By addressing administrative and structural barriers, deep integration can generate dynamic and efficiency gains that are more important than the static trade gains derived from tariff reduction alone. In Africa, the costs associated with incompatible technical standards and unnecessary border delays, for example, pose significant market barriers. Furthermore, the small size of local markets prevents businesses from achieving economies of scale and can give rise to anti-competitive practices. Deep integration can alleviate these constraints to growth. African governments are well aware of the need to ensure that the gains from economic integration are shared equitably. African leaders in government and the private sector as well as Africa's development partners are giving the new regional initiatives strong support, and integration efforts are beginning to bear fruit.

From the outset, it is necessary to note that African countries are already committed to the process of establishing an African Economic Community, as set out in the Abuja Treaty. This process envisages the creation of free trade areas and customs unions at the REC level in the course of the third stage, as set out in Article 6 of the Abuja Treaty[8]. The internal trade liberalisation stage of this process at a continental level (Stage IV), involving the elimination of all tariff and non-tariff barriers to trade in all goods, is due to be completed by 2019. However, it is felt that in the agricultural sector, and in particular with regard to basic food products, there is a need to accelerate this process. That is the rationale underlying this project.

However, before proceeding with the discussion of the key issues, it is advisable to briefly say a word on the question of definitions.

The use of the term 'common market' in the context of regional integration is commonly associated with the unrestricted movement of labour and other factors of production (capital and enterprise) in addition to the common external tariff and tariff-free movement of goods and services associated with a customs union. However, it needs to be remembered that the proposed African Union Common Market in Agricultural Products does not meet these conditions at this stage and the use of the term 'common market' is at best an aspiratory title, signifying the ultimate goal of creating an African Economic Community. Thus the term common market as used throughout this study refers to the creation of a Free Trade Area for agricultural products across the continent.

1.1 Purpose of the study

Africa is the only region of the developing world where the regional average of food production per person has been declining over the last 40 years, putting large segments of the population at risk for food insecurity and malnutrition. Although the prevalence of undernourishment has declined over the last two decades from 36 percent in 1979-81 to 27 percent by 2005, the absolute number of people undernourished has risen over the same time period.

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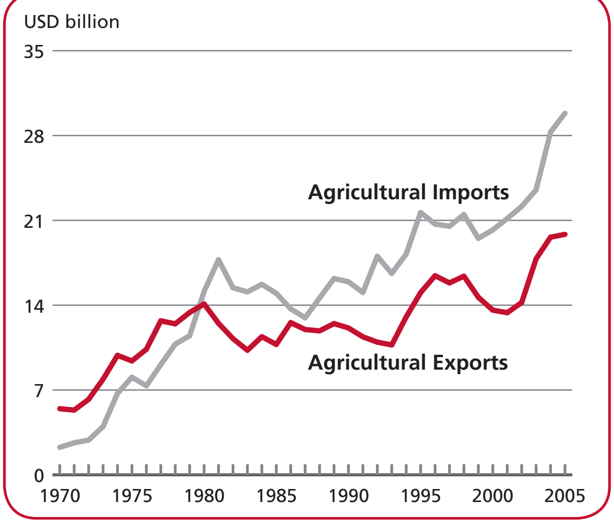
[7] Open regionalism is understood to mean open membership, consistency with GATT article XXIV that prohibits an increase in external barriers, and freedom for members to liberalize with others on a reciprocal basis. One interpretation by Renato Rugggerio, former Director General of the WTO, would go further to suggest gradual elimination of internal barriers within the grouping and towards non-members more or less at the same rate and on the same timetable

[8] The Abuja Treat envisages the formation of an African economic and monetary unions in 6 stages over a period of between 34 – 40 years (see Table 5)

Agriculture, including fisheries and forestry, continues to dominate the economies of most African countries and is an important vehicle for economic growth. The sector continues to produce the bulk of food consumed in Africa, accounting for about 60 percent of total employment and about 20 percent of total merchandise exports and GDP in many countries. The sector is the main source of raw material for industry, and as much as two-thirds of manufacturing value-added in most African countries is based on agricultural raw materials. The agricultural sector is the main purchaser of simple tools (e.g. farm implements/equipments) and services (e.g. transport), and farmers are the main consumers of locally produced consumer goods.

Figure 1. Trend in Africa's agricultural trade, 1970-2005



Despite the importance of agriculture in their economies, trade in agricultural products amongst the African countries remains at a relatively low level. Imports of agricultural products to the continent have been rising faster than exports since the 1970s and Africa as a whole has been a net agricultural importing region since 1980. Figure 1 depicts the trends in performance of Africa's agriculture during 1970-2005. Agricultural export patterns in Africa are characterized by a small number of traditional commodities and dependency on preferential access to a few developed-country markets.

The declining performance and contribution of the agricultural sector in most African countries is symptomatic of inadequate capital formation and heavy de-capitalization (vis-à-vis the developed countries) which raise costs and lower productivity in the agricultural sector. The continent has, and is still plagued with natural and man made disasters which have significantly affected small subsistence farmers, most of whom are women. Furthermore, the declining performance of the agricultural sector has compelled many farmers and other economic agents to engage in practices that degrade land resources, deplete forests and other natural vegetation and harm marine and other aquatic resources. Nevertheless, agriculture will remain, in the foreseeable future, the most important sector for addressing food insecurity and poverty in Africa.

These problems and how to overcome them have been at the forefront of the debate on Africa's development since the Lagos Plan of Action in 1963 and the Abuja Treaty of 1991. In 2001, the Assembly of the Heads of State of the former Organization of African Unity (OAU) decided that a possible catalyst to the solution to Africa's food insecurity problem was the creation of an African common market for agricultural products under the auspices of the African Union. To maintain the thrust and political commitment to the process, there is an urgent need for guidance on practical ways forward. Within this context, FAO was requested to provide technical assistance to African Union Commission, its Member States and Regional Economic Communities (RECs)[9] in the implementation of

[9] The five main Regional Economic Communities (RECs) that will be the focus of this project are: (1) The Arab Maghreb Union (AMU/UMA), (2) The Common Market for Eastern and Southern Africa (COMESA), (3) The Economic Community of Central African States (ECCAS/CEEAC), (4) The Economic Community of West African States (ECOWAS) and (5) The Southern African Development Community (SADC)

strategies and programmes aimed at increasing intra-African trade and improving food security. The recommendations of this study are aimed at fulfilling this objective.

The formation of an African agricultural common market would have a direct bearing on agricultural development, trade and food security in African countries by eliminating some of the obstacles that constrain the sustainable development of the agricultural sector and perpetuate high rates of poverty and under-nourishment in the region. Regional integration would mean the adoption of broadly similar, non-discriminatory trade reforms, which would promote economic efficiency, trade, investment and growth. A common market that removes internal barriers to trade and harmonizes - but does not increase - external protection would enable better use of African resources to provide for human needs on the African continent and could contribute to economic and political stability and solidarity[10].

Greater market openness and integration could also help ameliorate some of the problems that contribute to the underdevelopment of the agricultural sector in Africa. These include agro-ecological and resource constraints to production along with economic, social and institutional factors that influence profitable and sustainable use of inputs and resources. Market integration may also improve efficiency and sustainability of resource use, and complement other programmes to alleviate supply constraints.

The move toward a common market for agricultural products would require a carefully designed strategy, building on the already existing regional economic groupings and taking into account a wide range of issues. In particular, there is a need to increase government awareness about the policy implications that countries will have to face upon becoming members of the regional common market, to enable them to assess their acceptability domestically and gauge their degree of commitment to that endeavour.

Technical assistance from FAO will help the AU analyze the current national and regional barriers to successful market integration. It will also provide the AU the basis to assess the merits of establishing a continental common market for agricultural products building upon existing RECs, as a way to achieve the long term objective of establishing an African Common Market[11].

In particular, this study will assist in:

1. assessing the state of supply of and demand for agricultural products in Member States of the AU, with special emphasis on strategic commodities;
2. analyzing current national barriers to market integration, including those that relate to trade and marketing of agricultural commodities, with special emphasis on strategic commodities, viewed within the perspective of existing RECs;
3. identifying the principal policy and legal changes that member countries would have to implement in order to meet the conditions of a regional common market in strategic agricultural products;

[10] The use of the term 'common market' in the context of regional integration is commonly associated with the unrestricted movement of labour and other factors of production (capital and enterprise) in addition to the common external tariff and tariff-free movement of goods and services associated with a customs union. However, it needs to be remembered that the proposed African Union Common Market in Agricultural Products does not meet these conditions at this stage and the use of the term 'common market' is at best an aspiratory title, signifying the ultimate goal of creating an African Economic Community. Thus, the term common market simply refers to a Free Trade Zone as is understood in general trade literature

[11] Basic Food Products referred to throughout this document includes the *primary and worked components* of the following products of the following: Cereals, Roots and Tubers, Oils and Fats, Dairy, Livestock and Meats

4. suggesting fast track approaches to assist governments in assessing and harmonizing their legislative frameworks and legal commitments, as well as bilateral and plurilateral trade Agreements;
5. presenting options for reinforcing and harmonizing trade regimes within the context of existing RECs taking into account the diverse physical, political, social, and economic in the different African countries/regions.

The study will also assist the AU Member states in analyzing other means to increase trade in the region, including through existing and planned regional development, investment and food security programmes. These include programmes aiming at enhancing countries' competitive production and marketing capacity in basic food products, as well as those related to trade facilitation and capacity building in regulatory services.

Several initiatives have helped to shape the nature of this project. Firstly, the New Partnership for Africa's Development (NEPAD) which is a programme of the African Union and a pledge by African leaders, based on a common vision and shared conviction that they have a pressing duty to eradicate poverty and to place their countries on a path of sustainable growth and development and, at the same time, to participate more actively in the world economy. NEPAD's objective is to give impetus to Africa's development by bridging existing gaps in priority sectors in order to enable the continent to catch up with developed parts of the world. In 2003, NEPAD along with its development partners formulated the Comprehensive African Agricultural Development Programme (CAADP), whose primary goal is agriculture led development that eliminates hunger, reduces poverty and food insecurity, opening the way for trade expansion. Box 1 presents a summary of the objectives and scope of the CAADP. Pillar 2 of the CAADP has a direct bearing on the activities under this study as NEPAD is responsible for the coordination of regional programmes to ensure that they are harmonized across the various RECs. These will be examined in later chapters.

Furthermore, it is increasingly being recognised that African food and agricultural markets are extremely fragmented along sub-region, national and even sub-national levels, resulting in segmented markets of sub-optimal size which hinder the profitability of sizeable private investment in the different stages of the commodity chain. These segmented gaps between regional/national production and regional demand are increasingly being filled by imports of non-African origin [in some cases through the use of unfair trade practices], even in case where tradable surpluses exists.

A practical solution to this problem evolved during the 2004 AU Meeting in Sirte, Libya and subsequently in the December 2006 AU/NEPAD Summit on Food Security in Africa. The idea is that to achieve significant economies of vertical integration and scale in African agriculture, emphasis should be placed at the regional/sub-regional level around a limited number of *Strategic Commodities* without prejudice to ongoing efforts at sector-wide developments. Thus, for selected strategic commodities, a *Common African Market* that transcends national and sub-regional borders would offer an appropriate economic space to foster private investments at the level of regional economies. This implies that, for the selected strategic commodities, there is need to move market integration beyond the current pace of reform to create a free trade zone at the continental level. The strategic commodities would be those commodities that:

- represent an important weight in the African food basket;
- weigh significantly in the trade balance of the region through their contribution

BOX NO 1

The Comprehensive Africa Agricultural Development Programme (CAADP)

The Comprehensive Africa Agricultural Development Programme (CAADP) was formulated to address the key challenges facing African Agriculture. Some of these include market/ trade-related difficulties, technological obstacles and policy constraints that lead to low agricultural productivity and resulting in food insecurity. It was endorsed by the AU Summit of July 2003 in Maputo, Mozambique and all RECs in Africa were mandated to implement the programme in their respective regions. The NEPAD is the key organ for the implementation of the CAADP.BoxNewPara. Lor sim ipit am dipis eu feuis do commy numsandit nosto ex ea at dolobореros dolortion eu feuis do od diate feugiam quis nisim dunt accum quis ea feu feuisci erciduisim qui blamet, vullut la autetummy nibh el ex et nulluptat. Diat lor irit nismodigna at.

The overall objective of CAADP is to assist African countries to reach a higher level of economic growth through agriculturally-led development, eliminate hunger, reduce poverty and food insecurity, and enable expansion of trade. CAADP aims for agriculture growth rates of 6 percent per year which would enable African States attain the UN's Millennium Development Goal 1 of cutting hunger and poverty in half by 2015.

Initially, the CAADP was anchored on four key pillars. However, a fifth pillar has been added to address the livestock, fisheries and forestry sector:

Pillar 1: extending the area under sustainable land management and reliable water control systems

Pillar 2: improving rural infrastructure and trade-related capacities for market access;

Pillar 3: increasing food supply, reducing hunger, and improving responses to food emergency crises;

Pillar 4: improving agricultural research, technology dissemination and adoption; and

Pillar 5: sustainable development of livestock, fisheries and forestry resources.

In proclaiming CAADP, the AU Member States agreed to commit at least 10 percent of national budgets to agriculture and rural development. Accordingly, the RECs are to prescribe the direction to be taken at the national and regional levels in line with overall vision of the 1991 Abuja Treaty for the eventual creation of an African Common Market and Economic and Monetary Union. To implement the CAADP, compacts or agreements must be produced at the national and regional levels highlighting key policies, strategies and programs, existing gaps, investment levels and dialogue mechanisms required for effective and broad based implementation.

to foreign exchange earnings or imported in large quantities to make up the gap Africa's production and demand; and

- have considerable unexploited production potential in Africa, owing mainly to internal supply-side constraints as well as well as external impediments such as agricultural subsidies and support measures used by Africa's trading partners.

These products were identified in the first declaration of Abuja 2007 Food Security Summit as given in Box 2.

This declaration is the guideline for the common market project as the key strategic commodities identified will form the basis of this study. In addition, the five core RECs that form the object of this study are presented in Box 3. However, it is important to

BOX NO 2
Abuja Food Security Summit Declaration, December 2006

……… Declare our Firm Commitment to:

Expand Markets, with particular attention to Africa's own demand and to promote Inter African trade in staple foods.

To achieve this objective:

MEMBER STATES and **RECs** promote and protect rice, legumes, maize, cotton, oil palm, beef, dairy, poultry and fisheries products as strategic commodities at the continental level, and cassava, sorghum and millet at subregional level, without prejudice to focused attention being given also to products of particular national importance;

AUC and **NEPAD** to facilitate the attainment of continental self-reliance by 2015 for the following: rice, maize, sorghum/millet and Cassava, oil palm, beef, poultry, aquaculture (tilapia/cat fish);and to process 50 percent of cotton produced in Africa by 2015 while also making efforts to rapidly increase the share of local processing for other commodities;

CALL UPON Member States and **RECS** to take the following urgent measures to accelerate the development of the strategic commodities that include:

FAST TRACKING the implementation of trade arrangements adopted in the Regional Economic Communities (RECs) through lowering tariff barriers and elimination of non tariff barriers both technical and non technical by 2010, and take account of these measures during global negotiations in the Doha Round and Economic Partnership Agreement (EPA);

RATIFYING and implementing harmonized standards and grades including sanitary and phytosanitary standards within and across RECs by 2010.

note that the *Special Products* flexibility under the market access pillar of the ongoing WTO negotiations is also available to Africa countries. Special products are those that are relevant for developing countries' food security, livelihood security and rural development concerns. They should be identified by indicators that link them to the three criteria (food security, livelihood security and rural development) and they will be given flexible treatment in terms of tariff reduction. Although the criteria for the identification of the AU strategic products are not quite identical, studies undertaken by FAO identified all the strategic products (except fish) as special products for African countries.

Concurrently with their efforts to boost intra-trade and to integrate at a continental level, African states belonging to the ACP group have historically been closely linked to Europe through a series of trade agreements, starting with the two Yaoundé Conventions, followed by the Lomé Conventions, and most recently, the Cotonou Agreement[12]. All African countries on the Mediterranean, save Libya, have also

[12] *Cotonou Agreement,* 23 June 2000, [2000] OJ L 317/3 (entered into force 1 April 2003)

BOX NO 3
The five core RECs and member states

Regional Economic Communities	Member States
Arab Maghreb Union (AMU)	Algeria, Libya, Mauritania, Morocco and Tunisia
Common Market for Eastern and Southern Africa (COMESA)	Burundi, Comoros, Congo (DR), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe
Economic Community of Central African States (ECCAS)	Angola, Burundi, Cameroon, Central African Republic, Chad, Republic of Congo (Congo), Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe
Economic Community of West African States (ECOWAS)	Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo
Southern African Development Community (SADC)	Angola, Botswana, Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe

concluded separate agreements governing their trade relations with the European Community (later Union)[13]. Some of these agreements are reciprocal in nature while others are non-reciprocal that is to say; some provide non-reciprocal market access to the EU while others, such as South Africa's TDCA, require the opening of domestic markets. African countries that are members of the ACP are now engaged in Economic Partnership Agreements (EPAs) negotiations which were launched in September 2002 and were supposed to lead to the conclusion of new, reciprocal and WTO-compatible agreements by the end of 2007[14].

This would mean that Africa stands to lose considerably from the erosion of its preferences in the EU. New markets will have to be found especially among African countries themselves to enhance the Region's agricultural development programmes; hence this project reflects the urgency of establishing a Common Market for Agriculture in the continent. The current project will build on the lessons learned and best practices from the existing projects and serve as a focal point for exchange of knowledge between the various regional initiatives supported by FAO.

At the same time as these linkages have been developing, the majority of African countries joined the General Agreement on Tariffs and Trade and were founding

[13] See Euro-Mediterranean Agreement between the EC and Tunisia, 17 July 1995, OJ L 097/98 (entered into force 1 March 1998); Euro-Mediterranean Agreement between the EC and Morocco, 26 February 1996, OJ L 70/00 (entered into force 1 March 2000); Euro-Mediterranean Agreement between the EC and Egypt, 25 June 2001, COM (2001) 184, entered into force 1 June 2004; Euro-Mediterranean Agreement between the EC and Algeria, April 2002, OJ L 265 (entered into force September 2005)

[14] A comprehensive agreement was not reached by the end 2007 deadline and only a handful of African countries agreed to sign Interim EPAs with the EU

Members when the GATT was transformed into the WTO in 1995. These countries are now engaged in the Doha Round of WTO negotiations which are aimed at lowering barriers to trade globally, while ensuring that developmental aspects of trade are not neglected. It is important to remember that those States which are not yet Members of the WTO do not have any obligations under that body. Any proposed framework should therefore not be seen as an attempt to impose WTO disciplines on sovereign states that have chosen to eschew those disciplines.

These negotiations are certain to have an impact on the form that the Common Market for Agricultural Products will assume due to the fact that the Agreements that emerge from these negotiations will place legal obligations on the parties thereto. They are also likely to place a heavy burden on the parties responsible for conducting the negotiations, thus stretching the existing capacity on the continent.

1.2 The role of law within a trading system

In creating a CMAP, one of the goals must be to establish an effective framework that will impact positively on Member State conduct and thus, hopefully, on the Member States' economies. However, one characteristic shared by almost every regional organisation created by African states to date has been limited effectiveness with regard to influencing State behaviour; that is to say, the levels of legal compliance have been low and economic benefits negligible. In drawing up a legal framework for the CMAP, one of the key issues that must therefore be considered and stressed is the role that law plays in international relations generally and international trade in particular. The aim of this section is to therefore draw out some elements that contribute to enhanced effectiveness.

1.2.1 Law and international cooperation

International law requires that states comply with their legal obligations. However, this duty is not always met because even with the best of intentions, a number of factors, key among them ambiguity, lack of capacity and temporal factors, work to restrict levels of compliance. Ambiguity here refers to the prevalence of legal provisions whose interpretation is open to challenge while lack of capacity is a reference to the limited capacity of many African countries both financially and in terms of the relevant technical expertise. Capacity issues are problematic in Africa which has 34 of the World's 50 least-developed countries[15]. Reference to temporal factors concerns the often lengthy and flexible time periods provided for compliance with legal obligations. As a result, whether a state is complying with its obligations or not may depend on one's interpretation of the time-frame within which it is to comply.

One of the goals in concluding a legal agreement is to ensure that effective restraints are placed on the parties' behaviour in order to enhance the predictability of the trading regime. To paraphrase the words of Kenneth Dam, relying on the goodwill of governments to reduce trade barriers and promote trade is unlikely to succeed unless such goodwill is backed up by substantive law and procedures[16]. It is thus important to remember that law is not just substantive rules but also procedures and processes that serve 'to identify common interests in complex situations and to formulate short-term policies for the achievement of long-term objectives[17].'

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15 United Nations, *Least Developed Countries: Country Profiles,* available at http://unohrlls.expressiondev.com/en/ldc/related/62/ (visited 9 August 2007)

16 Kenneth Dam, *The GATT: Law and International Economic Organization*, (1970) p. 5

17 Dam, *The GATT*, pp. 4-5

A properly designed legal framework will therefore not only provide predictability and stability to the trading environment, it will also act as an efficient means of resolving conflict and capturing desired policy changes. With a legal framework in place, the credibility of the proposed common market will be enhanced thus increasing the prospects of greater public and private investment in the agricultural sector. As an essential part of this framework, it will be necessary to put in place institutions that can monitor the implementation of a final Protocol based on the draft presented in Annex I. This is one area where it will not be necessary to start afresh in light of the fact that the African Union already has an institutional framework in place in the form of the Commission. Proper utilization of the Commission's resources will therefore be essential to the success of the common market.

The effectiveness of the proposed common market will be greatly reduced if the obligations of the parties are reduced to the status of 'nonlaw'. Clear, precise and binding rules are the basis of any propensity of states to obey international law. In drafting the Protocol, it will therefore be necessary to draft State obligations in the clearest manner possible, bearing in mind the fact that there will be areas where the need for compromise will inevitably result in ambiguous language. However, if the necessary dispute resolution systems are in place this should not prove too big an obstacle to the success of the common market.

An additional advantage of encouraging African countries to embrace legally binding obligations is that the legal discipline imposed by binding commitments will prepare them for participating more effectively in the multilateral trading system centred on the WTO. Currently, developing and least-developed countries enjoy a great deal of flexibility in complying with WTO obligations but as they become more developed it is expected of them that they will assume stricter legal obligations. One of the central issues to be determined will therefore be the amount of discretion that national governments will be permitted to retain in the process of establishing the common market in agricultural products. Other issues to be considered include the use of "soft law" provisions, the inclusion of a dispute settlement mechanism and the participation of non-state actors in the common market.

A related issue that arises when it comes to dispute settlement, especially in the context of the numerous overlapping obligations that African states have, is the question of which obligations take priority. Where two states are members of two different organizations with differing rules on a certain issue, which rules will govern any dispute between the parties on that issue? The answer to this question will frequently depend on the forum before which the dispute arises. Thus if two countries that are members of both COMESA and the WTO take a dispute regarding the application of SPS measures before the WTO, a breach of WTO rules on SPS measures must be alleged and the panel will rule based on WTO rules, whereas if the dispute is taken before the COMESA Court of Justice, the rules at issue will be COMESA's rules on the issue. Determining rules setting out where disputes should be settled is thus an important aspect of the legal framework for trade liberalisation. This is an issue that would not arise where a country was only subject to one set of rules which is why, at the African level, establishing a continent-wide CMAP might be a better option.

In order to draft an appropriate legal framework for the establishment of a common market for agricultural products, it is essential to have a clear idea of what the expectations of the Member States are regarding such a common market. Without a clear idea of what the specific purpose the common market will serve is, the legal framework will not be able to fulfill its function and its effectiveness will be diluted.

As this is primarily a political question, it is essential that political leaders provide the necessary direction in this regard.

1.2.2 Issues of importance to the formation of a continental common market

Having discussed the necessity of framing obligations legally, it is necessary to elaborate on the specific areas in which consensus as to the applicable rules will be essential. There is a considerable amount of literature that has already identified the legal issues that arise in the establishment of a continental common market for agricultural products. With regard to some of these issues, the eventual CMAP rules require the elimination of certain tariff and non-tariff barriers to trade while, with regard to others, it is necessary to encourage harmonization of disparate trade measures between the participating states.

These issues include:

- Trade liberalisation involving the elimination of tariffs on agricultural products. A number of legal issues arise in this regard such as the time-period for eliminating tariffs and, from a WTO perspective, the legality of a sector-specific agreement such as the CMAP would be;
- Adoption of a common customs nomenclature system. In this regard it should be noted that though the products to be traded within the common market have been identified as the primary and worked components of cereals, roots and tubers, oils and fats, dairy, livestock and meats[18], from a legal perspective it will be necessary for these products to be identified accurately;
- When necessary, reduce and/or eliminate the use of quantitative restrictions on the import of agricultural products. Quotas are sometimes used to restrict imports as well as exports, especially in the context of safeguard measures. Quantitative restrictions are generally seen to be less transparent and more prone to abuse than tariff barriers. Rules are required to limit the ability of states to resort to quantitative restrictions;
- Rules of origin. These are used to determine the country of origin of goods thereby establishing whether or not they will be eligible for preferential treatment. In a customs union, a common external tariff is applied hence there is no need for rules of origin. However, in a free trade area, they are required to prevent trade deflections, that is, goods being trans-shipped through a Member with low external tariffs;
- In the proposed common market for agricultural products, rules of origin will be required in the period before a CET can be implemented. Goods that are wholly produced within the participating countries are not likely to be very contentious but where value is added, then there is a potential for disputes to arise as to their eligibility for preferential treatment. Rules of origin can thus be used as barriers to trade, which is why there is a need for regulations to govern their use[19];
- Application of trade remedies. In many countries, subsidies of various forms are extended to the agricultural sector. This is an issue that often arises in the context of unfair trade practices by developed countries but it should be remembered that subsidies are also used by developing countries. African countries will therefore need to determine what, if any, trade remedies they will be allowed to impose and what measures will be permitted in the event a country grants ‘unfair’ subsidies;
- Application of safeguard measures. Safeguards are temporary measures, often in the form of quotas, taken by states to ensure that their economies or domestic

[18] See FAO, ‘Assistance for the establishment of a common market for Basic food products’, p. 3
[19] Mitsuo Matsushita et al. *The WTO: Law, Practice, and Policy*, (2006) p. 119

industries do not suffer serious harm from trade liberalisation[20]. The danger in their use lies in the possibility that their application can persist indefinitely to shield inefficient industries thus defeating one of the goals of trade liberalisation which is the efficient allocation of resources across the relevant region;

- Adoption of harmonized sanitary and phytosanitary (SPS) measures. In liberalizing trade in food products it is necessary to ensure that the trade 'does not proliferate and propagate diseases and pests of either animals or plants[21].' The adoption of sanitary and phytosanitary standards is therefore a legitimate concern of governments. However, the use of differing standards between countries is capable of acting as a barrier to regional trade;
- Standards. The adoption of technical standards can be used to achieve public policy goals such as guaranteeing quality as well as facilitating production and trade. In order to minimize harmful Technical Barriers to Trade (TBT), it will be necessary to encourage the use of international agreements such as the ISO and IEC codes;
- Trade facilitation. The imposition of onerous documentation requirements in terms of customs procedures, number of documents and copies required as well as content of the documents is one of the ways in which trade between countries can be hindered. Trade facilitation aims to reduce the bureaucracy associated with trade activities;
- The streamlining of transport: Putting in place the legal framework for a common market will not increase trade in agricultural or other goods if the transport network does not exist to move the goods from seller to buyer. Transit traffic must also be facilitated in order to expedite the movement of goods. It is therefore imperative that the national governments, individually and collectively, work to improve the transport networks around the continent and to agree on harmonized transit requirements. In light of the fact that infrastructure improvement is a long-term, capital-intensive undertaking, this is not an area on which this study will dwell at length. Rather, the focus will be on measures that can be taken to facilitate transit traffic.

1.3 Layout of the study

The aim of this study is to examine from the economic and legal issues arising from the creation of a common market and to propose a framework that can be implemented to establish an operationally effective Common Market for selected Strategic agricultural products. The study is structured as follows: Following the general overview and background presented above, which in addition includes the legal context within which an integration agreement operates as well as the importance of using legal measures to provide the framework needed to attain the goal of a CMAP (Chapter 1); Chapter 2 provides an overview of the issues and trends in African agricultural trade, by first reviewing the key issues and followed by an analysis of the trends in food and agricultural trade globally as well as amongst African countries. Chapter 3 starts by evaluating the provisions of the Abuja Treaty in its capacity as the umbrella agreement guiding regional integration on the continent. It then continues to look at the relevant provisions and the status of regional integration and agriculture and food trade in each of the five RECs with which this project is most closely linked, that is, the AMU, COMESA, ECCAS, ECOWAS, and SADC. This Chapter brings out the salient features of each of the RECs which are then accessed in the following Chapters in light of the objectives for the Common Market. Chapter 4 examines and highlights those provisions of the multilateral rules found in the WTO Agreement that will be

[20] Matsushita et al. *The WTO*, p. 182

[21] COMESA, *Report on the Harmonisation of Agricultural Policy for COMESA Countries*, para. 20

relevant to the establishment of a CMAP. These rules are important because not only do they provide multilateral yardsticks against which measures adopted regionally can be measured, but they also set out rules that must be complied with by those African countries that are members of the WTO. Chapter 5 addressed the key challenges and constraints in a comparative analytical framework building on the issues and provisions identified in earlier Chapters. Chapter 6 assesses the ingredients and steps necessary for the creation of the CMAP. It concludes by analysing the opportunities and obstacles that arise from this plethora of provisions and making recommendations on possible options for the CMAP with suggestions of to the best way forward. Chapter 7 presents the conclusions of the study in a series of recommendations and actions to be undertaken to ensure that Africa realises to the fullest extent possible, the benefits of the common market.

Annexed to the end of the report is a proposed [indicative] draft Protocol for the establishment of the Common Market for Agricultural Products (CMAP).

CHAPTER 2: Overview of the current state of Africa's agricultural trade

2. INTRODUCTION

This Chapter provides an overview of the issues and trends in African agricultural trade, first with a review of the key issues followed by an analysis of the trends in food and agricultural trade – globally as well as amongst African countries.

2.1 The current status

2.1.1 Summary of key issues

Enhancing production and exports of agricultural products is essential for African economic growth as agriculture plays a major role in the continent's overall economy. At the world stage, the value of Africa's agricultural exports, which amounted to some US$21 billion in 2002-05, is growing extremely slowly, at 2.3 percent annually since 1996. The share of Africa in world agricultural exports has dropped steadily, from 8 percent in the 1970s to 1.3 percent in 2005[22]. Africa's failure to produce enough domestically has contributed to progressive growth in food imports, with Africa spending an estimated US$ 23 billion during 2002-05 - significantly more than the value of exports. During 2002-05, agricultural imports accounted for about 23 percent of total African merchandise imports[23]. Reversing this situation will require increased efforts by the African countries, with the assistance of the international community, to alleviate their domestic supply-side and other constraints.

The constraints concern the countries' high dependence on a limited number of export commodities, weak technological capacities, inadequate legal and regulatory institutional frameworks and insufficient transport, storage and marketing infrastructure, and policy-induced constraints resulting from trade and macroeconomic policies that have biased the structure of incentives against agriculture and exports. African farmers lack the necessary means to access markets, the information on market opportunities and prices. Furthermore, physical access to markets is poor, transaction costs are high, and these factors, combined with farmers' lack of proper organisation, results in low producer prices. At the national and local levels, the withdrawal of governments from direct involvement in marketing has left large gaps which the private sector is not yet able to fill; while the global conditions have created an inherently unfavorable environment for smallholder producers to enter markets - declining prices and heavy industrial country agricultural subsidies and higher technical standards amongst them.

Trading opportunities for African agricultural exports are dominated by developed country markets, and their conditions of access are of critical importance. Despite progress made in the implementation of the Uruguay Round Agreements, support to agriculture in developed countries continues to be high, tariff peaks still persist in

[22] It is also important to note the share of agricultural exports in world trade has also declined from about 18 percent in then 1970s to just 9 percent in 2002-04

[23] Total merchandise trade excludes arms and ammunition

several products (e.g. sugar, meat and horticultural products), and tariff escalation (higher tariff on more processed products which are given greater protection to the processing industry of the importing country) still prevails in several important product chains (e.g. coffee, cocoa, oilseeds, vegetable, fruit and nuts and hides and skins).

Meeting technical standards for export products, in the context of the WTO's SPS and TBT Agreements, remains a major challenge for all African countries. The gap in these standards between the African and richer countries is already high, and may grow wider unless a massive effort is undertaken to raise standards. The gaps tend to be higher precisely in those value-added, processed products where global demand is income elastic, as against primary agricultural products. Because of their limited capacities in scientific research, testing, conformity and equivalence, they face difficulties in meeting international safety and quality standards. The task is even more daunting when the developed countries, on risk assessment grounds, adopt higher standards than those currently recognised by international standard-setting bodies. Moreover, rising consumer concerns in the affluent countries over food safety and quality compound the difficulty of the African countries in meeting ever-higher standards.

The ongoing WTO negotiations on agriculture aim to achieve substantial multilateral improvements in market access, the reduction of all forms of export subsidies and in trade-distorting domestic support. At present, access of African agricultural exports to the developed country markets is governed largely by trade preferences they receive from several developed countries. These include in particular, preferences under the generalized system of preferences (GSP), the EU ACP agreements, the Euro-Mediterranean Free Trade Areas and the US African Growth and Opportunity Act (AGOA). However, the most significant development in trade preferential arrangements is the EU's ("Everything but Arms") initiative of duty-free and quota-free entry for all products (except arms) in favour of LDCs, 34 of which are African countries. This suggests that access to the EU markets for agricultural products may no longer be a major problem for African LDCs. A number of factors, however, have impeded the ability of African countries to utilise the preferential access. These include, for example, rules of origin and standards such as sanitary/phytosanitary and other technical requirements.

The main threat of preference erosion comes from multilateral liberalization and MFN reductions of trade barriers in Africa's major trading partners. Dependence on preferential schemes has become a risky strategy for Africa as the developed countries continue to forge RTAs with other developing countries. African countries need to make the necessary structural adjustments to maintain their international competitiveness, a daunting challenge given their heavy dependence on primary commodity exports and weak manufacturing base

Intra-Africa trade through strengthened RTAs offer particular opportunities given the strong political will in this direction. African leaders also believe that RTAs would increase their bargaining power in international trade negotiations and that trade integration would help reduce regional conflict and dependency of food imports from outside the continent. However, many African countries are landlocked small economies with inadequate infrastructure. Of the 53 African countries, 39 have fewer than 15 million people, and 21 have fewer than 5 million (ECA, 2004). Although Africa has 12 percent of the world's population, it produces just 2 percent of the world's output because its productivity is low. RTAs, by creating larger markets, might enable African countries to exploit economies of scale and enhance domestic competition as well as to raise returns on investment and, hence, attract more foreign direct investment (FDI). While trade liberalization, either unilaterally or multilateral in the context of the WTO negotiations, might contribute to the realization of these benefits, enhancing intra-African trade more importantly requires overcoming the significant constraints highlighted above.

2.1.2. Africa's food and agricultural trade with the rest of the world

Table 1 provides a snapshot of the agricultural trade situation of Africa. It shows that the total value of agricultural imports of about \$19 billion in 1996-99 rose to \$23 billion in 2002-05, which translates into a compound growth rate of 2.1 percent per annum. About 87 percent of the agricultural imports in 2002-05, or \$20 billion, are foods (excluding fish), with cereals and preparations accounting for 37 percent of the total and imports of oils and fats, dairy, meats and fruits and vegetables accounted for the bulk of the rest. Among the foods, import growth rates were above average (2.1) for cereals, oilseeds, meat, beverages and miscellaneous food products. Africa's Imports of live animals and sugar have declined since 1996-99.

Agricultural exports have also increased during the same period, from \$17 billion in 1996-99 to \$21 billion in 2002-05, equivalent to a growth rate of 2.3 percent per annum. The group contains tropical beverages (coffee, cocoa and tea) and miscellaneous of foods together accounted for 51 percent of total food exports followed by the fruits and vegetables group (21 percent) and sugar (6 percent). Encouraging growth rates in exports (above 3 percent per annum) were observed for dairy, meat, fruits and vegetables, beverages and spices during 1996-2005. Unlike imports, where they accounted for 13 percent, non-food agricultural products account for 21 percent of Africa's agricultural exports. A number of agricultural raw materials, like cotton and hides and skins, fall within this category.

It is common knowledge that Africa's agricultural trade balance is in deficit and that this deficit has been rising over time. Most of the deficit is due to high imports of basic foods as miscellaneous food products and non-food agricultural trade are in surplus. A worrisome trend however is that although the negative agricultural trade balance as a whole has narrowed since 1996, the deficit in food trade is rising.

In sum, these averages and trends have some implications for the discussion of intra-African trade. As stressed in the CAADP document, as well as in the many declarations by leaders in Africa, the food sector is Africa's most dynamic agricultural sector in terms of demand growth but much of the benefits are captured *inter alia* by strong import trends from outside Africa. At the same time, Africa is endowed with ample natural resources (e.g. land, water) to develop its agriculture, notably food production. The CAADP is the blueprint for this. This alone points to significant potentials for deepening intra-African trade in food and agriculture.

2.1.3 Intra-african trade in food and agriculture

This section reviews intra-African trade in food and agriculture among the core RECs and for the major food groups in Table 1 and presented in Table 3.

Although intraregional trade in Africa is lower than in other parts of the world, trade intensity is considerably higher among African countries than between African countries and typical country outside the continent. This regional concentration in trade is largely due to Africa's marginalization in global trade and the realization that regional trade is a key pillar for growth and development. Figure 2 shows the evolution of intra-African agricultural trade intensity[24].

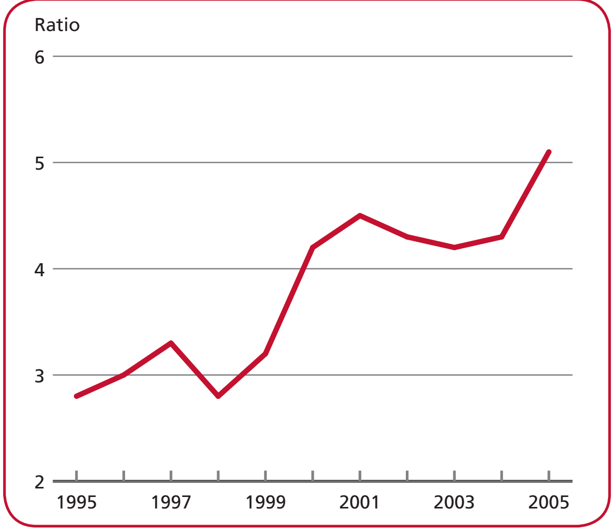
[24] The trade intensity index is given by: $I = \frac{T_1}{T_a} \Big/ \frac{T_a}{T_w}$, where I is the trade intensity index, T_1 is intraregional trade in agriculture, T_a Africa's total agricultural trade and T_w is world agricultural trade. If the index is higher (lower) than 1, intraregional trade is more (less) intense than extra-regional trade

TABLE 1: Overview of trends in Africa's agriculture and food trade

	1996-99 (million US$)	%	2002-05 (million US$)	%	Growth rate (per annum)
			Agricultural exports		
Agricultural products (total)	17 018		21 371		2.3
Total food (excluding fish)	13 193	100	16 904	100	2.5
Cereals	644	4.9	868	5.1	3.0
Oils and fats	545	4.1	622	3.7	1.3
Oilseeds	243	1.8	282	1.7	1.5
Dairy products	112	0.9	197	1.2	5.8
Meat and meat products	119	0.9	245	1.5	7.5
Sugar	944	7.2	993	5.9	0.5
Vegetables and fruits	2 538	19.2	3 557	21.0	3.4
Beverages	347	2.6	844	5.0	9.3
Live animals	165	1.3	315	1.9	6.7
Coffee, cocoa, tea	4 357	33.0	4 363	25.8	0.0
Spices	95	0.7	237	1.4	9.6
Miscellaneous food products	3 084	23.4	4 380	25.9	3.6
Non-food agriculture	3 824		4 467		1.6
	%		%		
Total food as % of agriculture	78		79		
			Agricultural imports		
Agricultural products (total)	18 701		23 003		2.1
Total food (excluding fish)	15 930	100	20 099	100	2.4
Cereals	5 905	37.1	7477	37.2	2.4
Oils and fats	1 899	11.9	2176	10.8	1.4
Oilseeds	222	1.4	374	1.9	5.4
Dairy products	1 191	7.5	1437	7.2	1.9
Meat and meat products	542	3.4	871	4.3	4.9
Sugar	1 324	8.3	1274	6.3	-0.4
Vegetables and fruits	828	5.2	1294	6.4	4.6
Beverages	321	2.0	502	2.5	4.6
Live animals	197	1.2	150	0.7	-2.7
Coffee, cocoa, tea	689	4.3	717	3.6	0.4
Spices	68	0.4	84	0.4	2.1
Other food products	2 744	17.2	3743	18.6	3.2
Non-food agriculture	2 771		2 904		
	%		%		
Total food as % of agriculture	85		87		

Source: COMTRADE

Figure 2. Intra-regional agricultural trade intensity in Africa, 1995-2005[25]



The index shows the intra-regional trade intensity has increased by about 45 percent since 1995. This trade intensity in agriculture has a cyclical pattern with flat peaks and troughs about every 3 years since 1995 with an upward trend.

Table 2 presents the performance of agriculture in intra-African trade from the perspective of the RECs. The value of intra-African agricultural exports in Africa's total agricultural exports has rising steady from about US$2.7 billion in 1996-99 to US$3.8 billion in 2002-05 representing an increase of about 31 percent. In 2002-05, intra-trade (exports) in agriculture was above 30 percent for COMESA, EAC and CEN-SAD. For the other RECs, the shares of intra-trade in agriculture were around 25-27 percent. In terms of imports, intra-trade shares ranged from a low of 15 percent in the EAC to a high of 24 percent in both the AMU and COMESA. These levels of intra-trade are way higher than earlier results.

These improvements can be attributed to the improved performance in trade structure as a result of an enhanced policy and regulatory framework. Also, most African countries have made significant strides in solving their supply-side bottlenecks related to regional transportation, tariff reduction and simplification, improved data collection and information flow and other behind the border issues.

TABLE 2: Share of intra-trade in agriculture by RECs (period averages)

	1996-99	2002-05
Agricultural Exports		
AMU	23.0	27.1
COMESA	44.5	34.7
ECOWAS	25.1	24.5
ECCAS	56.3	27.2
SADC	30.7	27.6
EAC	41.7	37.4
CEN-SAD	27.9	30.5
Africa	29.6	27.4
Agricultural Imports		
AMU	32.2	24.3
COMESA	28.2	23.8
ECOWAS	17.4	16.3
ECCAS	21.8	16.7
SADC	28.2	22.3
EAC	25.6	14.8
CEN-SAD	29.2	21.6
Africa	26.0	20.6

Source: COMTRADE

The rest of the sub-section provides an overview of intra-trade for the eleven major groups of food products examined earlier. Contrary to the widely held view that intra-trade in Africa only takes place among neighbouring countries, the available evidence suggest otherwise. For example, ECOWAS exported US$10 million worth of agricultural products to COMESA during 2002-05 and imported US$30 million during

[25] Export intensity computed is more or less similar

the same period. Table 3 presents summary of intra-African trade by major food groups:

Cereals: Africa's trade deficit in cereals of about $5.3 billion in 1996-99 rose to US$6.7 billion in 2002-05. Wheat alone accounts for over 50 percent of the deficit, followed by rice, and to a lesser extent by maize and other grains. Intra-African import is extremely low at 6 percent. On the other hand, 63 percent of the African exports of cereals are destined for Africa itself, most of it maize. With the exception of ECCAS, intra-African exports of cereals are over 60 percent for the AMU and over 90 percent for COMESA, ECOWAS and SADC. The almost 100 percent import dependency for wheat will mean that intra-trade in wheat will remain negligible. On the import side, intra-trade is very low among the RECs ranging from about 30 percent in COMESA to 0.1 percent in the AMU. The bulk of intra-trade in maize is exported by SADC mainly South Africa. Import intensity for maize is highest in the COMESA region as maize is the main staple. Intra-trade in maize accounts for around 16 percent of all maize imports, with the EU, USA and Asian countries supplying the bulk of maize outside the region. For rice, intra-trade is concentrated mostly amongst ECOWAS, COMESA and SADC countries, with the latter two RECs accounting for around 14 percent of the African rice market. Asian countries supply the bulk of rice consumed in Africa (around 70 percent). There is considerable scope for raising intra-trade in rice, maize and other grains. However, depending on relative prices, these cereals could also substitute some of the imported wheat. On the whole, domestic production has to expand substantially. A successful implementation of the CAADP will make a difference in intra-trade in cereals.

TABLE 3: Intra-african trade in major food products, 2002-05 averages

	Africa's export to:			Africa's import from:		
	World	Africa	% of Intra-trade	World	Africa	% of Intra-trade
Producs	(million US$)			(million US$)		
Cereals	868	558	64.3	7 477	451	6.0
Oils and fats	622	190	30.5	2176	213	9.8
Oilseeds	282	75	26.6	374	63	16.9
Dairy products	197	115	58.3	1437	112	7.8
Meat and meat products	245	122	49.8	871	55	6.4
Sugar [1]	993	313	31.5	1 274	233	18.3
Vegetables and fruits [2]	3 557	266	7.5	1 294	278	21.5
Beverages	844	271	32.1	502	134	26.7
Live animals	315	163	51.6	150	39	26.0
Coffee, cocoa, tea	4 363	321	7.4	717	304	42.5
Spices	237	18	7.6	84	23	27.2
Miscellaneous Food products	4 380	869	19.8	3 743	897	24.0
Total	16 904	3 280	19.4	20 099	2 803	13.9

[1] Includes sugar confectionary

[2] Includes roots and tubers

Source: Computed from COMTRADE

Meat: Meat is another product group where the potential for intra-African trade is high. Indeed, this is the case already on the export side, with 52 and 50 percent intra-trade for live animals and meat respectively. Bovine meat accounts for over half of the intra-trade with frozen, fresh and chilled meats together being the main products. SADC is the main exporter of beef with over 30 percent of the meat exported to other African countries. For poultry, in 2005, about 21 percent of intra-trade went to SADC, 14 percent to COMESA, 10 percent to ECCAS and 6 percent to ECOWAS. On the import side, intra-trade is about 26 percent for live animals but only 6.4 percent for meats. This is due to very low intra-trade in poultry meat whereas its share in total imports is high.

Among the RECs, intra-trade (exports) in live animals and meat is high for COMESA, ECCAS, ECOWAS and SADC but relatively low for the AMU at 8 percent for live animals and 14 percent for meat. On the import side, intra-trade in live animals is relatively higher than on meats. The EU supplies the bulk of meat from outside the region with over 50 percent of imports. The US and Asia (mostly India and China) also export significant amounts with Brazil and New Zealand gaining some market share recently. However, a recent decision by the US to include perishable goods as part of its food aid programme might change this situation in favour of the US. During the early 1990s almost 60 percent of beef produced in Africa was exported to the EU. However, due to the failure of African countries to meet strict EU food safety standards, exports of beef from Africa to the EU have declined significantly. This decline has not stimulated intra-trade in beef among African countries. Lack of refrigerated transport facilities and technical standards imposed by African countries themselves are major reasons for low intra-trade in meat because lack of African demand cannot be an important factor. Also beef imports from Latin America and elsewhere especially to meet the growing demand by supermarket chains has not been entirely helpful particularly in major beef producing countries like Tanzania and Botswana. On the whole, however, prospects for intra-trade in meats should be considered to be good along with improved rules on FDI that would ensure that locally produced products are targeted.

Sugar and sugar confectionary: The prospect for increased intra-African trade appears relatively good for sugar. Not only is intra-trade relatively high currently in both exports and imports (32 and 81 percent respectively) the total values of the exports to and imports from the rest of the world are also high and not very wide apart, with a positive net balance of trade. Among the RECs, intra-trade (both export and imports) is also relatively high at above 17 percent for both import and export. Intra-African sugar trade for ECCAS is over 90 percent. Sugar trade is more intense in COMESA and SADC which together supply 40 percent of the African sugar market. Most of the current export to the rest of the world is traded under preferential schemes, e.g. to the EU. This trade is unlikely to be diverted to Africa as long as the attraction of the preferential access remains. But even after deducting preferential exports, the scope for raising intra trade is considerable, and indeed recent trends show that this trade is picking up.

Animals/vegetable oils and fats: Africa exports about 31 percent of vegetable oils to Africa itself but given the large value of import, intra-trade as percentage of total import is very low (10 percent). Africa's trade deficit of this product category is about over US$1.6 billion, second to cereals which is over US$3 billion. Among the RECs, intra-trade (exports) is on the high side for COMESA and SADC at 81 and 73 percent respectively but moderate for ECOWAS at 39 percent and low for the AMU at just over 15 percent. On the import side, intra-trade rates are similar for COMESA, ECOWAS and SADC ranging between 15 and 20 percent. At both extremes are ECCAS with intra-trade of 60 percent and AMU with less the 1 percent. Soy oil alone accounts for close to 38 percent of all oil imports, but is hardly produced in Africa. Although about 80 percent of African palm and groundnut oils are traded in Africa, total imports are large relative to exports. The key challenge in the oils sector is raising production and exportable surplus, notably of palm and groundnut oils. Eventually, these oils may also substitute some of the soy oil that is being imported heavily.

Oilseeds: Although the overall size of the trade in oilseeds is relatively small, intra-trade is relatively high, with 27 percent in exports and 17 percent in imports. Amongst the RECs, on the export side, intra-trade is 77 and 95 percent for COMESA and ECCAS respectively, and 30 and 36 percent for ECOWAS and SADC. On the import side, with the exception of AMU, intra-trade in oilseeds is relatively high for other RECs, ranging from 34 percent for SADC to 65 percent for ECCAS. Importantly, the scope for more intra-trade is brighter because of the better trade complementarity between African exports and African imports. Except for soybeans, other oilseeds, notably ground nuts and sunflower, feature in both the export and import baskets.

Beverages (alcoholic and non-alcoholic): Africa exports 32 percent of the total export of beverages to Africa itself (beer, wine, water are major products). On the import side intra-trade is about 27 percent. In terms of the RECs, exports of beverages within Africa are high, ranging from 30 percent in the AMU to 81 percent for ECCAS. The shares for the other RECs also show promise – COMESA 68 percent, ECOWAS 42 percent and SADC 30 percent. Intra-African imports of beverages are relatively lower than for exports. While this is an indication of a relatively high intra-trade, this figure can be raised further. The main limiting factor is demand, i.e. current income levels are not high enough to sustain higher beverage consumption, especially spirits and wine. Also, this sector is highly protected as an "infant industry" in most African countries. When the demand picks up and trade barriers are dismantled, so will the intra-trade.

Vegetables and Fruits: Intra-trade in vegetables and fruits should be considered to be relatively low in terms of exports at around 8 percent. Intra-African imports are about 22 percent. Among this food group, legumes (pulses) are highly traded among the region and accounts for around 16 percent of intra-trade. In terms of the RECs, intra-trade (exports) shows good prospects for SADC (34 percent), ECOWAS (19 percent) and ECCAS (84 percent). In COMESA, intra-trade is around 9 percent and over 30 percent for the AMU. If one considers that there is a great deal of trade complementarity in vegetables and fruits with many countries producing different types of vegetables and fruits, including processed vegetables, the scope for increased intra-trade seems good. Currently, it seems that bulk of the fresh vegetables is exported outside of Africa while processed vegetables and fruits weigh heavily in Africa's imports from outside the region. On the whole, prospects for intra-trade are brighter for vegetables and fruits with potential for horizontal and vertical linkages through value-addition. It is worth making concerted efforts in this sub-sector.

Miscellaneous (other) food products: On the whole, intra-trade is relatively high for a variety of miscellaneous food products. Africa exports as high as 20 percent of these food products to Africa itself and imports around 24 percent. Amongst the RECs, intra-trade (exports) is slightly higher than 20 percent with ECOWAS and SADC exhibiting strong intra-trade shares of 57 and 69 percent, respectively. In terms of imports, intra-trade for all the RECs show promise, ranging from a low of 19 percent for the AMU to a high of 48 percent for COMESA. One reason for low intra-trade is that certain products are heavily imported into Africa from rest of the world, notably highly processed cereal-based food products. However, intra-trade in products such as bread, pastries, biscuits and sugar confectionaries is encouraging because these are among the prominent cereal-based products that are typically produced by economies during the early phase of industrialization. Indeed, special efforts should be made on the production and regional export of these products by linking farming to agro-industries, and by facilitating trade.

The analyses above have demonstrated that the scope for intra-trade in the key food groups among African countries is promising. Table 4 shows the average tariff rates for agricultural products among the RECs in comparison with some developing countries. Contrary to some published reports that high tariffs among African countries is a key impediment for intra-trade, the average tariff rates for African countries are almost identical to those of other developing countries and in most cases even lower. Thus, the low level of intra-trade in Africa cannot be attributed to tariffs but rather non-tariff barriers and other supply-side constraints. These will be addressed in the next Chapter from the perspective of the RECs.

2.2 The relevance of informal cross-border trade

A discussion of regional integration and trade in Africa will be incomplete without examining the relevance of what is now referred to as informal (and sometime as illegal) cross-border trade. A survey reported by the World Bank[26] of traders along the Kenya – Uganda border reveals that maize imports from Uganda totaled 72.9 million shillings (US$1.1 million) in 2005, far more than the officially recorded imports of 300 000 (US$4 505). This survey clearly encapsulates the nature and magnitude unrecorded cross border trade in Africa. These so called informal trade flows are important not only for their economic significance but also because they reflect the *de facto* economy of most African countries. It is generally agreed by African scholars that trans-border trade remains by far the most efficient, organised and institutionally deep-rooted system of trade in Africa and thus any modifications without thorough understanding of the extent of this type of interaction could therefore have tremendous economic, social and environmental consequences (Meagher, 2003).

TABLE 4: MFN applied tariffs by RECs and selected developing countries

	Simple Average		
	All	**Agr**	**Non-Agr**
AMU	21.0	34.6	18.9
COMESA	15.6	18.9	15.1
ECCAS	17.0	20.1	16.5
CEMAC	18.0	22.0	17.4
UEMOA	12.0	14.3	11.6
EAC	15.8	20.0	15.2
SADC	10.6	14.0	10.1
Africa	*15.1*	*19.6*	*14.4*
Other developing countries			
Bangladesh	18.6	20.6	18.3
Cambodia	16.4	19.5	15.9
Brazil	12.4	10.3	12.7
Mexico	18	24.5	17.1
India	29.1	37.4	27.9
Korea, Rep. of	11.2	41.6	6.7

Source: Computed by the author from WTO World Trade Report, 2005

Trans-border trading net-works are not mere reactions to economic imbalances: they are historically grounded economic systems, involving actors and institutions capable of responding to new incentives and defending their interests". Whereas struc-tural adjustment policies (SAPs) in 1980s were supposed to eradicate trans-border trade (considered to benefit from 'market failures'), they actually had the effect of encouraging it by creating a general environment of disarray throughout the official economy and encouraging traders

[26] http://www.reformersclub.org/documents/reform/KenyaTrade.pdf

to cut costs by trading outside official channels and consumers to shift their demand towards lower-cost imported goods and by forcing populations and officials – both struggling for survival – to find new sources of income. The implementation of SAPs on a national case-by-case basis tended to exacerbate disparities and distortions in monetary and fiscal policies, all of which contributed to new opportunities for trans-border trade.

Cross-border trade has also benefited from globalization, with the introduction technological change in transport and telecommunications, boosting growth in global financial markets. These processes facilitated the consolidation and extension of cross-border trading networks by encouraging direct contact with overseas suppliers (in Asia, for example) – bypassing traditional middlemen – and accessing foreign exchange in order to purchase or engage in currency speculation. Whereas banks in most African countries impose 30 percent interest rates on credit, in the informal sector it is far less and in most cases based on trust. Also money transfer charges in the informal sector are about 3 to 6 percent compared to the 12 to 15 percent in official circles. These developments introduced scale and geographic distinctions between small-scale, rural, intra-regional trans-border trade on the one hand, and on the other hand, inter-continental, large-scale, urban-based trans-border operators benefiting from access to official resources.

The importance of cross border has led to several initiatives to bring it in line with the official economies especially to enhance transparency and improve performance. In West Africa, the OECD sponsored *Club du Sahel* has come up with the West African Border Initiative which brings together key actors involved in cross border trade to sensitize them about key issues in regional integration and trade. Other similar initiatives are going on in Eastern and Southern Africa. As regional integration contributes to an improved trading environment, it is important to be aware of the impact of cross border trade over such evolution.