CHAPTER 4: The WTO rules

4. THE WTO

Of 53 African countries, 41 are Members of the WTO, 8 have observer status[170] and 4 are neither Members nor observers[171]. This implies that for those countries that are Members of the WTO, it will be necessary to ensure that any agreement concluded will be in accordance with WTO rules in order to avoid challenge at the WTO. While least-developed countries are generally granted considerable leeway towards complying with WTO obligations, by virtue of their limited capacities, this is not so much the case with those African countries classified as developing countries.

It also means that for those 41 countries, there is a potential for a dispute to arise which could be the subject of proceedings either at the WTO-level or at the regional level. With regard to the issues identified in Chapter 2.2 as being of importance in creating a CMAP, the rules of the WTO can be found in a variety of sources, the most important of which is GATT 1994. Other important sources of rules are the various Agreements reached at the end of the Uruguay Round which elaborate on the rules in GATT. The following sections give a brief overview of these rules.

4.1 GATT 1994: Article VI – Anti-dumping and countervailing duties

Article VI of GATT 1994 addresses both those situations where a product is being dumped into an importing party and those situations where a subsidy is being granted in the country of export on the manufacture, production or export of a product. In the case of dumping, WTO Members are permitted to levy anti-dumping duties to offset or prevent dumping[172]. Dumping is defined in the Article as the introduction of products of one country into the commerce of another at less than the normal value of the products and is to be condemned 'if it causes or threatens material injury to an established industry or materially retards the establishment of a domestic industry[173].' With regard to subsidies, the Article provides that countervailing duties are not to exceed an amount equal to the estimated subsidy granted to the product in question[174]. In both cases, duties can only be imposed where the dumping or subsidies are such as to cause material injury to an established industry or to retard materially the establishment of a domestic industry. Note that further provisions aimed at enhancing the transparency of the provision of subsidies are set out in Article XVI of GATT 1994.

Article VIII – Fees and formalities (trade facilitation)

Trade facilitation is one of the most important elements to be considered in streamlining the trade transaction. Article VIII aims to alleviate the problem of formalities by obliging Members to ensure that fees and charges connected with importation or exportation of products are limited to the approximate cost of the services rendered and are not used as an indirect protection to domestic products[175]. It also recognises the need

[170] Algeria, Cape Verde, Equatorial Guinea, Ethiopia, Libya, Sao Tome and Principe, Seychelles, and Sudan
[171] Comoros, Eritrea, Liberia, and Somalia
[172] GATT 1994, Article VI(2)
[173] GATT 1994, Article VI(1)
[174] GATT 1994, Article VI(3)
[175] GATT 1994, Article VIII(1)(a)

to decrease and simplify import and export documentation requirements[176], without actually imposing a uniform standard that Members are required to meet.

Article XI – General elimination of quantitative restrictions
This Article contains a general bar on the use of 'prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures' on imports of products from any other contracting party or exports to any other contracting party[177]. However, this general rule is subject to a number of exceptions for purposes such as relieving critical shortages of foodstuffs or the application of standards. **Article XIII** elaborates on this by providing that any restrictions on imports or exports are to be applied on a non-discriminatory basis.

Article XIX – Emergency action on imports of certain products (safeguards)
Safeguard measures 'refer to the right of a WTO Member to impose temporary tariffs, quotas, tariff-rate quotas or other measures to ensure that its economy or domestic industries do not suffer serious harm from imports and trade concessions[178].' They are not based on any concept of unfair trade and provide an illustration of a case where the WTO allows 'the introduction of trade distortions and protective measures[179].' Article XIX of GATT 1994 caters for circumstances where, as a result of unforeseen developments and the obligations incurred under the Agreement, a product is being imported into the territory of a WTO Member in quantities that are causing or likely to cause serious injury to domestic producers of competing products. In these circumstances, Members are permitted to suspend the obligation or withdraw the concession made[180]. This provision was further elaborated following the Uruguay Round by the Agreement on Safeguards, which is discussed below.

Article XX (b) – Exceptions
Under Article XX, WTO Members are allowed to, *inter alia*, adopt or enforce measures necessary to protect human, animal or plant life or health provided that such measures are not applied in a manner which would constitute an arbitrary discrimination or a disguised restriction on international trade. This provision is to be read and understood in the light of the SPS Agreement discussed below.

Article XXIV: Creation of regional trade agreements (RTAs)
The WTO is founded on the non-discrimination principle enshrined in Article I of GATT 1994. However, under Article XXIV, WTO Members are permitted to establish regional trade agreements in the form of free trade areas, customs unions and interim agreements leading to customs unions and free trade areas. A key requirement for such RTAs to be legal, derived from GATT's definition of customs unions and free trade areas, is the elimination of tariffs and other barriers to trade on substantially all goods[181]. This obligation is, however, quite ambiguous and has been the subject of intense debate within the GATT and now the WTO. It is worth noting that the WTO can endorse the establishment of non-conforming agreements through the waiver provisions. Thus, where a proposed agreement does not conform to the provisions of article XXIV, Members can still apply for it to be approved. Thus Article XXIV: 10 provides that:

[176] GATT 1994, Article VIII(1)(c)
[177] GATT 1994, Article XI(1)
[178] Matsushita et al., The World Trade Organization, p. 182
[179] Matsushita et al., The World Trade Organization, p. 182
[180] GATT 1994, Article XIX(1)(a)
[181] GATT 1994, Article XXIV(8)

> The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

The drafting history of the GATT indicates that this paragraph was intended to cover the set of circumstances where a non-party to GATT was a member of the regional arrangement in question[182]. This provision could therefore come into play with regard to an AU CMAP in light of the fact that a number of African countries are not members of the WTO.

Following the establishment of the WTO, waiver requirements are now to be considered under Article IX of the Marrakech Agreement.

4.2 The enabling clause

The Enabling Clause is another key provision to be considered in the establishment of preferential trade arrangements such as the AU's CMAP would be. This is primarily because the Enabling Clause allows developing countries to derogate from the MFN principle enshrined in Article I of GATT 1994. The Enabling Clause permits:

> Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another[183].

Developing countries are therefore given the option as to whether or not to eliminate tariffs on imports from one another. It is significant to note that the Enabling Clause is silent on the external dimensions of a customs union. This would be significant if the aim of the proposed CMAP entailed the setting up of a common external tariff. However, this is not contemplated at the moment. The Enabling Clause is important as it could provide legal cover the establishment of a CMAP, thus shielding African WTO Members from challenge at the WTO, providing they meet the criteria or conditions prescribed by the CONTRACTING PARTIES.

4.3 Agreement on agriculture

The main purpose of the Agreement on Agriculture is to introduce reforms aimed at introducing a market-oriented basis to trade in agricultural products. Article 4 of the Agreement obliges Members not to maintain, resort to or revert to measures of the kind which are required to be converted to customs duties. The Agreement also contains provisions regarding permitted domestic support measures[184], export subsidies[185] and safeguards[186].

The Agreement is also significant because it obliges Members 'to give effect to the Agreement on the Application of Sanitary and Phytosanitary Measures[187].'

[182] WTO, Guide to GATT Law and Practice (1995) vol. 2, 829
[183] GATT, Enabling Clause, para. 2(c)
[184] Agreement on Agriculture, Article 6 & 7
[185] Agreement on Agriculture, Articles 8-11
[186] Agreement on Agriculture, Article 5
[187] Agreement on Agriculture, Article 14

With regard to least developed countries, the Agreement exempts them from undertaking reduction commitments while developing countries were given the flexibility of a ten year period to implement reduction commitments which ended in 2005[188].

4.4 Sanitary and phytosanitary measures

The SPS Agreement elaborates on the rules for the application of the provisions of GATT 1994 relating 'to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b)[189].' The agreement reaffirms that:

> No Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade[190].

The Agreement defines sanitary or phytosanitary measures as any measure applied:

a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests[191].

The Agreement provides that Members are to 'base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist…'[192] If a Member chooses to adopt an SPS measure that conforms to international standards, guidelines or recommendations, such a measure is presumed to be consistent with the provisions of the Agreement and of GATT 1994. In an effort to ensure transparency, Members are required to 'notify changes in their sanitary or phytosanitary measures' and to 'provide information on their sanitary or phytosanitary measures'[193]. The Agreement also contains a couple of provisions that are of particular interest to developing countries. In Article 9, Members 'agree to facilitate the provision of technical assistance to other Members, especially developing countries, either bilaterally or through the appropriate international organizations.' Article 10 obliges Members to 'take account of the special needs of developing country Members, and in particular of the least-developed country Members' in the preparation and application of SPS measures. Unfortunately, the language in which these obligations are phrased is open to interpretation and therefore any determination as to whether the obligation is being complied with is bound to be subjective.

[188] Agreement on Agriculture, Article 15(2)
[189] SPS Agreement, preamble
[190] SPS Agreement, preamble
[191] SPS Agreement, Annex A, Article 1
[192] SPS Agreement, Article 3(1)
[193] SPS Agreement, Article 7

4.5 Agreements on anti-dumping and on subsidies and countervailing measures

The Agreement on the Implementation of Article VI of GATT 1994, which was one of the outcomes of the Uruguay Round, elaborates on the procedures to be followed in applying anti-dumping duties under Article VI of GATT 1994. Dumping is defined as the introduction into the commerce of another country of a product at less than its normal value and a product is considered as being dumped 'if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country[194].' The Agreement provides, *inter alia*, that anti-dumping measures are only to be applied under the circumstances set out in Article VI and following investigations initiated and carried out pursuant to the provisions of the Agreement[195].

In Article 15, the Agreement requires developed country Members to have special regard 'to the special situation of developing country Members when considering the application of anti-dumping measures under [the] Agreement.' Before applying anti-dumping duties, they are to explore any possibilities of constructive remedies as provided for by the Agreement. With regard to subsidies, the Agreement on Subsidies and Countervailing Measures contains detailed provisions setting out the definition of a subsidy[196] as well as the actions to be taken with regard to the grant or maintenance of subsidies. Thus, in Article 3 subsidies that are contingent on export performance or the use of domestic over imported goods are prohibited and in the event of a measure being found to be a prohibited subsidy, the Member concerned is to withdraw it immediately[197]. Article 5 of the Agreement, which discourages the use of subsidies that can cause adverse effects, is not applicable to subsidies maintained on agricultural products, which are covered by Article 13 of the Agreement on Agriculture. A Member State granting or maintaining a subsidy resulting in adverse effects is to take measures to remove the adverse effects or to withdraw the subsidy altogether[198].

4.6 Agreement on safeguards

The aim of the Agreement on Safeguards is to establish the rules under which the safeguard measures provided for in Article XIX of GATT 1994 are to be applied[199]. Under Article 2 of the Agreement on Safeguards, Members are permitted to apply safeguard measures to products that are being imported into their territory in such quantities as to cause or threaten to cause serious injury to domestic industries producing like or directly competitive products. However, such measures can only be applied where the Member has conducted investigations under Article 3 which have resulted in a determination of serious injury or threat thereof as set out in Article 4.

4.7 Summary

The rules of the WTO are significant for two reasons: Firstly, as mentioned at the beginning of this Chapter, many African countries are Members of, or in the process of joining, the WTO and are thus bound by its rules; and secondly, the rules provide a multilateral benchmark against which rules that have been promulgated by African RECs can be measured and against which any rules that are proposed can be

[194] Agreement on Article VI, Article 2(2.1)
[195] Agreement on Article VI, Article 1
[196] Agreement on Subsidies, Article 1
[197] Agreement on Subsidies, Article 4(4.7)
[198] Agreement on Subsidies, Article 7(7.8)
[199] Agreement on Safeguards, Article 1

measured. Where WTO rules exist, it would be advisable to ensure that African rules in those areas are consistent with the multilateral rules in order to facilitate trade and prevent a situation where traders are required to comply with two sets of rules. Where the multilateral rules are overly onerous, it is proposed that they be either modified to cater for African country capacities, or technical assistance should be provided to ensure African countries are able to meet the rules.

CHAPTER 5: Addressing the challenges and constraints to intra-trade

5. ANALYSIS OF KEY ISSUES

Having identified and discussed the main provisions of relevance for the creation of a CMAP in Chapters three and four, the aim of this Chapter is to provide an analysis of those particular areas where harmonisation of rules will be necessary if an effective common market is to be attained. The Chapter also reviews the key challenges that will need to be addressed. Appendix 1 to the report sets out this comparative analysis in table form.

5.1 Reduction and elimination of tariffs

As seen in the previous Chapter, the different RECs have reached different stages in their trade liberalization programmes. With the exception of the AMU, the other core RECs are moving towards Customs Union (CUs) within some years. Already, CEMAC, EAC, WAEMU and SACU are full CUs. Both COMESA and ECOWAS will be CUs during 2008, with monetary union also planned for both after becoming CUs. SADC will have its FTA by 2008 while ECCAS is working on its integration agenda based on the model of CEMAC. For SADC, its mid-term review and audited studies have also identified means to resolve some of the key difficulties. If these plans are realised, tariff barriers within the RECs will be eliminated. Thus, one known impediment to intra-trade is likely to disappear. While there could be some delays and reversals, the exemptions for some sensitive products have not deterred the RECs from moving forward with their RIAs as in most case, a general agreement have been reached to have a common list of sensitive products. In this regard, tariffs are not likely to be an issue after some years.

Hopefully, the same will apply to other forms of taxation. Although the expectation is that once the RECs become CUs, this issue should disappear, it has not been the case for the RECs are currently CUs. With trade taxes contributing a significant amount to government revenue in most African countries, this is an area that would be difficult to eliminate unless other forms of revenue generating activity are realized.

Setting a CET has not been easy for most RECs as it has different implications for different Members of a REC, in terms of the impact on production, consumption, employment and revenue. Considerable efforts have been made by some RECs in this direction and the catalyst provided by the EPAs has strengthened the political resolve in getting RECs to move quickly. In the case of ECOWAS, one can conclude that the CET is already in the works as Members have already published their tariff schedule and started implementation. For COMESA, the CU will be implemented by December 2008 while SADC has set 2010 as the deadline for its CU.

From the standpoint of the eventual African common market which is envisaged to be a CU (and more), the implications are that there will be an Africa-wide CET. While the individual RECs set their own CET now and in the next few years, it is important that they leave enough space for an Africa-wide CET down the road. Difficulties could arise in the future if there are different perceptions of sensitive products among the various RECs, in which case one REC may set a low CET for a product that happens to be the sensitive product of the other REC. To make sure that such issues do not arise in the future, some supra-organization - notably the AU Commission in this case - needs to have a mechanism to review the individual CET before these are adopted and to provide guidelines from the standpoint of the eventual African CET. It is encouraging to note that there is a formal process of consultations amongst some of the RECs, e.g. ECOWAS and CEMAC/ECCAS and COMESA and SADC. With regard to the AMU, these issues can be dealt within CEN-SAD which has Members in four of the five core RECs and plans to have an FTA in the near future.

However, despite these formal consultation processes, the strategies taken by individual RECs so far, have not been consistent. A comparative structure of the broad approach adopted by some RECs in their drive to become CUs is presented in Table 6. The key commonality is the four bands of tariffs, but the categories vary amongst the RECs. Whereas the maximum tariff (band IV) for ECOWAS is 30, that for the EAC is 25, for CEMAC and the proposed CET for COMESA are both 30. For intermediate goods (band III) the rates also differ: EAC and ECOWAS/WAEMU at 10, COMESA and CEMAC at 15 and 20 respectively. This would have some implications for the reduction programme envisaged for the propose FTA covering the strategic food products.

TABLE 6: Comparative structure of inter-RECs CET

Category	Type	Implemented	Scheduled	Implemented	
		EAC	COMESA	CEMAC	UEMOA
I.	Primary raw materials, essential drugs, medical equipment, plant and machinery, and agricultural input and other special goods	0	-	-	-
	Capital goods	-	0	-	-
	Basic necessities	-	-	0	-
	Selected essential social goods	-	-	-	0
II	Raw materials	-	5	-	-
	Primary raw materials and capital equipment	-	-	-	5
	Primary necessity, basic raw materials, capital equipment and specific inputs	-	-	-	5
III	Intermediate goods	10	15	20	10
	Finished consumer goods [2]	20-25	-	30	20
IV	Finished goods	-	30	-	-

Note: A dash (-) implies the category is not applicable

[2] The finished consumer goods category includes products not listed elsewhere in the case of UEMOA

Source: www.eachq.org,; www.comesa.int; www.izf.net

Furthermore, looking at the specific tariff structure for the strategic products the differences highlighted above are clearly apparent (Table 7). As the tariff liberalization is based on the nature and relevance of each of the commodities to the respective countries, they vary across the four bands considerably. Also, the products that are sensitive are not uniform across the RECs. For the AMU specifically, with the exception of maize, cassava and palm oil, its tariffs for other strategic products are at least 40 percent higher than those of other RECs. Another feature to note is that for COMESA and EAC. Interestingly, the MFN applied tariffs in COMESA are lower than those of the EAC even though within these two RECs, the products regarded as sensitive are identical. EAC and COMESA and SADC/SACU all have some specific duties for sensitive products and the SACU Members do have recourse to the SSG. Tariff escalation and

TABLE 7: MFN applied tariffs for strategic and other key products, 2006

	HS Code	Products	AMU	COMESA	EAC	ECCAS	ECOWAS	SADC	SACU
Beef	0102	Live bovine animals	51.8	5.7	9.5	4.9	12.5	3.3	0.0
	0201	Meat of bovine animals, fresh or chilled	49.5	13.3	19.0	10.0	20.0	11.4	x
	0202	Meat of bovine animals, frozen	62.3	13.3	19.0	10.0	20.0	11.4	x
Poultry	0105	Live poultry	31.7	8.3	14.5	4.9	12.9	5.8	0.0
	0207	Meat and edible offal, of the poultry	47.1	14.7	19.0	10.2	20.0	10.6	2.9
Dairy products	0401	Milk and cream, not concentrated	58.8	18.8	38.0	4.3	20.0	11.0	0.0
	0402	Milk and cream, concentrated	33.1	18.0	43.0	10.5	11.5	13.8	x
	0403	Buttermilk, curdled milk and cream, yoghurt	56.0	20.3	22.0	13.8	16.3	16.8	0.0
	0404	Whey, whether or not concentrated	19.2	13.6	19.0	6.8	13.3	6.7	x
	0405	Butter and other fats and oils derived from milk	32.3	17.8	22.0	16.3	17.5	16.0	x
	0406	Cheese and curd	45.6	17.3	22.0	16.3	20.0	14.8	x
Legumes	0708	Leguminous vegetables, shelled or unshelled, fresh	38.7	11.7	17.0	8.8	20.0	10.4	5.0
	071021	Peas (Pisum sativum)	38.0	14.7	17.0	8.8	20.0	12.5	10.0
	071022	Beans (Vigna spp., Phaseolus spp.)	40.0	14.7	17.0	8.8	20.0	12.5	10.0
	0713	Dried leguminous vegetables, shelled	34.5	11.1	17.0	8.5	17.8	11.6	10.8
Cassave	071410	Manioc (cassava)	10.6	12.7	17.0	8.8	20.0	10.2	2.5
	110814	Manioc (cassava) starch	20.0	8.4	10.0	8.0	12.8	5.6	5.0
Wheat & products	1001	Wheat	28.0	2.9	2.0	4.3	5.0	1.2	1.0
	1101	Wheat flour	50.9	15.9	45.0	15.8	20.0	10.7	2.0
	110311	Of wheat	50.6	13.6	19.0	8.8	5.0	14.4	20.0
	110811	Wheat starch	22.0	7.6	10.0	8.0	12.8	4.5	5.0
Maize and products	1005	Maize (corn)	4.4	8.8	24.5	4.9	5.0	7.1	x
	110220	Maize (corn) flour	23.6	11.1	19.0	10.0	20.0	11.4	x
	110313	Of maize (corn)	23.6	12.6	19.0	8.8	10.0	8.1	5.0
	110423	Of maize (corn)	23.6	12.9	19.0	10.0	10.0	8.5	5.0
	110812	Maize (corn) starch	22.0	8.4	10.0	8.0	12.8	5.6	5.0
Rice	1006	Rice	32.2	3.7	9.4	7.4	13.3	2.2	0.0
	110230	Rice flour	36.6	11.7	19.0	10.0	20.0	15.0	20.0
Sorghum	1007	Grain sorghum	11.5	6.7	17.0	5.5	5.0	6.3	3.0
Groundnuts & oil	1202	Ground-nuts, not roasted	49.9	6.2	8.0	5.5	5.0	7.6	10.0
	1508	Ground-nut oil and its fractions	15.6	12.4	13.0	10.8	15.0	9.4	9.8
Oil palm	120710	Palm nuts and kernels	11.9	7.8	8.0	5.5	5.0	5.1	7.4
	1511	Palm oil and its fractions	11.4	11.8	10.6	12.0	16.3	9.2	10.0
Sugar	17	Sugars and sugar confectionery	19.6	15.3	29.6	17.3	12.2	10.4	5.2
Beverages	22	Beverages, spirits and vinegar	31.7	24.6	26.1	25.7	19.8	22.1	18.6
Cotton	52	Cotton	15.8	13.8	17.7	11.5	14.6	13.7	18.7
Tobacco	24	Tobacco and manufactures tobacco substitutes	19.7	35.9	27.2	22.8	14.8	44.7	35.3

Source: UNCTAD Trains in WTS, 2006

Tariffs for CEMAC and WAEMU are identical to those for ECCAS and ECOWAS respectively.

tariff peaks are also general feature of some REC's tariff structures. Although the COMESA roadmap for its CU indicated that consultations will be held with both SADC and EAC to see how best to harmonize their regime before it is adopted in December 2008.

These differences in the tariff structure are likely to pose some difficulties for some RECs in further liberalizing their tariffs for the proposed Inter-REC FTA for the strategic food products. The EPAs has also served to heighten the difficulties faced by African ACP State as they will have to liberalize their tariffs vis-à-vis the EU[200]. The combined effect of both liberalizing their tariffs for the creation of a CU and then further under the EPA might pose significant challenge for the propose common market for selected strategic products as there is considerable uncertainty surround loss of revenue and the nature of adjustments support promised under the EPAs. Thus, unless a mechanism is included in the common market agreement to allay the fears of most of the AU member States, the success of the proposed Africa-wide FTA even if limited to a select number of products will not be realized. Towards, this end, it will be useful for the RECs to investigate the possibility of making use of a mechanism like the ECOWAS Decreasing Protecting Tax (DPT) as discussed earlier. Furthermore, the common thread that runs through their different programmes is that of adopting a progressive approach to the elimination of customs duties. This is an indication of the reluctance of African countries to take any hasty measures which might result in disruptions to their economies. The fear of losing customs revenues is a key consideration. It will therefore be prudent to adopt the same approach in devising a Protocol establishing a CMAP.

5.2 Non-tariff barriers and other restrictions to trade

Non-tariff barriers (NTBs) to trade are increasingly becoming front stage market access concerns as tariffs have been bound, lowered and made transparent. All the RECs have provisions in their treaties to reduce and eventually eliminate all NTBs and the state of progress in some of these has been pointed out in the previous chapter. There are numerous studies on African exports facing NTBs in overseas markets with much more on the NTBs themselves that exist in intra-African trade. Several ECA studies, as well as others, claim that significant intra-trade opportunities are lost due to Africa' own NTBs[201].

Despite these widely accepted claims, reining in the NTBs is very difficult in practice. In the literature, NTBs are often categorized into two groups. The so-called "core NTBs" include measures like non-automatic licensing, quotas, voluntary export restraints as well as price control measures such as variable charges or minimum prices. It is generally held that with reforms associated with structural adjustment programmes, and the Uruguay Round itself, the incidence of core NTBs has fallen considerably. On the other hand, the so-called "non-core NTBs" that includes almost everything from multiple road blocks to demand for bribes are more subtle impediments to trade and are difficult to locate and control. In a study of NTBs in Africa, for example, it was found that the incidence of the core NTBs fell from 45 percent to 15 percent between 1994 and 2004 while that of the non-core NTBs increased from 55 percent to 85 percent in the same period (Bora et al. 2002, Mold (2005). The non-core NTBs will be dealt with in more detail below. Although a significant barrier to intra-trade and a ubiquitous topic in trade discourses, hard facts are missing in order to take action.

[200] It would also be unrealistic to expect that the US would not request similar treatment of its exports to Africa, thus that also needs to be factored in the overall context of the CMAP

[201] For example, Longo and Sekkat (2001); ECA (2004); Clarke (2005) and Mold (2005)

UNCTAD's Trade Analysis and Information System (TRAINS) is the most comprehensive database for NTBs globally, but the coverage for African countries is poor and thus of limited use. The TRAINS system has data only on 22 African countries with very limited commodity coverage.

With regard to the elimination of non-tariff barriers, the approaches adopted by the RECs differ, with some such as COMESA providing that non-tariff barriers were to be eliminated immediately while others such as ECOWAS and SADC have taken a more gradual approach. In both cases, however, the problem encountered has been ensuring that the Treaty obligations are actually implemented. Complaints from business communities regarding the existence of non-tariff barriers to trade are common across the continent. In order to address this issue, it will be necessary to provide for the elimination of non-tariff barriers as well as to institute monitoring mechanisms in order to identify and address non-tariff barriers whenever and wherever they occur.

5.3 Revenue loss and monetary constraints

As stated above, besides import duties, the import regimes of many African countries currently include "other duties and charges" such as transitory surtaxes for sensitive products, toll charges, import levies, etc, With trade taxes contributing about 10-30 percent of the revenues of most African countries, this is an area that would be difficult to eliminate unless other forms of revenue generating activity are realized. It is not surprising, then, that a discussion on trade liberalization—whether in the context of multilateral, regional, or bilateral arrangements - also provokes a discussion of the potential consequences for government revenues. However, the potential revenue losses from RTAs are likely to be small because intra-regional trade in most of Africa's RTAs typically accounts for a small fraction of total trade. In cases where intra-regional trade is important and the common external tariff is also reduced when a customs union is formed, revenue losses can be significant. Furthermore, the EPA will also highlight these loses as African countries also have to reduce their tariffs on EU goods[202]. Concern over revenue loss will therefore be a key obstacle to broader trade liberalization in Africa.

The fragmentation of African economies is compounded by the fact multiplicity of monetary regimes throughout the continent. Although all the RECs with the exception of the AMU has a vision to create a monetary union as part of their integration framework, these are still not yet realized except for CEMAC and WAEMU. SACU to some extent has a monetary arrangement with some of its Members. However, a key monetary hurdle in Africa relates to the multiplicity of currencies and exchange rates and the related risk management traders have to deal with in the conduct of their daily transactions in various areas including intra-regional food trade. Currency and exchange rate risks are further emphasized by uncompetitive business practices and other infrastructural weakness on the continent. Even as convergence criteria for common currencies are being met in most RECs, the issues related to inter-REC trade will still need to be overcome as the banking systems across the RECs are all operating on different platforms with clearing houses focused only at the regional level.

In some countries, monetary authorities require that export earnings in foreign currency be repatriated at a specific date. In addition, some African banks charge interest rates as high as 30 percent. Restrictions also apply in several areas, for instance

[202] African countries are also concern that the US might make similar demands on them

in the WAEMU and CEMAC zones with very long history of monetary cooperation and part of the common CFA zone. Details of these issues are beyond the scope of this study though the status of monetary integration amongst the RECs should be considered in line with CMAP

5.4 Trade remedies

Preventing unfair trade practices is the sole aim of trade remedies. The practice of dumping is condemned by all the RECs. The primary differences are to be found in the procedures that are to be followed before anti-dumping duties are imposed. The SADC approach which specifically provides that the application of anti-dumping duties is to conform to WTO provisions is one option to be followed. However, a more suitable approach is that prescribed under the ECOWAS with clear and transparent provisions regarding use and duration. To the extent that this is WTO compatible, it avoids the vagueness in WTO legal language and would easily be implemented by the RECs. However, this is an area where the input of the private sector in raising complaints is critical.

The Protocol should therefore be drafted in such a way that it allows for the participation of the private sector. On the issue of subsidies, the RECs adopt different approaches. As is the case with dumping, however, the approach adopted by ECOWAS and/or SADC which is based on WTO provisions should be evaluated in order to ensure uniformity.

5.5 Rules of origin

Formulating acceptable rules of origin to govern the CMAP is critical to the success of the project. In this regard, the African Union is yet to conclude a Protocol on Rules of Origin to govern the AEC. It is therefore necessary to examine the various rules that have been adopted by the RECs. The picture that emerges is one where three basic rules are used to determine which goods are considered to originate from within the trade bloc in question: one based on goods wholly produced within the region, another based on restricting the value of imported materials to a certain percentage of materials used in producing an item, and a third based on a value added during production. In addition, a change of tariff heading is sometimes sufficient to confer a local identity to a product. Whereas in determining value-added content, the percentages are calculated in most of the RECs in value terms, in the ECOWAS/WAEMU it is done by both mass and volume. Also, in the Central Africa, the (ECCAS/CEMAC), member States still continue to charge duties at the internal border even though duties have already been paid upon entry into the customs union territory. SADC has rules of origin which are product specific. In this regard, the AU Expert Working Group on Rules of Origin should work with the RECs in trying to find a solution to these issues.

For the purposes of a common market in agricultural products, it is clear that the simplest mode of determining origin will be based on what is already in operation in the RECs subject to the alignment of the rules in SADC. However, it should be noted that in the case of CEMAC, member States are not fully implementing the rules as laid down under their protocols although the Secretariat has informed the AU that this situation will be rectified in due course.

5.6 Technical standards and phytosanitary measures

There is a large and growing literature on difficulties and obstacles that technical standards related to the sanitary and phytosanitary measures have created for trade in general as well as intra-African trade. The problem is not so much about a lack of appreciation of these obstacles, nor of what needs to be done, but one of being able to implement the reform measures. The challenges are immense and costs very high to meet technical standards acceptable for trade to flow smoothly. For most of the RECs, besides the international standards, they also have to deal with varying standards set by their trading partners most of which themselves are not harmonized (even amongst the different EU member States) and the emerging private standards set by large private retail outlets.

The WTO SPS Agreement, including the international standards for food products referred to by it, provides the benchmark against which to measure the gaps between the current situation and what needs to be done. There is by now a good appreciation among national policy officers of the gaps and actions required. Indeed, considerable work is underway. This includes for example implementing the provisions or recommendations of the SPS Agreement in a variety of areas. Many workshops and conferences in Africa and elsewhere have been helpful in identifying general as well as region-specific problems and issues and thus recommendations for action.

One recent and comprehensive effort towards identifying problems and solutions for Africa was the first FAO/WHO Regional Conference on Food Safety for Africa, held in Harare 3-6 October 2005. This conference brought together over 185 participants from 45 countries of Africa, along with outside experts. The conference adopted a resolution recommending a nine-point, five-year *Strategic Plan for Food Safety in Africa* for adoption by FAO and WHO, along with the AU. The plan contains numerous recommendations of practical actions to strengthen food safety systems in the region. The key elements of the nine-point plan were as follows, each one of them elaborated in the Conference report[203].

- Food safety policies and programmes
- Legislative and institutional aspects
- Standards and regulations
- Food inspection programmes and techniques
- Food analysis and food safety testing laboratories
- Monitoring food-borne diseases and the safety of foods on the market
- Participation in the Codex Alimentarius Commission
- Communication and stakeholder involvement (including industry officials and consumers)
- National, regional and international cooperation

The Conference agreed that its bureau, along with representatives of FAO and WHO, would constitute the follow-up committee that would ensure the monitoring of the implementation of the strategic plan.

The nature of the problem and range of reform measures to be undertaken in this area is similar to those discussed above. As with food, for intra-trade to expand, common and effective actions to prevent the spread and introduction of pests of plants and plant products and measures for their control are needed in accordance with national, regional and international requirements. As Codex Alimentarius Commission (Codex) sets international standards for food, the International Plant Protection Convention (IPPC) is the relevant international body for standards for plants. Harmonization plays a central role here too.

Among the many areas where progress is needed – and a great deal is already being

[203] See FAO/WHO (2005). The Report as well as all other Conference documents are available at: http://www.foodsafetyforum.org/african/crd.asp

done – are establishment and/or strengthening of import health standards on a source country and commodity basis; pest risk assessments based on scientific data in order to determine the phytosanitary risks; institutional strengthening for issuing phytosanitary certificates that are accepted in the region; and seeking proactively technical and other assistance provided by international organizations like FAO.

Problems associated with veterinary requirements in Africa are perhaps more complicated than for food because most herds are reared and managed in the open and move across frontiers with little or no control. As with food and plants, there is a need to harmonize zoo-sanitary measures, adapted to the sanitary and phytosanitary characteristics of the regions, including disease-free areas which may not correspond to political boundaries and to disseminate and observe production and export standards in order to promote cross border trade and also trade with non-members.

Determination of pest- or disease-free areas and areas of low pest or disease prevalence could be done by an appropriate authority based on objective criteria (geography, ecosystem, epidemiological surveillance, and effectiveness of SPS controls). Many African countries and regional groups have export potential that is not currently realized due to problems with meeting the health standards of external markets. For example, indigenous cattle meat is a major item of agricultural production in 12 out of 18 CEN-SAD countries, but the region exports only live cattle rather than meat. To overcome these challenges, countries need to develop regional zoo-sanitary standards within the context of establishing a common agricultural market.

For an African common market to flourish, common regional procedures need to be developed for control, inspection and approval. Other important areas requiring common approaches include the evaluation of veterinary services, and surveillance and monitoring of animal health. With regard to trade, particularly important requirements are principles applicable to different forms of transport, animal health measures applicable before and at departure and during transit and on arrival together with border posts and quarantine stations in the importing country. There is also a need for developing model veterinary certificates. Some progress has been made, e.g. in COMESA some Members are now issuing sanitary and quality standards certificates along their land borders.

In addition, it is important that the African countries take as much advantage as possible from facilities and assistances available globally. Often, a pro-active approach brings in more assistance than otherwise. Some of the prominent facilities include the following:

- the *Standard and Trade Development Facility* put in place by five agencies (WTO, WHO, OIE, World Bank and FAO) for mobilizing and coordinating support for capacity building in the areas of food safety, plant and animal health;
- inform traders to take advantage of such information exchange facilities like the International Portal on Food Safety, Animal and Plant Health, which offers national governments and trading partners' access to relevant official information – it is important that this portal is used by traders in particular;
- the FAO/WHO Trust Fund for Enhanced Participation in Codex, that facilitates greater participation of developing countries in Codex meetings;
- *scientific advice on food safety and nutrition* usually provided by the expert bodies of FAO and WHO which could directly be used by governments as a basis for food regulation or could form a basis for new international standards to facilitate trade.

A related recommendation would be to explore the feasibility of setting up some variant of the Portal mentioned above, for Africa itself with much more details on African commodities and trade.

In sum, on the issue of sanitary and phytosanitary measures, the RECs are all agreed, as is the Abuja Treaty, in permitting Members to introduce or continue restrictions or prohibitions relating to the protection of human, animal or plant health or life. This is therefore a provision that will have to be included in any CMAP Protocol. With regard to which standards are to be applied, a uniform, internationally accepted system will be best and for that reason it is recommended that the standards adopted within the WTO be adopted with any necessary modifications to suit the African environment. In this connection, it is also recommended that the African Union Commission work closely with the Codex Alimentarius Commission, the International Office of Epizootics and the Secretariat of the International Plant Protection Commission in developing such standards.

5.7 Safeguard provisions

The challenge regarding safeguard measures lies in striking a balance between allowing countries to apply safeguard measures to prevent serious disruption to their economies and ensuring that they do not resort to safeguard measures to an extent that defeats the trade liberalisation purpose of the Protocol. The RECs are unanimous in allowing restrictions in the event of the occurrence of serious disturbances. In addition, they generally permit restrictions for balance of payments reasons as well as the protection of infant or strategic industries. Where we have a Protocol focussing solely on basic food products, the rationale for protecting infant or strategic industries is reduced and the only provision that is likely to be necessary is one allowing the imposition of restrictions in the event of serious disturbances.

5.8 Trade facilitation

Most of Africa is characterized by weak market infrastructure which adds to the cost of moving goods from country to country and/or even within a country resulting in the current low levels of intra-trade. “Soft” market infrastructure is also wanting. These include regulatory framework and information for markets to operate competitively, standards and norms to ensure proper quality and safety of products, protect consumers and open up opportunities for export. Other marketing constraints affecting both domestic and international trading include lack of appropriate grading and standardization, inadequate storage which is directly related to post-harvest losses and in adequate market information systems. Much has already been written about these issues elsewhere so only a brief overview will be provided here to summarize the key issues.

The poor state of Africa’s road infrastructure has imposed very high transport cost on the region’s trade. Several surveys have concluded that transport costs are the most important component of trade costs and that an increase in international freight cost, for example, of 10 per cent could reduce the volume of trade by as much as 20 per cent. For countries in Africa, the reduction in trade volumes due to transport costs could be much more severe, as many countries in Africa are landlocked. Landlocked countries may lose the equivalent of up to 40 per cent of the export value or price on high transport costs. Table 8 depicts the cost of transporting goods on Africa’s major transport corridors and Table 9 shows the cost faced by landlocked African countries.

This high cost faced by African countries are in part a reflection of Africa’s colonial legacy, which resulted in the construction of roads and railways from the interior to the coast, for the extraction and export of raw materials. Not only does this infrastructure remain in the wrong place today, it was designed to service industries where African countries now face declining terms of trade. But more than the colonial legacy is to blame for the continent's inadequate stocks of transport infrastructure. Investment in transport infrastructure since independence has been woefully inadequate. Civil wars in many countries have resulted in the destruction of much transport infrastructure that fulfilled the vital role in linking rural areas with cities and ports. In turn many opportunities, such as the production of high-valued food crops are unexploited due to the inability of farmers to bring these goods to market.

A much more popular commentary about Africa's status in the international trade discourse relates to delays and long transit times due to multiple road blocks and other rent seeking activities on Africa's road network. A survey of investment climate in Africa for small and medium-sized enterprises showed that 40 percent of the enterprises surveyed reported trade and customs regulations to be a serious obstacle for exports to neighbouring countries or sub-region (Clarke 2005). Delays have been reduced in several areas through the introduction of single documents, harmonization of standards for vehicles, introduction of third party insurance and regional driving permits. However, much of the analysis in this area has mostly focused on private sector perspectives without a thorough understanding of the behaviour of the private sector operators themselves coupled with the security concerns of most African governments have often contributed to worsening the situation. However, in a more positive light, it is worth mentioning the World Bank's trade facilitation project which support implementation of several RECs institutional reforms for transport facilitation,

TABLE 8: Estimated unit road transport cost for container (max 28 tonnes in 40 ft)

Decription	Distance (km.)	Total cost ($)	Cost ($ per km.)
Corridors with sub-Saharan Africa			
Djibouti-Dire Dawa - Addis Ababa	844	n.a.	n.a.
Mombasa - Kampala	1 440	3 250	2.26
Dar-es-Salaam - Kigali	1 650	4 980	3.02
Dar-es-Salaam - Bujumbura	1 750	5 180	2.96
Dar-es-Salaam - Lusaka	2 000	4 230	2.11
Dar-es-Salaam - Harare (via Lusaka)	2 490	4 013	1.61
Dar-es-Salaam - Blantyre (via Lilongwe)	2 030	3 573	1.76
Nacala - Lusaka (via Lilongwe)	1 774	2 735	1.54
Beira - Lubumbashi (via Harare, Lusaka)	1 581	2 554	1.61
Walvis Bay - Harare (via Maun)	2 409	3 585	1.49
Doula - Bangui	1 600	7 900	4.94
Doula - D' Jamena	1 900	8 000	4.21
Cotonou - Niamey	1 056	2 200	2.08
Lomé - Niamey	1 234	3 160	2.56
Lomé - Ouagadougou	1 000	2 550	2.55
Abidjan - Bamako	1 230	2 192	1.78
Dakar - Bamako	1 200	3 400	2.83
Other corridors			
Maputo - Johannesburg	561	775	1.38
Durban - Lusaka (via Plumtree)	2 524	3 873	1.53
Walvis Bay - Johannesburg	1 885	2 593	1.38

Source : UNCTAD secretariat on the basis of SATN Comparative Transit Transport Cost Analysis September 2001 - USAID; MSC presentation in Geneve, February 2003; Marchés tropicaux, 18.4.2003, pag 792

TABLE 9: Estimated unit road transport cost for container (max 28 tonnes in 40 ft)

Year	Country Group	Estimate of freight cost of imports	Value of imports (CIF)	Freight costs as percentage of import values
2003	World average (*Southern Africa*)	379.2	7 053	5.4
2002	Malawi	101.0	695	14.5
2000	Zambia (*Western Africa*)	108.6	993	10.9
2001	Burkina Faso	92.5	656	14.1
2003	Mali	275.8	1 130	24.4
2003	Niger (*Eastern Africa*)	117.3	490	23.9
2003	Burundi	20.9	157	13.3
2004	Rwanda	61.0	284	24.1
2004	Uganda	288.3	1 657	17.4

Source : UNCTAD Review of Maritime Transport 2005 (UNCTAD RTM//2005) and 2006

establishing joint border posts, regional cargo tracking and enhancing port security and electronic data interchange systems. When fully operated, these initiatives are expect to reduce delays and transit times 20-50 percent. A synopsis of the current magnitude of the financial costs involved is illustrated by Table 10.

The situation is even more severe in the area of information and technology infrastructure. A recent indicator developed by UNCTAD spells out the situation facing African countries[204]. Using this indicator a range of 120 to 250 of the *info state* index is judged satisfactory. Recent data published using this indicator reveals that with the exception of South Africa and Mauritius both of who have values of 87 and 89 respectively, all the other African countries have values of 70 or less. This paints a very gloomy picture for Africa but some progress have made, although cost are still very high.

5.8.1 Regional market information systems

As a result of Africa's weak market infrastructure, regional markets are often localized with weak transmission of prices between the markets and hence sharp fluctuations in prices. One often finds acute food shortages in one sub-region while there is surplus elsewhere, within the country or region. One response to addressing such marketing problems has been setting up of Market Information Systems (MISs). The Systems are now operational in many African countries. However, they still continue to suffer from lack of knowledge about them, inconsistency in the information provided and the general low access by poor farmer who lack the necessary network connectivity to them. For instance, the AFRISTAT[205] which covers a number of African countries no such initiative exist in across the RECS. In the case of the AFRISTAT, it is widely unknown even in countries that it covers and is mostly limited by the fact that most of the useful information is limited by the language coverage.

[204] The ICT opportunity index is based on a number of ICT related indicators that defines the info-state of a country (UNCTAD 2005). The info state is composed of (a) the info density – network infrastructure such as main telephone lines, cable connectivity and the internet, as well as ICT machinery and equipment, a total of eight indicators depicting the ICT productive capacity of a country, (b) the info use which measure the consumption capacity and comprises of number of telephones, PCs, internet users per 100 inhabitants, and ICT intensity – number of broadband users and international phone traffic, etc. The info state index is an aggregate of the info density and info use

[205] www.afristat.org

TABLE 10: Cost of logistics - estimates for Lomé - Ouagadougou corridor, (40-ft container)

Logistics cost	Total Cost in CFA Francs	Percent of Total Costs (%)
Total transport cost	**1 100 000**	
of which:		
- Fees in Togo	121 000	11
- Fees in Burkina Faso	125 000	11
- Freight forwarder fee	170 000	16
- Mandatory insurance	90 000	8
- Illegal payments	300 000	27
Total logistics costs	**806 000**	**73**
Tot. Avoidable costs :	**646 000**	**58**
- Public procedures	186 000	
- Private services	160 000	
- Illegal payments	300 000	
Non avoidable costs	**160 000**	**15**

Source: UNCTAD

With trade across borders and regions gaining prominence, the national MISs is also being linked in order to cover regional markets. An example of this approach is MISTOWA (the regional Market Information Systems and Traders' Organizations) project in West Africa, covering ECOWAS countries. The project aims to increase regional agricultural trade and food security by improving and linking the existing regional efforts to generate, disseminate, and make commercial use of market information. It is geared to help the regional networks of MISs and trade partners address information related constraints, so that strong and dynamic commodity chains emerge that will use the information to enhance production, handling, credit, and trade; and value added services such as post-harvest, processing, packaging, and quality control. MISTOWA's focus is not only on basic staples but also on a variety of emerging traded products like fruits and vegetables. However, the ECOWAS Secretariat has a similar system (SIGOA-TOPS) for the region and there is also the RESIMAO[206] network all with duplication of efforts. It will be useful to consolidate these efforts to avoid duplication and waste scarce resources.

Another example of a recent initiative is the Food and Agricultural Marketing Information System (FAMIS) established at the COMESA Secretariat. This will develop into a COMESA-wide network of national and regional databases with linkages through the internet. This framework will not only provide information on prices, demand and supply trends and thus trading opportunities, but will also cover such areas as trends in tariff barriers, SPS requirements, plant pests/disease and animal disease status of each country. The vision is to develop the framework into a comprehensive information portal for facilitating intra-trade (AfDB 2003). The *Food Security and Food Policy Information Portal for Africa*, hosted by ECA-Addis Ababa, also promises to offer many services that contribute to promoting intra-trade.

5.8.2 Commodity exchange for greater intra-trade and risk management

In Declaration number 8 of the 2005 Arusha Declaration on commodities (AU 2005b), Ministers committed to "develop suitable delivery models for managing commodity risks at the farm and national levels so as to reduce the vulnerability of farmers to income

[206] www.resimao.org

declines and price volatility. Innovative and new commodity risk management tools need to be made available to farmers so that they can manage risk of price volatility, weather or climatic hazard or other crop risks". Commodity exchanges are seen as one of such delivery models. This was addressed in the Arusha Plan of Action number 7. While the Plan of Action makes a commitment to the establishment of commodity exchanges in general, at this stage it calls upon the AU Commission and others to initiate a process of studies and discussions towards the establishment of the exchanges.

The Arusha Declaration on commodities recognized the value of formal commodity exchanges for risk management and trade promotion but called upon the AU Commission and other agencies to initiate, at this early stage, a process of analysis and discussions on "suitable delivery models" including commodity exchanges. There is indeed a great deal to learn from and reflect on recent experiences with commodity exchanges and other risk management tools from Africa itself.

This process needs to be initiated with a work plan and involving competent agencies, including from outside because there is so much to learn from experiences in other parts of the world. From the perspective of intra-African trade, two additional considerations may need to be taken as part of the process of analyses and discussion.

- first, as said in the para 7 (d) of the Arusha Plan of Action, the studies should explore how commodity exchanges and other forms of risk management can contribute to promoting intra-African trade, in addition to promoting African exports to rest of the world;
- second, the studies should also explore "suitable delivery models" for food products, and not just on products for which commodity exchanges are known to work much better, like tea, coffee, cocoa and cotton. This is important because of the high potentials of food products for intra-African trade.

In Africa, a number of countries have already made or are making efforts to establish exchanges. The available evidence indicates that these initiatives have met with unexpected success. This has led to a re-thinking of the traditional view relating to commodity exchanges: that they work best for a limited number of commodities like tea, coffee, cocoa and cotton for reasons of the uniformity in grades and standards, as well as because there are similar exchanges elsewhere in the world and helps in price discovery. However, recent advances in technology and local innovative approaches have dispelled this traditional view as illustrated in Box 4.

Further, to address problems related to storage and financing, warehouse receipts systems are on the increase in most parts of Africa. These systems are designed to increase liquidity in commodity markets, allowing producers as well as traders to consolidate marketable and exportable commodity volumes. Under a collateralized warehouse receipts system, producers and traders can convert inventories of agricultural products into readily tradable products. Warehouse receipts are negotiable instruments that can be traded sold, swapped, and used as collateral to support borrowing. Often, the issuing of tradable warehouse receipts is linked to inventory financing. Such schemes have been undertaken elsewhere in Africa, notably South Africa, Zimbabwe, Tanzania, Zambia, and Ethiopia.

5.8.3 Need for credible statistics on intra-trade

As the process of trade integration accelerates in Africa, reliable trade statistics become absolutely essential for a variety of reasons, such as formulating integration policies such as rationalization of the RECs and the identification of strategic products, for trade facilitation (customs valuations, rules of origin), resolving disputes (e.g. safeguard measures), and so on.

BOX NO 4

COMESA: Reaching Out to the Poor

1. The Kenya Agricultural Commodity Exchange (KACE)

Through a special radio programme called the SOKO HEWANI, an electronic trade platform is currently in operation for small-scale producers to place offers for sale of various agricultural commodities and bid to buy available commodities. Over 30 agricultural commodity announcements are made and weekly sales reports record over 500 purchases through the programme. Each commodity announcement includes information on quality, quantity, location and offer/bid price. The programme has a wide coverage, including the western rift valley provinces of Kenya and the eastern parts of Uganda. It has an audience of over 4.5 million people. The information broadcast on the radio programme is collected from the Market Information Points (MIPs), which are spread throughout the country. The MIPs are rural centres where smallholder farmers can post information on commodity offers for sale and receive information on commodity bids to buy. This information is then transferred to centers in the major markets where consumers can access through a website or through the radio programme. The information is also displayed on blackboards at the MIPs. KACE has also designed an interactive voice response system through which traders can get additional information on commodity offers. To ensure credibility of sales, only registered farmer groups and associations can trade through the programme.

2. The Malawi Agricultural Commodity Exchange (MACE)

Established in 2004, MACE has brokered a deal with a local telecommunications provider MTN company to disseminate market information to smallholder farmers throughout Malawi. The information is transmitted through the short Messaging System (SMS) at a minimal charge equivalent to the normal SMS text charge. By dialing a special number, smallholder farmers are able to access information on available commodities, prices, quality, quantity and descriptions anytime and anywhere in the country. The information disseminated by MTN is obtained from the MACE central hub, which processes all the information is obtained from the rural MIPs. MACE is also spear heading a horticultural marketing project through which it supplies chain stores, supermarkets, schools and hospitals with graded and packaged fresh farm produce. The programme also markets vegetable seed and other inputs such as insecticides at very competitive prices at their rural MIPs. MACE also utilizes other market information tools such as the Internet-based virtual library, the interactive voice response system and a weekly radio programme similar to KACE.

3. The Agricultural Commodity Exchange in Africa (ACE)

ACE was launched in October 2006 by COMESA in order to link national marketing institutions to create free information flows and facilitate regional trade growth. The aim of ACE is to provide price information and relative real time information for producers, traders and processors in order for them to sell and/or buy their commodities at a more regional level. ACE has already attracted the interest of 11 companies in Malawi, 6 companies in Zimbabwe and a growing number of members from South Africa, who are also members of the South African Futures Exchange, SAFEX. Trading with ACE is simply carried out by placing commodity offers and bids on the ACE website and members can make sales and purchases on behalf of their clients following the rules and procedures set by ACE. ACE plans to establish links with MACE, KACE, the commodity exchanges in Uganda and Ethiopia, as well as the ones that is being established in Zambia and other parts of Africa.

4. The Agricultural Marketing Promotion and Regional Integration Project (AMPRIP)

The AMPRIP was launched in 2005 to promote agricultural trade in the region by bridging information gaps, dealing with food safety and strengthening agricultural commodity exchanges. Under the AMPRIP, a COMESA-wide Food and Agriculture Market Information System (FAMIS) is being developed. The FAMIS is expected to feature critical information such as prices, regional wide crop production statistics, supply and demand figures and the regulations and procedures that govern trade in the member states. The AMPRIP will support training on SPS issues of private and public sector players, including technical and support laboratory technicians on SPS measures and support legislative and regulatory reforms in Member States. The AMPRIP will strengthen and coordinate existing agricultural commodity exchanges and encourage the establishment of new ones where they do not exist. It will also focus on creating regional linkages among the exchanges in order to strengthen information flows and create wider market networks. Through the AMPRIP, COMESA plans to assist the exchanges to develop legal frameworks for their operation and build their capacity through training and the provision of software for the collection and transmission of market information to a regional hub. The AMPRIP hopes to strengthen the marketing institutions within COMESA and provide strong supportive frameworks that enhance competitiveness in the agricultural markets leading to growth and development in commodity trade.

The target should be to put together trade statistics by source and destination and at a sufficiently disaggregated product level – just like the COMTRADE but with additional information relating to tariffs and NTBs. This would most probably be maintained centrally somewhere in Africa, e.g. at the AU Commission level, but the following considerations are very important: i) country and commodity coverage should be comprehensive; ii) the data should be seen as reliable by all parties in the sense that intra-trade as reported by trade partners are consistent; iii) that statistics should be easily accessible not only to the RECs and individual countries but also to traders and analysts.

The AU Commission would be the most appropriate body to provide the leadership for moving this process forward. A COMTRADE database for Africa would be the starting point for developing the database. There should readily available financial and technical assistance both from within and outside Africa, with concerted effort to coordinate and integrate some of the on going efforts. The ongoing FAO programme *CountrySTAT* is an effort in the right direction[207]. The important point is that this process needs to be implemented effectively. Recent attempts to develop trade statistics in the region (e.g. COMESA and SADC) has merely resulted in a reproduction of the datasets in COMTRADE with some tariff information. However, access to these systems is very inefficient at the moment.

All the RECs contain provisions obliging Members to harmonize, simplify and standardise their trade documents and procedures as well as their customs regulations and procedures. In discharging this obligation, the different RECs have adopted documents suiting their circumstances. The Abuja Treaty provides limited guidance in this regard in that it merely provides for the harmonization and standardization of these documents, regulations and procedures. If a decision is made to adopt a continent-wide CMAP, it will be necessary to include an article obliging the countries to standardize and harmonize their customs regulations and procedures as well as their trade documents and procedures. However, if the CMAP is based on the existing RECs, they will be able to rely on their current documents and procedures.

5.9 Dispute resolution

The issue of dispute resolution is one that has only been mentioned in passing to this point but which is critical to the success of the CMAP as it is inevitable that disputes will arise in the liberalisation of such a sensitive area. Though the approaches taken by the different RECs differ in emphasis, they all contain provisions setting out procedures to be taken where differences between Members occur. In some instances, Members are enjoined to engage in consultations with each other in order to resolve disputes. However, dispute settlement bodies in the forms of tribunals or courts are also common among the RECs. Some RECs, such as COMESA, permit not just States but also individuals and other legal persons to institute proceedings where breaches of the relevant treaties are alleged. Extending *locus standi* to individuals has the advantage of ensuring that business persons, who are usually directly affected by State actions and are often less reticent about challenging illegal actions, can assist in monitoring compliance with the Protocol.

[207] CountrySTAT is a statistical framework and applied information system for analysis and policy-making to organise, integrate and disseminate statistical data and metadata on food and agriculture coming from different sources. CountrySTAT gathers and harmonises scattered institutional statstical information so that information tables become compatible with each other at the country level and with data at the international level: http://www.fao.org/statistics/countrystat/

The approach taken in the Protocol therefore combines inter-State consultations with the use of the African Union Court of Justice as a forum for interpretation of obligations. It is also recommended that the Court be used for dispute settlement both between Member States themselves as well as between individuals and Member States.

CHAPTER 6: Towards a common market

6 INTRODUCTION

Having examined the various RECs and identified the relevant provisions that touch on trade in agricultural products, the question that needs to be answered is: What are the steps needed for a CMAP and the possible options for reinforcing and harmonizing trade regimes within the context of existing RECs taking into account the diverse physical, political, social and economic situations in the different African countries/ regions? In answering this question, first, a review of the key steps are analysed along with issues to be considered along the path and then the various possible options for the common market are discussed.

6.1 Negotiating and implementing a common market

The steps toward market integration should take full account of the complementary and competitive nature of production among member countries, between existing regional groups and between members and third parties. Steps also need to indicate how – through a process of harmonization and convergence of policies and strategies – the constraints to growth and development of agriculture will be removed, allowing each member country to fully exploit production potential. The idea is to improve the competitive efficiency of each country and thereby of Africa as a whole in the production of appropriate agricultural products, including the strategic products. This will position African countries to take advantage of intra-community and international trade to enhance regional, national and household welfare and food security. In order to address these issues, a number of actions are recommended as an integral part of the practical way forward so that the African common agricultural market is placed on a sound footing.

Food insecurity remains a serious problem in many African countries and its reduction is a central goal in the ongoing integration process. It is important to address the interface between regionalism and food security in the design of a common market. The regional integration of markets may enhance food security in a number of ways: by fostering economic growth, by augmenting domestic food supplies to meet consumption needs and by reducing overall food supply variability. Nonetheless, there will be those who either fall behind or lose out in the process of regional integration. This risk points to the need for country-specific and region-specific evaluations of market integration on the status of food insecure households. Where negative impacts on food secure households are identified, regional market integration should be accompanied by flanking measures to address these negative impacts.

There is no single blueprint for the creation of a common market. Most RTAs have followed a unique path from conceptualization to implementation. The basic steps in the process include:

- agree in principle to negotiate an integration Agreement to create an agricultural common market within a general time frame;

- create appropriate institutional structures to conduct the negotiations[208];
- negotiate the methods, modalities and timetables for implementing the terms of the agreement;
- submit the Agreement for ratification by national legislatures;
- adjust national legal and regulatory frameworks to implement the Agreement.

Negotiations for some regional economic agreements have been quite lengthy and complex, consisting of multiple committees, negotiating and consultative groups, and rounds of debate. The complexity of the negotiations depends on factors such as the number of parties to the agreement, the scope of the talks, the institutional capacity of the parties and the political will of each party to secure an agreement. Ironically, more comprehensive agreements may be easier to reach than those entailing a large number of commodity - and country-specific exemptions. Given the diversity of African countries in terms of size, economic status and institutional capacity, it may be useful to adapt existing integration agreements for the continent as a whole rather than starting from scratch. Successful integration schemes require the adoption of binding commitments to be taken by specific dates, but these deadlines and commitments can accommodate the different economic and institutional capacities of the members.

The negotiation for the creation of a common market for agricultural products is within the context of the negotiations for the creation of the African Economic Union as is enshrined in the Abuja Treaty. Given the scope of the proposed Union, those negotiations are likely to be long and complex. The agricultural negotiations could be part of an "early harvest" in which countries agree to the following strategic steps:

- elimination of internal tariff and non-tariff barriers and harmonization of external tariffs;
- harmonization of technical standards, including sanitary and phytosanitary measures and food safety and quality measures;
- harmonization of agricultural sector policies, including transportation, storage and marketing infrastructure development.

Although the overall objectives of the African common market for agriculture will be agreed at the supra-national level, the bulk of the changes to the legal and regulatory frameworks will be carried out at the national level. That is, countries wishing to join the common market will have to take steps to bring their national legislation into line with the Agreement's provisions. In this regard, the legal instruments of African countries will have to be harmonized and coordinated. The kinds of adjustments that countries may have to make will depend on the scope, structure and policies of the proposed common agricultural market as negotiated. The convergence of trade and customs policies and the harmonization of sanitary and phytosanitary measures, have been discussed in Chapter 5. Other requirements are highlighted here to alert policy makers to their importance. These reforms would be intended to foster a decline in transaction and regulatory costs and an increase in compliance and enforcement.

In order to maximize their gains from the formation of a common market, African countries should examine their obligations under various regional groups to which they

[208] These could include: (i) a negotiations committee having overall responsibility for drawing up the integration agreement which will lay down the rules and procedures for establishment and functioning of the common agricultural market,;(ii) working groups to negotiate specific issues, such as tariff reduction, technical standards and differential treatment for low-income members; and (iii) consultative groups to secure technical expertise in particular areas of the negotiations and to provide forums to ensure that the concerns of the business community, farmers and other members of civil society are taken into consideration

BOX NO 5

Role of Special Programme for Food Security within the Framework of a Common Market for Agriculture

National and regional programs of food security can help in the regional integration process by strengthening countries' competitiveness through investment in agricultural productivity and production capacity and in improving poor people's access to food. A particular example is FAO's Special Program for Food Security (SPFS), a program implemented at the national level, which aims at assisting developing countries to improve their year-to-year variability in production and access to food on an economically and environmentally sustainable basis[209].

The SPFS consists of two phases. Phase I focus on microeconomic factors, and is composed of four interrelated and complementary components which are particularly important for Member countries of several African RECs: water control; intensification of sustainable plant production systems; diversification of production; and analysis of constraints to food security. Phase II includes the development of a food security and agricultural sector policy program; the preparation of agricultural investment plans; and the development of feasibility studies of bankable projects. Every country that joins the SPFS commits itself to establishing a National Plan of Action to achieve national food security and a Plan of Operations to be implemented within the country. The Plan of operations could be enhanced to take into account of market integration concerns.

The FAO/SPFS is providing assistance for the development of regional food security strategies and is operational in the five core RECs. The SPFS is not a stand-alone initiative. The goals and vision that guide the SPFS have been integrated into major international efforts including the Comprehensive Africa Agriculture Development Programme (CAADP) of the AU/NEPAD. Food security programmes are also major contributors to achieving the UN Millennium Development Goals. The regional programs could in turn assist national programs for food security in order to improve agricultural productivity within the regional groupings on an economically and environmentally sustainable basis.

The regional programme serves as an umbrella for information collection and technical assistance activities. In particular regional support could facilitate trade within and outside the area by development of food standards, the standardization of phytosanitary and zoo-sanitary norms in accordance with WTO, the establishment of commodity development programs and the identification of key training programs.

FAO/SPFS can assist the RECs with development of training programs for capacity building in agricultural trade negotiations, policy articulation and formulation of investment proposals. Policy assistance is critical in order to create an environment more conducive to increasing agricultural investment, production, revenues and trade and thereby enhancing food security. Policy assistance needs to strengthen ministries, other organizations and agencies as well as

[209] According to FAO food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The SPFS aims to address food security in the broadest sense including productivity, stability of supplies, access, and all aspects of agricultural and rural development including trade. In this sense all FAO activities could be conceived and implemented under the umbrella of SPFS, which is what 1996 World Food Summit had envisaged when it endorsed the Director General's proposal to launch the program

belong in order to avoid incompatibility and contradictions. The 18 members of CEN-SAD, for example, belong to a total of 9 different RECs; some countries are members of three regional bodies outside CEN-SAD. In this regard, it may be necessary to rationalize the number of RECs.

African countries also need to examine their participation in preferential trade agreements outside the continent. In this regard, developments in the EPA negotiations with the EU and the AGOA initiative of the US would need to be monitored carefully. The EPAs could actually facilitate the integration of agriculture in Africa; however, some of its requirements may be incompatible with the overlapping membership and fragmented nature of African regional organizations. Member countries should continue to monitor the implementation of these provisions.

6.1.1 Steps towards tariff harmonization

Tariff harmonization would be provided by agreements and measures for the stepwise reduction and, finally, elimination of all tariff and non-tariff barriers to trade. Member countries would also move gradually towards a common external tariff (CET) on agricultural products imported from non-member countries. The following steps are required:

Tariff elimination: Many formulas for tariff elimination on internal trade are available for consideration including those used in COMESA, the Group of Three (Mexico, Colombia and Venezuela), MERCOSUR and other groups[210]. Provisions for accelerated tariff reduction may be included in the Agreement as was done in MERCOSUR, CARICOM, NAFTA and several bilateral agreements.

Common external tariff: In addition to consistency with WTO provisions, questions to be addressed in the negotiation and implementation of a CET include: tariff levels, compliance, alternative sources of revenue, modalities for administering the CET and distributing revenues, and categorization of goods. The tariff reduction/elimination arrangements under one REC should be consistent with the other arrangements in Africa.

Exceptions: Consultation must take place between members on "sensitive" product categories. To ensure the widest possible coverage of the common market, it is recommended that a "negative" list approach be used whereby countries identify a very small number of products that require special treatment rather than a "positive" list approach in which a few products are singled out for liberalization[211]. Ideally, members would agree to apply tariff reduction to all regional agricultural products.

Balance of payments: Consideration may also have to be given to a country in serious balance of payments problem by allowing it, after due review by an appropriate body, to impose a time bound restrictions on goods originating from other member States.

[210] In COMESA, member states were allowed to gradually reduce tariffs by 10 percent every two years commencing in October 1994 from the baseline of 60 percent that had been achieved in 1992 to zero tariffs by October 2000. In MERCOSUR tariff liberalization took place over three years (1991-1994) on an automatic, gradual and incremental manner until 0 percent tariff were reached. In the Group of Three, for 90 percent of base tariffs are generally eliminated in 10 annual steps starting on 1 January 1995 and concluding on 1 July 2004 with some variation for certain products. Yet another variant is available in US-Jordan FTA whereby the schedules for each country vary depending on the good in question with a range from immediate tariff elimination to a ten-year reduction period. This is roughly the model of tariff reduction in NAFTA and Association for Latin American Integration

[211] Such "negative" lists of exception were allowed under for example, MERCOSUR, Andean Pact, Central American Common Market, Caricom, NAFTA and the Group of Three, but in the most successful groups, the number of exceptions was kept very small and these products were eventually brought into compliance

The restrictions should be solely for purposes of overcoming balance of payments problem and to be WTO consistent, these should be least trade disruptive and should preferably take the form of priced based measures like import surcharges and import deposits rather than quantitative restrictions.

Base tariffs: Choice of the base period and base tariffs is critical. More specifically, the base could be the applied tariff in effect on the date of entry into force of the agreement. However, given the diversity of tariff levels in Africa, it may be necessary for countries with higher tariffs to reduce to a certain level before the others begin, as was done in the case of COMESA.

Safeguards: Africa could provide a time bound safeguard action with specific provisions for less advanced countries. Safeguard measures may include temporary suspension of tariff preferences, the reinstatement of MFN duties for specific products, suspension of further reduction of tariff, quantitative restriction, etc. A combination of these measures is allowed under a number of regional trade arrangements including Andean Pact, CARICOM, NAFTA, etc. A transparent mechanism needs to be established to undertake safeguard investigation at the national level and to rule on it at the community level.

6.1.2 Existing production, marketing and trading environment

Profiles of agricultural production, consumption and trade are presented in the Statistical Annexes for the nine RECs and by country. Current patterns of agricultural production and trade are conditioned by policy factors, many of which would change under the common market. Caution is also necessary because of the poor quality of much of the data, particularly for trade, which may be considerably greater than official statistics suggest. Nonetheless, an examination of existing production, marketing and trade structure can reveal potential areas of complementarity and competition.

The structure of production is broadly similar although the performance varies by crop sector across the RECs. These are presented in detail in the Statistical Annex and in Table 11. In general, cassava, pulses, rice, maize, poultry and meat, dairy and cotton are the main items in production. Exports typically consist of cotton lint, cocoa, coffee, sugar, tobacco and palm oil, while imports are dominated by basic foodstuffs such as wheat, rice, sugar and maize. Most regions are net importers of agricultural products.

While most regions are net exporters of cotton lint, for example, several countries are significant importers. Similar pairings can be found for sugar, meat, rice, maize, palm oil and other products, suggesting that potential exists for intra-African trade. For all regions except ECCAS there has been substantial growth in intra-regional trade, often by a factor of 10 or more.

Table 11 presents the trends in the growth of production for key strategic products. The long term performance as indicated by the average annual growth rate from 1985-2005 shows varying degrees of trend growth by commodities across the RECs. Moderate to high average (above 3 percent) long term growth were achieved for commodities like rice, dairy, poultry and legumes in the AMU; millet, sorghum, beef, rice, dairy, poultry and legumes in COMESA/SADC; maize, millet, sorghum, cotton, legumes in ECCAS; and cassava, maize, rice, cotton and legumes in ECOWAS. The short term growth (5 year intervals) exhibit considerable fluctuations for all commodities across the RECs, indicating very high degrees of production variability – a symptom which African countries would need to urgently address for the success of the common market.

TABLE 11: Trends in Production for Selected Strategic Commodities, by REC's

	AMU					COMESA					ECCAS				
	Average Annual Growth					Average Annual Growth					Average Annual Growth				
Item	1985-90	1990-95	1995-00	2000-05	1985-05	1985-90	1990-95	1995-2000	2000-2005	1985-05	1985-90	1990-95	1995-2000	2000-2005	1985-05
Cassave															
Cassava	...	...	...	...	...	3.1	-2.3	4.0	-0.3	1.1	2.7	-0.8	1.7	2.0	1.4
Cereals															
Maize	6.2	-34.0	16.1	15.0	-1.6	2.0	-1.0	5.6	-0.9	1.4	2.8	2.8	4.0	4.1	3.4
Millet	-8.9	15.6	-3.8	-5.2	-1.0	-5.4	4.9	2.3	3.8	1.3	-3.2	3.5	2.4	3.4	1.5
Rice	15.2	0.4	12.0	-6.6	4.9	4.6	4.8	3.2	1.6	3.5	4.1	-1.3	1.7	-0.4	1.0
Sorghum	-9.0	20.1	-9.3	-20.3	-5.7	-8.3	7.0	1.8	7.7	1.9	-2.7	4.7	0.1	5.3	1.8
Cotton															
Cotton lint	6.1	-29.2	5.6	-2.3	-6.2	-7.5	-5.6	2.4	3.6	-1.9	2.1	4.2	-0.2	5.6	2.9
Cottonseed	5.7	-31.2	-17.1	-0.9	-12.1	-8.8	-3.9	0.8	3.0	-2.3	0.2	-0.6	2.6	3.2	1.3
Dairy															
Milk,total	3.5	2.3	6.1	1.6	3.4	4.1	2.1	4.2	2.1	3.1	2.5	0.4	3.7	1.1	1.9
Butter	4.2	0.3	7.2	1.8	3.3	2.0	0.1	2.4	0.2	1.2	0.6	0.2	5.8	1.3	1.9
Cheese	4.4	1.8	8.5	1.6	4.0	2.0	10.8	4.4	15.7	8.1	-1.7	-0.1	5.5	0.2	1.0
Cow milk, whole, fresh	4.2	2.9	7.2	1.7	4.0	4.8	1.2	4.2	2.4	3.1	1.3	0.2	4.0	0.9	1.6
Meat															
Beef and veal	6.8	-0.7	3.5	-0.2	2.3	0.9	1.4	3.6	2.0	2.0	6.0	-0.6	4.6	1.0	2.7
Chicken meat	6.7	3.8	4.3	1.5	4.1	3.5	5.3	5.8	1.7	4.1	4.2	1.5	0.1	2.8	2.1
Legumes															
Pulses, total	-3.7	-11.2	-0.7	13.2	-1.0	4.2	0.0	0.2	1.5	1.5	-1.6	0.8	2.3	2.0	0.9
Beans, dry	2.4	12.0	13.0	0.2	6.8	3.2	-1.7	0.6	2.1	1.0	-1.9	0.6	1.2	1.6	0.4
Beans, green	8.8	-7.8	12.1	18.3	7.4	6.2	3.3	4.7	2.7	4.2	20.1	14.9	42.5	11.4	21.7
Chick-Peas	0.1	-16.9	-3.8	20.7	-0.9	3.7	2.2	8.2	-3.9	2.5	...	...	...	...	...
Oils															
Palm oil	...	...	...	...	...	2.3	1.7	-3.0	0.8	0.5	4.6	-0.3	-0.9	1.1	1.1
Palm kernels	...	...	...	...	...	0.8	0.5	-1.9	3.7	0.8	1.0	1.0	0.3	2.1	1.1
Sugar															
Sugar cane	7.2	0.2	6.8	-7.1	1.6	1.6	1.7	1.7	1.1	1.5	2.8	0.7	0.8	1.2	1.4

TABLE 11: Trends in Production for Selected Strategic Commodities, by REC's (Cont'd)

	ECOWAS Average Annual Growth					SADC Average Annual Growth				
Item	1985-90	1990-95	1995-2000	2000-2005	1985-2005	1985-90	1990-95	1995-2000	2000-2005	1985-2005
Cassave										
Cassava	7.5	10.6	1.9	3.7	5.9	2.5	-1.5	3.3	1.8	1.5
Cereals										
Maise	15.0	4.2	-4.7	4.1	4.4	0.5	-6.0	11.0	0.4	1.6
Millet	3.1	2.2	0.8	2.1	2.0	-7.0	2.1	-0.5	-0.1	-1.4
Rice	6.3	3.0	4.2	0.8	3.5	3.9	-0.4	1.1	2.3	1.7
Sorghum	-2.3	9.7	0.8	2.1	2.5	-7.0	4.9	1.0	1.0	-0.1
Cotton										
Cotton lint	12.4	4.3	4.7	5.0	6.6	-1.0	-2.3	5.1	4.3	1.5
Cottonseed	12.7	2.4	2.6	5.3	5.7	-1.1	-1.5	2.9	2.8	0.7
Dairy										
Milk, total	3.6	2.7	2.5	2.3	2.8	2.2	1.2	-0.4	0.4	0.9
Butter	5.6	2.1	1.0	0.9	2.4	...	...	...	...	...
Cheese	...	...	...	...	...	4.3	-2.3	-1.0	3.3	1.1
Cow milk, whole, fresh	3.4	2.5	2.4	2.0	2.6	2.2	1.2	-0.4	0.4	0.8
Meat										
Beef and veal	-6.3	3.8	2.2	1.5	0.2	0.2	-0.6	2.2	0.6	0.6
Chicken meat	4.7	2.3	1.8	3.9	3.2	9.5	2.8	5.9	2.3	5.1
Legumes										
Pulses, total	10.6	4.5	3.7	2.8	5.4	1.3	-0.0	2.5	1.2	1.2
Beans, dry	2.5	6.2	7.9	1.7	4.6	1.6	-0.9	1.0	1.6	0.8
Beans, green	21.3	9.8	24.3	0.7	13.6	-1.4	-2.1	6.2	-0.8	0.4
Chick peas	...	3.7	5.9	1.2	4.2	8.1	-2.9	1.1	2.6	2.1
Oils										
Palm oil	4.1	2.7	0.8	0.6	2.0	2.6	2.1	-2.0	0.8	0.9
Palm kernels	0.1	6.6	1.4	1.2	2.3	1.3	1.1	-1.1	2.8	1.0
Sugar										
Sugar cane	2.7	-1.7	1.5	1.0	0.8	0.3	-0.6	4.2	-0.4	0.9

Source: FAOSTAT

As demonstrated above, agricultural production and marketing have inherent risks, both natural and market-based. For many commodities of member countries price and weather instability remains an issue and the movement to free markets will further exposed producers, especially smallholders to increased market price risks. No less important are risks associated with inelastic demand, competition from new products and new areas (competition in coffee from Latin America and Asia), and environmental and health concerns. Unfamiliarity of producers and traders with risk management techniques are likely to aggravates the situation.

A response to risks relates to storage and warehousing, which deals with fluctuations in demand and supply over time. One important role played by storage and warehousing facilities is temporary holding of goods before and after transport across border, which is necessary for various purposes including sanitary and phytosanitary inspection. Storage is an organized method of safe holding commodities for future use. Warehousing has the additional connotation of dynamic commercial storage for taking advantage of market opportunities that may unfold in the near or medium term future. Within the framework of a common agricultural market, storage is important in many settings: households, farm enterprises, shipping and transport firms, wholesale and retail markets, government, non-governmental organizations, industry and border facilities. For the purpose of trade and commerce, storage and warehousing are strategic activities that require strategic planning and execution. In the proposed common agricultural market, storage and warehousing will play a critical role in the synchronization of production cycles with those of intermediate and final consumption/use, thereby stabilizing the market.

Furthermore, market integration could be facilitated by the integration and harmonization of transportation, storage and marketing infrastructure. Despite some progress, each of these areas is problematic in the African context, more so in some regions. Air transport is virtually irrelevant for movement of goods between countries in Africa. Rail transport does not even exist in several countries and in those with rail services the amount hauled is modest with few exceptions. The bulk of movement of goods, services and animals are on roads and tracks, mostly unpaved. The importance of improvement and linking of road networks within and between member countries cannot be overemphasized. Road networks should include both inter-urban as well as strategic rural road network. Road/railway network planning therefore needs to be based on long-term potential of areas to be developed and linked.

6.1.3 Products to be considered for the CMAP

Ideally, all agricultural products should be considered for the common market. However, in light of the analytical assessments of the nature of the African agriculture using the criteria provided in Chapter 1 (and reproduced below) and the added political will provided under the Abuja Food Security Summit declaration, it is recommended that the strategic products identified under the Abuja declaration form the first set of products for immediate liberalization in the creation of the common market. The Abuja Declaration identified the following products as strategic products: rice, legumes, maize, dairy, beef, poultry, oil palm and cotton for fast tracking the common market at the continental level for which a free trade area should be created. These products where selected based on initial work undertaken by FAO[212] to assess the three criteria given for their selection, i.e.: a) they represent an important weight in the African

[212] See FAO (2003b): Products with Competitive Potential in African Agriculture, Working Paper TCP/SAF/2081, Agricultural Policy and Coordinating Service, FAO, Rome

food basket; b) weigh significantly in the trade balance of the region through their contribution to foreign exchange earnings or are imported in large quantities to make up the gap between Africa's production and demand; and c) they exhibit considerable unexploited production potential in Africa, owing mainly to internal supply-side constraints as well as external impediments such as agricultural subsidies and support measures used by Africa's trading partners.

Furthermore, analysis of the trade structure of African agriculture also points to these products as those that are currently the mostly highly traded. Table 12 below shows the trade intensities of the strategic products sorted by their potential for intra-trade. For instance, rice and maize have high to very high intra-trade intensity amongst all the RECs, whereas for legumes, except for ECCAS where its intra-trade potential is judged as average, it also exhibit considerable potential in intra-trade. The pattern is similar for all the key strategic products evaluated except for cassava and sorghum – products for which official trade statistics are poor. However, it is no secret that significant amounts of informal trade take place for these two products as well. In essence, the analysis of both the production and trade structure reveals that the strategic products should form the basis for the start of the common market, whiles effort at other fronts (i.e. CAADP) are strengthened to overcome the supply-side constraints.

TABLE 12: Integration modalities of the African Economic Community, 1997-2027

	AMU	CEN-SAD	COMESA	EAC	ECCAS	ECOWAS	SADC	WAEMU	Top Trading Partners with over 50% of African Market Share in 2005
Rice	H	VH	H	H	VH	VH	H	VH	Asia (73%) of which India (12%); US (3%); EU (1.4%)
Legumes	VH	H	H	H	A	VH	VH	H	EU (32%); Austrialia (16%); Asia (15%) of which China (8%) and India (5%); USA (7%)
Maize	H	H	VH	VH	A	A	VH	AA	USA (71%); EU (5%)
Cotton	VH	VH	VH	VH	H	VH	VH	VH	No partner outside Africa exceeded 4%
Palm oil	H	VH	A	H	H	VH	AA	VH	Asia (72%)
Groundnut oil	A	VH	BA	A	H	VH	BA	VH	Asia (38%) of which both China and India at 6% each; EU (22%); USA (3%)
Beef	H	H	VH	VH	A	AA	VH	A	EU (22%); USA (20%); Asia (19%) of which India (18%); Australia (7%)
Dairy	VH	H	VH	H	A	A	VH	AA	EU (57%); New Zealand (11%); Austrailia (8%)
Poultry	H	VH	VH	VH	H	VH	VH	VH	EU (62%); USA (5%); Austrailia (3%)
Cassava	BA	H	AA	AA	H	VH	AA	H	No partner outside Africa exceeded 4%
Sorghum	A	A	A	BA	AA	VH	A	A	No partner outside Africa exceeded 2%

VH - Very high potential (75% and above); H - High potential (63-74%); AA - Above Average potential (50 - 63%)
A - Average (potential (25-50%); BA - Below Average potential (25% and less)
Source: Derived from COMTRADE

More importantly, a key issue for consideration in the creation of a common market for these products rests on the fact that with the exception of cotton, cassava and sorghum, over 50 percent of imports of these products are currently sourced from outside Africa (Table 12). Furthermore, Africa's major trading partners are all engaged in negotiating bilateral trade agreements with Africa and elsewhere under terms that often imply obligations that are over and beyond those in WTO agreements. This therefore calls for caution amongst African countries when negotiating trade agreements with these partners, otherwise, the overall objective of the common market may not be realized.

For instance, the proposed strategy for African Countries/regions under the negotiations for Economic Partnership Agreements (EPAs) with the European Union (EU) should involve selecting these strategic products as sensitive products (and also as special products under the WTO) to ensure that full liberalization of these products under the EPAs (or other similar arrangements) is deferred until way into the transition period agreed to under the EPAs so that a proper assessment of their impact due to the common market at the continental level could be made. Unless this is done, it is likely that early liberalization of these products under the EPAs would undermine the regional integration efforts amongst African countries rather than strengthen it – thus, further undermining a key objective of the EPAs – strengthened regional integration, trade and food security in African countries.

6.1.4 Dealing with the consequences of trade liberalisation

In addition to preferential treatment for weaker and lower-income countries discussed earlier, Member countries may need assistance to deal with consequences of tariff reduction/elimination and free trade in general as manifested in short term revenue loss and adjustments in production and employment. Over the medium term, as the adjustment process is completed, trade liberalization should result in higher economic growth, increased exports, increased consumption, net employment creation and increased revenue generation from non-trade sources of revenue. However in the short run some of these concerns may be justified.

First the fiscal, production and employment impact of a common agricultural market have to be very carefully assessed. Compensatory measures would have to be devised to deal with shortfall/losses if any. Data on the structure of trade (exports and imports) of REC members presented in the Annex tables clearly brings out the importance of agricultural products in trade. Only very limited indications are available on intra regional agricultural trade, which makes it difficult to make an informed estimate of the size of revenue from intra-regional agricultural trade[213]. Some of the direct revenue loss from the elimination of tariffs on intra-regional trade may be compensated through improved methods of collecting domestic value-added tax and transparent and enhanced customs coverage on imports from non-members. The ASYCUDA/Euro Trace and other systems being adopted in Africa would improve revenue collection so that the CET may actually lead to an increase in revenue.

The momentum likely to be generated by a common agricultural market may have a spillover effect in terms of streamlining the overall tax system resulting in revenue

[213] Intra-regional customs revenue from all sources (agriculture and non-agriculture) for COMESA countries was found to be in the range of 0.1 percent to 2.2 percent with three countries falling outside this bound with 4.1 percent, 4.2 percent and 11.7 percent. Agriculture alone would be a fraction of this. While no direct conclusion can be drawn for other RECs, the direction is suggestive

increase due to improved compliance. One can go a step beyond and conceive of a fiscal compensation mechanism at the community level or as undertaken in the Cross Border Initiative (CBI)[214]. The time frame for tariff reduction should be such as to allow countries to make necessary adjustments to potential loss of revenue by reducing dependence on import tariff revenue and reforming the fiscal system and tax policies to create an appropriate pro-growth incentive framework. With improved competitive environment, harmonized regional investment climate, improved economic and physical infrastructure, improved technology and information network, agricultural resources will be more effectively and efficiently utilized and will be the engine of growth, leading to economy wide increase in production and employment. Still at the national and regional level safety net may have to be devised to tackle potential short-term negative impact.

Thirty-three African countries are calorie deficit; daily per caput calorie intake is below the minimum recommended by FAO, sometimes by a significant margin (Statistical Annex). All African countries import food and most are net agricultural importers, with some devoting a large share of total and agricultural imports to food. Importing countries differ in terms of their ability to import as reflected in export earnings, foreign exchange reserves and debt service burden. The situation is further aggravated by large volatility of production and exports. A sudden reduction in domestic food supply due to drought or any other natural or man-made calamities together with export decline that may arise from volume decline due to demand contraction or a sudden price collapse as is often the case with commodities from Africa may seriously compromise national and household food security. African countries and RECs need to review such possibilities in-depth and continuously monitor the situation.

6.2 Option 1: Continental liberalisation

One possible option is to propose the adoption of a common market that covers the entire continent. Under this scenario, the programmes already adopted by the RECs would be superseded, so far as agricultural products go, by the AU programme. The main advantage of such a broad agreement is that it would create, at one stroke, a continental common market with a single set of rules to be followed by all African states. This would increase efficiency by reducing transaction costs. It would also act as a mechanism for expediting the creation of a continental common market for all goods.

However, given the diverse interests of the African countries, achieving consensus as to the contents of such a Protocol will not be easy. Moreover, the prevailing economic and geographic circumstances in the different regions may not support such an arrangement. From a drafting perspective, in order to achieve compromise and agreement for such a broad market, it will prove necessary to employ 'soft' non-binding language and to include provisions granting individual states considerable discretion as to the actions that they would be required to undertake. This would defeat the purpose of concluding such a Protocol.

6.3 Option 2: REC-based liberalisation

A second possible option is to continue along the path laid down in the Abuja Treaty and work with each REC to liberalise trade in basic food products and to ensure that in doing so, they adopt, to the extent possible, identical standards and time frames.

[214] The international sponsors of CBI (World Bank, IMF, EU and the African Development Bank) have agreed to compensate CBI member states participating in COMESA for loss of revenue resulting from COMESA tariff reduction. One has to find sponsors for affected countries in other regions

This option would have the advantage of working with already established RECs in the context of the trade liberalisation programmes that they have already undertaken. The main disadvantage of this option is that it would fall some way short of creating a common market covering the entire continent and it would leave the question of overlapping RECs unresolved. The aim of expediting trade liberalisation in agricultural products would therefore fall some way short of achievement.

6.4 Option 3: Fast-track availability

The third possible option would be a blend of the first two options. Under this scenario, the RECs would form the basis of the common market but there would be a fast-track option for those countries wishing to liberalise trade with all African countries immediately. This would, however, be dependent on whether the countries in question had already established a common external tariff with other Members of the REC of which they are a part or not. In the event that they had, the individual countries might not be able to fast-track liberalisation, but the REC in question itself could. However, such liberalisation would still have to be carried out in the context of an agreement that was WTO-compatible otherwise the Members in question would be open to charges of engaging in discriminatory conduct vis-à-vis non-African countries.

With regard to the products to be traded, the biggest problem will be agreeing on a list of products that shall not immediately be undermined by an equally large list of exceptions for various reasons. Options available include compiling a list from which no derogation is allowed, to compiling a list from which a strictly limited number of predetermined products can be excluded by individual countries at an initial stage to a programme where a list is compiled from which no derogation is allowed but in which countries are given some discretion as to the period of time within which they wish to liberalise.

6.5 WTO status

On the question of the international legal status of the common market, it is clear that it would not comply with the provisions of Article XXIV of GATT 1994. The options available are therefore to notify it under the Enabling Clause or to seek a waiver for its implementation. With regard to notification under the Enabling Clause, the Protocol would have to be notified to the Committee on Trade and Development, which would then refer it to the Committee on Regional Trade Agreements to examine in accordance with the provisions of the Enabling Clause. If a waiver were to be sought then the provisions of Article IX of the WTO Agreement would have to be followed, that is to say, an application would have to be made to the Ministerial Conference and approved by a three quarter majority.

6.6 Summary

The aim of this study, pursuant to its terms of reference, was to prepare a comprehensive report covering key issues of importance to the formation of a continental common market in agricultural products through, inter alia, analysis of how regional legal instruments foster or hinder trade, a review of the underpinning principles of regional instruments and recommendations on how legal and institutional arrangements can be strengthened to foster legal and policy harmonization. The options presented above will be further elaborated on following review recommendations from the high level technical meeting.