African Region

African Region
Data Collection Survey on the African Continental Free Trade Area (AfCFTA)

Final Report

December 2021

Japan International Cooperation Agency (JICA)

IC Net Limited

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21-019

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Abbreviations

Abbreviation	Definition
AAEC	ASEAN Agreement on Electronic Commerce
ADP	Anti-Dumping
ACCEC	ASEAN Coordinating Committee on Electronic Commerce
ACF	African Competition Forum
ACIA	ASEAN Comprehensive Investment Agreement
ACT	ASEAN Consultation to Solve Trade and Investment Issues
ACTS	ASEAN Customs Transit System
ADGMIN	ASEAN Digital Ministers' Meeting
ADGSOM	ASEAN Digital Senior Officials Meeting
AEC	ASEAN Economic Community
AEF	Afrique Équatoriale Française
AEGC	ASEAN Experts Group on Competition
AFAFGIT	ASEAN Framework Agreement on the Facilitation of Goods in Transit
AFAS	ASEAN Framework Agreement on Services
AfCFTA	African Continental Free Trade Area
AFTA	ASEAN Free Trade Area
AfDB	African Development Bank
AGOA	African Growth and Opportunity Act
AIA	ASEAN Investment Area
AIC	ASEAN Industrial Complementation
AIDI	Africa Infrastructure Development Index
AIGA	ASEAN Investment Guarantee Agreement
AIM2015	ASEAN ICT Masterplan 2015
AIM2020	ASEAN ICT Masterplan 2020
AIP	ASEAN Industrial Project
AMU	Arab Maghreb Union
APEC	Asia-Pacific Economic Cooperation
APRM	African Peer Review Mechanism
ARIPO	African Regional Intellectual Property Organization
ARISE	ASEAN Regional Integration Support by the EU
ASA	Association of Southeast Asia
ASEAN	Association of Southeast Asian Nations
ASPEC	ASEAN Patent Examination Co-operation
ASSIST	ASEAN Solution for Investments, Services and Trade
ASW	ASEAN Single Window
ATEX	African Trade Exchange
ATIGA	ASEAN Trade in Goods Agreement
ATR	ASEAN Trade Repository
ATRC	ASEAN Telecommunication Regulators' Council
AUC	African Union Commission
AUDA-NEPAD	African Union Development Agency - New Partnership for Africa's Development
AU	African Union
AWGIPC	ASEAN Working Group on Intellectual Property Cooperation
AWSC	ASEAN Wide Self-Certification
CARD	Coalition for Africa Rice Development
CCC	COMESA Competition Commission
CCJA	Common Court of Justice and Arbitration
CE	Certified Exporter
CEN-SAD	Community of Sahel-Saharan States
CEMAC	Central African Economic and Monetary Community
CEPT	Common Effective Preferential Tariff
COMESA	Common Market for Eastern and Southern Africa

COMESA RIA	COMESA Regional Investment Agency
COVID-19	Coronavirus Disease 2019
CPIA	Country Policy and Institutional Assessment
CSAP	Consolidated Strategic Action Plan
CV	Countervailing
DCP	Destination Contact Point
DIFAP	ASEAN Digital Integration Framework Action Plan 2019-2025
DTI	Department of Trade and Industry
EAC	East African Community
EACJ	East African Court of Justice
ECCAS	Economic Community of Central African States
ECCJ	ECOWAS Community Court of Justice
ECTS	Electronic Cargo Tracking System
EAMU	EAC Monetary Union
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of West African States
EPA	Economic Partnership Agreement
ERIA	Economic Research Institute for ASEAN and East Asia
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (a German development agency)
GNI	Gross National Income
IAI	ASEAN Integration Initiative
ICA	Infrastructure Consortium for Africa
ICN	International Competition Network
ICSID	Convention on the International Centre for the Settlement of Investment Disputes
ICT	Information and Communication Technology
IGADD	Intergovernmental Authority on Drought and Development
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
ISDS	Investor-State Dispute Settlement
JETRO	Japan External Trade Organization
JICA	Japan International Cooperation Agency
JJC	Jakarta Japan Club
JKUAT	Jomo Kenyatta University of Agriculture and Technology
KOICA	Korea International Cooperation Agency
KPIs	Key Performance Indicators
MFTA	Morocco Free Trade Agreement
MSME	Micro, Small, and Medium Enterprises
NAFTA	North American Free Trade Agreement
NEET	Not in Employment, Education, or Training
NEPAD	New Partnership for Africa's Development
NSW	National Single Windows
NTB	Non-Tariff Barrier
NTR	National Trade Repository
OAPI	Organisation Africaine de la Propriété Intellectuelle
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries

OSAA	United Nations Office of the Special Advisor on Africa
OSBP	One-Stop Border Post
PAIC	Pan-African Investment Code
PAIPO	Pan-African Intellectual Property Organisation
PAUSTI	Pan-African University of Basic Science, Technology and Innovation
PCR	Polymerase Chain Reaction
PICI	Presidential Infrastructure Champion Initiative
PIDA	Programme for Infrastructure Development in Africa
PREPARE	Partnership for Building Resilience against Public Health Emergencies through Advanced Research and Education
PTA	Preferntial Trade Area / Preferential Trading Arrangement
QR	Quantitative Restrictions
Ras	Responsible Agencies
RCEP	Regional Comprehensive Economic Partnership Agreement
REC	Regional Economic Community
RECDTS	Regional Electronic Cargo and Driver Tracking System
RISDP	SADC Reginal Indicative Strategic Development Plan
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCAT	Southern African Development Community Administrative Tribunal
SADCC	Southern African Development Coordination Conference
SCT	Single Customs Territory
SDG	Sustainable Development Goal
SEATO	Southeast Asia Treaty Organization
SEZs	Special Economic Zones
SG	Safeguard
SHEP	Smallholder Horticulture Empowerment and Promotion
SME	Small and Medium Enterprise
SOLVIT	Solutions to Problems with Your EU Rights
SPS	Sanitary and Phytosanitary
SSG	Special Safeguards
STI	Science, Technology, and Innovation
TBT	Technical Barriers to Trade
TELMIN	ASEAN Telecommunication and IT Ministers Meeting
TELSOM	ASEAN Telecommunication and IT Senior Officials Meeting
TICAD	Tokyo International Conference on African Development
TMEA	Trademark East Africa
TPP	Trans-Pacific Partnership Agreement
TRQ	Tariff-Rate Quotas
UDEAC	Union Douanière et Économique de l'Afrique Centrale
UDE	Union D1ouanière Equatoriale
UEMOA	Union Economique et Monétaire Quest Africaine (West African Economic and Moneary Union)
UNCTAD	United Nations Conference on Trade and Development
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNICEF	United Nations Children Fund
UNOPS	United Nations Office for Project Services
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
XS	Export Subsidies

Note: Following best practice, the first letters have been capitalized only in proper nouns.

1. Purpose, Methodology and Main Activities

1.1 Introduction

At the 10th AU [African Union) Extraordinary Summit in March 2018, the signing ceremony of the Kigali Declaration on the Establishment of the AfCFTA (Kigali Declaration) was held, with signatures from 44 of the 55 AU Member States / regions. In April 2019, domestic ratification by 22 AU Member States (a condition for the Agreement Establishing the AfCFTA to take effect) was completed, and the AfCFTA entered into force on 30 May 2019. In July 2019, the AU declared that the AfCFTA had moved from the preparatory stage to the implementation stage, and initially aimed to start operation of AfCFTA in July 2020.

While there was a movement toward establishment of continent-wide regional integration, none of the plans progressed as expected. In contrast, the AfCFTA Agreement has been ratified by member states at a rapid pace not seen before. The AfCFTA Secretary-General, H.E. Mr. Wamkele Mene, who took office in March 2020, noted in his inaugural address[1] and in subsequent media interviews[2] that the ratification of the AfCFTA has been without precedent, demonstrating how African countries recognize the importance of market integration.

However, the prolonged COVID-19 pandemic has seriously affected the progress of AfCFTA negotiations. Ratification by the countries that signed the agreement has progressed step by step, but the start of operation scheduled for July 2020 had to be postponed due to the pandemic; operation finally commenced in January 2021. There are still many issues remaining, and considering the complexity of these outstanding issues, it will take some time before full-scale operation of the AfCFTA. Recently, Secretary-General Mene stated that the AfCFTA is not a rush event, but a process, suggesting that it will take some time before AfCFTA proceeds to full-scale operation.[3]

If the AfCFTA is realized, it will become a free trade area comparable to the world's largest free trade areas; it will have a population of about 1.3 billion and a GDP of US$3.4 trillion, with substantial impact on the world economy. The World Bank has found that if the AfCFTA were fully functional, total exports from Africa would increase by 29% by 2035, intraregional trade would increase by more than 81%,[4] and real income would rise by 7%,[1] amounting to US$450 billion, and a large number of people in Africa would escape poverty.[5] The World Bank also projected that the implementation of the AfCFTA will play a key role in the recovery from the economic damage caused by COVID-19 on the continent.[6] However, at this point, it is difficult to predict how far the grand concept of the AfCFTA

[1] Statement of H.E. Mr. Wamkele Mene, on the occasion of his swearing in as the Secretary-General of the AfCFTA Secretariat, 19 March 2020.

[2] https://www.un.org/africarenewal/magazine/may-2020/coronavirus/implementing-africa%E2%80%99s-free-trade-pact-best-stimulus-post-covid-19-economies.

[3] https://thebftonline.com/19/01/2021/afcfta-is-a-process-not-an-event-that-has-been-rushed-sec-gen-tells-critics/.

[4] World Bank, *The African Continental Free Trade Area Economic and Distributional Effects*, 2020, p. 46.

[5] Ibid., p. 44.

[6] Ibid., p. 8.

will be realized. Although there are certain expectations for the AfCFTA from companies doing business in Africa, some doubt its feasibility.

Restrictions resulting from the COVID-19 pandemic adversely affected the implementation of this survey. Under these circumstances, the survey team endeavored to identify issues related to the operation of the AfCFTA as much as possible, and based on lessons from the Association of Southeast Asian Nations (ASEAN), the team tried to find the best ways to pursue future cooperation. These findings are summarized in this report.

1.2 Purpose of the Survey and the Activities of the Japan International Cooperation Agency

The Japan International Cooperation Agency (JICA) has sponsored various technical assistance projects to strengthen connectivity and facilitate trade in Africa, e.g., technical assistance projects to support the introduction of one-stop border posts and modernize customs procedures. From this background, good relationships have been cultivated between Japan and African countries.

At the 6th Tokyo International Conference on African Development (TICAD 6) held in Nairobi, Kenya, in August 2016, the Government of Japan launched the Japan-Africa Public-Private Economic Forum to support investment by Japanese companies in Africa and announced that it would promote investment agreements and tax agreement negotiations. In June 2019, the Japan Business Council for Africa was established with the aim of promoting trade, investment, and business relations between Japan and Africa. At TICAD 7 held in Yokohama in August 2019, it was reconfirmed that the development of Africa would be strongly promoted with the cooperation of the Japanese public and private sectors.

The Yokohama Declaration 2019 adopted by TICAD 7 declared that aligned with AU Agenda 2063 and its first-decade vision for Africa, as a commitment to achieving the sustainable development goals (SDGs), Japan will assist acceleration of the economic transformation and improvement of the business environment through innovation and private-sector engagement. In the Yokohama Plan of Actions 2019, with TICAD partners, Japan decided to focus on activities such as promoting economic diversification, industrialization, and competitiveness; ensuring sustainable financing practices; and strengthening connectivity and integration through quality infrastructure investment.

In view of this background and developments, JICA will continue to contribute to the promotion of trade in Africa. It was decided that the survey would analyze the current situation and issues for the operation of AfCFTA, and explore future cooperation of JICA. Activities included strengthening of the capacity of stakeholders for the operation of AfCFTA and supporting Japanese companies interested in the African market. In addition, an important objective of this survey was to build relationships with stakeholders for future cooperation.

Furthermore, this survey analyzed the historical background of regional integration in ASEAN and the ASEAN Economic Community. The survey sought to identify implications for consideration in the operation of AfCFTA through the analysis of various initiatives and issues from the operation of the ASEAN Secretariat and trade facilitation in ASEAN.

1.3 Methodology of the Survey

This survey – which was planned before COVID-19 – commenced in June 2020 and was conducted during the pandemic. At the beginning of the survey, it was considered that the impact of COVID-19 might be short-term and transient, and therefore it was decided that the survey would begin from Japan, while it was assumed that overseas fieldwork would be possible starting in October 2020. However, since the pandemic did not abate, the team continued to work from its home base, while frequently reviewing plans for conducting field missions.

Initially, the team had planned to visit Ethiopia, Tanzania, Kenya, South Africa, and Nigeria to conduct field surveys, to interview African institutions and development partners related to the AfCFTA, and to visit border facilities between Tanzania and Kenya. In addition, there was a plan to invite AfCFTA officials to Japan, and to invite AfCFTA officials to the ASEAN region to visit the headquarters of the ASEAN Secretariat in Indonesia and Malaysia-Singapore border facilities. There was also a plan to invite AfCFTA officials to workshops in Ethiopia and South Africa at the end of the survey. However, none of these plans could be realized due to travel restrictions and lockdowns resulting from COVID-19.

The only field survey that could be conducted was a mission to Ghana, where the AfCFTA Secretariat is located. Other than that, the team conducted this survey through research and analysis of literature (non-Japanese and Japanese) and remote (virtual) interviews with related parties.

1.4 Structure of the Survey

Table 1 lists the members of the survey team and the planned allocation of work.

Table 1: Structure of the Survey

Name	Specialization(s)	Tasks
Kazuhira Nakasato	Project Leadership / Trade Liberalization	• Summarize the survey and consult with relevant organizations such as the Ministry of Economy, Trade and Industry and JETRO, and report to JICA • Supervise and direct the work of each team member • Gather information from related organizations (domestic and international) • Supervise and implement the invitation programs and the field visits • Hold workshops and seminars • Write and compile each report based on the TOR
Bruce Winston	Regulations / Organizations	• Gather information from related organizations (domestic and international) • Implement field visits • Draft reports on fields of responsibility based on the TOR
Masaharu Shimoya	Trade Facilitation	• Gather information from related organizations (domestic and international) • Implement invitation programs and field visits • Draft reports on fields of responsibility based on the TOR
Hikari Harrison	Inter-Organizational Coordination / Training Management	• Coordinate domestic and field survey activities • Coordinate invitation programs and field visits • Coordinate workshops and seminars

1.5 Main Activities in this Survey

As mentioned, in addition the survey on the full-scale operation of the AfCFTA, the team conducted a survey on the ASEAN region, and organized several events. This chapter provides an overview of the various activities that were carried out during the survey.

1.5.1 Field Survey and Information Collection in Africa

Regarding information collection surveys in Africa, in addition to the field survey in Ghana, the team collected information by reviewing various reports and publications, sending questionnaires to relevant parties, and conducting interviews.

Since the adoption of the agreement in 2018, development partners from around the world have provided support to AfCFTA-related organizations toward the start of its operations. In this survey, the team conducted interviews with staff members in organizations that have played and have been playing a central role in establishing the AfCFTA.

Specifically, the team conducted interviews and a questionnaire survey with key staff members of the AfCFTA Secretariat, which began operations in April 2020, and staff members of the Trade and Industry Bureau of the African Union Commission (AUC), which supported AfCFTA activities before the Secretariat became fully operational. The team also conducted interviews and a questionnaire survey with staff members of the African Union Development Agency and New Partnership for Africa's

Development (AUDA-NEPAD) in the Economic Integration, Infrastructure and Connectivity and Industrialization Division of the AU, and conducted interviews and a questionnaire survey with staff members of the United Nations Economic Commission for Africa (UNECA).

In addition, this survey conducted interviews and a questionnaire survey with the East African Community (EAC) and the Economic Community of West African States (ECOWAS), two regional economic communities (RECs) that have played an important role in AfCFTA negotiations. Also, the survey prepared a questionnaire for the other six RECs formally recognized by the AU. In addition, to understand the situation of customs clearance during the COVID-19 pandemic, the team administered a questionnaire survey to officials at the Kenyan-Tanzania border control facility (at Namanga), and received responses from both the Kenyan and Tanzanian sides.

Further, the survey interviewed Professor Engela Schlemmer, a legal scholar specializing in international economic law who is familiar with the AfCFTA and who teaches at the University of the Witwatersrand in Johannesburg, South Africa. For information on Africa from the viewpoint of the Government of Japan, the survey conducted interviews with staff members in the Ministry of Economy, Trade and Industry (METI), Trade Policy Bureau, Africa Office, which is responsible for Japan's industrial policy toward Africa. Additionally, the survey conducted interviews with the Overseas Strategy Group, Planning Division, Planning Department, Japan External Trade Organization (JETRO), which supports overseas investment by the Japanese private sector. Also, the survey conducted interviews with several Japanese companies doing business in Africa, the Japan Association of Corporate Executives, and the Japan Chamber of Commerce and Industry.

During the field mission in Ghana, the team visited the field offices of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, a German development agency), to learn about its support for the AfCFTA. In addition, the team conducted interviews with the JETRO Accra Office and with companies expanding operations in Africa. Also, the team met with the Japanese Ambassador to Ghana, H.E. Mr. Tsutomu Himeno, to receive advice on future cooperation, and later held working-level discussions with the officer-in-charge of the Embassy of Japan in Ghana.

Regarding two other major development partners – the European Union (EU) and the United States Agency for International Development (USAID) – which could not adjust their schedules for meetings during the field mission in Ghana, the team conducted remote interviews after returning to Japan to collect information on the status of their support for the AfCFTA.

1.5.2 Information Collection in the ASEAN Region

The main purpose of the information collection survey on the ASEAN region was to obtain useful knowledge for the operation of the AfCFTA. This aspect of the work was conducted to the extent necessary to achieve the intended purpose. The information collection survey on the ASEAN region was mainly undertaken through a desktop literature review, along with a questionnaire survey for the ASEAN Secretariat and a supplementary interview on the status and challenges of initiatives and operations in ASEAN. For example, the team inquired about topics such as the background of successful tariff elimination in ASEAN and trade facilitation efforts in the ASEAN Economic Community.

In addition, as a domestic (i.e., Japan-based) information collection activity, the team conducted an interview with staff members of the Asia-Pacific Division, Trade Policy Bureau, Ministry of Economy, Trade and Industry, which is responsible for Japan's industrial policy toward ASEAN. Also, the team conducted interviews with Japanese companies doing business in the ASEAN region on issues such as the business environment.

1.6 Events Conducted in this Survey

As mentioned, this survey included activities such as strengthening of the capacity of AfCFTA staff members and supporting companies interested in investing in the African market. The events (e.g., workshops) held this during survey were done for these derived purposes. The following subsections presents an overview of the events conducted during the survey (the attached report provides details).

1.6.1 Meetings for an Exchange of Views between and among Stakeholders and JICA toward Implementation of the AfCFTA

This two-day event was held on two days, 10 and 17 May 2021. The purpose of this event was to introduce AfCFTA officials to experience of ASEAN that may be useful for achieving the full-scale operation of the AfCFTA and to introduce JICA’s efforts to date supporting trade facilitation and legal development. This event was co-hosted by JICA and AUDA-NEPAD.

On the first day of the event, the AfCFTA Secretariat presented on current initiatives and future challenges, and the Team Leader of the survey (i.e., of the JICA Consultant Team) and a researcher from the Economic Research Institute for ASEAN and East Asia (ERIA) presented on issues common to ASEAN and the AfCFTA. Interactive discussion among the participants followed.

On the second day of the event, AUDA-NEPAD introduced efforts related to the operation of the AfCFTA, and JICA introduced its support for legal development and trade facilitation. In addition, Professor Schlemmer of the University of the Witwatersrand in South Africa presented comprehensive issues to be addressed in the operation of the AfCFTA. Again, interactive discussion followed.

1.6.2 Meeting to Exchange Views between African and ASEAN Officials for Implementation of the AfCFTA

This event was held in September 2021 and was cohosted by the AfCFTA Secretariat and JICA. The AfCFTA Secretariat presented the status of AfCFTA negotiations, and the ASEAN Secretariat introduced the operation of the Secretariat and advanced initiatives in ASEAN to AfCFTA officials. In addition, ERIA presented on the value chain of automobiles in the ASEAN region, and again interactive discussion followed.

During the discussion, staff members from the AfCFTA Secretariat stated that the strategic plan formulated by the ASEAN Secretariat has much in common with what the AfCFTA Secretariat plans to do, and accordingly they would like to learn more about ASEAN policy-making processes and how ASEAN formulates strategies in major fields.

1.6.3 Follow-up Discussion Meeting on Matters of Interest to AfCFTA Stakeholders

This event was held in November 2021 for follow-up on matters that were on the agenda at the event held in September 2021 and on which the AfCFTA Secretariat requested further discussion. At this event, speakers from ERIA and the ASEAN Secretariat presented on how to manage a regional organization and formulate action plans, and how to build value chains in sectors other than the automotive industry. After the presentations, there were discussion of issues such as future operation of the AfCFTA.

In the discussion at this workshop, a participant from the AfCFTA Secretariat stated that it was informative for them to learn about the division of roles between ASEAN Secretariat headquarters and the National ASEAN Secretariats in each Member State, the budget structure, and the organizational structure of ASEAN Secretariat.

1.6.4 Briefing session for Japanese companies interested in the African market

This event was held in December 2021 and was co-sponsored by the AfCFTA Secretariat and JICA. Many Japanese companies that are already doing business in the African market or are interested in entering the African market participated in this workshop. The purpose of this event was to convey the appeal of AfCFTA and promote investment to African market.

In the discussions at this workshop, a participant from a Japanese company doing business in Africa stated that they expected that implementation of the AfCFTA will improve the business environment in Africa, with systematic removal of tariffs, reductions in transportation costs, and protection of intellectual property.

2. Overview of the AfCFTA

2.1 History of Establishment of the AfCFTA

Regional communities on the African continent have a history of over 60 years. The AU's predecessor, the Organization of African Unity (OAU), was founded in 1961, even before the establishment of ASEAN, which was created in 1967.

From the early stages of the OAU there was a movement toward establishment of a single market to overcome the weakened economy from the colonial era and to promote economic independence of the African continent. In the Lagos Plan of Action for the Economic Development of Africa, adopted by an OAU Summit in 1980, African countries agreed to establish an African Economic Community by 2000.[7]

In addition, the Treaty Establishing the African Economic Community (the Abuja Treaty),[8] adopted by an OAU Summit in 1991, provided a roadmap for economic integration in Africa. The Abuja Treaty planned for the establishment of a common market and monetary union by 2028. However, none of these attempts to create common markets proceeded as planned due to various constraints (e.g., political conditions).

In 2002, the OAU was reorganized into the AU, and at an AU Summit in 2012, an action plan to integrate the RECs including creation of a continent-wide free trade zone was agreed in the Decision on Boosting Intra-African Trade, the so-called BIAT decision. In addition, the AU (which celebrated its 50th anniversary in 2013, including the OAU period), in May 2013 agreed on an Agenda 2063, a long-term vision for Africa's politics, economy, and society. The establishment of the AfCFTA was one of top priorities of Agenda 2063.

At an AU Extraordinary Summit in March 2018, the signing ceremony of the Kigali Declaration on the Establishment of the AfCFTA (Kigali Declaration) was held, with signatures from 44 AU Member States. In April 2019, domestic ratification by 22 AU Member States (a condition for the Agreement Establishing the AfCFTA to take effect) was completed, and the AfCFTA entered into force on 30 May 2018. At the 13th Extraordinary Session of the Assembly on 5 December 2020, the AU Member States agreed to commence trading in the AfCFTA on 1 January 2021. As of October 2021, 54 of the 55 AU Member States / regions (i.e., all except Eritrea) had signed the agreement, 41 had ratified it, and 38 had deposited their instruments of ratification.[9]

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7 The original action aimed to address broad economic problems and to promote agriculture and industry from 1980 to 2000. However, an economic crisis in the 1980s in Africa prevented implementation of the plan.

8 The Abuja Treaty envisaged strengthening of the integration of existing RECs first and then removing barriers between the RECs to create a continent-wide common market. However, progress in integration has varied by REC and generally has not proceeded as planned.

9 Some sources have suggested that Eritrea's diplomatic relationship with Ethiopia might be a reason why Eritrea has not signed the AfCFTA Agreement.

2.2 Overview of the AfCFTA Organization

In February 2020, H.E. Mr. Wamkele Mene, a former World Trade Organization (WTO) negotiator for South Africa, was elected Secretary-General of the AfCFTA Secretariat at the AU Summit and his inauguration ceremony was held in March 2020. The secretariat's duties began with the appointment of the secretary-general, but the secretariat did not yet have an office. The AfCFTA headquarters was opened in Accra, Ghana, on 17 August 2020, but with only the secretary-general and a small staff; the Department of Trade and Industry in the AUC will support operations until the Secretariat becomes fully operational.

The operation of the AfCFTA started on 1 January 2021, but even then, the organization had not yet hired a full complement of staff; recruitment was hindered by difficulties due to the COVID-19 pandemic. Interviews with the AfCFTA Secretariat indicated that the department providing the AfCFTA with support at the AUC is now gradually improving its personnel system, e.g., supporting the various departments of the AfCFTA Secretariat. As of July 2021, the Secretariat had six departments, including a department in charge of trade and a department in charge of customs, and about 65 staff members were working at the Secretariat.

The AfCFTA Secretariat plans to increase its staff to 300, and depending on the progress of AfCFTA negotiations, the AfCFTA Secretariat plans to expand its organization, and transform the department in charge of competition policy to a regional competition authority. They also plan to transform the department in charge of intellectual property rights to an intellectual property agency, and transform the departments in charge of customs to be customs authorities in the future.

Article 5(a) of the Agreement Establishing the AfCFTA provides that the AfCFTA is an organization operated by the AU member states. Thus, the AfCFTA is not operated by the member states that have signed the agreement, which is a unique aspect of the AfCFTA's organizational structure.

Figure 1 presents the organizational structure of the AfCFTA.

Figure 1: Organizational Structure of the AfCFTA

Source: AfCFTA Secretariat, *Making the AfCFTA Work for Women and Youth*, 2020

Article 9 of the Agreement Establishing the AfCFTA provides that the AfCFTA consists of the AU Assembly (at the top of the hierarchy), the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat. There is no supernational organization in the AfCFTA system. In addition, Article 5(k) of the Agreement Establishing the AfCFTA clarifies that the AfCFTA has adopted the consensus principle.

On the other hand, Article 20 of the Agreement Establishing the AfCFTA provides for the establishment of a dispute resolution body between AfCFTA Member States, the detailed rules of which are to be set out in the Protocol on Rules and Procedures on the Settlement of Disputes. The dispute resolution body is composed of representatives from member states[10] and is modeled after the WTO's dispute resolution procedure. Like the WTO procedure, the dispute resolution procedure in the AfCFTA includes a Panel and Appellate Body,[11] and the chairperson is elected from AfCFTA Member States,[12] and it adopts the consensus principle.[13]

[10] Protocol on Rules and Procedures on the Settlement of Dispute, Article 5, Paragraph 2.
[11] Ibid., Article 5, Paragraph 3.
[12] Ibid., Article 5. Paragraph 4.
[13] Ibid., Article 5, Paragraph 6.

Article 9 of the Agreement Establishing AfCFTA stipulates that the AfCFTA consists of the AU Assembly, at the top of the hierarchy, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat. There is no supranational organization in the AfCFTA system. In addition, Article 5 Item (k) of the Agreement Establishing AfCFTA clarifies that the AfCFTA has adopted the consensus principle.

On the other hand, Article 20 of the Agreement Establishing AfCFTA provides for the establishment of a dispute resolution body between AfCFTA Member States, the detailed rules of which are stipulated in a Protocol on Rules and Procedures on the Settlement of disputes. The dispute resolution body is composed of representatives from member states[14] and is modeled after the WTO's dispute resolution procedure. Like the WTO procedure, the dispute resolution procedure in the AfCFTA includes a Panel and Appellate Body,[15] the chairperson is elected from AfCFTA Member States,[16] and it adopts a consensus principle.[17]

The AU Assembly is the highest decision-making body of the AU, composed of the leaders of the Member States, and its mission is to provide oversight and strategic guidance for the AfCFTA.[18] It also has the exclusive power to decide whether to adopt the recommendations of the Council of Ministers, and the consensus principle has been adopted for decisions regarding the interpretation of the Agreement.[19]

The Council of Ministers under the AU Assembly is a political platform composed of trade ministers of AU Member States,[20] and is to play an important role in the implementation of Agreement and Protocols. The Council of Ministers is also responsible for establishing and supervising various committees and working groups,[21] and holds sessions twice a year and extraordinary sessions as needed.[22] Decisions of the Council of Ministers are binding on AfCFTA Member States, which must take the necessary steps, but if the content involves legal, structural, or financial judgments, approval by the AU Assembly is needed.[23]

The Committee of Senior Trade Officials is established under the Council of Ministers[24] and composed of officers appointed by AfCFTA Member States.[25] The Committee of Senior Trade Officials is responsible for managing and overseeing activities of the AfCFTA, including measures to implement

[14] Ibid., Article 5, Paragraph 2.
[15] Ibid., Article 5, Paragraph 3.
[16] Ibid., Article 5 Paragraph 4.
[17] Ibid., Article 5, Paragraph 6.
[18] Agreement Establishing AfCFTA, Article 10, Paragraph 1.
[19] Ibid., Article 10, Paragraph 2.
[20] Ibid., Article 11, Paragraph 1.
[21] Ibid., Article, 11, Paragraph 3 (f) and (h).
[22] Ibid., Article 11, Paragraph 4.
[23] Ibid., Article 11, Paragraphs 5 and Paragraph 6.
[24] Ibid., Article 12, Paragraph 3.
[25] Ibid., Article 12, Paragraph 1.

specific decisions of the Council of Ministers. For example, it is authorized to develop an AfCFTA action plan[26] and conduct monitoring to ensure proper functioning of the AfCFTA.[27] In addition, Representatives of the Regional Economic Communities will participate as advisors to the Committee of Senior Trade Officers.[28]

The AfCFTA Secretariat is composed of technical staff members under the Secretary-General, and it is responsible for various operational affairs. The Secretariat is an organization that is functionally independent from the AU,[29] and is also independent from the AUC.[30] However, the budget of the secretariat is to be derived from the budget of the AU,[31] and the secretariat itself does not have authority to make operational decisions Therefore, it is understood that the AfCFTA Secretariat is functionally independent. For example, the United Nations has various independent institutions such as the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Development Programme (UNDP), and the AfCFTA Secretariat is understood to be similarly independent.

2.3 Current Status of the AfCFTA and Related Issues

2.3.1 Current Situation of the Negotiation Phase of the AfCFTA

Initially, the implementation process of the AfCFTA was divided into two phases. Arrangements on goods trade, services trade, and dispute settlement were to be finalized in Phase 1,[32] and were summarized in the Kigali Declaration. At the AU Ordinary Summit held in February 2019, it was agreed to eliminate tariffs on at least 90% of product categories and limit exempt items for goods trade to less than 3% of product categories; it was further decided that tariffs on the remaining 7% of product categories would be eliminated in principle in 10 years (13 years in least developed countries) considering that these are sensitive items that may have a large impact on domestic workers.

The agreement entered into force in May 2019 and commenced its operational phase in July 2019. Although Member States[33] accordingly entered Phase 2, they could not begin substantive negotiations regarding issues in Phase 2 because some issues in Phase 1 had not yet been resolved. Article 7 of the Agreement Establishing the AfCFTA stipulates those negotiations in Phase 2 are to cover competition policy, investment, and intellectual property rights. Although the Member States had planned to reach agreement on these subjects in 2020, as of the end of September 2021, the situation has not moved forward.

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[26] Ibid., Article 12, Paragraph 2(b).
[27] Ibid., Article 12, Paragraph 2(c).
[28] Ibid., Article 12, Paragraph 5.
[29] Ibid., Article 13, Paragraph 3.
[30] Ibid., Article 13, Paragraph 4.
[31] Ibid., Article 13, Paragraph 5.
[32] Alternatively, these phase numbers are written with Roman numerals (e.g., Phase I).
[33] All AU Member States are involved in the negotiations of the AfCFTA Agreement, as opposed to only State Parties (which are those AU Member States that have ratified the AfCFTA Agreement). See, e.g., https://www.tralac.org/blog/article/14804-the-afcfta-agreement-is-in-force-why-can-it-not-be-implemented.html ["since the AfCFTA negotiations have been launched as an AU project and are member-driven, all AU Member States participate in the negotiations"].

Article 23 of the Agreement Establishing the AfCFTA allows Member States to add items other than investment, competition policy, and intellectual property rights to the negotiations. In January 2020, the Member States agreed to start negotiations regarding development of the legal system for e-commerce (electronic commerce) as Phase 3 and the General Assembly of the AU declared in February 2020 that Member States would start the Phase 3 negotiations as soon as the Phase 2 negotiations are concluded. However, as the COVID-19 pandemic continued, Member States considered that the negotiations on e-commerce should not wait until the conclusion of Phase 2 negotiations, and accordingly the e-commerce negotiations were consolidated with other Phase 2 negotiations.

In addition, given that many small and medium enterprises (SMEs) on the African continent are led by women and young people, at the All-African High-level Virtual Roundtable on AfCFTA Youth Inclusion held in April 2021, heads of AU Member States mandated the AfCFTA Secretariat to draft new protocols so that women and young people can benefit from the AfCFTA. Currently, the AfCFTA Secretariat is in the process of developing a protocol for women and youth, and plans to complete it by the end of 2021.

As of October 2021, 41 of the 55 AU Member States / regions had ratified the agreement, and 38 had deposited their instruments of ratification. Figure 2 presents the staged plan for establishing the AfCFTA.

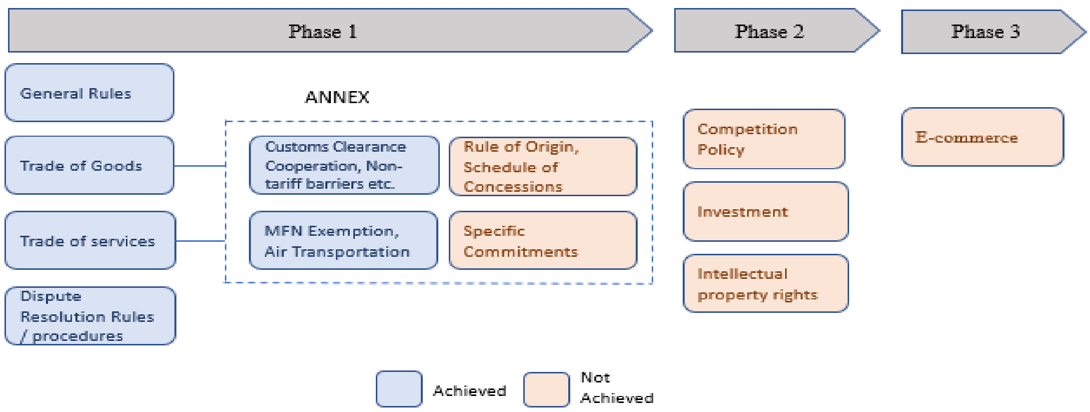

Figure 2: Progress of the Phase-by-Phase Plan for Establishing the AfCFTA

Source: Japan External Trade Organization

(1) The Current Situation of Phase 1

The Phase 1 negotiations include general rules, as well as protocols on the trade of goods, the trade of services, and dispute resolution rules and procedures. Although Member States have reached agreement on general rules and other protocols, the negotiations on rules of origin, concessions, and commitments, which involve the most important and difficult negotiations in the free trade area, had not yet been completed as of the end of September 2021.

The negotiations on the rules of origin for trade in goods have reached the final stage. Member States agreed on 91 of 96 sections and 87% of the negotiations were completed. What remained were issues on items that involve the interest(s) of particular Member States, e.g., regarding crude oil, sugar, automobile, and dairy products. However, negotiations on textiles (which account for many items), infant products, and products manufactured in special economic zones had not yet been negotiated. Not much progress was made since the end of 2020.

On the other hand, the concession table for trade in goods was not available even after the deadline at the end of June 2021. As of the end of October 2021, 41 Member States, the Central African Economic and Monetary Community (CEMAC), the EAC, ECOWAS, and the Southern African Customs Union (SACU) had submitted first concessions, 28 of which had been technically approved and waiting for the start of trading. A proposal to issue a Ministerial Directive regarding the application of the concession table was under consideration, and preparations were being made for its adoption at the next Council of Ministers meeting.

Specific commitments on trade in services were also not reached. As of the end of September 2021, 36 countries had submitted their first specific commitments. Five committees on the trade in services had been established by May 2021, with subcommittees considering issues such as the legal framework. Negotiations on seven service sectors had not yet been completed.

The AfCFTA Secretariat hopes to complete negotiations of all protocols by December 2021, but realization of this objective will be challenging.

(2) The Current Situation of Phase 2

The Phase 2 negotiations – which originally aimed to reach agreement on investment, competition policy, and intellectual property rights – were supplemented with negotiations on e-commerce, and women and youth in trade. Since the negotiations require knowledge and systems regarding the issues, Member States that lack adequate resources tend to be left behind. The following subsections provide an overview of the current situation and challenges on these specific issues.

(a) The Current Situation and Challenges on Competition Policy

Competition law is the basic law that allows for functioning of a market economy –it is sometimes referred to as an economic constitution. It is envisaged that Phase 2 of the AfCFTA negotiations will establish a fair competitive environment at the continental level. However, because quite a few countries on the continent lack an adequate system regarding competition law, there are many serious anti-competitive behaviors and cross-border transgressions such as cartels and abuse of dominant position in the African market, which impedes fair competition in the market and have adverse impacts on consumers.[34]

The African Competition Forum (ACF) – which promotes competition law and cooperation among various competition authorities – started with 19 competition authorities in 2011. As of 2020, the ACF had grown to include 34 member organizations including 30 national competition authorities and four regional competition authorities. However, at this stage the ACF is not sufficiently large or well-developed to have a significant impact on the continent as whole.

Another organization with members in Africa related to competition is the International Competition Network (ICN), which provides a specialized yet informal venue for maintaining regular contacts and addressing practical competition concerns among competition authorities. As of 2021, this global organization had 23 African members, including Algeria, Botswana, Egypt, Eswatini (formerly Swaziland), Ethiopia, The Gambia, Kenya, Malawi, Morocco, Mauritius, Nigeria, Tanzania, Tunisia, Namibia, Nigeria, Senegal, Seychelles, South Africa, Zambia, and Zimbabwe, as well as other members (e.g., COMESA).[35] However, the ICN is not sufficiently large and lacks the mission to directly fight cross-border illegal activities under competition law.

The AUC regards knowledge and capacity as a precondition for the AfCFTA negotiations, which in the case of competition policy requires the establishment and development of national implementation system(s) authorized to enforce cross-border competition law. As of 2019, 33 countries had enacted competition law(s) but only 23 of the 33 had established implementation organization(s); 17 countries did not even have a competition law.[36]

The AUC categorizes countries into four groups according to their development level regarding competition law:

(i) The first group includes 23 countries with a competition law and implementation authority: Algeria, Botswana, Burkina Faso, Cameroon, Democratic Republic of Congo, Egypt, Eswatini (formerly Swaziland), Ethiopia, The Gambia, Côte d'Ivoire, Kenya, Liberia, Madagascar, Malawi, Mauritius, Morocco, Namibia, Senegal, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe.

(ii) The second group includes 10 countries with a competition law but lacking an implementation authority, including Angola, Burundi, the Comoros, Cape [Cabo] Verde, Djibouti, Gabon, Mali, Mozambique, Rwanda, and Sudan.

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[34] United Nations Economic Commission for Africa, African Union, African Development Bank, and United Nations Conference on Trade and Development, *Next Steps for the African Continental Free Trade Area*, 2019, p. 15.

[35] See https://www.internationalcompetitionnetwork.org/members/?location=africa.

[36] See, e.g., UNECA, AU, AfDB, and UNCTAD, *Next Steps for the African Continental Free Trade Area*, 2019, p. 147.

(iii) The third group includes four countries that do not have a competition law: Lesotho, Niger, Nigeria,[37] and Togo.

(iv) The fourth group comprises 17 countries with no competition law or with a competition law at an early stage of development: Benin, the Central African Republic, Chad, Congo, Equatorial Guinea, Eritrea, Ghana, Guinea, Guinea-Bissau, Libya, Mauritania, São Tomé and Príncipe, Sierra Leone, Somalia, South Sudan, Uganda, and Western Sahara.

While most African countries are developing their own competition policy, law, and implementation system(s), they face challenges in assuring a competition environment in the current digital economy, in which large companies have emerged and are emerging, with dominant market positions.

Although the first category includes 23 countries, the AUC recognizes only 15 as having a strong and inclusive competition law and more than 70% of African countries face implementation issues regarding competition law and policy. The International Monetary Fund (IMF) has indicated that African countries critically require the (i) promotion of market liberalization, (ii) the establishment of an implementation system of appropriate competition policies, and (iii) additional policies that support competition policy to address issues concerning the development of a competitive environment.[38]

Although African governments have promoted privatization for more than 30 years (i.e., since the 1980s), including support for activating the private sector, privatization in Africa has stalled in the last decade. As a result, government enterprises have monopolized markets in most African countries, with consequent adverse impact on competition. In addition, IMF research identified laws and regulations limiting entry into specific markets such as networking services and found that two-thirds of African countries are regulating prices, which impedes fair competition.[39] Accordingly, there is considerable scope for African countries to actively promote market liberalization.

Another issue identified by the IMF research is that most governments have not enforced competition law(s) that they have enacted. Generally, independence of the competition authority from political pressure to favor certain enterprises is important for promotion of competition policy; however, one-third of the competition laws in African countries do not provide for such independence. Moreover, the IMF research found that organizational structures to implement competition policy in African countries were insufficient (e.g., due to insufficient staffing).[40]

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[37] Nigeria – which has the largest economy in Africa – had been criticized until it enacted the Federal Competition and Consumer Protection Act, 2018, which established a Competition and Consumer Protection Commission. Therefore, Nigeria now falls into the first group according to the AUC categorization.

[38] International Monetary Fund, *Competition, Competitiveness and Growth in Sub-Saharan Africa*, 2020, p. 19.

[39] Ibid., p. 20.

[40] While competition authorities in some countries may have sufficient staffing, one-third of the competition authorities in Africa have less than ten officials / staff members. Ibid.

The lack of adequate competition policies, laws, and structures (i.e., implementation systems) prevents people from having access to inexpensive, high-quality goods and services. In some cases, enterprises may intentionally increase prices by limiting the quantity of goods supplied during times of market confusion, e.g., during the COVID-19 pandemic. The competition authorities in Botswana, Kenya, Namibia, Nigeria, Malawi, Mauritius, and South Africa have started such investigations[41]; however, the likelihood of effective investigations without adequate implementation systems is low.

Active competition in markets requires not only competition policy itself but also complementary macroeconomic policies (e.g., trade, foreign investment, and financial policies).[42] In Africa, high tariffs and other non-tariff barriers impede active competition; indeed, one of the aims of the AfCFTA is to reduce or eliminate these impediments. In addition, interventions by governments (e.g., financial policies) may affect competition; for example, preferential treatment for certain enterprises in tax or public procurement policies, and inadequate administration of customs clearance, may prevent fair competition. The AfCFTA protocols will address these issues, and it is hoped that they will improve the current situation.

(b) The Current Situation and Challenges Regarding Investment

Foreign direct investment (FDI) in Africa in 2020 was about US$39.8 billion. Year-on-year FDI decreased by 15.6% in 2019,[43] and by another 10.3% in 2020.[44] FDI in Africa was on a downward trend due to falling commodity prices, but the COVID-19 pandemic resulted in the worst recession in 50 years and exacerbated the situation. The outlook for the future recovery of the African economy, which was previously optimistic, is becoming more severe the longer the COVID-19 pandemic continues. Under these circumstances, the AfCFTA is becoming more important as one of the keys to achieving economic recovery of the continent.

UNCTAD found that the announcement of greenfield investments – an indicator of FDI trends – decreased by 62% in 2020 from the previous year. The announcement of greenfield investments for large infrastructure projects plummeted by 74%, and investment for mergers and acquisitions decreased by 45%.[45] These results indicate negative sentiment toward investment in African markets.

In 2020, FDI in the Sub-Saharan region was down 12% year-on-year, and FDI in East Africa and South Africa was down 16% each, with only a slight increase in Central Africa.[46]

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[41] The competition committee in South Africa has investigated the markets for staple foods (e.g., potatoes, onions), for which prices have increased. Mauritius has started an investigation on sugar, while Kenya, Malawi, Namibia, Nigeria, and Malawi are investigating markets for medical and hygiene supplies.

[42] International Monetary Fund, *Competition, Competitiveness and Growth in Sub-Saharan Africa*, 2020, p. 22.

[43] UNCTAD, *World Investment Report, 2021*, p. 38.

[44] UNCTAD, *World Investment Report, 2020*, p. 28.

[45] Ibid., p. 40.

[46] Ibid.

In terms of FDI by country in 2020, investment in Egypt, Democratic Republic of Congo, South Africa, Nigeria, and Ethiopia were the top five on the African continent (see Figure 3). While some countries had significantly reduced FDI compared to the previous year, it has been growing in other countries. For example, FDI in Nigeria increased slightly because of its policy to diversify the economic structure, which has traditionally relied on crude oil exports, and consequently an increase in investment in the manufacturing industry has increased FDI to the country.[47]

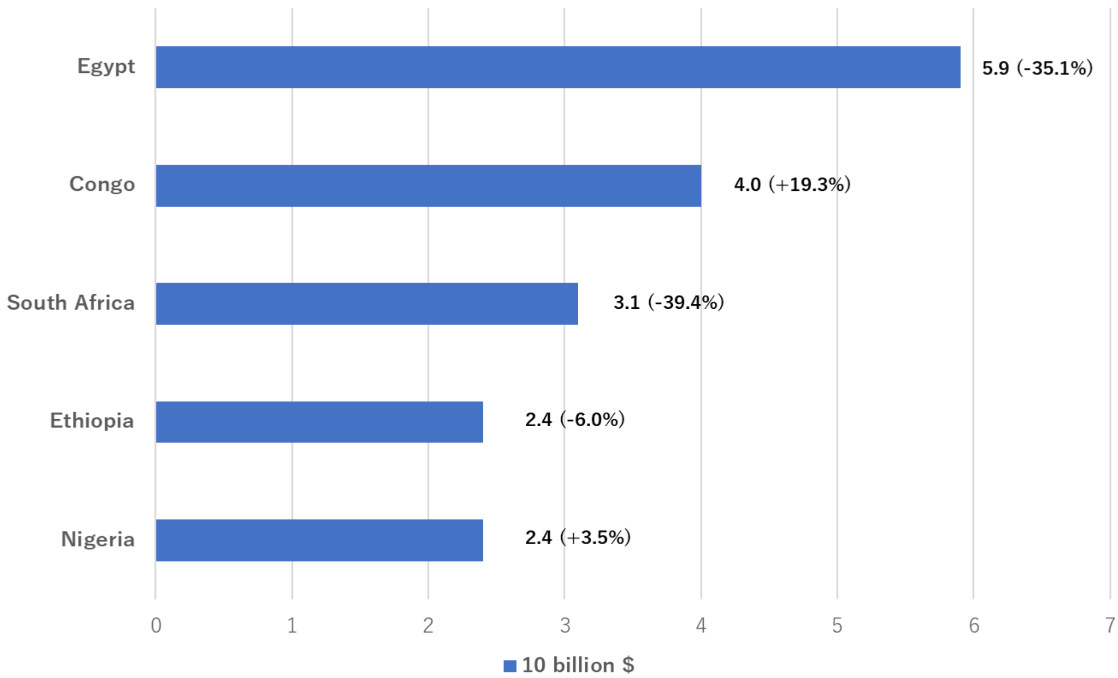

Figure 3: African Countries with the Top Five FDI Flows (US$ billion)

Source: UNCTAD, *World Investment Report 2021*

Figure 4 shows investor economies in Africa by FDI. As of 2019, the country that had invested the most in Africa was the Netherlands, as in the previous year. The overall trend has been for investment from the United Kingdom, France, and the United States to decrease in recent years. Hong Kong and Germany have disappeared from the top 10, while Mauritius, which has become a tax haven, joined the top 10, which may also reflect other developments (e.g., the US-China trade war or trade frictions). Japan is not yet among the top 10 investor economies.

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[47] Ibid., p. 41.

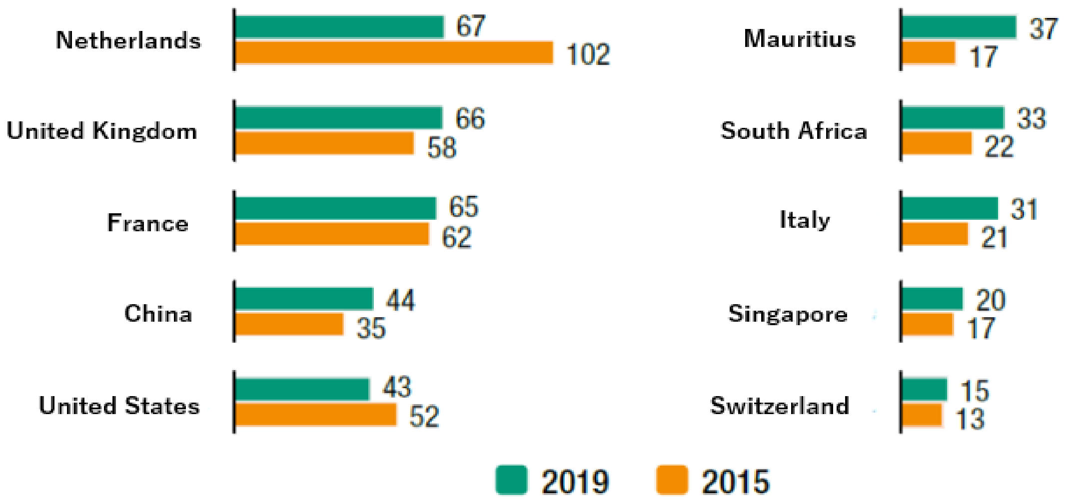

Figure 4: Investor Economies by FDI Stock (US$ billion)

Source: UNCTAD, *World Investment Report 2021*

FDI enables technology transfer and promotes divergence in exports, industrialization, and structural reform by enhancing the productivity of local companies. However, FDI can lead to environmental problems and increased income disparities as well as political pressures to review tax systems, especially corporate taxes. African countries have long[48] responded to these pressures by creating special economic zones (SEZs)[49] in which companies receive tax and employment-related benefits, and in which quality infrastructure has been provided. Figure 5 shows the development of SEZs by (example) leading African economies. The pragmatic reason why African countries have set up SEZs has been to concentrate physical and human resources in the limited area of the SEZs, and resolve problems such as delays in infrastructure development and weak government management, to attract foreign investment. [50]

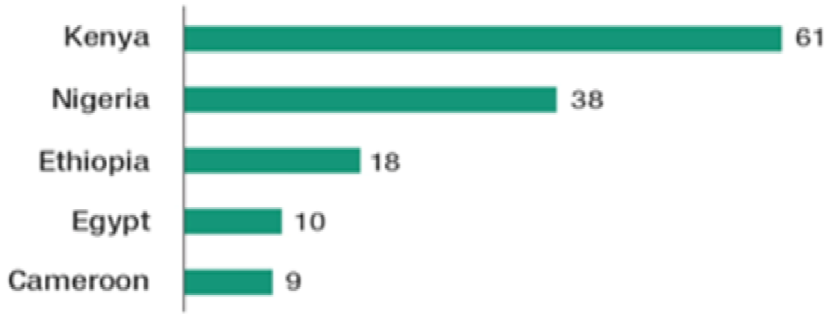

Figure 5: SEZs in Africa by (Example) Leading Economies

Source: UNCTAD, *World Investment Report 2019*, P 149

[48] Some SEZs in Africa date back to the 1970s.
[49] UNECA, AU, AfDB, and UNCTAD, supra note 34, p. 178.
[50] UNCTAD, *Special Economic Zones & African Continental Free Trade Agreement: Results from a Continent-wide Survey*, 2021, p. 6.

As of 2019, there were 237 SEZs in 38 African countries. In 2018, Burkina Faso, Côte d'Ivoire, and Mali jointly established cross-border SEZs, and Ethiopia and Kenya plan to establish cross-country SEZs.[51] While China has long strategically invested in African SEZs,[52] other countries have made similar investments in recent years, including a Japanese official development assistance loan project for an SEZ in Mombasa, Kenya.

As mentioned earlier, in the negotiations on AfCFTA Phase 1 rules of origin, there has been disagreement over the handling of products manufactured in the SEZs. If the products manufactured in SEZs are treated the same as domestic products, there is a concern that unfair competition will occur between the products of the companies located in the SEZs, which are given preferential treatment in terms of taxation, and the products of the domestic companies. The other reason for the disagreement is that most of the companies established in the SEZs are foreign-owned companies. In response to this view, it is stated that domestic exporters can receive similar institutional incentives without having to physically set up a company in the SEZs, and in African intraregional trade, many traded products are manufactured in SEZs. Therefore, it has been argued that excluding products manufactured in SEZs from the AfCTTA would contravene the AfCFTA's purpose of revitalizing intraregional trade in Africa.[53]

UNCTAD predicts that the implementation of the AfCFTA will increase investment in SEZs from within Africa by 15% and from outside Africa by 30%. Investors see SEZs as gateways to the African continental market and can be expected to increase investment in the most competitive special economic zones.[54]

For both investors and investees to receive benefit(s) from FDI, policy, legal, and regulatory frameworks must be coordinated and function well. However, these frameworks in Africa tend to be overly complicated. As of 2021, a total of 852 bilateral investment agreements had been concluded in Africa since the 1960s and 515 of them remained in force. Of these agreements, a total of 173 were between countries in Africa, and they accounted for 28% of total bilateral investment agreements worldwide.[55] African countries generally do not review these agreements even though they are not functioning well and regulations are fragmented and overlapping, which impedes FDI (see Figure 6).

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[51] United Nations Conference on Trade and Development, *World Investment Report 2019*, p. 160.

[52] (i) Yoshihiro Kojima, "China's Expansion into Africa (4)", *Metal Resources Report*, Vol. 42, Japan Oil, Gas and Metals Mineral Resources Organization, 2013, PP 49-60; (ii) Michiko Murakami, Special Economic Zones (SEZs) Hold the Key to African Industrialization", *Overseas Investment and Loans*, May 2016, Overseas Investment and Loan Information Foundation, PP 16-17; and (iii) Nelson Santos António and Shaozhuang Ma, "China's Special Economic Zones in Africa: Context, Motivations and Progress", *Euro Asia Journal of Management*, Issue 44, Vol. 25, 2015, pp. 79-103.

[53] UNCTAD, supra note 50, p. 24.

[54] UNCTAD, supra note 43, p. 45.

[55] UNECA, AU, AfDB, and UNCTAD, supra note 34, p.147.

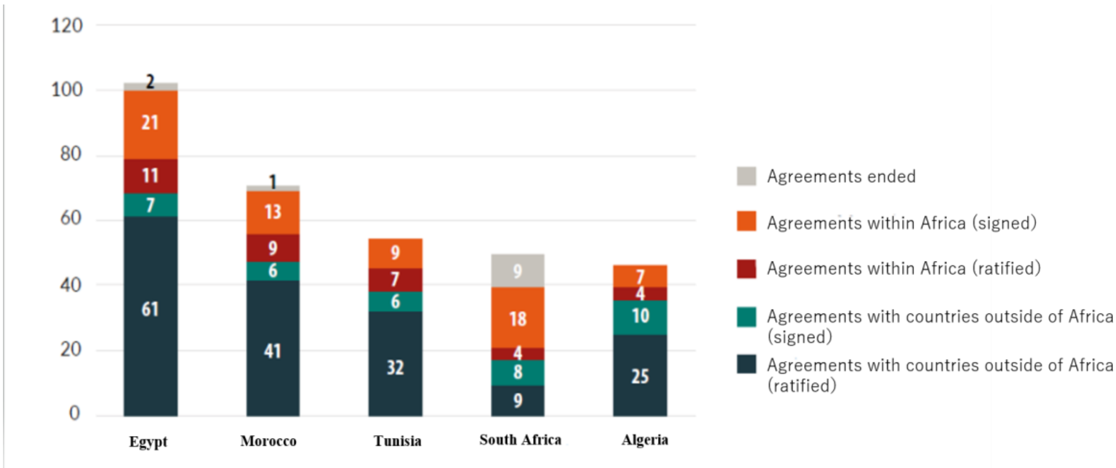

Figure 6: Countries with the Most Bilateral Investment Agreements in Africa

Source: United Nations Economic Commission for Africa, African Union, African Development Bank, and United Nations Conference on Trade and Development, *Next Steps for the African Continental Free Trade Area*, 2019, p. 176

In October 2017, the Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration of the AU adopted the Pan-African Investment Code (PAIC), with the objective of redefining the obligations of investors and investees, and integrating investment treaties on the continent. However, an AfCFTA preparty meeting in March 2017 declined to annex the PAIC to the AfCFTA because the PAIC is not binding but is only a framework of cooperation.[56]

Generally, companies do not invest without certain legal protections, e.g., through a well-established dispute resolution system (with arbitration), and with protection against sudden policy changes. Therefore, investment agreements, free trade agreements, and economic partnership agreements typically include protections against unfair expropriation, discriminatory treatment, and special requests for technology transfer.

Article 20 of the Agreement Establishing the AfCFTA provides dispute settlement procedures applicable to disputes between State Parties. Article 27 of the Protocol on Rules and Procedures on the Settlement of Disputes provides arbitration only for State Parties. Therefore, the AfCFTA does not have a dispute settlement mechanism to protect private enterprises. Moreover, the AfCFTA does not permit the AfCFTA Secretariat or other institutions to resolve disputes. In the next negotiations, how the Protocol on Investment (to be addressed in forthcoming negotiations) will regulate Investor-State Dispute Settlement (ISDS) and how it will resolve the problems of overlapping ISDS clauses in the many existing bilateral investment agreements are issues attracting attention.

There are many investment dispute resolution mechanisms in Africa, including the Convention on the Recognition and Enforcement of Arbitral Awards (the New York Convention) adopted in 1958. As of

[56] Ibid., p. 176.

September 2021, a total of 168 countries had ratified the New York Convention; Ethiopia, the 33rd country in Africa to ratify the convention, did so in February 2020.

In recent years, increasing attention has been paid to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention), which was adopted on 20 December 2018 by the UN General Assembly and entered into force on 12 September 2020. As of September 2021, a total of 53 countries had acceded to this convention, including the United States, China, India, and 11 African countries, but not yet including Japan.[57]

Another dispute resolution mechanism at the international level is the Model Law on International Commercial Arbitration developed under the auspices of the United Nations Commission on International Trade Law (UNCITRAL), which as of September 2021 had been acceded to by 85 countries, including 10 in Africa. In addition, as of September 2021, a total of 164 countries including 45 in Africa had acceded to the Convention on the International Centre for the Settlement of Investment Disputes (ICSID).

At the regional level there have been few cases on investment disputes filed in African courts, although the 17 West and Central African countries in the Organization for the Harmonization of Business [or Corporate] Law in Africa (OHADA) have common laws on arbitration procedures.[58]

As mentioned, Africa has various problems related to the environment for investment. Therefore, it would be productive for African countries to reconsider current investment promotion challenges in the wake of the AfCFTA.

(c) The Current Situation and Challenges Regarding Intellectual Property Rights

Most African countries have joined the World Trade Organization (WTO), with 44 currently member states and nine having observer status (2021). The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is applied to WTO member states. The TRIPS Agreement sets minimum standards for intellectual property rights although developing African countries benefit from postponement of implementation.[59]

Nearly all African countries (i.e., all except for South Sudan) are also members of the World Intellectual Property Organization (WIPO) Convention, a multilateral treaty that governs the protection of intellectual property rights. For African countries, the Convention on Biological Diversity and the associated Nagoya Protocol on Access to Genetic Resources and the Fair and

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57 The previous arbitration procedure required filing for a new arbitration if one of the parties did not fulfill its obligation(s) in their settlement agreement. This convention improves the investment environment by enhancing the effectiveness of arbitration through judicial action.

58 UNECA, AU, AfDB, UNCTAD, supra note 34, p. 179. OHADA is a system of business or corporate law and implementing institutions adopted by 17 West and Central African nations in 1993 in Port Louis, Mauritius.

59 Ibid., p. 115.

Equitable Sharing of Benefits Arising from Their Utilization are important to protect African traditional knowledge.[60]

In addition, two organizations have been established to pool intellectual property:

(i) The African Regional Intellectual Property Organization (ARIPO) was established by English-speaking countries in 1976 to integrate intellectual property law and related policies. ARIPO has implemented a system that provides protections for rightsholders in single or multiple member states through applications to the ARIPO headquarters. As of September 2021, ARIPO had 20 member states including Botswana, Eswatini (formerly Swaziland), The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe.

(ii) The Organisation Africaine de la Propriété Intellectuelle (OAPI) was established by Francophone countries in 1962. As of September 2021, OAPI had 17 member states including Benin, Burkina Faso, Cameroon, Chad, the Central African Republic, the Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, and Togo.

In 2018, WIPO, ARIPO, and OAPI agreed to cooperate on intellectual property research, policy recommendations, and the provision of advice to enterprises unfamiliar with intellectual property issues.[61]

As reviewed above, the African region has several frameworks regulating intellectual property rights. However, the protection of intellectual property rights in Africa is not as strong as in other regions in the world, at least partly because these regulations in Africa remain fragmented.[62] To address this issue, Agenda 2063 plans to establish a Pan-African Intellectual Property Organisation (PAIPO) as a specialized agency of the AU with its operations to commence by 2023. One of the purposes of PAIPO will be to implement common intellectual property regulation among the AU, the RECs, ARIPO, and OAPI.[63] On 30 January 2016, the AU General Assembly adopted the Statute of PAIPO, which is to come into effect 30 days after ratification by 15 countries[64]; however, to date only six countries (Chad, the Comoros, Ghana, Guinea, Sierra Leone, and Tunisia) have signed the agreement and none have ratified it.

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[60] Ibid.
[61] Ibid., p. 111.
[62] Africa International Trade and Commerce Research, Organisation Africaine de la Propriété Intellectuelle, and African Regional Intellectual Property Organization, *Report of the Webinar on Towards Intellectual Property Rights Harmonization in Africa*, July 2020, p. 4.
[63] African Union Commission, *African Union Handbook 2017,* 2017, p. 148.
[64] Statute of the Pan Africa Intellectual Property Organization, 30 January 2016, Article 24-1.

According to World Intellectual Property Indicators 2020, the number of patent applications filed in Africa had increased in the preceding decade, but the percentage of applications filed in Africa compared to the global total was only 0.5%, which is quite low compared to other regions of the world. It is apparent that protection of intellectual property in Africa has been weak and, as shown in Table 2, interest in patents on the continent has been from foreign rather than African enterprises.

Generally, it has been pointed out that the reasons why the movement to protect intellectual property rights is not active in Africa are the low awareness of intellectual property rights, the cumbersome procedure to acquire intellectual property rights, rampant rights infringement, and a lack of specialists.

Table 2: Patent Applications Filed by Country of Residence

Region	Number of Patent Certified		Percentage of Residents		Share of the World	
	2009	2019	2009	2019	2009	2019
Africa	12,800	16,100	16.7	18.6	0.7	0.5
Asia	944,000	2,094,800	73.2	81.8	50.9	65.0
Europe	323,400	363,900	65.9	58.5	17.4	11.3
Latin America and the Caribbean	52,200	55,700	12.5	15.3	2.8	1.7
North America	493,600	657,900	46.6	44.0	26.6	20.4
Oceania	30,100	35,800	13.6	8.4	1.6	1.1
The World	1,855,900	3,224,200	61.8	69.2	100.0	100.0

Source: WIPO, *World Intellectual Property Indicators* 2020, 2020

The AfCFTA requires intellectual property regulations to be integrated. Countries with large markets such as Nigeria, South Africa, Egypt, Algeria, and Morocco need to cooperate with each other regarding intellectual property regulation. However, these countries have not joined ARIPO or OAPI, which will make the Phase 2 negotiations for the AfCFTA more difficult. Also, during the ongoing COVID-19 pandemic, some have argued that patents for medical supplies should be limited, while others have expressed skeptical views on compulsory licenses[65] for medical supplies.[66]

[65] Article 27 of the TRIPS Agreement protects patented inventions related to pharmaceutical products, and in principle, only patentees or licensed ones can implement them. However, for developing countries, the prices of pharmaceutical products have been rapidly increasing and it is impossible to freely import products, which impedes access to medicines, resulting in the spread of infectious diseases. Therefore, Article 31-2 of the TRIPS Agreement allows member countries to grant licenses against the will of the patentee for the purpose of exporting to a third country under certain conditions.

[66] Japan External Trade Organization and Spoor & Fisher, *African Intellectual Property Newsletter*, Vol. 54, 2020, p. 1.

(d) The Current Situation and Challenges Regarding E-commerce

As stated previously, the Protocol on E-Commerce was scheduled for Phase 3 of the AfCFTA negotiations, but in view of its importance, it was decided that it would be considered in Phase 2, since preparations are proceeding toward launching of full-scale operation of the AfCFTA.[67] Considering the progress of economic globalization and the growth of e-commerce (as well as other forms of cross-border trade), this field has become an important topic in FTA negotiations.

Referring to other regions, there is a dedicated chapter on e-commerce in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP11), involving Japan and 10 other countries,[68] and which went into effect on 30 December 2018.[69] Similarly, important agreements have been reached regarding e-commerce in the Regional Comprehensive Economic Partnership (RCEP) Agreement signed by the 10 ASEAN Member States as well as Japan, Australia, China, the Republic of Korea, and New Zealand, on 15 November 2020.[70]

The progress of the digitalization of economies in Africa is evidenced by the remarkably rapid penetration of mobile technology, which has recently become a driving force behind economic development on the continent. However, far fewer people in Africa have accounts with financial institutions than people in other regions of the world; in fact, most people in Africa have never had access to basic financial services. That said, the present diffusion of fintech (financial technology, which aims to compete with traditional financial methods) channeled through mobile phones has given people access to electronic money even though many still do not have bank accounts. Financial inclusion (i.e., the availability and equality of opportunities to access financial services) – the achievement of which is an important goal in Africa – is improving.

At the Ordinary Session of the AU in February 2020, an official decision was made to commence negotiations on the Protocol on E-Commerce, and instructions were given to undertake necessary preparations (e.g., enhancement of the capacity for future negotiations with involvement of the AUC); this decision reflected the great potential of e-commerce to benefit economies in Africa. As expectations for e-commerce were increasing, the COVID-19 pandemic swept through Africa in 2020. While the pandemic has caused substantial damage to economies on the continent, the

[67] For example, in November 2020, UNECA launched the African Trade Exchange (ATEX), a platform for business-to-business (B2B) e-commerce, in anticipation of the commencement of operation of the AfCFTA.

[68] TPP11 was signed by Japan as well as Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

[69] The TPP11 chapter on e-commerce recognizes the freedom to move data across borders; it prohibits governments from requiring foreign corporations to set up servers or other computer-related facilities domestically, from disclosing the source code of software, or from levying customs duties on electronic transmissions.

[70] Similar to TPP11, the RCEP prohibits the levying of customs duties on electronic transmissions and implementing requirements for setting up computer-related facilities; also, it contains provisions for the free flow of data, consumer protection, and the like. However, the RCEP has drawn criticism because it lacks provisions guaranteeing execution. Shintaro Hamanaka, *RCEP Shomei ha Nani wo Imi Suru ka: Chikeigakuteki Mikata* (*The Meaning of the Signing of the RCEP: A Geopolitical Outlook*), IDE Square Sekai wo Miru Me (IDE Square Eyes on the World), Institute of Developing Economies, Japan External Trade Organization, 2020.

AU considers that realization of the AfCFTA will reduce this damage and accelerate recovery, and because of continued market integration and expansion, e-commerce is expected to create opportunities for SMEs – which have suffered massive damage—to enter new markets.

In Africa, diffusion of the internet and social media is still at a relatively early stage, but the diffusion of mobile phones (although not smartphones) is rapidly progressing, with mobile phone contracts outnumbering people in more than 10 African countries, as shown in Figure 7.

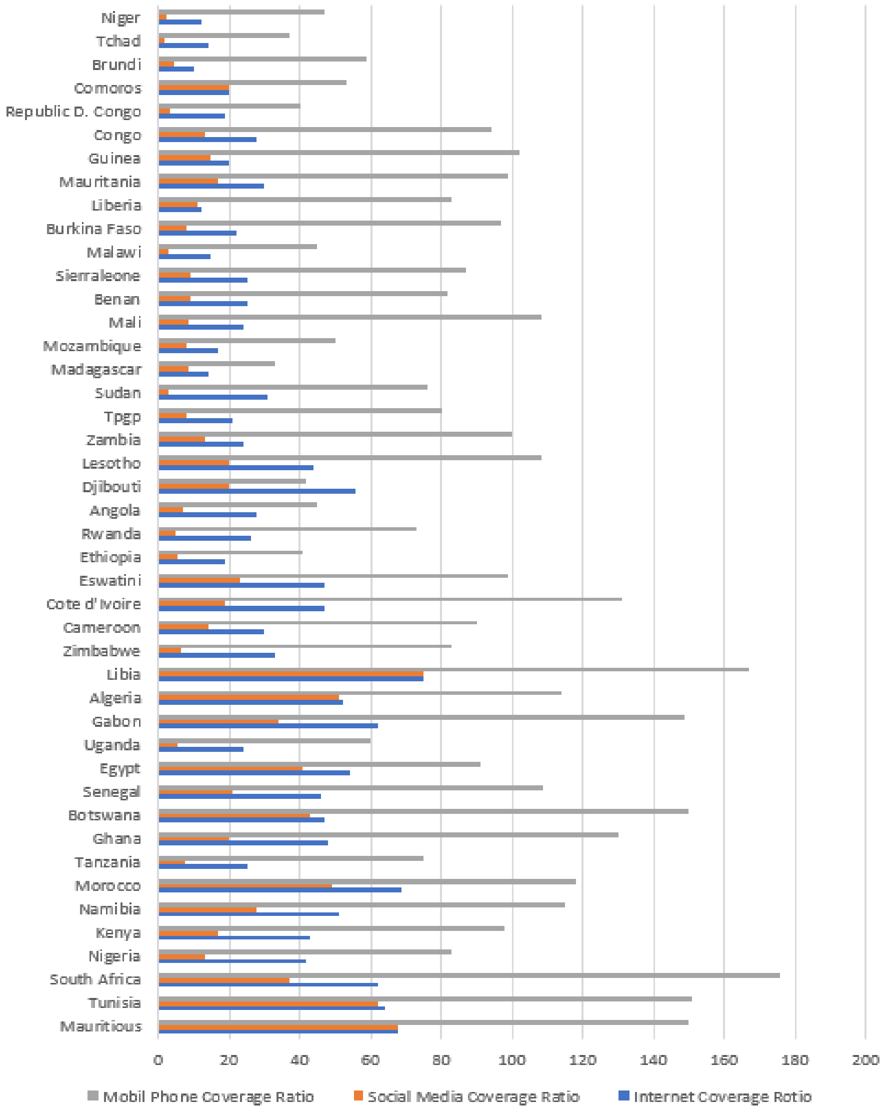

Figure 7: Mobile Phone, social media, and Internet Diffusion Rates in African Countries

Source: Kepios Pte. Ltd., *Digital 2020*

However, Africa remains the world's least developed region in terms of diffusion of the internet, and as a result many people lack access to e-commerce, as shown in Table 3.

Table 3: Rates of Internet Diffusion and Access to Banking by Region

Region	Internet Penetration Rates (%)	Financial Account Holding Rates (Including Mobile Accounts; %)
Africa	30	40
South East Asia, East and South Asia	57	60
Latin America and the Caribbean	64	53
West Asia	77	58
Developed Countries	88	93
World	60	60

Source: UNCTAD, B2C E-Commerce Index 2020

The Organization for Economic Co-operation and Development (OECD) expects the COVID-19 pandemic to generate a shift away from commerce at traditional "brick-and-mortar" stores and a corresponding increase in demand for e-commerce, and for this trend to continue for the foreseeable future. A similar trend can be seen in Africa.[71] OECD has also called for governments to implement suitable measures addressing issues such as poor telecommunications coverage, financial challenges, and insufficient computer skills, which create a divide between those who can and cannot benefit from e-commerce, and because not all SME owners are making a smooth transition to e-commerce.[72] These issues raised by OECD in a more general context apply to Africa.

These divides in Africa are deeply rooted, and Africa has many issues to resolve relating to e-commerce. Particularly in rural areas, SME owners do not have the leeway to incorporate new technologies due to an absence of telecommunications coverage and low literacy rates stemming from a lack of emphasis on education. Additionally, the supply of electricity is unreliable and the cost is high, many people lack the skills to use e-commerce, and sufficient e-commerce laws have not been enacted. Other problems include a lack of infrastructure for transporting products, an insufficient environment to support online payments, the low purchasing power of consumers, and a general preference for face-to-face transactions and cash payments. There are also governance issues, e.g., a lack of official statistics for cross-border e-commerce and insufficient capacity for publicizing and circulating government orders.[73]

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[71] Karishma Banga, Mohamad Gharib, Max Mendez-Parra, Jamie Macleod, *E-commerce in Preferential Trade Agreements-Implications for African Firms and the AfCFTA*, 2021, pp. 21-22.

[72] OECD, *E-Commerce in Times of COVID-19, Talking Coronavirus (COVID-19: Contributing to a Global Effort)*, 2020.

[73] UNECA, AU, AfDB, and UNCTAD, supra note 34, p. 230.

Several RECs have been proactively working to resolve these numerous, difficult issues, as indicated in the following examples:

(i) The Southern African Development Community (SADC) formulated an e-SADC Strategic Framework in 2010 to establish an environment and strengthen capacity for e-commerce, develop telecommunications infrastructure, and establish a system to manage e-commerce.

(ii) The Common Market for Eastern and Southern Africa (COMESA) launched a Digital Free Trade Area Initiative in 2018, and is implementing initiatives on three pillars – e-trade (e.g., the creation of platforms for trade procedures, introduction of electronic payment systems, introduction of mobile applications for small-scale imports and exports), e-logistics (e.g., using ICT for customs procedures), and e-legislation (enacting laws allowing for intraregional, cross-border electronic transactions and payments). COMESA commenced trial operations to issue electronic certificates of origin in June 2020.

(iii) The East African Community (EAC) is implementing a series of e-commerce projects and measures although it has not established strategic targets in the field. One of its projects is to establish an intraregional broadband network, while another aims to provide guidance for cyberlaws, digitization of analog telecommunications systems, and harmonization of the ICT policies of its Partner States.

(iv) The Economic Community of West African States (ECOWAS) is engaging in initiatives to harmonize the cyberlaws of its Member States as well as other activities involving e-commerce, although (like the EAC) it has not established strategic targets specifically for e-commerce.[74]

A defining characteristic of e-commerce is the use of multiple agreements between/among multiple entities for single transactions, in some cases involving multiple countries. Because data collected from these transactions is used without the knowledge of the users, there is a need for great care in handling "big data", to ensure information security and consumer protection, with countries needing to enact the requisite laws and regulations. However, since there is considerable variation in e-commerce legislation enacted by African countries (as shown in Table 4), harmonizing them across the continent presents challenges.

Table 4: Status of E-Commerce Legislation in Africa

[74] United Nations *Conference on Trade and Development, Review of E-Commerce Legislation Harmonization in the Economic Community of West African States*, 2015, pp. 3-5.

Country	Legislation for Online Electronic Commerce	Legislation for Data Privacy Protection	Legislation for Cybercrime	Legislation for Consumer Protection
Zambia	✓	✓	✓	✓
Uganda	✓	✓	✓	✓
Tunisia	✓	✓	✓	✓
South Africa	✓	✓	✓	✓
Senegal	✓	✓	✓	✓
Nigeria	✓	✓	✓	✓
Morocco	✓	✓	✓	✓
Kenya	✓	✓	✓	✓
Ghana	✓	✓	✓	✓
The Gambia	✓	✓	✓	✓
Côte d’Ivoire	✓	✓	✓	✓
Cabo Verde	✓	✓	✓	✓
Zimbabwe	✓	✓	✓	
Tanzania	✓	✓	✓	
Togo	✓		✓	✓
Seychelles	✓	✓	✓	
Rwanda	✓		✓	✓
Niger	✓	✓		✓
Mauritius	✓	✓	✓	
Mali	✓	✓	✓	
Madagascar	✓	✓	✓	
Liberia	✓		✓	✓
Egypt	✓		✓	✓
Cameroon	✓		✓	✓
Burundi	✓		✓	✓
Burkina Faso	✓	✓	✓	
Algeria	✓		✓	✓
Sudan	✓		✓	
Congo	✓		✓	
Malawi	✓	✓		
Lesotho	✓	✓		
Guinea	✓		✓	
Gabon		✓	✓	
Ethiopia	✓		✓	
Eswatini	✓	✓		
Botswana			✓	✓
Benin		✓	✓	

Country	Legislation for Online Electronic Commerce	Legislation for Data Privacy Protection	Legislation for Cybercrime	Legislation for Consumer Protection
Angola		✓	✓	
South Sudan			✓	
Sierra Leone				✓
São Tomé and Príncipe		✓		
Namibia			✓	
Mauritania	✓			
Guinea-Bissau				✓
Equatorial Guinea		✓		
Djibouti			✓	
Comoros	✓			
Chad		✓		

Notes: (i) Countries listed in general order of achievement regarding e-commerce legislation rather than in alphabetical order. (ii) Eswatini was formerly known as Swaziland.
Source: United Nations Economic Commission for Africa, African Union, African Development Bank, and United Nations Conference on Trade and Development, *Next Steps for the African Continental Free Trade Area*, 2019, P 246.

In Africa, there are many countries that levy taxes on electronic transactions, and unharmonized taxation rules that vary from country-to-country cause problems such as double taxation and hinder e-commerce.[75] The AFCFTA is expected to harmonize e-commerce tax rules, and there are several issues to be resolved, as shown in Table 5. Also, there are plans to negotiate overall matters related to e-commerce, as shown in Table 6.

Table 5: Issues Related to E-Commerce Negotiations

Negotiation Item(s)	Expected Negotiation Issues
Data Management Control	✦Data protection, data portability, data security, and privacy (personal information, company information, personal health information, public data control harmonization – including general principles and framework) ✦Data that crosses international borders and rules on data localization ✦Laws on cybercrime, investigations, information sharing, and coordination ✦Rules on protection of third-party content
Control of E-Commerce	✦Rules on e-commerce (electronic signatures, electronic contracts, settlement of disputes on cross border e-commerce transactions)
Taxation of Electronic Commerce	✦Taxation of cross border e-commerce – including principles, framework, and harmonization controls (e.g., jurisdiction issues)
Promotion of Goods Trade by E-Commerce	✦Development of standards to promote e-commerce and simplification of the clearance procedures
General Standards	✦Rules for preferential treatment of countries regarding digital goods and services

[75] Karishma Banga, Mohamad Gharib, Max Mendez-Parra, Jamie Macleod, supra note 71, p. 36.

Notes: (i) Data portability is the ability for a given service to reuse data collected from a specific user, for another service.
(ii) Data localization is an approach that requires a given service to store all important data within a given country.
(iii) De minimis rules set standards for ignoring small amounts of nonlocal materials that are exceptions to standards for changing customs classification numbers on the origin side.

Source: Prepared by the Survey Team based on interviews with officials and staff members of international, regional, and national organizations in Africa, August-October 2020

Table 6: Overall Issues Related to E-Commerce Negotiation

Negotiation Item(s)	Expected Negotiation Issues
Controls on Trade in Goods	✦ Removal of customs duties on goods related to e-commerce (e.g., personal computers, telecommunications equipment, semiconductors) ✦ Digitalization of facilities for promoting trade in goods (digitalization of clearance procedures, paperless procedures including national single windows)
Controls on Trade in Services	✦ Measures to promote trade in services (preparation of electronic communication systems, services using computers, electronic settlement, delivery systems)
Intellectual Property Rights	✦ Intellectual property rights unique to e-commerce (e.g., source code, algorithms, proprietary information on transactions) ✦ Issues related to transfer techniques
Competition Policy	✦ Redefinition of market dominant positions and anti-competitive behavior in the digital industry (e.g., related to the handling big data) ✦ Consumer protection regulations in e-commerce (including returns, consumer safety, and supplier responsibilities)
Investment	✦ Issues related to e-commerce
Other Items	✦ Regulations on electronic public procurement

Source: Prepared by the Survey Team based on interviews with officials and staff members of international, regional, and nations organizations in Africa.

During the Trump administration, the United States was requesting African countries to agree on bilateral agreements that included matters related to e-commerce. It seems that the strategy of Trump administration was to conclude a bilateral agreement with one African country, and then use it as a model to conclude agreements with other African countries.[76] At present, Morocco is the only African country to enter a bilateral agreement with the United States, with the Morocco Free Trade Agreement (MFTA), which includes matters relating to e-commerce.[77] The United States started FTA negotiations with Kenya[78] in 2020 that included provisions on e-commerce considering post-AGOA regime.[79]

[76] Laird Treiber, *It's Time for a New Economic Partnership with Africa*, Center for Strategic & International Studies, 2021, https://www.csis.org/analysis/its-time-new-economic-partnership-africa.

[77] The MFTA is a bilateral free trade agreement signed by the United States and Morocco in June 2004. The agreement went into effect in January 2006.

[78] Based on free trade negotiations between the United States and Kenya, Kenya apparently plans to sell agricultural products in the United States market, as well as maintain trade relations with the United States in addition to receiving American investment in Kenya under the post-AGOA system, while the United States evidently intends to enter Kenyan markets in nearly all sectors. Bilateral negotiations such as these are criticized for their negative impacts on trade promotion and cooperation agreements with regional organizations such as the EAC, of which Kenya is a Partner State; however, major policy changes are expected in the Biden Administration.

[79] The African Growth and Opportunity Act (AGOA), a law covering trade between the United States and Africa, was enacted in May 2000, originally as a limited-duration act with a period of validity of eight years. However, this period was extended a few times. Although the current validity period extends to 2025, the Trump administration

The AU has opposed bilateral trade agreements, instead preferring agreements to be entered into by Africa as a whole in place of the AGOA, with the belief that the continent should join together to negotiate as one.[80] Some African countries have also stated that the African Continent should engage in free trade negotiations with the United States with one voice through the AfCFTA.[81]

The diplomatic strategy of the United States of concluding bilateral agreements with African countries has changed during the Biden administration. Negotiation of the bilateral agreement that was underway with Kenya, which started in July 2020, is currently on hold.[82]

The Biden administration has not disclosed its diplomatic strategy regarding AGOA and has adopted a cautious stance about rejoining the TPP, but it seems that the United States intends to start talks with African countries on the premise of a continental framework in the form of the AfCFTA.[83] In the background, it seems that there is a battle for hegemony in Africa between the United States and China. The future diplomatic strategy of the United States toward Africa is drawing attention.

(e) Women and Youth issues in AFCFTA

Article 3(e) of the Agreement Establishing the AfCFTA provides that the objective of AfCFTA is to "promote sustainable and inclusive socio-economic development, gender equality and structural transformation of State Parties". In addition, Article 27(2)(d) of the Protocol on Trade in Services requires State Parties to improve the export capacity of both formal and informal service suppliers, with particular attention to micro, small, and medium-sized female and youth service suppliers. For these reasons, protocols on women and youth in trade will be considered in Phase 2 negotiations,.

In Africa – which has the youngest average age in the world – more than 60% of the population is 25 years old or younger, and it is forecasted that this proportion will increase for a while.[84] Therefore, enabling young people, who make up the majority of the population, to benefit from the AfCFTA is in line with the spirit of Agenda 2063, which advocates inclusive growth.

However, it is difficult to predict how women and young people will benefit from the AfCFTA in the current situation in which most businesses in Africa are small and medium-sized enterprises, most of

announced its preference for bilateral trade agreements modeled differently from the AGOA, which applies to multiple countries.

80 https://au.int/en/pressreleases/20171002/statement-ambassador-albert-m-muchanga-african-union-commissioner-trade-and.

81 https://agoa.info/news/article/15635-south-africa-african-free-trade-deal-can-help-boost-exports-to-the-us-says-patel.html.

82 https://www.state.gov/the-united-states-and-kenya-strategic-partners/.

83 https://asia.nikkei.com/Politics/International-relations/In-Africa-Biden-finds-a-free-trade-zone-he-can-embrace.

84 Mo Ibrahim, "Governance Lags behind Youth Expectations and Needs", *Foresight Africa*, 2019, p. 11.

the economic activities are in informal sectors, and most people who work in informal sectors are women.[85]

The high proportion of informal sectors in Africa's overall economy has long been recognized as a problem, but no country has ever found an effective solution. Workers suffer from low wages and long working hours in informal sectors that are not covered by social security systems, and because the large proportion of workers and enterprises in informal sectors do not pay taxes, governments cannot collect sufficient revenues.

As shown in Table 7, in 2019, the proportion of employment in informal sectors in Africa was as high as 82.9%.[86] In addition, there are significant regional disparities, with a high proportion (84.9%) of informal sectors in Sub-Saharan Africa, compared to Northern Africa (70.8%). The difference between men and women varies substantially depending on the region. In Northern Africa, the percentage of men working in informal sectors is higher, but in Sub-Saharan Africa, the proportion of women working in informal sectors (90%) is higher.[87]

Table 7: Percentage and Number of Laborers in Non-Regular Sectors in Africa

	Informality Rate (%)			Number of Laborers in Informal Sectors (million)		
	Total	Male	Female	Total	Male	Female
Africa	82.9	80	86.6	379	208	171
North Africa	70.8	72.3	64.5	46	37	9
Sub-Saharan Africa	84.9	82	88.2	333	171	161

Source: ILO, *World Employment and Social Outlook Trends 2021*

It has been observed that there is a large proportion of informal sectors in Africa due to various factors, such as inadequate institutional development, a large proportion of rural areas and agricultural sectors, unstable political situations with armed struggles, and a lack of skilled human resources. These factors are considered closely related to poverty and gender issues.[88]

The proportion of informal sectors is particularly pronounced in low-income countries, for example, in countries such as Benin, Burundi, and Madagascar, where more than 85% of employment is in informal sectors, while in relatively rich countries such as Mauritius and South Africa, the ratio of employment in informal sectors is less than 20%.[89] The situation varies significantly from country to country.

[85] AfCFTA Secretariat, *Making the AfCFTA Work for Women and Youth*, 2021, p. 11.
[86] ILO, *World Employment and Social Outlook Trends 2021*, 2021, p. 43.
[87] ILO, supra note 86, p. 44.
[88] Franziska Ohnsorge and Shu Yu, *The Long Shadow of Informality*, World Bank, 2021, p. 232.
[89] Ibid., p. 233.

Youth[90] employment and gender issues in Africa are among the most difficult challenges to which to find solutions. As shown in Table 8, the proportion of so-called NEET (not in employment, education, or training) youth who do not work, do not attend school, and do not receive vocational training is on the rise in Africa as well as globally. The NEET rate of women in Africa is about 10% higher than that of men, but the gender gap is still low compared to Asian and Middle Eastern countries. However, the NEET ratio of women in Africa in 2018 was lower than that in 2012.[91] In addition, the NEET ratio was more than 26% in the Northern Africa, while it is less than 20% in Sub-Saharan Africa, which may reflect cultural differences.[92]

Africa has the lowest youth unemployment rate in the world, but this is not a desirable situation. The ratio of employment in informal sectors is large on the continent, and social security systems are not sufficiently developed. As a result, it is difficult for young people to obtain quality jobs, with worthwhile work, and often it is necessary for thrm to accept work with low wages to live.[93]

There are also regional differences in the youth unemployment rate. In Northern Africa, the youth unemployment rate exceeds 30%, which is the highest level in the world, while in Sub-Saharan Africa, it is low, just under 9%.[94] The trend of youth, low-wage labor in Africa is generally declining (although it is higher than the world average), which suggests that the middle-income group has increased.[95]

Table 8: Percentage of NEET Youth, Unemployment, and Low-Wage Laborers in Africa

			2012	2018	2019	2020	2021
NEET Rate	World	Total	21.6	21.9	22.2	22.3	22.5
	Africa	Total	20.4	20.5	20.7	20.7	20.8
		Male	14.6	15.5	15.7	15.7	15.8
		Female	26.3	25.6	25.7	25.8	25.9
Youth Unemployment Rate	World	Total	13.4	13.5	13.6	13.7	13.8
	Africa	Total	11.7	10.9	10.8	10.7	10.6
		Male	11.6	10.6	10.5	10.4	10.4
		Female	11.8	11.3	11.1	11	11
Extreme working poverty rate (<1.90 USD per day)	World	Total	38.7	35.8	35.6	35.4	35.1
	Africa	Total	42.1	39.2	38.4	37.6	36.9
		Male	40.7	38.7	38.0	37.2	36.5
		Female	43.7	39.7	38.9	38.1	37.3

Abbreviation: NEET = not in employment, education, or training
Source: ILO, *Global Employment Trends for Youth 2020: Africa*

[90] The African Youth Charter, adopted by the AU in 2006, defines young people as people between the ages of 15 and 35.
[91] ILO, *Global Employment Trends for Youth 2020: Africa*, 2020, p.1.
[92] Ibid.
[93] ILO, supra note 91, 2020, p.2.
[94] Ibid.
[95] Ibid., p. 3.

The COVID-19 pandemic has significantly damaged the African economy, but it has had less impact on the African labor market. While employment is declining globally, African male employment in 2019-2020 declined by only 0.1%. In contrast, women's employment decreased by 1.9% from 2019 to 2020. The female employment rate is expected to increase by 4.7% from 2020 to 2021, more than offsetting the job losses resulting from COVID-19 (see Figure 8).[96]

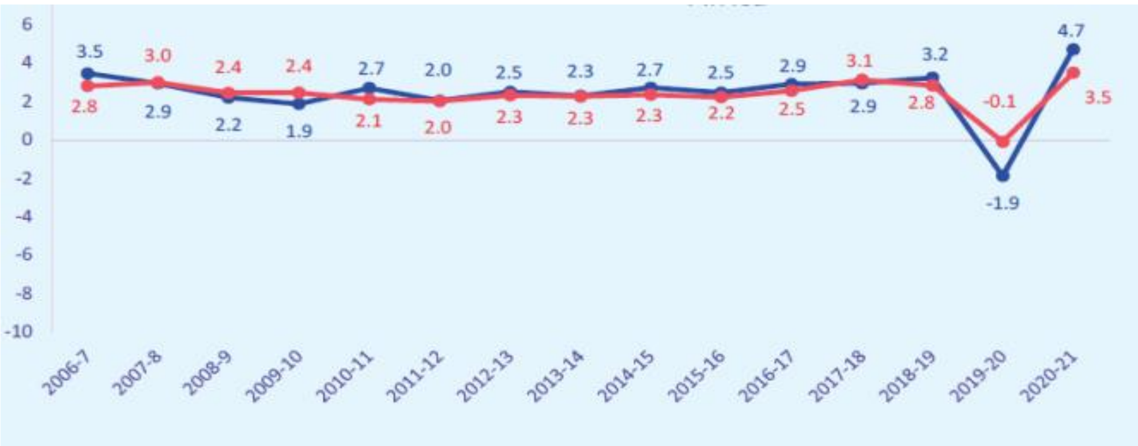

Figure 8: Percentage Change in Employment (red: male, blue: female)

Source: ILO, *Building Forward Fairer: Women's Rights to Work and at Work at the Core of the COVID-19 Recovery*, 2021

There have been differences in female employment trends by region in Africa during the COVID-19 pandemic. Women accounted for only 16% of the workforce in Northern Africa, while the female employment rate in Sub-Saharan Africa was 57.1%, the highest in the world.[97] This may reflect a situation where people have to work at the expense of the quality of work; they have to continue working during the pandemic, putting their families at risk of infection.[98] The COVID-19 pandemic is making the situation in Africa worse than before.[99]

Table 9: Status of Low-Wage Labor in Africa

	Extreme Working Poverty (< US $ 1.90 per day)				Moderate Working Poverty (US $ 1.90 - 3.2 per day)			
	(Percentages)		(Millions)		(Percentages)		(Millions)	
	2019	2020	2019	2020	2019	2020	2019	2020
Africa	31.8	34	145	154	24.1	26.2	110	119
North Africa	2.3	2.5	1	2	14.6	17.4	9	11
Sub-Saharan Africa	36.7	39.1	144	153	25.6	27.6	100	108

Source: ILO, *World Employment and Social Outlook Trends 2021*

96 ILO, *Building Forward Fairer: Women's Rights to Work and at Work at the Core of the COVID-19 Recovery*, 2021, p. 3.
97 Ibid.
98 Ibid.
99 ILO, supra note 86, p. 45.

Problems from different angles have also been pointed out regarding the employment environment in Africa as shown in Figure 9.

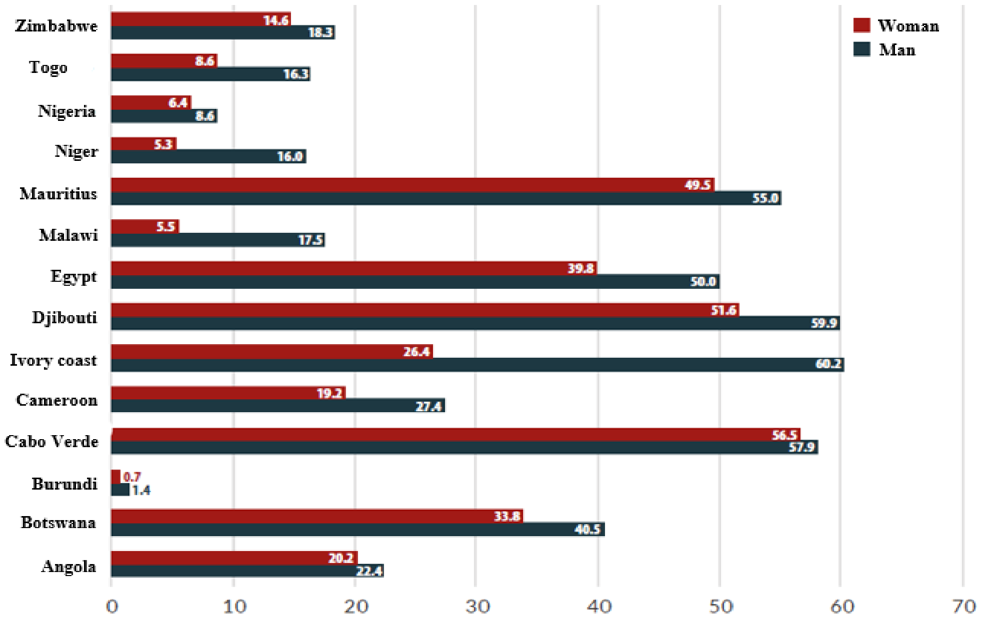

Figure 9: Internet Access in Africa by Gender

Source: UNECA, AU, AfDB, UNCTAD, *Next Steps for the African Continental Free Trade Area*, 2019

Although digitization is still developing in Africa, it is rapidly advancing, and digital skills are often required to find a job. However, it is observed that there is a gender gap in internet access, which has led to a gap in employment opportunities between men and women.[100] The lack of progress in women's participation in society in African countries is causing massive economic losses; if African countries were able to achieve gender equality, the economic benefits could total US$316 billion by 2030.[101]

At first glance, the protocol on women and youth may seem to be directly related to trade. However, the reason why a protocol on this issue has been included in the AfCFTA negotiations is that women and youth play a major role in actual trade but do not benefit sufficiently. In addition, taking these groups into account is in line with Agenda 2063, the blueprint and master plan for Africa's politics, economy, and society

In the upcoming AfCFTA negotiations, protocols on women and youth in trade are to be discussed, and this is drawing attention regarding the kind of arrangements that can be made on a continental scale, where there are significant disparities in the working environment between and among regions.

[100] UNECA, AU, AfDB, UNCTAD, supra note 34, p. 244.
[101] McKinsey Global Institute, *The Power of Parity: Advancing Women's Equality in Africa*, 2019, p. 2.

2.3.2 Trade in Africa

(1) Current Status of African Economy

The world economy these days moves up and down depending on the spread of COVID-19, the degree of vaccination, and the success or failure of economic measures taken by each country, but as a whole, it is gradually recovering, and in some countries, it is recovering substantially. For example, in the United States, there have been many deaths attributed to COVID-19, but the economy is moving significantly upward due to the progress of vaccinations and the effect of the government's economic measures. According to National Industrial Conference Board of the United States, the GDP growth rate in the country in 2021 is expected to approach 6%.[102] China achieved a 7.9% GDP annual growth rate in the first quarter of 2021 due to a high rate of vaccination, but COVID-19 infection has returned and economic growth has slowed.[103]

The African economy is gradually moving toward recovery from the worst recession in the last 50 years, and the IMF[104] and World Bank[105] forecast that the GDP growth rate of Sub-Saharan Africa in 2021 will be 3.4%, and the African Development Bank (AfDB) forecast an overall GDP growth rate of 3.4% in Africa in 2021 (see Figure 10).[106]

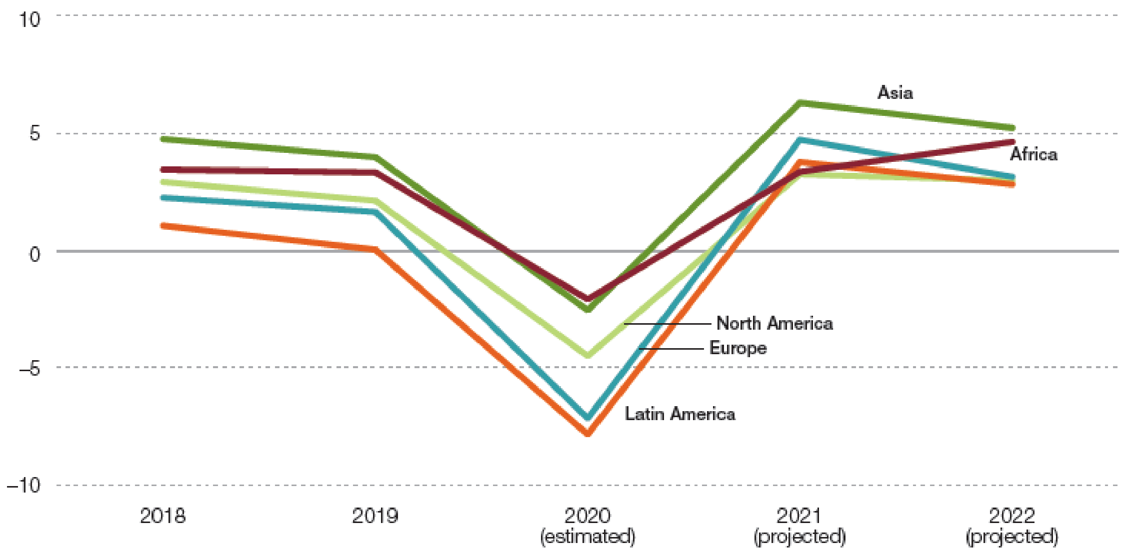

Figure 10: GDP Growth Rate by Region (%)

Source: African Development Bank, *African Economic Outlook 2021*

[102] https://www.conference-board.org/research/us-forecast/US-Economy-Forecast-August-2021.
[103] https://www.reuters.com/business/chinas-economy-grows-more-slowly-than-expected-q2-2021-07-15/.
[104] IMF, *Regional Economic Outlook: Navigating a Long Pandemic*, 2021, p. 3.
[105] World Bank, *Africa's Pulse: An Analysis of Issues Shaping Africa's Economic Future*, Volume 23, 2021.
[106] African Development Bank, *African Economic Outlook 2021: From Debt Resolution to Growth, The Road Ahead for Africa*, 2021, p. 8.

The World Bank estimated Africa's GDP growth rate in 2020 to be minus 2%,[107] AfDB estimated this rate to be minus 2.1%,[108], and the IMF estimated a rate of minus 1.9%,[109] which was not as negative as initially expected, but none of these institutions have an optimistic view of Africa's economic recovery. The IMF pointed out that one of the reasons why economic recovery in Africa is the slowest in the world is that vaccination rates are expected remain below 60% across the continent up to 2023.[110]

The outlook for a slow recovery in Africa raises a serious issue of a widening economic gap with developed countries, where COVID-19 measures have been relatively more successful and the economy is recovering more quickly.[111] Comparing per capita GDPs to estimate how long it will take to recover to the pre-pandemic economy using GDP in 2019 as the base, the economies of developed countries are expected to recover by the end of 2021. In contrast, based on an average scenario, Sub-Saharan Africa is not expected to recover until after 2023 (see Figure 11).[112]

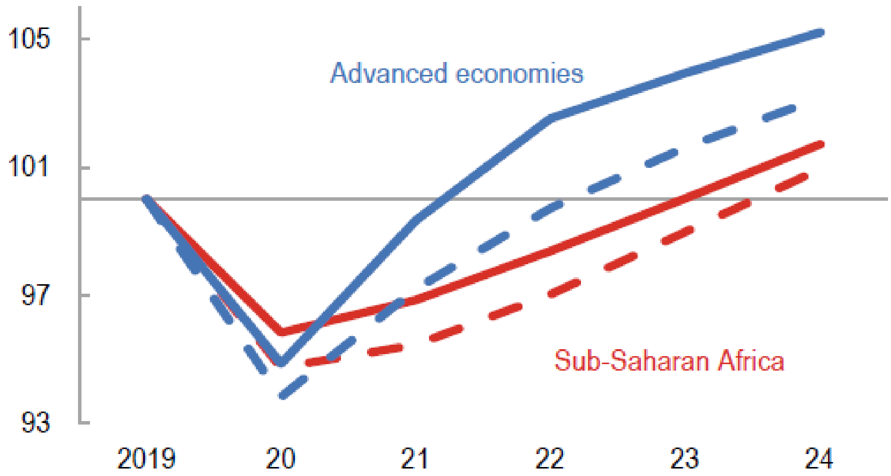

Figure 11: GDP Per Capita between Sub-Saharan Africa and Developed Countries (Index 2019 = 100)

Source: IMF, *Regional Economic Outlook, Sub-Sahara Africa: Navigating a Long Pandemic*, 2021

The economic growth outlook for countries in Africa varies significantly depending on the industrial structure of each country's economy. The IMF categorizes countries in which more than 30% of exports are oil as oil exporters, and countries depending on natural resources other than oil in which non-renewable natural resources account for more than 25% of exports as resource-intensive countries. The IMF also categorizes countries that do not depend on natural resources as non-resource intensive countries, countries that depend on tourism as tourism-dependent countries, and countries with a

[107] World Bank, supra note 105, p. 16.
[108] African Development Bank, supra note 106, p. 8.
[109] IMF, *World Economic Outlook 2021*, p. 39.
[110] IMF, supra note 104, p. 3.
[111] Ibid., p. 12.
[112] Ibid., p. 3.

Country Policy and Institutional Assessment (CPIA) of 3.2 or less as fragile states. CPIA is a criterion that the World Bank applies to evaluate effective assistance. The IMF estimated the economic growth of African countries based on these categories. According to the IMF analysis (see Figure 12), countries that do not depend on natural resources are expected to exceed the level of 2019 by the end of 2021, but oil exporters and resource-intensive countries are not expected to recover to the 2019 level even after 2025.[113]

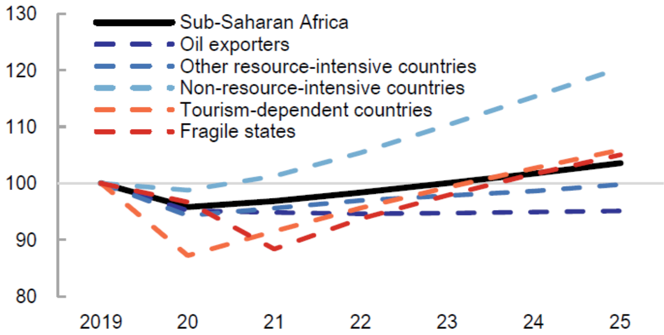

Figure 12: Economic Growth Outlook by Industrial Structure in Sub-Saharan Africa (Index 2019 = 100)

Source: IMF, *Regional Economic Outlook: Navigating a Long Pandemic*, 2021

Crude oil prices were US$41 per barrel in 2020, but increased demand due to faster-than-expected economic recovery in developed countries is expected to lead to higher prices. In addition, OPEC Plus[114] – which consists of the Organization of the Petroleum Exporting Countries (OPEC) and multiple oil-producing countries – has agreed to reduce crude oil production in a coordinated manner. Therefore, oil prices increased to US$59 per barrel in the first quarter of 2021. Metal prices also increased by 36% between June and December 2020.

However, the IMF predicts that oil producers' incomes will start to fall again in 2021, and that policies are needed to foster alternative industries and promote economic resilience.[115] It was once said that the economic trends in Africa were linked to the movement of oil prices,[116] but nowadays the trend is toward global environment-friendly decarbonization such as the shift to electric vehicles. Therefore, for the oil producers, the diversification of industry is an urgent issue.

The IMF found that the AfCFTA will promote industrial diversification, benefit from economies of scale, and contribute to productivity gains in response to the current situation in Africa.[117] Also, AfDB found that to get out of the economic recession caused by COVID-19, a structural transformation that will realize digitalization and create a fair competitive environment is necessary, and the AfCFTA will

[113] Ibid.
[114] OPEC Plus is a group of 14 OPEC member countries (Iran, Iraq, Kuwait, Saudi Arabia, Venezuela, Libya, United Arab Emirates, Algeria, Nigeria, Ecuador, Gabon, Angola, Equator Guinea, Republic of Congo) and 10 non-member countries (Azerbaijan, Bahrain, Brunei, Kazakhstan, Malaysia, Mexico, Oman, Russia, South Sudan, Sudan).
[115] IMF, supra note 104, P 13.
[116] Katsumi Hirano *African Economy Has Skidded to a Halt*, Institute of Developing Economies, 2014.
[117] IMF, supra note 104, p. 14.

promote such a structural transformation.[118] The World Bank has suggested that it is important for economic recovery to deepen regional integration through the AfCFTA over the next 12 months.[119]

(2) Current Status of Trade in Africa

As of 2019, as shown in Tables 10 and 11, trade in Africa was about US$569 billion for imports and about US$462 billion for exports, and the share of African trade in world trade has been almost flat over the past few years. The share of African trade in world trade in 2019 was only 3% for imports and 2.4% for exports.

Table 10: Regional Share of Imports in World Trade (US$ billion)

Region	2017		2018		2019	
	$ US	%	$ US	%	$ US	%
World	17975.2	100	19812.3	100	19237.6	100
North America	3285.5	18.3	3562.49	18	3500.71	18.2
South and Central America	581.95	3.2	649.44	3.3	613.94	3.2
Europe	6450.39	35.9	7084.01	35.8	6858.39	35.7
Africa	515.87	2.9	576.14	2.9	596.05	3
Middle East	734.61	4.1	745.75	3.8	744.37	3.9
Asia	6005.8	33.4	6758.35	34.1	6492.86	33.8

Source: AU, *African Trade Statistics 2020*

Table 11: Regional Share of Exports in World Trade (US$ billion)

Region	2017		2018		2019	
	$ US	%	$ US	%	$ US	%
World	17737.6	100	19468.1	100	18888.7	100
North America	2376.39	13.4	2565.48	13.2	2553.7	13.5
South and Central America	585.66	3.3	634.88	3.3	594.32	3.1
Europe	6512.29	36.7	7134.35	36.6	6923.85	36.7
Africa	423.88	2.4	484.16	2.5	462.17	2.4
Middle East	940.33	5.3	1106.97	5.7	968.14	5.1
Asia	6381.43	36	6904.42	35.5	6769.23	35.8

Source: AU, *African Trade Statistics 2020*

Trade in Africa has always been heavily influenced by what happens outside of Africa. As shown in Figure 13, from 2008 to 2009, imports and exports declined due to the global financial crisis and from 2012 to 2016, imports and exports declined due to the effects of the decision of OPEC to increase crude

[118] African Development Bank, supra note 106, p. 94.
[119] World Bank, supra note 105, p. 3.

oil production to counter the production of shale oil in the United States. The COVID-19 pandemic has led to lower demand in developed and emerging economies, which has had a negative impact on African trade. It has been suggested out that Africa's economic recovery depends on the resurrection of the manufacturing industry of its main trading partners, China and the EU.[120]

Although the number of countries in the region is small, the North African region accounts for about one-third of Africa's total trade.[121] The negative impact of the suspension and trade blockade of the European economy due to the COVID-19 pandemic has had a notable impact on North Africa, which is geographically close to Europe.[122] More than 20 African countries are more dependent on Europe for both imports and exports than on China. The Chinese economy is closer linked to East African countries such as Kenya and Ethiopia for imports and South Sudan for exports, and oil exporters such as Angola and exporters of metal resources such as Guinea and the Democratic Republic of Congo. Trends in the US economy affect exporters of sewn products such as Madagascar and Mauritius.[123]

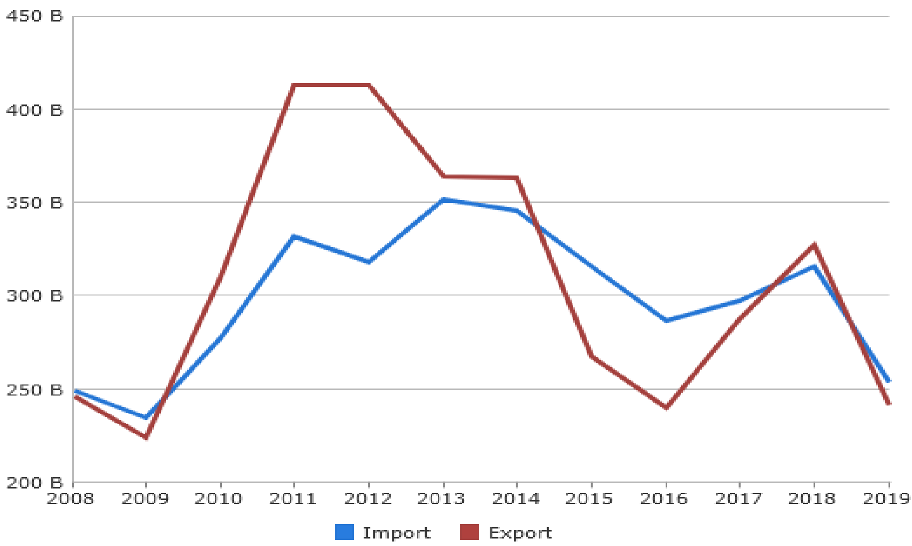

Figure 13: Trade in Sub-Saharan Africa

Source: World Bank, World Integrated Trade Solution Database [https://wits.worldbank.org/]

Regarding the trend of trading partners in Africa in recent years, the rise of China and India has been remarkable, while the United States and the EU have lost their shares, as has Japan. According to the World Integrated Trade Solution Database of the World Bank, the leading countries in terms of exports to Africa are now China, India, South Africa, the United States, and the Netherlands, while the leading countries for imports from Africa are China, South Africa, India, the United States, and Germany (both in order).

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[120] WTO, *Strengthening Africa's Capacity to Trade*, 2021, p. 13.
[121] Ibid.
[122] JETRO, *JETRO Global Trade and Investment Report 2020*, 2020, p. 73.
[123] Ibid., p. 73.

Japan's trade with Africa in 2020 totaled about 1.8 trillion yen (about US$16 billion equivalent), down 7% from the previous year, the first decrease in four years. In particular, the decrease in exports from Japan to Africa has been remarkable, totaling about 850 billion yen (about US$7.5 billion equivalent), down 14% from the previous year. Exports of automobiles to South Africa decreased by 32% and exports of automobiles to Kenya decreased by 18%. On the other hand, Japan's imports from Africa have remained flat at about 920 billion yen (about US$9.2 billion equivalent), with imports from South Africa, which account for more than 60% of the total, increasing by 10% from the previous year, and imports of petroleum products from Nigeria 2.2 times that of the previous year. LNG imports also increased 32% year-on-year, and Japan's trade balance with Africa was in deficit for the first time in two years.[124]

One of the characteristics of African trade has been the low proportion of intraregional trade. Exports from one African country to another have been low compared to exports to Europe or Asia. In this regard, UNCTAD points out that the structure of the African economy, which has historically depended on countries outside of Africa, makes the African economy vulnerable[125] (see Figure 14).

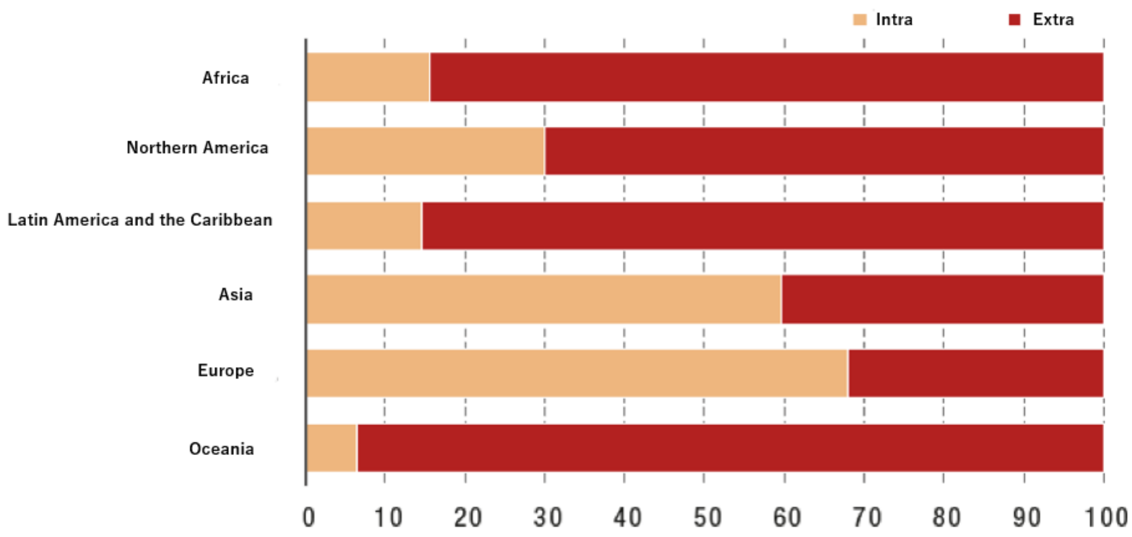

Figure 14: Percentage of Intraregional Trade in Each Region

Source: UNCTAD, *Handbook of Statistics 2020, 2020*

Nevertheless, intraregional trade in Africa has been gradually increasing, driven by two relatively integrated RECs (SADC and the EAC),[126] and the AfCFTA is expected to play a role in accelerating intraregional trade.

As shown in Figure 15, most intraregional exports in Africa have been petroleum and mining products. However, there are high expectations for the growth of manufacturing industries resulting from the

[124] Japan Foreign Trade Council, *Foreign Trade 2021*, 2021, No. 46, P 48.
[125] UNCTAD, *Economic Development in Africa Report 2019*, 2019, p. 19.
[126] IMF, *The African Continental Free Trade Area: Potential Economic Impact and Challenges*, 2020, p. 10.

AfCFTA, which has the second-largest share of current intraregional exports. The expectations for agriculture – which has accounted for only 15% of total exports – are less than the expectations for growth of manufacturing, but the COVID-19 pandemic has underscored the importance of intraregional trade of agricultural products.

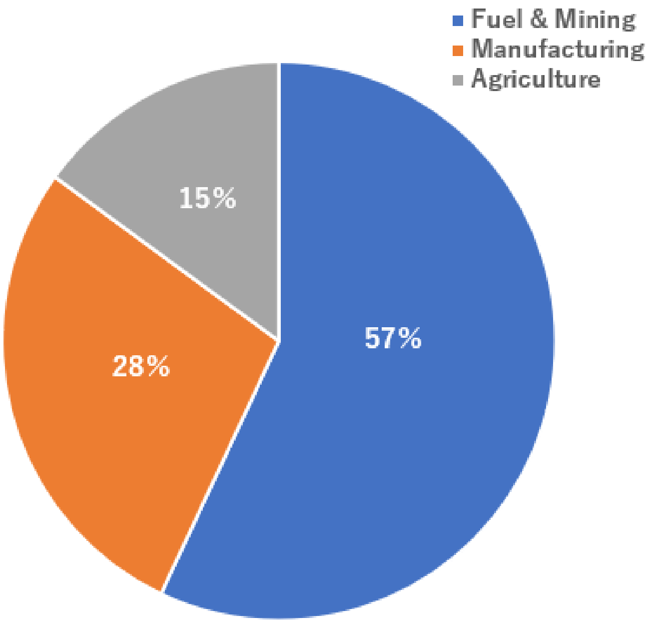

Figure 15: Percentage of Major Industries in African Trade Exports (2018,%)

Source: WTO, *Strengthening Africa's Capacity to Trade*, 2021

The main agricultural products produced in Africa have been cash crops for sale in external markets rather than self-consumption, such as cacao, fruit, coffee, tea, and spices. Many foods indispensable for daily consumption such as grains, dairy products, and edible oils are imported. While the distribution of agricultural products has stalled due to the COVID-19 pandemic, there have been concerns about food shortages and soaring food prices, which have occurred in various parts of Africa.[127] In addition to the decrease in the production of agricultural goods and increased transport costs, and depreciation of exchange rates of African currencies caused by the COVID-19 pandemic has led to increased food prices.[128]

Under these circumstances, the AfCFTA's effect on intraregional trade in the agricultural sector is important from the perspective of food security, especially since Africa's population is expected to grow significantly in the future.[129]

[127] https://www.reuters.com/world/africa/food-prices-soar-west-africa-amid-conflicts-covid-wfp-says-2021-04-16/
[128] African Development Bank, supra note 106, p. 15.
[129] Food and Agriculture Organization of the United Nations and the AU, *Intra-African Trade, the African Continental Free Trade Area (AfCFTA) and the COVID-19*, 2020, pp. 1-3.

(3) Current Status of Tariffs and Non-Tariff Barriers in Africa

(a) Current Status of Tariffs in Africa

The Protocol on Trade in Goods, Article 2, Paragraph 2, stipulates that one of the objectives of the Agreement Establishing the AfCFTA is to stimulate intraregional trade by actively removing tariffs and non-tariff barriers. Tariffs are taxes levied on the import and export of goods, and have functions such as the generation of revenues, protection of domestic industry protection, and sanctions.[130] In this regard, as of February 2021, as many as 33 countries in Africa were classified as least developed countries,[131] and the revenue generation function of tariffs is considered particularly important for least developed countries.[132]

While some critics of the AfCFTA have expressed concern about the decline in tariff revenues associated with the elimination of tariffs,[133] the World Bank and the IMF have estimated that the benefits of the AfCFTA exceed the costs from a reduction in tariff revenues.

The World Bank estimates that while elimination of tariffs will reduce tax revenues, in many countries these revenues will decrease only by less than 1.5%. This is because the ratio of tariff income from imports within Africa is less than 10% of the total, and in the short term, in many cases, sensitive items can be excluded from the tariff elimination requirement. In the medium term, it is estimated that even if there is a slight decrease in tax revenue from the elimination of tariffs, the increase in tax revenue due to the increase in total imports and exports from the AfCFTA and the increase in tax revenue due to the stimulation of economic activities will exceed that amount.[134]

Analysis by the IMF has reached similar results. The IMF estimates that the decrease in income due to the removal of tariffs in the AfCFTA will be small, only 0.03% to 0.22% of GDP. The IMF further estimates that in the long term, an increase in income caused by the increase in consumption with the AfCFTA is expected to exceed the decrease in tariff income, but over the short term, it is not always expected that income will increase so much and therefore they recommend appropriate revenue mobilization.[135]

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[130] Ministry of Economy, Trade, and Industry, *The 2021 Report on Compliance by Major Trading Partners with Trade Partners*, 2021, p. 255.

[131] The United Nations Development Program designates countries with gross national income (GNI) of US$1,025 or less as least developed. A total of 33 countries in Africa have been so designated: Angola, Benin, Burkina Faso, Burundi, Central Africa, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea Bisau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, São Tomé Principe, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Togo, Uganda, Tanzania and Zambia. Angola is scheduled to graduate in 2021 and San tome Principe is also scheduled to graduate in 2024.

[132] Trudi Hartzenberg, *The African Continental Free Trade Area Agreement – What is Expected of LDCs in Terms of Trade Liberalization?, 2019,* https://www.un.org/ldcportal/afcfta-what-is-expected-of-ldcs-in-terms-of-trade-liberalisation-by-trudi-hartzenberg/.

[133] Ken Etim, Abimbola, Akeredolu, Azeezah Muse-Sadig, Kemi Ajayi, Oluwatoba Oguntuase, and Emmanuel Onyeabor, *Creation of the AfCFTA: Tax Leaks and Economic Implications for Nigeria*, 2020, https://www.mondaq.com/nigeria/international-trade-investment/890384/creation-of-the-afcfta-tax-leaks-and-economic-implications-for-nigeria.

[134] World Bank, *The African Continental Free Trade Area Economic and Distributional Effects*, 2020, p. 54.

[135] IMF, *The African Continental Free Trade Area: Potential Economic Impact and Challenges*, 2020, pp. 24-25.

Thus, from the perspective of Africa as a whole, the impact of the elimination of tariffs by the AfCFTA itself is not so much of a problem. However, by country, as shown in Figure 16, tariff elimination is expected to have a significant impact in countries such as Cameroon, Nigeria, Ethiopia, and Madagascar.[136]

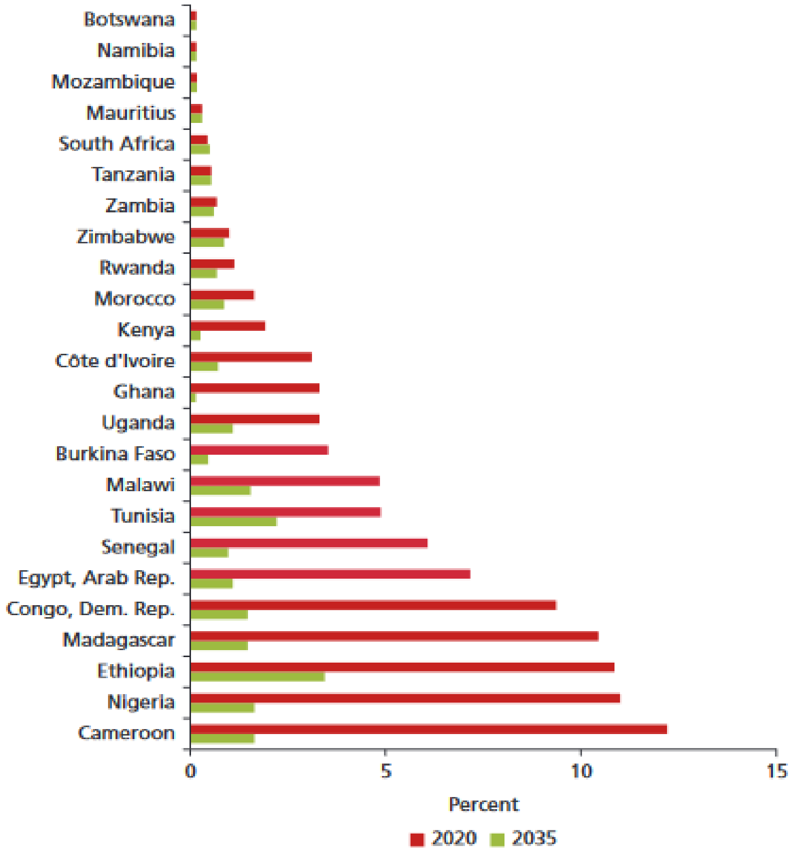

Figure 16: Expected Reduction in Tariff Rates from Implementation of the AfCFTA (%)

Source: World Bank, *The African Continental Free Trade Area Economic and Distributional Effects*, 2020

The AfCFTA's tariff elimination schedule differs between least developed countries and other countries. It is scheduled that 90% of tariffs will be eliminated within five years in countries other than least developed countries and within 10 years in least developed countries. Regarding the elimination of the remaining 10% of tariffs, a grace period 10 years (13 years in least developed countries) is provided for tariff elimination for sensitive product categories that may have a significant impact on domestic industrial workers (7% of the 10%). Furthermore, for Ethiopia, Madagascar, Malawi, Sudan, Zambia, and Zimbabwe, which are called the G6, special consideration is provided, and the grace period for elimination of 90% of tariffs has been extended to 15 years.

[136] World Bank, supra note 134, p. 33.

A total of 44 of the AU member countries are members of the WTO, and 9 African countries participate as observers. Since all countries except Algeria that have signed the Agreement Establishing the AfCFTA participate in the WTO as a member or observer, basically the General Agreement on Tariffs and Trade (GATT) of WTO is applied to almost all AfCFTA State Parties. In short, Africa has a basis for establishing integrated tariff rules.

However, it is challenging that there are many trade agreements within Africa that are intricately interlaced. Specifically, there are complex combinations of preferential trade agreements between individual African countries and with countries outside the region, economic cooperation agreements between African regional and non-African economic communities, and trade agreements between and among African regional economic communities. The presence of many agreements in Africa makes it difficult to adjust them to establish a continent-wide free trade zone.[137]

The presence or coexistence of many RECs in Africa[138] is one factor that makes it difficult to create a continent-wide common market, but they have contributed to improvement of the trade environment. The average tariff rate, which was above 20% in 1997, was reduced to 11.8% by 2016.[139] However, intraregional tariffs remain high compared to those in other regions of the world, as shown in Table 12.

Table 12: Simple Average of Applied Tariffs, 2016

Regional Economic Community	Intraregional (%)	Most Favored Nation (%)
Arab Maghreb Union (AMU)	5.0	14.0
Common Market for Eastern and Southern Africa (COMESA)	5.0	11.0
Community of Sahel-Saharan States (CEN-SAD)	12.0	13.1
East African Community (EAC)	0.0	12.8
Economic Community of Central African States (ECCAS)	9.0	14.6
Economic Community of West African States (ECOWAS)	11.0	12.2
Regional Economic Community	**Intraregional (%)**	**Most Favored Nation (%)**
Southern African Development Community (SADC)	4.0	9.2
Intergovernmental Authority on Development (IGAD)	9.0	16.1
Association of Southeast Asian Nations (ASEAN)	1.0	6.3
Southern Common Market (Mercosur)	0.0	12.1

Source: International Monetary Fund, *Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model*, 2019

[137] IMF, *The African Continental Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model*, 2019, p.8.

[138] Other, smaller RECs include the Agadir Agreement, the Central African Economic and Monetary Community (CEMAC), the Gulf Cooperation Council (GCC), Indian Ocean Commission (IOC), the Pan-Arab Free Trade Area (PAFTA), Southern African Customs Union (SACU), the West African Economic and Monetary Union (WAEMU), and the Southern African Customs Union (SACU).

[139] IMF, supra note 137, p. 8.

(b) Current Status of Non-Tariff Barriers in Africa

Even if the AfCFTA eliminated tariffs, that alone would not maximize the benefits of the AfCFTA. In this regard, the IMF found that reducing non-tariff barriers is far more effective than eliminating tariffs,[140] and the World Bank has similarly found that a key factor for the success of the AfCFTA will be the elimination of non-tariff barriers[141].

However, non-tariff barriers are commonly applied by AU Member States, presenting a major obstacle for trade. If African countries were able to abolish non-tariff measures, the economic benefits would total about US$20 billion according to one recent estimate.[142]

Although there are cases in which a country implementing non-tariff measures may be reasonably exercising its regulatory authority to protect the health and safety of its people, there are cases in which the measures are implemented for protectionist reasons with disguised policy aims; thus, to realize the AfCFTA, it will be necessary to reduce non-tariff measures by closely examining them to consider their necessity. For this purpose, the accuracy of monitoring these measures will be critical.[143]

Annex 5 of the Protocol on Trade in Goods has various provisions on non-tariff barriers, and based on Article 31 of this protocol, an NTB Sub-Committee has been established,[144] and the procedures related to the elimination of non-tariff barriers will be examined by this subcommittee.[145]

A special unit for non-tariff barriers will be established in the AfCFTA Secretariat,[146] and in addition, each State Party is to establish a National Monitoring Committee and National Focal Points to monitor non-tariff barriers within its country.[147]

RECs are also obliged to establish mechanisms to monitor non-tariff barriers, and the AfCFTA Secretariat, member countries, and the RECs are required to work together to tackle non-tariff barriers.[148]

AfCFTA member states must first seek to resolve non-tariff barriers at the REC level before availing of the AfCFTA's dispute resolution procedure; only if they cannot resolve such disputes at the REC

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[140] IMF, supra note 135, pp. 20-21.
[141] World Bank, supra note 134, pp. 3-4.
[142] Christian Knebel, "Breaking Down Non-Tariff Barriers", *The African Continental Free Trade Area: From Agreement to Impact*, European Centre for Development Policy Management, March 2020, p. 19.
[143] Nick Charalambides, "Ensuring the AfCFTA is Implemented and Applies", *The African Continental Free Trade Area: From Agreement to Impact*, European Centre for Development Policy Management, March 2020, pp. 16-18.
[144] Protocol on Trade in Goods Annex 5, Article 4 Paragraph 1.
[145] Ibid., Annex 5, Article 5.
[146] Ibid., Annex 5, Article 6, Paragraph 1.
[147] Ibid., Annex 5, Article 6, Paragraph 2.
[148] Ibid., Protocol on Trade in Goods, Annex 5, Article 10, Paragraph 2.

level can they use the AfCFTA's dispute resolution procedures.[149] Therefore, non-tariff barrier issues can be resolved using the AfCFTA's dispute resolution procedure only if the dispute cannot be resolved at the REC level, or if it is a dispute between RECs, or if it is a dispute between State Parties that are not members of a REC.[150]

Table 13 shows the number of non-tariff measures in 2018 in African countries.

Table 13: Number of Non-Tariff Measures in Africa

Country / Region	SPS	TBT	ADP	CV	SG	SSG	QR	TRQ	XS
Benin	6	2							
Botswana	3	103							
Burkina Faso	6								
Burundi	8	13							
Cabo Verde	4								
Cameroon		8							
Central African republic	3	10							
Congo		3							
Côte d'Ivoire	19						15		
Democratic Republic of the Congo	2								
Egypt	87	207	15						
Eswatini	2	1							
Ethiopia					1				
Gabon		2							
The Gambia	2	2							
Ghana	5	9							
Guinea	11	1							
Kenya	92	770							
Liberia	1	3			3				
Madagascar	37								
Malawi	16	18							
Mali	21	2					20		
Mauritius	17	8					9		
Morocco	56	26	13		4			16	
Mozambique	6	14							
Namibia		1							
Nigeria	29	8							
Rwanda	1	215							
Senegal	7	14							
Seychelles	4	4					6		
South Africa	61	278	32		3			53	62
Tanzania	2	292							
Togo	11	2							
Tunisia	2	27			3			13	
Uganda	56	999							
Zambia	4	88			1				
Zimbabwe	6								

Note: Eswatini was formerly known as Swaziland.
Abbreviations: ADP = anti-dumping, CV = countervailing, QR = quantitative restrictions, SG = safeguards, SPS = sanitary and phytosanitary, SSG = special safeguards, TBT = technical barriers to trade, TRQ = tariff-rate quotas, XS = export subsidies
Source: International Monetary Fund, *Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model*, 2019

[149] Ibid., Annex 5, Article 12, Paragraph 4.
[150] Ibid.

Generally, non-tariff barriers include measures such as quota restrictions. UNCTAD defines a non-tariff barrier as "a policy measure other than ordinary tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both."[151]

Annex 5 of the Protocol on Trade in Goods provides a general categorization of non-tariff measures: (i) government participation such as subsidies and tax incentives for specific industries; (ii) customs and administrative entry procedures; (iii) technical barriers to trade such as requiring a certain label on packages and documents on product production processes; (iv) sanitary and phytosanitary measures for the purpose of protecting the health of people, animals and plants; (v) specific limitations such as allocation of import/export volumes and non-tariff measures; and (vi) charges on imports such as import tax prepayments.[152]

The IMF has noted that in Africa there are problems with sanitary and phytosanitary (SPS) barriers, technical barriers to trade (TBT), and high transaction costs.[153] In this regard, it is obligatory that AfCFTA State Parties that have already joined the WTO ensure the transparency of procedures and minimize impacts on trade regarding SPS and TBT.

Non-tariff barriers include various transaction costs such as infrastructure gaps and burdensome customs clearance procedures in addition to non-tariff measures. As shown in Table 14, transaction costs in the Sub-Saharan region are much higher than other regions.[154]

Table 14: Trade-Related Transaction Costs in Africa

Trading Costs	Africa	Sub-Saharan Africa	Middle east & North Africa	Central America	South America	South Asia
Burden of Customs*	3.6	3.6	4.0	3.7	3.5	3.8
Time to Export (days)	29.3	30.9	21	15.4	19.8	30
Time to Import (days)	36.4	38.5	25.6	15.3	24.3	31.5
Cost to Export (USD per container)	2,149	2,302	1,340	1,181	1,809	1,696
Cost to Import (USD per container)	2,819	3,056	1,600	1,329	2,020	1,877

Note: *1 = inefficient to 7 = efficient
Source: IMF, *The African Continental Free Trade Area: Potential Economic Impact and Challenges*, 2020

[151] UNCTAD, *International Classification of Non-tariff Measures*, 2019, p. 5.
[152] Protocol on Trade in Goods, Annex 5, Article 3 Paragraph 1.
[153] IMF, *Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model*, 2019, p. 9.
[154] Ibid.

In January 2020, the AfCFTA established a system for non-tariff barriers online reporting, monitoring, and elimination to address non-tariff barriers. In this system, traders can report non-tariff barriers on the site www.tradebarriers.africa.

This system was introduced with technical support from UNCTAD and financial support from the Government of Germany. It is important that it can be freely used by all citizens, so that women and youth who are working in small and medium-sized enterprises or working in informal sectors can also report non-tariff barriers using this system. Details on the operational performance of the system are not yet available, but it is expected that it will be actively used when the AfCFTA becomes fully operational.

However, operational problems with the system have been identified. The system is to support four languages (English, French, Arabic, and Portuguese), but there are many other languages in Africa. If there is a difference in the language used between the reporting side and the receiving authority side, use of the system may not be effective.[155]

2.4 AfCFTA-Related Challenges in Africa

As discussed, there are many challenges to overcome to realize operation of the AfCFTA. Many of the challenges are deeply related to other problems, and many challenges can only be resolved with incremental efforts made over time. This subsection provides an overview of AfCFTA-related challenges.

2.4.1 Challenges Related to Regional Industrial Structure

The economies of many countries in the AfCFTA region rely on primary commodities, e.g., agricultural products, mineral resources, and crude oil. According to UNCTAD, 50% of the world's economies rely on primary commodities; however, about 40% of those countries are in Sub-Saharan Africa, as shown in Figure 17.

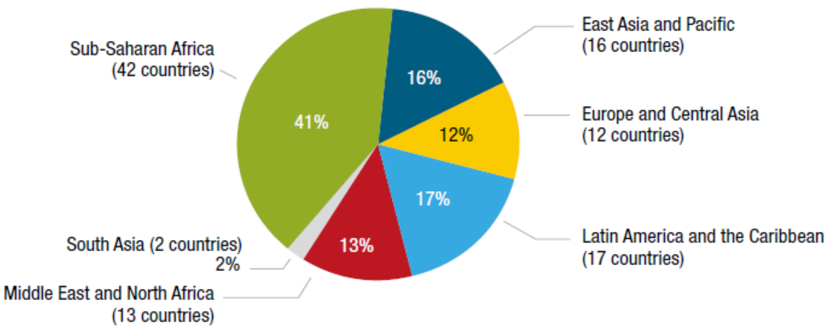

Figure 17: Distribution of Commodity-Dependent Countries

Source: UNCTAD, *State of Commodity Dependence*, 2019

[155] Ibid.

Moreover, at 90%, Sub-Saharan Africa has the highest proportion of national economies relying on primary commodities.[156]

Developing countries with high dependence on primary commodities are vulnerable to price fluctuations in these commodities.[157] In addition, recent economic downturns in developing countries have degraded the financial standing of many primary commodity-dependent countries, and consequently their external debt has trended upward (based on data from 2008 to 2017), as shown in Figure 18.[158] This situation has been exacerbated by the COVID-19 pandemic, and the total government debt balance of African countries compared to GDP has increased rapidly.

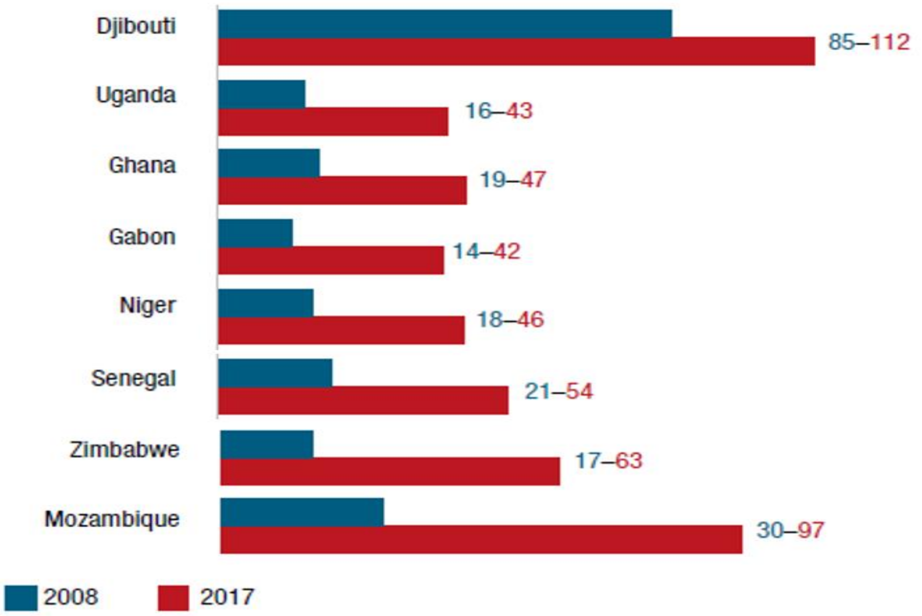

Figure 18: External Debt as Percentage of GDP (%)

Source: UNCTAD, *State of Commodity Dependence*, 2019

To date, African countries have made repeated efforts to shift away from industrial structures dependent on primary commodities, and they continue to take a trial-and-error approach to determining how to carry out successful structural transformations. In this regard, industrialization is traditionally viewed as a means of redistributing resources from low-productivity agriculture to high-productivity industry, and then shifting to the service industry after a certain level of income has been achieved; however, few countries in Africa have achieved such a structural transformation.[159]

[156] UNCTAD, *State of Commodity Dependence 2019*, 2019, p. 3.
[157] Ibid., p. 9.
[158] WTO, supra note 120, p. 10.
[159] UNCTAD, *Structural Transformation and Export Diversification in Southern Africa*, 2018, p. 6.

The absence of appropriate government policy, the lack of investment in value chains, and vulnerability in the capacity of electric power supply are cited as causes for the stagnation of industrialization in Africa.[160] Recent decreases in the prices of primary commodities, the weakening of demand, and the destruction of supply chains due to the COVID-19 pandemic have exacerbated the problem, bringing industrialization in Africa to an abrupt halt.[161]

The realization of the AfCFTA is expected to break through the prevailing sense of despair, accelerate African industrialization, and expand economic diversification in addition to helping create high-quality jobs and resolving structural issues in African economies.[162] The diversification of exports is critical for countries dependent on primary commodities to mitigate their vulnerabilities to fluctuations in the global economy.

However, introducing foreign capital into domestic markets in a country such as Nigeria – which is excessively dependent on primary commodities, with over 90% of its export value accounted for by crude oil and other mineral products, and with domestic agriculture and manufacturing industries that are not competitive in export markets – puts the country's domestic industries further behind in terms of economic diversification, and simply lowering tariffs has a substantial negative impact on domestic industries. In addition, measures such as providing support for capital investment in manufacturing or the cost of employment to reduce damage to domestic industries can increase costs to the government.[163]

Nigeria ratified the AfCFTA in November 2020; although domestic views of the agreement appear to have solidified, the difficulty of forming a consensus is thought to be a reason that so much time passed between the country's signing and ratifying the agreement.

Generally, it is difficult for low-income countries with similar industrial structures to allocate labor and mutually share benefits based on mutual complementarities. Primary commodity-dependent countries in Africa wish to sell their commodities in exchange for finished goods, but there is no such market in Africa; these countries eventually compete with each other because they seek to sell in the same products in overseas markets.[164] Since considerable time and effort is required to transform a country's

[160] African Development Bank, *Southern Africa Economic Outlook 2020*, 2020, p. 10.
[161] Ibid., p. 32.
[162] (i) OECD Development Centre, OECD Emerging Markets Network, *The Future of Production in Africa: The Case for Regional Integration*, 2020, P 18; and (ii) United Nations Conference on Trade and Development, *COVID-19 on Africa's Economic Development*, 2020, p. 18.
[163] Nigeria has Africa's largest economy and a population of over 190 million. Nigeria signed the Agreement Establishing the AfCFTA in July 2019 and ratified it in November 2020. Although it is not possible to predict how Nigeria's response will change over time, domestic industrial groups are actively lobbying the government, and the country continues to be cautious about trade liberalization considering its policy of protecting domestic industries. Nigeria has adopted non-tariff measures such as restricting import items, levying additional taxes, and restricting the procurement of foreign currency for settlement of imported daily necessities.
[164] Emilia Onyema, "Reimagining the Framework for Resolving Intra-African Disputes in the Context of the African Continental Free Trade Area Agreement", *World Trade Review*, Volume 19, Issue 3, Cambridge University Press, 2020, p. 3.

industrial structure, there is a tendency for foreign investment to be concentrated in the economically advanced countries, and it is therefore unlikely for the less industrialized countries to benefit from significant economic effects.

Another recent view holds that economically impoverished developing countries with weak economies must improve their production capacity to receive the benefits of global trade. This view holds that a lack of production capacity in Africa is the cause of the continent's losing its share of world trade – from 1980 to 2017, it decreased from 6.0% to 2.3% despite the population increasing from about 11% to 17% over that period.[165]

Conversely, others argue for the effectiveness of resource-based industrialization based on the view that exports are possible when products are competitive – for example, according to this view, a country with abundant natural resources should use them to industrialize, or a country with strong agriculture should use it to develop industries that add value by processing agricultural products.[166]

There are quite a few views about the challenge of changing industrial structures, which has not been successfully done to date, and therefore this remains an academic debate. It is difficult to predict how much the AfCFTA will benefit, but it is hoped that the revitalization of both intraregional and extra-regional trade will lead to at least slight shifts in the industrial structure of African countries.

2.4.2 Insufficient Infrastructure and a Lack of Infrastructure Investment Funds

Infrastructure is a prerequisite for the trade of goods and services. For example, roads and trucks are required to carry goods, a power transmission and distribution network is required for electric power supply, and base stations are necessary for telecommunications services. However, infrastructure on the African continent is not sufficiently developed.

About 580 million people in Africa do not have access to electricity, accounting for 75% of the world's total.[167] In Sub-Saharan Africa only 18% have access to safe water,[168] and 225 million children in this area do not have access to safe water at school.[169] The internet penetration rate in Africa is also low at 30% on average.[170]

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[165] United Nations Conference on Trade and Development, *Developing Productive Capacities to Industrialize and Diversify African Economies and Achieve the SDGs [Sustainable Development Goals]*, 2020, p. 4.
[166] Francesca Guadagno, Samuel Wangwe, Michele Delera, Andre Bueno Rezende de Castro, *Horticulture, and Wood and Furniture Industries in Tanzania: Performance, Challenges and Potential Policy Approaches*, International Growth Centre, London School of Economics and Political Science, 2019, P 40.
[167] International Energy Agency (IEA), *World Energy Outlook 2020 Executive Summary*, 2020, p. 5.
[168] United Nations Children's Fund (UNICEF), *Progress on Household Drinking Water, Sanitation and Hygiene, 2000-2017*, 2019
[169] UNICEF and World Health Organization (WHO), *Progress on Drinking Water, Sanitation and Hygiene in Schools: Special Focus on COVID-19*, 2020.
[170] UNCTAD, B2C E-commerce Index 2020, p. 7.

Improving infrastructure is an urgent challenge to realize the AfCFTA. For example, delays in infrastructure development constitute a non-tariff barrier and result (among other things) in increased transport costs. According to a study by the Boston Consulting Group, shipping costs in Africa are 3.2 times the value of goods, and they are much higher than they are in other regions (e.g., they are 2.0 times the value of goods in South America, and 1.4 times the value of goods in East Asia and North America).[171]

Infrastructure investment funds are significantly in short supply in Africa. The *Africa Economic Outlook 2018* of the AfDB estimated before the COVID-19 pandemic that while there was a need for US$130-170 billion in annual infrastructure investment on the continent, there was a US$68-108 billion financing gap between requirements and investment[172]; also, the Infrastructure Consortium for Africa (ICA) estimated a financing gap of US$53-93 billion before the COVID-19 pandemic.[173] Therefore, infrastructure investment meets only about half of the requirement.

A March 2020 publication by McKinsey & Company found that infrastructure investment in Africa has been about 3.5% of GDP since 2000; filling the financing gap will require an increase in infrastructure investment to about 4.5% of GDP and an additional US$150 billion per year by 2025.[174]

By sector, AfDB has estimated that annual infrastructure investments of US$24.3 billion will be needed in ICT, US$29-$39 billion will be needed in energy,[175] and US$11-17 billion will be needed in marine transport, the total of which amounts to over 80% of the annual value of trade in Africa.[176]

While African countries have raised 42% of the funding for infrastructure development from their own resources,[177] the developing countries of the continent are not able to fund the entire amount required for infrastructure development. To address these financial shortfalls, AfDB established ICA as an infrastructure development platform in 2005. ICA contributed more than US$100 billion in 2018,[178] and is gradually transforming infrastructure development on the continent, which previously depended only on government financing.

As shown in Figure 19, China has invested heavily in infrastructure development in Africa. However, as shown in Figure 20, China's investment in infrastructure in Africa has been decreasing, with recent investment from in China becoming more targeted.[179]

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[171] The Boston Consulting Group, *Pioneering One Africa*, p. 5.
[172] African Development Bank, *African Economic Outlook 2018*, p. 64.
[173] ICA, Infrastructure Financing Trends in Africa 2018, p. 2.
[174] McKinsey & Company, *Solving Africa's infrastructure Paradox*, 2020, p. 2.
[175] African Development Bank, *The Africa Infrastructure Development Index (AIDI) 2020*, 2020, p. 3.
[176] Africa CEO Forum, *Fast-Tracking Transformation,* 2020, p. 45.
[177] McKinsey & Company, *Solving Africa's Infrastructure Paradox*, 2020, p. 2
[178] African Development Bank, *The Africa Infrastructure Development Index (AIDI) 2020*, 2020, p. 1.
[179] Baker McKenzie, *New Dynamics Shifting Patterns in Africa's Infrastructure Funding*, 2021, p. 7.

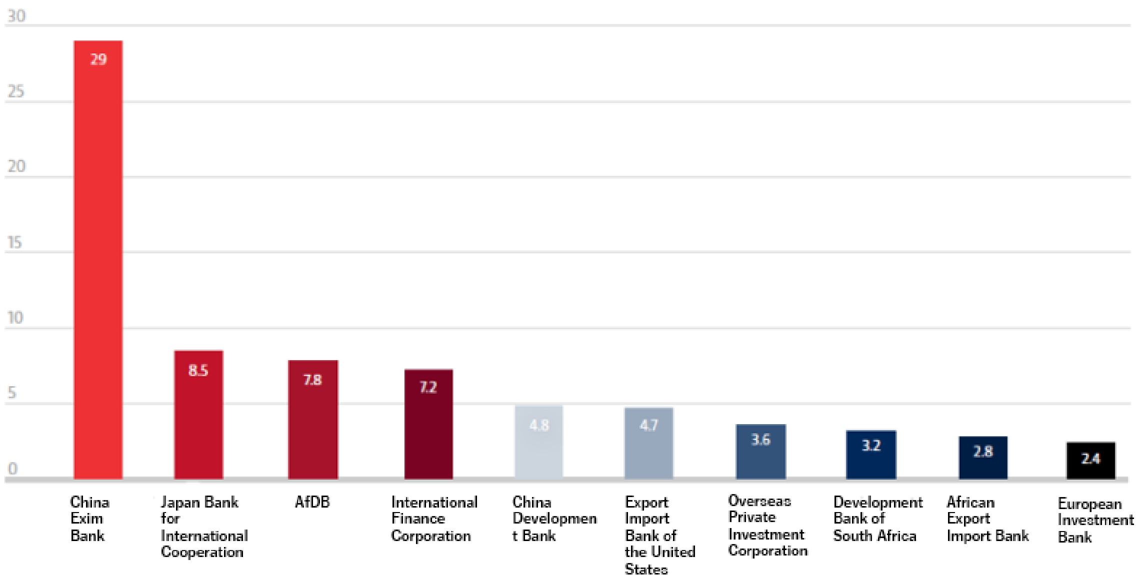

Figure 19: TOP10Top 10 Lenders for African Infrastructure (2008 – -2020, US$ billion USD)

Source: Baker McKenzie, *New Dynamics Shifting Patterns in Africa's infrastructure Funding* [, 2021]

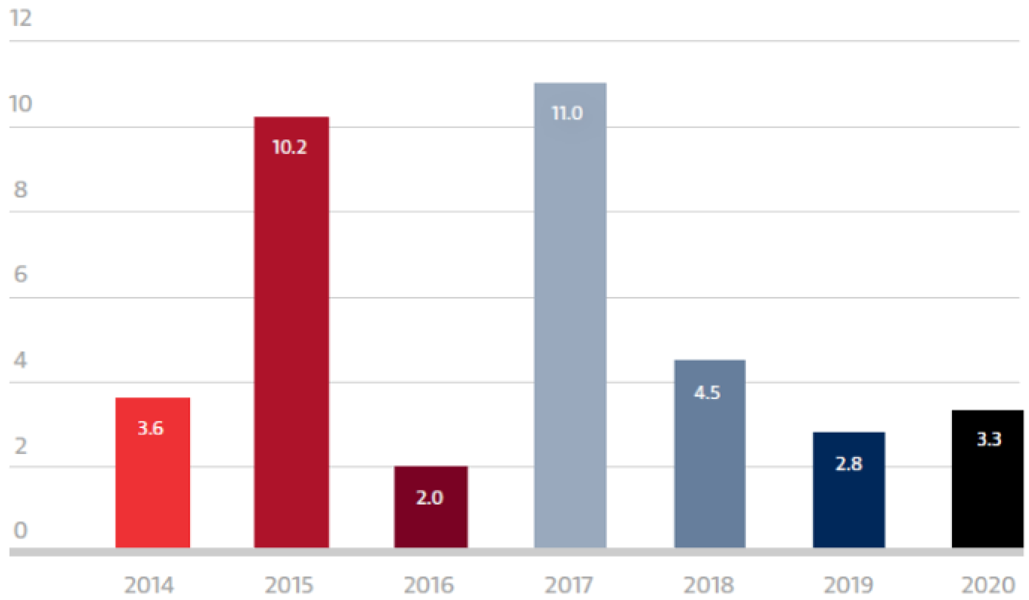

Figure 20: Infrastructure Investment in Sub-Saharan Africa from Chinese Banks

Source: Baker McKenzie, *New Dynamics Shifting Patterns in Africa's infrastructure Funding, 2021*

On the other hand, investors attracted by Africa's recent rapid economic growth have invested an estimated US$550 billion overall in Africa in recent years.[180] There are many different countries of origin and types of investors; although some investors look to make speculative investments, others seek to invest in stable projects, as shown in Figures 21 and 22.

[180] McKinsey & Company, *Solving Africa's Infrastructure Paradox*, 2020, p. 3.

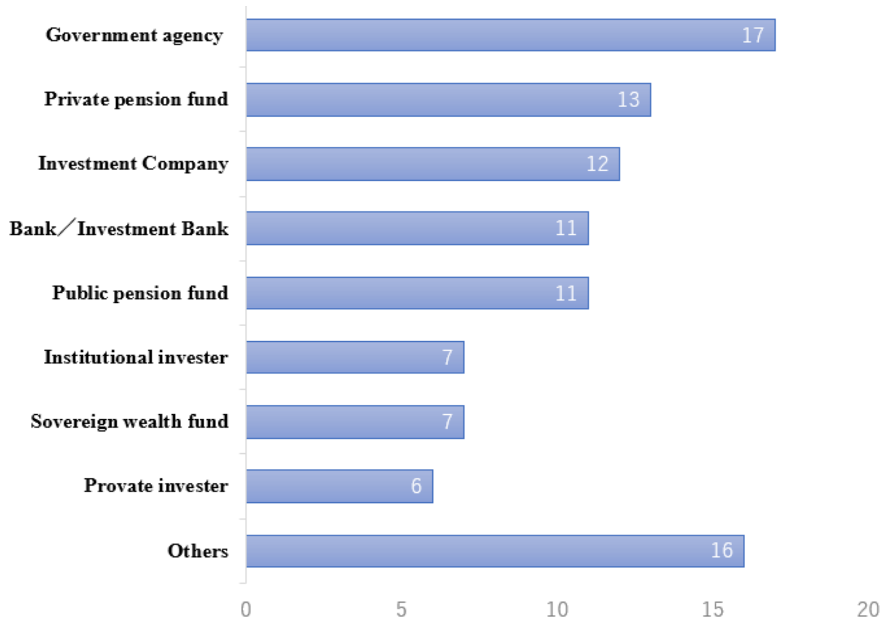

Figure 21: Investors in Africa by Type (%)

Source: McKinsey & Company, *Solving Africa's Infrastructure Paradox*, 2020

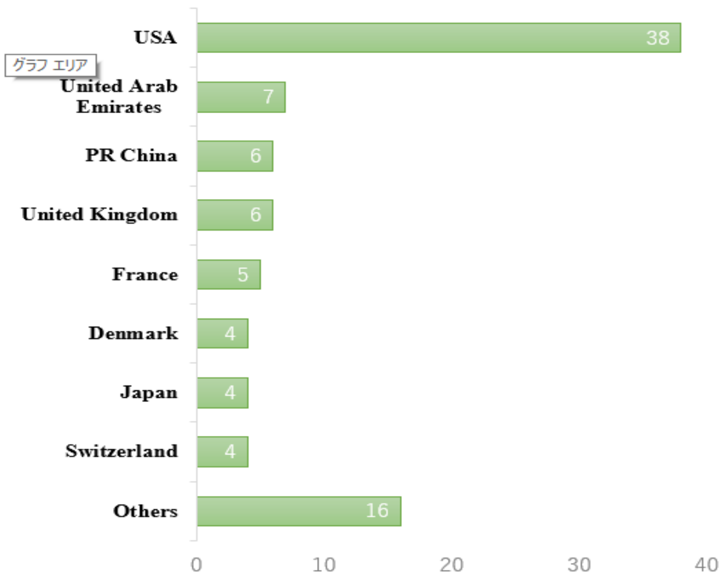

Figure 22: Investors in Africa by Location (%)

Source: McKinsey & Company, Solving Africa's Infrastructure Paradox, 2020

The recent McKinsey & Company research has suggested rather than simply a lack of funds, the problem in Africa is that most infrastructure development plans never reach the implementation stage; in other words, the interest of investors has not been fully leveraged.[181] Specifically, less than 10% of the plans launched for infrastructure development on the continent reach the implementation stage; more than 80% of the plans "fizzle out" during feasibility studies, for many reasons, including a lack

[181] McKinsey & Company, *Solving Africa's Infrastructure Paradox*, 2020, p. 4.

of capacity to implement the plans, and mismatches between the short phases of political systems and the long periods of time required for infrastructure planning. McKinsey & Company estimated that about US$30 billion has been spent on the initial phases of plans in recent years.[182]

At the 18th Ordinary Session of the AU Summit in 2012, the Programme for Infrastructure Development in Africa (PIDA) was launched, including 51 infrastructure development projects (and more than 400 subprojects) focused on energy, information and communications technology (ICT), transport, and water resources.

In addition, the Hon. Jacob Zuma, the former President of South Africa, proposed the Presidential Infrastructure Champion Initiative (PICI) in 2010, to prioritize and integrate infrastructure projects, emphasizing committed political leadership as a key prerequisite for success. However, reflecting the difficulty of the challenges, none of the infrastructure development projects have been carried out smoothly.

Intraregional trade in Africa has increased steadily in recent years, but the most rapid growth has been concentrated in certain regions, with Côte d'Ivoire, Kenya, Senegal, and South Africa emerging as regional trading hubs.[183] However, across Africa, the growth of intraregional trade is limited due to low incomes, small economies, and physical isolation from partners; also, in political terms, trade is suppressed by high tariffs as well as complicated trade laws and regulations.

As mentioned, it is expected that intraregional trade will grow if the AfCFTA eliminates tariffs, but it is difficult to obtain sufficient benefits from the AfCFTA by simply eliminating tariffs. It is often considered that the reduction of non-tariff barriers is more important than the elimination of tariffs, and it is estimated that if customs clearance procedures[184] and transport infrastructure are improved, economic benefits would be up to four times greater.[185]

Infrastructure development is considered necessary to maximize the economic benefits of the AfCFTA, but a solid infrastructure development plan and maintenance plan is required.

2.4.3 Relationship and Plurality of Rules of the AfCFTA and Regional Economic Communities

The Abuja Treaty – which has been ratified by 50 AU Member States – provides a roadmap for economic integration of the African continent divided into six stages. Negotiations for integration have

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182 Ibid., pp. 4-6.

183 International Monetary Fund, *Regional Economic Outlook, Sub-Saharan Africa: Recovery Amid Elevated Uncertainty*, World Economic Financial Surveys, 2019, P 39.

184 Since the average waiting time for trucks to cross borders in Africa is 97 hours, it has been stated that the benefits of the AfCFTA cannot be achieved without improvement of customs efficiency. Afrochampions Initiative, *AfCFTA Year Zero Report*, 2020, p. 23.

185 International Monetary Fund, *Regional Economic Outlook, Sub-Saharan Africa: Recovery Amid Elevated Uncertainty*, World Economic Financial Surveys, 2019, p. 39.

proceeded in each of the eight major RECs, but progress varies by REC (e.g., CEN-SAD is still at the stage of promoting regional economic cooperation, while COMESA and ECOWAS are proceeding to form a free trade area, and the EAC is proceeding to create a common market). Table 15 presents the status of integration by stage as set out in the Abuja Treaty.

One of the characteristics of economic integration in Africa is that many countries participate in multiple RECs, as shown in Table 16. A total of 42 of the 54 countries that signed the Agreement Establishing the AfCFTA participate in multiple RECs, which results in complicated import and export procedures and increased costs, is one of the obstacles to the AfCFTA,[186] because of multiple, overlapping, or conflicting rules. For example, there are multiple tariff rates on the same item, different rules of origin are applied, and import and export procedures are complicated. Confronted with this situation, Japanese companies doing business in Africa often express their desire for the application of uniform rules and predictable, transparent laws.

Table 15: Status of Integration by Stage as Set Out by the Abuja Treaty

	1994-99	2000-20	2008-17		2018-2019	2020-23	2024-28
RECs	RECs establishment and consolidation	Tariff and non-tariff barriers	Regional FTA	Regional CU	Continental CU	Continental Common Market	Pan-African Economic and Monetary Union
EAC	Achieved	Achieved	Achieved	Achieved			
ECOWAS	Achieved	Achieved	Achieved	Achieved			
COMESA	Achieved	Achieved	Achieved				
SADC	Achieved	Achieved	In progress				
ECCAS	Achieved	Achieved	In progress				
IGAD	Achieved	Achieved	In progress				
CEN-SAD	Achieved	In progress	In progress				
AMU	Achieved	Achieved	In progress				

Abbreviations: AMU = Arab Maghreb Union, CEN-SAD = Community of Sahel-Saharan States, COMESA = Common Market for Eastern and Southern Africa, CU = customs union, EAC = East African Community, ECCAS = Economic Community of Central African States, ECOWAS = Economic Community of West African States, FTA = free trade area, IGAD = Intergovernmental Authority on Development, REC = regional economic community, SADC = Southern African Development Community

Source: African Union Commission, *African Regional Integration Report, Towards an Integrated Prosperous and Peaceful Africa, Voices of RECs*, 2019

[186] Akiko Yanai, *Institutional Challenges of Regional Integration in Africa*, Africa Report No. 55, Institution of Developing Economies, 2017, p. 100.

Table 16: Membership of Regional Economic Communities

Eastern Africa	AMU	CEN-SAD	COMESA	EAC	ECCAS	ECOWAS	IGAD	SADC
Burundi			•	•	•			
Comoros		•	•					•
Djibouti		•	•				•	
Eritrea		•	•				•	
Ethiopia			•				•	
Kenya			•	•			•	
Madagascar			•					•
Malawi			•					•
Mauritius			•					•
Mozambique								•
Rwanda			•	•				
Seychelles			•					•
Somalia		•	•				•	
South Sudan				•			•	
Uganda			•	•			•	
United Republic of Tanzania				•				•
Zambia			•					•
Zimbabwe			•					•
Middle Africa	**AMU**	**CEN-SAD**	**COMESA**	**EAC**	**ECCAS**	**ECOWAS**	**IGAD**	**SADC**
Angola					•			•
Cameroon					•			
Central African Republic		•			•			
Chad		•			•			
Congo					•			
Democratic Republic of the Congo			•		•			•
Equatorial Guinea					•			
Gabon					•			
Sao Tome and Principe					•			
Northern Africa	**AMU**	**CEN-SAD**	**COMESA**	**EAC**	**ECCAS**	**ECOWAS**	**IGAD**	**SADC**
Algeria	•							
Egypt		•	•					
Libya	•	•	•					
Morocco	•	•						
Sudan		•	•				•	
Tunisia	•	•	•					
Southern Africa	**AMU**	**CEN-SAD**	**COMESA**	**EAC**	**ECCAS**	**ECOWAS**	**IGAD**	**SADC**
Botswana								•
Eswatini			•					•
Lesotho								•
Namibia								•
South Africa								•
Western Africa	**AMU**	**CEN-SAD**	**COMESA**	**EAC**	**ECCAS**	**ECOWAS**	**IGAD**	**SADC**
Benin		•				•		
Burkina Faso		•				•		
Cabo Verde						•		
Côte d'Ivoire		•				•		
Gambia		•				•		
Ghana		•				•		
Guinea						•		
Guinea - Bissau		•				•		
Liberia						•		
Mali		•				•		
Mauritania	•	•						
Niger		•				•		
Nigeria		•				•		
Senegal		•				•		
Sierra Leone		•				•		
Togo		•				•		

Source: United Nations Conference on Trade and Development, *Economic Development in Africa Report 2019*, 2019

The AUC has stated that one of the objectives of the AfCFTA is to resolve the problem of participation in multiple RECs. This objective can be achieved with uniform rules by consolidating the RECs through formation of a common, continent-wide market. However, even if it were possible to form such a market, this cannot realistically be done in the short term; the RECs will continue for the foreseeable future. Thus, the rules of the various RECs must continue to coexist.

The relationship between the AfCFTA and the RECs is ambiguous. Article 5(b) of the Agreement Establishing the AfCFTA recognizes RECs as the building blocks of the AfCFTA, Article 9 of the Agreement sets out four institutions for implementing the AfCFTA (the AU Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat), and Article 12, Paragraph 5, of the Agreement stipulates that RECs are to be represented on the Committee of Senior Trade Officials in an advisory capacity.

However, the AfCFTA Agreement does not provide a clear definition of “building bloc[k]s,” and thus it is unclear whether the RECs will be integrated into the AfCFTA at the point when the common market for the entire continent is formed, or whether they will continue to exist separately from the AfCFTA.

On this point, the Revised Protocol on Relations between the African Union and the Regional Economic Communities, adopted at the Ordinary Session of the AU in February 2020, includes several provisions calling for close cooperation between the AU and RECs. However, this revised protocol does not mention what will happen to the RECs after the formation of the common market for the entire continent, and it does not consider how RECs would be consolidated after they discontinue their activities.

The AU Assembly instructed the AfCFTA Secretariat to establish a cooperative framework among the AUC, the AfCFTA Secretariat, and the RECs; the framework sets out many roles and responsibilities for the RECs,[187] and the eight RECs formally recognized by the AU are regarded as strategic partners for the AfCFTA.

This survey conducted interviews with the AfCFTA Secretariat and other organizations, which examined the relationship between the RECs and the AfCFTA. The Survey found that the AfCFTA

[187] RECs are to cooperate with the AfCFTA in several fields including but not limited to: (i) dissemination of the experience of implementing FTAs in the RECs, (ii) assignment of skilled personnel, (iii) trade facilitation, (iv) management of simplified trade systems, (v) cooperation with transport guarantees, (vi) trade facilitation along corridors, (vii) cooperation between customs authorities, (viii) border control, (ix) intraregional connectivity, (x) public relations for trade-related laws, (xi) simplification and harmonization between tariff-related legislation and procedures, (xii) sharing of trade data, (xiii) monitoring of and reporting on the elimination of non-trade barriers, (xiv) monitoring and reporting on the avoidance of rules of origin, (xv) development of value chains, (xvi) cooperation on quarantine standards, (xvii) establishment of trade-related infrastructure, (xviii) collaboration with the private sector, (ixx) introduction of Pan-African payment and settlement systems, (xx) legislation for export companies, (xxi) trade of services, (xxii) e-commerce, (xxiii) integration of national-level policy, (xxiv) implementation of a common market, and (xxv) resource mobilization.

Secretariat regards the RECs as strategic partners until a continental customs union is achieved. However, one REC – the Arab Maghreb Union (the AMU) – indicated that it regards the AfCFTA as nothing more than a free trade agreement; it does not believe that the RECs will be replaced by the AfCFTA. In addition, ECOWAS appears to have taken the same stance as the AMU.[188] Therefore, considering the conflicting views regarding the position of RECs, it is likely to take some time to resolve the challenges caused by the plurality (multiplicity) of rules among RECs.

The conflicting views on the position of the RECs and the plurality of rules may be a result of the AfCFTA's recognizing the RECs as part of the institution. Article 19, Paragraph 1, of the Agreement Establishing the AfCFTA provides that AfCFTA rules are to prevail over REC rules in the case of conflict; applying this provision without exception would resolve the issues regarding the plurality of rules. However, Article 19, Paragraph 2, of the Agreement provides that the rules of RECs that have attained higher levels of integration than the AfCFTA are to continue to prevail, which is an explicit acknowledgment of the existence of rules other than those of the AfCFTA. Similarly, Article 8 of the Agreement, which covers the protocol on trade in goods, provides that the rules of RECs that have successfully eliminated higher-level tariffs and other barriers will continue to prevail.

Thus, even after the AfCFTA becomes effective and operational, problems with the plurality of rules will not necessarily have been resolved. The AfCFTA does not contain procedures for resolving problems with participation in multiple RECs and the plurality of rules.[189]

On this point, the position of the AUC is that there is no problem because AfCFTA rules are applied wherever a customs union has not been achieved. However, the limits of the scope of AfCFTA rules have not been clearly defined, and it is unclear why the achievement of a customs union is regarded as indicative of a higher level of integration.

Incidentally, while some consider that Article 19, Paragraph 2, of the Agreement applies to SADC because it has successfully eliminated more than 95% of tariffs,[190] others believe that the South African Customs Union (SACU), a REC that is not among the eight formally recognized by the AU, is also exempt under Article 19, Paragraph 2, and would be exempt if the SADC-EAC-COMESA Tripartite Free Trade Agreement (SADC-EAC-COMESA 3) goes into effect.[191]

[188] Amanda Bisong, "ECOWAS and the Role of the RECs in AfCFTA Implementation", *The African Continental Free Trade Area: From Agreement to Impact*, European Centre for Development Policy Management, 2020, p. 23.
[189] Gerhard Erasmus, *How Will the AfCFTA Live Up to All the Expectations?*, Trade Law Centre Working Paper No. S20WP05/2020, April 2020, p. 8.
[190] Talkmore Chidede, *The African Free Trade Area and What it Means for Africa*, International Bar Association, 2019 [https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=50a110dc-3d76-4c99-8128-6f0de46b31ba].
[191] Gerhard Erasmus, *Does the AfCFTA have a Clear Design and Will it Live a Life of Its Own?,* Trade Law Centre Trade Brief No. S19TB20/2019 November 2019, p. 17.

On this point, in the EAC, an EAC Council of Ministers resolution provides that EAC rules apply to EAC Partner States, with the understanding that these rules will continue to apply to the Partner States even after the AfCFTA goes into effect. Similarly, in ECOWAS, it is understood that the rules of the REC will continue to apply.[192]

A recent JETRO report on challenges for regional integration found that consolidation and elimination of RECs will be necessary to realize the AfCFTA and achieve a common market. However, some experts consider that it may be advantageous to first achieve full implementation of the RECs. Some Japanese companies doing business in Africa have expressed the view that a more realistic way to realize the AfCFTA would be to focus efforts in a specific region and achieve success there before expanding the concept to other regions.

2.4.4 Principles of the AfCFTA, and Ensuring Implementation of the Agreement

To implement the AfCFTA and realize market integration, it is necessary to establish an implementation system with sufficient power to smoothly resolve inevitable differences of views and compel signatories to abide by their commitments. As stated, Article 9 of the Agreement Establishing the AfCFTA sets out provisions for establishing institutions for implementing the AfCFTA – the AU Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat. Key issues include how these institutions function – in particular, how the AfCFTA Secretariat functions as the de facto implementing institution – and the extent to which the implementation of the agreement can be monitored.

Article 5 of the Agreement lists the principles that govern the AfCFTA; Article 5(a) provides that the AfCFTA is to be driven by Member States of the AU. This provision means that the AfCFTA is an organization operated by AU Member States rather than its signatories, which could have substantial impact on subsequent negotiations and implementation of the AfCFTA.[193]

State Parties that have ratified the AfCFTA are the ones with the rights and responsibilities under the Agreement; these State Parties are responsible for eliminating tariffs and implementing other measures by the deadlines set out in the Agreement. In AfCFTA negotiations, countries that have signed but have not ratified the AfCFTA are involved in the negotiations if they are AU Member States. In other words, parties with no responsibilities under the AfCFTA can voice their opinions about the implementation of the agreement, while the system gives them no incentive to ratify the agreement.

Article 10, Paragraph 2, of the Agreement Establishing the AfCFTA provides that the AU Assembly, as the highest decision-making organ of the AfCFTA, has the exclusive authority to make decisions on matters following the recommendation(s) of the Council of Ministers. The Assembly is a political

[192] Amanda Bisong, supra note 188, ECDPM, 2020, p. 23.
[193] Gerhard Erasmus, supra note 191, p. 14.

forum in which all AU Member States can participate. Eritrea – which has not signed the AfCFTA – also participates in the AU Assembly.

As of October 2021, the AfCFTA had not been ratified by 13 of its signatories; given the lack of incentives to ratify the agreement, it is likely to take some time before it functions as a convention for the entire continent.

The four-decade-old Lagos Plan of Action (1980) may be considered the origin of the vision of market integration across the continent. However, none of the agreements reached over the last 40 years have proceeded on schedule; the flexibility accorded individual countries in the implementation stage is recognized as a reason for these delays.[194]

Although the word "flexibility" is generally translated into Japanese as the equivalent of the English word "adaptability," it means something different in this case; for example, if efforts to reduce tariffs are behind schedule, delays are allowed within the scope of flexibility, and there is no penalty for noncompliance. Additionally, RECs often permit members to introduce import surcharges or change the way tariffs are levied on certain products, or take other actions to essentially increase tariffs, all under the doctrine of flexibility. Another example of actions taken in the name of flexibility is ECOWAS Member State Nigeria's effort(s) to protect domestic industries by imposing additional tax rates on 177 items (e.g., steel products), even as it nominally promotes economic integration.

Even in ASEAN, flexible timeframes are permitted, with different Member States having different deadlines in consideration of their stage of economic development and the time of their entry into the regional organization. However, deadlines in ASEAN must be observed. In contrast, in Africa, while uniform timeframes have been imposed, flexibility is now allowed in implementation, sometimes without limit.

Article 5 of the Agreement Establishing the AfCFTA lists the principles of the Agreement; among them, the concepts of variable geometry in Article 5(c) and flexibility in Article 5(d), respectively, are critical for ensuring the implementation of the Agreement.

"Variable geometry" is often discussed with reference to EU integration. Originally, the EU deployed what is known as the Monnet method of integration, by which Member States simultaneously promoted common policies based on common rules. However, the acceptance of new Member States in the EU resulted in economic disparities and differences in policy objectives among Member States, which has made it difficult to sustain the Monnet method. With the Rome Declaration of 2017, the EU shifted to what academics refer to as the "multi-speed method" (among other terms), a method by which Member

[194] Akiko Yanai, supra note 186, pp. 96-97.

States generally proceed at a uniform pace, but can also participate at different speeds and scales in exceptional cases.[195]

A more detailed examination shows different approaches to the multi-speed method. Variable geometry is a type of multi-speed method, based on an assumption of perpetual spatial and geographical differences in the integrated community, with multiple layers of groups of nations that exist only for intergovernmental cooperation and groups of nations promoting integration.[196]

Variable geometry in the EU is conceptualized under the European Parliament and European Court of Justice, supranational institutions in which the sovereignty of Member States is pooled. However, the concept of EU-style variable geometry may not apply to the AfCFTA, in which there is no presumption of the establishment of supranational institutions.

In view of general objectives under Articles 3(a) and (d) of the Agreement Establishing the AfCFTA to create a single market and establish a Continental Customs Union, respectively, the adoption of variable geometry as a principle of the AfCFTA has been criticized as self-contradictory.[197] Conversely, others argue that, although there may be no option but to establish temporary differences in the progression of integration in light of the large number of AfCFTA Member States and the considerable economic disparities between them, the extent and duration over which variable geometry is allowed should be clarified based on a robust procedure.[198]

Additionally, views vary regarding the governing principle of consensus in decision-making set out in Article 5(k) of the Agreement Establishing the AfCFTA. Some believe that variable geometry reinforces the shortcomings of the ratified agreement since Member States have veto rights, and is the basis of Article 19, Paragraph 2, which allows for both AfCFTA and REC rules to apply, as discussed previously.[199] Others consider that variable geometry enables the categorization of pending matters and approaches tailored to specific phases, and they suggest that the AfCFTA is a progressive trade agreement.[200]

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[195] Kazuyuki Inoue, "Jiron: Eikoku to EU no Brexit Before & After (Commentary on Current Events: UK and the EU Before and After Brexit)", *Sumitomo Mitsui Trust Bank Monthly Report of Studies*, March 2020.

[196] Tomoyoshi Tanaka, "EU Kaikaku to Ōshu Tōgō no Shōraizō: Ei Ridatsu go no EU no Yukue wo Saguru" (The EU Reformation and the Future of European Integration: Considering Where the EU Will End up after Brexit), *International Trade and Investment No. 113*, Institute for International Trade and Investment, 2018, p. 8.

[197] Olu Fasan, "AfCFTA: The Long, Hard Road to One African Market", *Business Day NG*, TV, and Podcast, 2020, https://archive.businessday.ng/olu-fasan/article/afcfta-long-hard-road-one-african-market/.

[198] Gerhard Erasmus, *How Will the AfCFTA Live Up to All the Expectations?*, Trade Law Centre Working Paper No. S20WP05/2020, April 2020, p. 17.

[199] Alex Ansong, *International Economic Law in Africa: Is the African Continental Free Trade Area a Variable Project?*, 2018, p. 5.

[200] Chisa Onyejekwe and Eghosa Ekhator, *AFCFTA and Lex Mercatoria: Reconceptualising International Trade Law in Africa*, Commonwealth Law Bulletin, 2020, p. 13.

In summary, there is doubt about the ability of the AfCFTA to achieve a consensus in decision-making, which is a governing principle or requirement of the AfCFTA. In fact, the significant differences in policy objectives between and among Member States of the AU is likely the reason the AfCFTA incorporated the concepts of variable geometry and flexibility from the start; if that is the case, the AfCFTA's goal of creating a continental-scale common market may be better understood as having a symbolic meaning.

2.4.5 Dispute Settlement Mechanism for the AfCFTA

Article 20 of the Agreement Establishing the AfCFTA sets out provisions for a dispute settlement mechanism. The first subparagraph of the article states that the mechanism applies to the settlement of disputes arising between State Parties. In addition, a Protocol on Rules and Procedures on the Settlement of Disputes has been prepared to govern the AfCFTA dispute settlement mechanism; Article 3, Paragraph 1, of the Protocol states that it applies to disputes arising between State Parties about rights and responsibilities under the provisions of the Agreement.

Article 1(v) of the Agreement Establishing the AfCFTA defines “State Party” as a Member State that has ratified the AfCFTA and has the rights and bears the responsibilities therein. This provision makes clear that the AfCFTA dispute settlement mechanism applies only to disputes between States; the AfCFTA does not cover investor-state dispute settlement (ISDS).

Many observers are critical that the AfCFTA does not include provisions for ISDS,[201] with this criticism mainly directed at the design of a system that prevents private businesses – the entities that trade goods and make investments – from participating in the mechanism, even though the preamble of the Agreement Establishing the AfCFTA calls for increasing intraregional trade and investment.

The AfCFTA dispute settlement mechanism was modeled after the mechanism of the WTO,[202] which has in practice fallen behind in the reappointment of Appellate Body members, and therefore has ceased to function since December 2019, in part because of the diplomatic stance of the Trump administration. Nonetheless, the WTO’s mechanism is well-proven, and is generally highly regarded.

Similar to the dispute settlement mechanism of the AfCFTA, the WTO’s dispute settlement mechanism prohibits private businesses from directly participating in the mechanism with few exceptions[203]; the

[201] See, e.g.: (i) Gerhard Erasmus, *Governance under the AfCFTA: Linkage between Implementation and Gains*, Trade Law Centre Working Paper No. S20WP09/2020, August 2020, P 15; (ii) Olabisi Akinkugbe, “Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment”, *African Journal of International and Comparative Law*, Volume 28, 2020, P 157; (iii) Chisa Onyejekwe and Eghosa Ekhator, *AFCFTA and Lex Mercatoria: Reconceptualizing International Trade Law in Africa*, Commonwealth Law Bulletin, 2020, P 17; and (iv) Alex Ansong, *International Economic Law in Africa: Is the African Continental Free Trade Area a Variable Project?*, 2018, p. 7.

[202] Gerhard Erasmus, *Governance under the AfCFTA: Linkage between Implementation and Gains*, August 2020, Trade Law Centre Working Paper No. S20WP09/2020, p. 13.

[203] There are also cases in which the domestic laws of Member States allow governments to petition to sue the WTO. https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c1s4p1_e.htm.

same is true of the dispute settlement mechanisms established by many bilateral investment agreements between African countries.[204] In addition, there have been cases in which proxies of private businesses have been subrogated[205] to the government in their participation in the WTO mechanism[206]; this approach should not pose any major problems if the AfCFTA is expected to operate in the same way as the WTO. However, given the current state and history of dispute settlement mechanisms regarding business legislation in Africa, the criticism of the AfCFTA mechanism may be valid.

Dispute settlement mechanisms in commercial trade in Africa include but are not limited to litigation in the courts of Member States, mediation, and arbitration. All countries in Africa have judicial proceedings, and matters relating to commercial trade can be adjudicated in the courts. However, legislation in many African countries needs to be modernized; in many cases, legal systems were inherited from the colonial era, and have changed little since then. In addition, lengthy procedures and the mix of languages and legal systems (e.g., common law, civil law, and Roman-Dutch law) in different countries have been identified as complicating factors.[207]

There are no agreements for continent-wide execution of judicial decisions in Africa, and no African countries have signed the Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (The Hague, 1971) or the Convention on Choice of Court Agreement (The Hague, 2015). Judicial decisions made in one African country cannot be executed in other countries on the continent.

In this regard, the 17 countries[208] affiliated with the Organization for the Harmonization of Business [or Corporate] Law in Africa (Organisation pour l'Harmonisation en Afrique du Droit des Affaires, OHADA)[209] have integrated their business laws including arbitration law, corporate law, and the like; jurisdiction rests with the Common Court of Justice and Arbitration (CCJA), a supranational institution, rather than their domestic courts, and CCJA judicial decisions are enforceable in each of the OHADA Member States.[210]

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[204] For example, ISDS mechanisms were not introduced in the bilateral investment agreements Brazil concluded with Ethiopia in 2018 and Malawi in 2015. See, e.g., Uche Eweluka Ofodile, *Dispute Settlement under the African Continental Free Trade Agreement: What Do Investors Need To Know*, Kluwer Arbitration Blog, http://arbitrationblog.kluwerarbitration.com/2019/09/29/dispute-settlement-under-the-african-continental-free-trade-agreement-what-do-investors-need-to-know/.

[205] Subrogation is the assumption by a third party of another party's legal right to collect damages (or a debt).

[206] For example, participation in the mechanism by proxies of Guatemala and other banana exporters was allowed in an action against the EC. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm。

[207] Chisa Onyejekwe and Eghosa Ekhator, *AFCFTA and Lex Mercatoria: Reconceptualising International Trade Law in Africa*, Commonwealth Law Bulletin, 2020, pp. 6-7.

[208] The 17 Member States of OHADA are Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, the Democratic Republic of the Congo, Senegal, Chad, and Togo. OHADA's headquarters is in Yaoundé, Cameroon.

[209] OHADA was established in 1993 with the recognition that the lack of judicial stability amid economic crises and large-scale declines in investment was the most prominent factor driving investors away from Africa. OHADA membership is open to all AU Member States as well as to other countries.

[210] Emilia Onyema, supra note 164, p. 7.

The "softest" form of mediation as a dispute settlement mechanism is the reaching of a settlement agreement through voluntary discussions between the parties. An advantage of this approach is the maintenance of amicable relations between the parties, while a disadvantage is the lack of enforceability. In contrast, arbitration is a mechanism by which the parties entrust the resolution of a dispute to an arbitrator – a neutral, third party – and agree beforehand to abide by the arbitrator's decision. This approach requires both money and time, but it has the advantages of being private and enforceable.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention),[211] which was signed on 10 June 1958 and as of January 2021 had 166 signatories, is a convention on international arbitration; in February 2020, Ethiopia became the 33rd African country to ratify the New York Convention. In addition, the Singapore Convention on Mediated Settlement Agreement (the Singapore Convention on Mediation),[212] which was approved by the UN General Assembly in December 2018 and went into effect on 12 September 2020, is a convention on the swift and less expensive process of mediation; 13 African countries have signed the Singapore Convention on Mediation.

Thus, although African countries are gradually signing international conventions, and international investors are becoming increasingly secure in investing on the continent, African countries still have complicated procedures for executing the decisions of foreign courts, and there is no system that makes it easy to enforce arbitration decisions.[213] However, there has apparently been an increase in the number of international arbitration cases filed by African businesses – against African countries in particular. That said, harmonization of dispute settlement mechanisms for commercial trade open to private businesses is needed to increase investment from within and outside Africa.[214]

The judicial organs of RECs provide another mechanism for settling commercial trade disputes in Africa. Judicial organs of the eight RECs formally recognized by the AU include the East African Court of Justice (EACJ) of the EAC and the Community Court of Justice of ECOWAS (ECCJ). Both the EACJ and the ECCJ mainly handle cases involving human rights,[215] and it was initially understood that these judicial organs did not have jurisdiction over cases involving international commercial trade. However, the extension of the EACJ's jurisdiction to cases involving trade and investment was

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[211] Signatories of the New York Convention can execute commercial arbitration decisions made in foreign countries with approval of courts in other countries.
[212] Mediation formerly required the filing of a second lawsuit or arbitration for enforcement in cases when one party failed to perform their duties under a settlement agreement; signing the Singapore Convention on Mediation empowers signatories to enforce arbitration decisions with approval of courts in other countries without filing second lawsuits or the like.
[213] Emilia Onyema, supra note 164, p. 12.
[214] Ibid., pp. 12-13.
[215] Gerhard Erasmus, *Governance under the AfCFTA: Linkage between Implementation and Gains*, August 2020, Trade Law Centre Working Paper No. S20WP09/2020, p. 15.

approved at the EAC Summit in 2015,[216] and the enactment of an investment protection law in 2008 made it possible at least for businesses in the ECOWAS region to argue international arbitration cases before the ECCJ.[217] In addition, both the EACJ and the ECCJ allow businesses and NGOs to participate in these proceedings as parties.[218]

However, in order to implement the extension of the EACJ's jurisdiction, EAC Partner States must ratify the Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice (2015), and as of January 2021 only Rwanda had ratified the protocol.[219] Also, for the ECCJ, Partner States are bound by ECCJ decisions under the Convention, but decisions are not always executed; as of January 2021, Partner States had executed only 35 of the 64 ECCJ decisions.[220]

SADC also has a judicial organ – the Southern African Development Community Administrative Tribunal (SADCAT) – but experts consider it to be dysfunctional.[221] The SADCAT mechanism originally included provisions allowing individuals and businesses to sue national governments. In one case, a farmer in Zimbabwe disputed the legality of the government's seizure of land without compensation, and SADCAT ruled that the seizure was illegal. However, the SADC Summit sought an injunction against the judgment, and a new protocol approved in 2014 revised the system to limit participation in the mechanism to nation states. Incidentally, although the new protocol was signed by former South African President Jacob Zuma, the Constitutional Court of South Africa invalidated the protocol as unconstitutional, ruling that the former president's signature was illegal.[222] SADCAT thereafter effectively ceased to function.

Given the chaos of dispute settlement mechanisms in Africa described in the preceding text, there are likely expectations for the establishment of a uniform dispute settlement mechanism for the entire continent under the AfCFTA. However, because it is considered that African countries generally are reluctant to use dispute mechanisms in actions against other African countries, there is concern that the dispute settlement mechanism of the AfCFTA, which only applies to disputes between State Parties, could become useless.[223]

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[216] James Otieno-Odek, *Judicial Enforcement and Implementation of EAC Law, East African Community Law: Institutional, Substantive and Comparative EU Aspects*, 2017, P 468.
[217] Matthew Happold, "Investor-State Dispute Settlement using the ECOWAS Court of Justice: An Analysis and Some Proposals", *ICSID Review*, Vol. 34, No. 2, 2019, p. 499.
[218] Chisa Onyejekwe and Eghosa Ekhator, *AFCFTA and Lex Mercatoria: Reconceptualizing International Trade Law in Africa*, Commonwealth Law Bulletin, 2020, p. 17.
[219] Ally Possi, *An Appraisal of the Functioning and Effectiveness of the East African Court of Justice*, 2018, p. 10.
[220] Matthew Happold, supra note 217, p. 515
[221] Uche Eweluka Ofodile, *Dispute Settlement under the African Continental Free Trade Agreement: What Do Investors Need To Know*, Kluwer Arbitration Blog, http://arbitrationblog.kluwerarbitration.com/2019/09/29/dispute-settlement-under-the-african-continental-free-trade-agreement-what-do-investors-need-to-know/.
[222] Law Society of South Africa and Others vs. President of the Republic of South Africa and Others (CCT67/18) [2018] ZACC 51; 2019 (3) BCLR 329 (CC); 2019 (3) SA 30 (CC), 11 December 2018.
[223] Nick Charalambides, "Ensuring the AfCFTA is Implemented and Applies", *The African Continental Free Trade Area: From Agreement to Impact*, European Centre for Development Policy Management, March 2020, pp. 16-18.

The risk of lawsuits by investors against State Parties with respect to COVID-19 measures was discussed at the Extraordinary Session of the AU on 5 December 2020; if lawsuits by investors are considered to present risks to States, dispute mechanisms under the AfCFTA may have been designed with the intent to prevent disputes.

According to Professor Engela Schlemmer of the University of the Witwatersrand in South Africa, in addition to the case in Zimbabwe, it is noteworthy that the Government of Kenya limited the authority of the EACJ after a ruling of the EACJ went against it in a case involving an investor. Similarly, the Government of South Africa withdrew from many bilateral investment treaties that allowed investors to sue the state and enacted the Protection of Investment Act, which does not allow for arbitration between investors and the Government.

Businesses investing in foreign countries must have measures to deal with country risks of arbitrary enforcement of legal systems and sudden policy changes; if such country risks may prevent them from recovering their investments, they are likely to choose not to invest.

Normally, investment agreements provide those countries receiving investments will not engage in unreasonable seizures or discriminatory treatment against foreign companies, nor will they request special technology transfers and the like; FTAs and EPAs commonly incorporate similar provisions. Professor Schlemmer noted that investors cannot sue a State Party under the framework of the AfCFTA. Consequently, investors have no choice but to depend on a diplomatic solution, an award of damages under the State Party' domestic law (which is unlikely), or an award of damages from the African Court on Human and Peoples' Rights (in Arusha, Tanzania). In any case, for the AfCFTA to attract foreign investment, it is desirable to establish procedures that allow investors to invest with peace of mind.

2.4.6 Trade Facilitation at African Borders

Annex 4 of the Protocol on Trade in Annex 4 provides for trade facilitation, and Article 1(i) of the protocol defines trade facilitation as simplification and harmonization of international trade procedures. To the extent possible, AfCFTA State Parties are to publish information such as necessary documents for customs clearance and related laws and regulations on the internet promptly in a nondiscriminatory and easily accessible manner.[224] AfCFTA State Parties also are required to adopt or maintain procedures allowing electronic payment for duties to the extent practicable.[225]

In addition, AfCFTA State Parties are to publish the average release time of goods for customs clearance,[226] use the most modern information and communications technology to the extent practicable,[227] and endeavor to establish a single window to enable various procedures through one

[224] Protocol on Trade in Goods, Annex 4, Article 4, Paragraph 1.
[225] Ibid., Annex 4, Article 8.
[226] Ibid., Annex 4, Article 12, Paragraph 1.
[227] Ibid., Annex 4, Article 17.

portal site.[228] Also, AfCFTA State Parties are obliged to endeavor to maintain and report import and export data in line with international best practices,[229] and share relevant information and best practices for trade facilitation through the AfCFTA Secretariat.[230]

Moreover, border control authorities and agencies of AfCFTA State Parties are required to cooperate with each other to the extent possible and practicable to facilitate trade,[231] such as alignment of working days and hours, procedures and formalities, sharing of common facilities, and establishment of one-stop border posts (OSBPs). [232] Further, cooperation between customs authorities is separately required in Annex 3 of the Protocol on Trade in Goods, and in relation to trade facilitation, efforts must be made for cooperation toward simplification and harmonization of customs procedures.[233] Specifically, it is required to prepare procedures in line with the Revised International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention) [234] and the Trade Facilitation Agreement[235] of the WTO.

The World Bank suggests that countries can maximize the benefits of the AfCFTA by eliminating tariffs, reducing more difficult non-tariff barriers, and implementing trade promotion measures.[236] The World Bank estimates that trade promotion measures to improve border infrastructure and reduce costs for administrative procedures will increase competitiveness in domestic and international markets, leading to increased productivity, increased trade. and accelerated economic growth.[237]

Reducing various costs through trade promotion measures is especially important for landlocked countries, which generally face difficulties with their economic development because they have access to the global market only through maritime nations. They are also generally vulnerable to changes in food prices, have food security problems, and are often vulnerable to climate change because many

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[228] Ibid., Annex 4, Article 18, Paragraph 1.
[229] Ibid., Annex 4, Article 16, Paragraph 1.
[230] Ibid., Annex 4, Article 16, Paragraph 2.
[231] Annex 4, Article 25. Paragraph 2.
[232] As defined by the Virtual PIDA Information Centre, the OSBP concept refers to the legal and institutional framework, facilities, and associated procedures that enable goods, people, and vehicles to stop in a single facility in which they undergo necessary controls following applicable regional and national laws to exit one state and enter the adjoining state. Also see *One-Stop Border Post Sourcebook, 2nd Edition,* May 2016 [prepared by PADECO Co., Ltd.], Chapter 1. Work to update this Sourcebook is ongoing with the support of JICA and AUDA-NEPAD.
[233] Protocol on Trade in Goods, Annex 3, Article 5.
[234] The revised Kyoto Convention reduces trade costs by simplifying or harmonizing customs procedures, improving the predictability of customs procedures, and contributing to the facilitation of international trade. As of the end of August 2021, the Convention, which came into effect in February 2006, had 128 Contracting Parties worldwide, 38 of which were African countries.
[235] The WTO Trade Facilitation Agreement aims to improve the transparency of customs procedures and facilitate access to the global value chain. The agreement, which came into force in 2017, has 164 Contracting Parties worldwide, of which 44 are African countries.
[236] World Bank, supra note 134, p. 125.
[237] Ibid., p. 41.

landlocked countries are in arid regions.[238] There are 32 landlocked countries in the world, of which 16 are in Africa.[239]

Landlocked countries need to cross borders more than countries with seacoasts, resulting in higher procedural costs. Landlocked countries are subject to long-distance and poorly maintained transport infrastructure, suffering from disasters caused by climate change and depending on the political stability of maritime countries. Broadly, the cost and time required for transport for landlocked countries are about twice that of maritime countries.[240]

Considering the number of landlocked countries in Africa, one trade facilitation initiative is the electronic cargo tracking system (ECTS), which was originally introduced by EAC Partner States with support from Trademark East Africa (TMEA),[241] and more recently has been introduced in other African countries. The Democratic Republic of Congo introduced such a system in 2019, and in 2021 Mozambique also introduced an ECTS.

In an ECTS, an officer at the port attaches a device with a GPS tracking function to a truck with loaded inspected cargo destined for a landlocked country and seals it, and then the cargo can be shipped to the final destination without being opened at borders along the way. Such systems prevent theft of the cargo during the transport operation, and are also useful in preventing smuggling and reducing the time required for stops at border crossings along the way. Nevertheless, there are operational issues. For example, although the introduction of these systems has reduced the theft of cargo, it has not contributed much to reducing border crossing times, such as the time required to check documents even for trucks equipped with the ECTS.[242]

At present, due to the COVID-19 pandemic, time is required to check the negative test certificates of truck drivers and administer polymerase chain reaction (PCR) tests at the border, which has become a problem from the viewpoint of trade facilitation. In response to this situation, the EAC decided in August 2020 to introduce the Regional Electronic Cargo and Driver Tracking System (RECDTS), which traces not only truck location but also driver health, so that drivers who have been tested for COVID-19 at the departure point are not tested multiple times en route.[243]

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[238] UNOPS, *The Importance of Infrastructure for Landlocked Developing Countries*, 2019, p. 5.
[239] There are 16 landlocked countries in Africa: Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, South Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.
[240] UNOPS, supra note 238, p. 6.
[241] TMEA is an organization founded in 2010 with the support from Belgium, Canada, Denmark, the European Union, Finland, France, Ireland, the Netherlands, Norway, the United Kingdom, and the United States, working with the EAC to reduce trade barriers and pursue other economic development measures in the region.
[242] Flix Kilonzi and Cyrus Kamau Kanai, "Electronic Cargo Tracking System and Its Effects on Revenue Realization in East Africa Member Countries", *International Journal of Scientific and Research Publications*, 2020, Volume 10, Issue 1, p. 636.
[243] See https://www.eac.int/press-releases/147-health/1845-eac-to-launch-regional-electronic-cargo-and-driver-tracking-system.

While such tracking systems have mainly been implemented in East Africa so far, OSBPs have been been introduced at dozens of borders in Africa, many with the support of JICA. The first road-based OSBP in Africa was opened in 2009 at Chirundu, between Zambia and Zimbabwe. There are currently about 10 OSBPs in operation within the EAC region alone. In June 2021, a new OSBP started operation on the border between Kenya and Ethiopia, between two RECs, at Moyale. PIDA and the 2nd edition of the OSBP Sourcebook found that there are more than 70 OSBP locations across Africa, including those in the planning stage,[244] and more recent estimates (by JICA/AUDA-NEPAD in April 2020) indicate that there are more than 100. The widespread adoption of the OSBP concept is driven by reductions in transport times.

In this regard, according to TMEA, OSBPs have generally reduced border crossing times by 30% or more, e.g., 79-80% at the Busia OSBP between Kenya and Uganda, 82% at the Taveta OSBP between Kenya and Tanzania, and 25% at the Kagitumba/Mirama Hills OSBP between Rwanda and Uganda 25%[245] However, plans to open OSBPs have not always proceeded smoothly, e.g., at the Gatuna/Katuna OSBP on the border between Rwanda and Uganda, which has been closed due to political conflict.[246]

In addition, there have been issues with OSBP operations. For example, the customs system adopted by Uganda and Rwanda is ASYCUDA World, but until recently Kenya used its SIMBA system, which was not web-based, while Tanzania used its TANCIS system. Therefore, necessary information could not be shared with the adjoining country, leaving paper-based work including the manual input of information printed out from other systems to other systems, resulting in inefficiency in the work.[247]

In this regard, Kenya migrated from SIMBA to the web-based Integrated Customs Management System in 2021,[248] although the introduction was delayed, and it is unclear whether this will change office work at OSBPs.

The time for crossing borders can be substantially shortened by sharing electronic data between authorities and harmonizing procedures in OSBPs.[249] Trade facilitation cannot be achieved by a single

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[244] See https://www.au-pida.org/one-stop-boarder-posts-osbp/.

[245] TMEA, *Accelerating Trade in Africa*, 2019, p. 6. Japan International Cooperation Agency and PADECO Co., Ltd., *Component for OSBP Operationalization of the Project on Capacity Development for International Trade Facilitation in the Eastern African Region, Work Completion Report for Phase 2*, December 2017, Table 2.9, p. 37. In addition, JICA found a 55-73% reduction in time required for cargo crossing at the Rusumo OSBP between Rwanda and Tanzania. Japan International Cooperation Agency and PADECO Co., Ltd., *Component for OSBP Operationalization of the Project on Capacity Development for International Trade Facilitation in the Eastern African Region, Work Completion Report for Phase 2*, December 2017, Table 2.9.

[246] Rwanda claimed that Uganda was unfairly detaining Rwandan nationals, and it closed the border in 2019. Since then, several high-level talks have been held between the two countries, but the issue remains unresolved.

[247] Paul Nugent and Isabella Soi, *One-Stop Border Posts in East Africa: State Encounters of the Forth Kind*, *Journal of Eastern African Studies*, 2020, Vol. 14 No. 3, pp. 442-43.

[248] See https://research.hktdc.com/en/article/NzAyNTQxMzQz.

[249] Adam Willie, *Border Posts Infrastructure Concessioning Regime and Trade Efficiency under the AfCFTA*, 2021, pp. 3-4.

country and a legally binding framework for State Parties to cooperate is required.[250] It is hoped that the AfCFTA will lead to cooperation between and among State Parties and facilitate trade.

2.4.7 Trends in AfCFTA Member States

Japanese companies doing business in Africa often express the view that information about administrative management in African countries is not sufficiently disclosed. Citizens of these countries appear to be keenly interested in governmental economic policies; however, administrative management in African countries is not always sufficiently transparent, and in many cases, incomplete information is all that is available from the media. Although this also applies for information about the AfCFTA, it is possible to capture snapshots of information from individual countries. The following discussion presents an overview of how African countries are approaching AfCFTA negotiations, based on information obtained from the media and other sources.

African countries can be broadly divided into three categories in terms of their stance(s) on the AfCFTA: (i) countries that have not signed the agreement, (ii) countries that have signed the agreement but have not ratified it, and (iii) countries that have signed and ratified the agreement. At present, 54 of the 55 AU Member States and regions have signed the agreement. Eritrea is the only AU Member State that has not signed the agreement, possibly due to longstanding tension with neighboring Ethiopia; in any case, Eritrea does not appear to be planning to sign the agreement in the foreseeable future.[251]

On the other hand, there are some common elements in the stances toward the AfCFTA by the countries that have signed and ratified the agreement. Each country that has signed and ratified the agreement has specific expectations for economic benefits from increased intraregional trade and market growth from the elimination of tariffs. Expectations for economic benefits under the AfCFTA rest on the ratification status of some of the larger economies of Africa known as the “Big Five” (i.e., Algeria, Egypt, Morocco, Nigeria, and South Africa). As of October 2021, of these only Morocco had not yet ratified the agreement, although its ratification was awaiting the final approval of its King; there are expectations for increased foreign investment under the AfCFTA in what is already the second-largest target of intraregional investment in Africa.[252] Generally, the countries with the largest economies in Africa have fully supported the AfCFTA, and there is reason to be hopeful that economic benefits can be achieved for the entire continent with its implementation.

In this way, all the countries with relatively large economies on the African continent are likely to come together, and substantial economic effects of the AfCFTA on the entire African economy can be

[250] Lethabo Sithole, *The Role of Trade Facilitation in Addressing Non-Tariff Barriers in the African Continental Free Trade Area*, 2021, p.8.
[251] https://www.africanews.com/2020/07/29/eritrea-defends-decision-to-sit-out-africa-free-trade-pact-for-now/.
[252] https://www.mapnews.ma/en/actualites/politics/ratification-afcfta-will-give-expression-hm-kings-vision-africa-minister-says.

expected. However, since it is considered that investment resulting from trade liberalization will generally be concentrated in relatively large economies, many small countries are divided regarding the impact of the AfCFTA on their individual economies. For example, although São Tomé and Principe is an island nation physically distant from the continental market, and it has a small population and limited natural resources, and is susceptible to climate change, it has positively viewed the economic effects of the AfCFTA. It ratified the Agreement Establishing the AfCFTA in June 2019 in the hope of entering a new market.

Burundi is a resource-poor, densely-populated, landlocked country, and it has considered that the AfCFTA would offer possibilities to stimulate its economy. One reason it has had a positive stance toward the AfCFTA has been its recently having received support from UNCTAD and benefiting from a capacity enhancement program to facilitate trade; it ratified the Agreement Establishing the AfCFTA in August 2021.

Malawi had adopted a cautious stance toward ratification of the Agreement Establishing the AfCFTA due to serious concerns over the extent to which the elimination of tariffs may damage its national finances, which depend substantially on tariff revenues, but it ratified the Agreement in January 2021.

Like the case of Malawi, Seychelles had also adopted a cautious stance toward ratification of the Agreement Establishing the AfCFTA due to concerns about negative impacts on its fishing industry, the country's leading industry. Specifically, it has had concerns regarding the enforcement of rules of origin (e.g., how to prove whether fish were caught in the waters around the country), but it ratified the Agreement in June 2021.

On the other hand, as of the end of September 2021, there were 13 countries that had signed the Agreement Establishing the AfCFTA but had not yet ratified it. Some countries have approached the final stage of ratification as has Morocco, but other countries remain cautious toward ratification. There is little or no information on the progress of ratification procedures in Libya, Sudan, Madagascar, Benin, and Guinea-Bissau. Although the EAC has urged South Sudan to ratify the Agreement,[253] and SADC has urged Botswana, the Comoros, and the Democratic Republic of Congo to ratify the Agreement,[254] none of these countries have done so and there is little or no information on progress.

In this regard, Mozambique, which signed the Agreement Establishing the AfCFTA but has not yet ratified it, has continued to adopt a cautious stance toward ratification because it considers that it is unlikely that consumption will increase beyond the decrease in tariff revenues.[255] In addition, Liberia

[253] See https://www.theeastafrican.co.ke/tea/business/eac-seeks-support-to-reap-more-afcfta-benefits-3263186.
[254] See https://www.sadc.int/news-events/news/sadc-urges-member-states-sign-and-ratify-afcfta-and-tfta/.
[255] See https://clubofmozambique.com/news/mozambique-is-not-in-a-position-to-ratify-afcfta-agreement-economist-181973/?utm_source=The+Mozambican+Investor_&utm_campaign=f2da7d83b8-EMAIL_CAMPAIGN_2017_05_25_COPY_01&utm_medium=email&utm_term=0_d3b369a42d-f2da7d83b8-.

has continued to adopt a cautious stance toward ratification because it has concerns whether its domestic industries can withstand the impact of trade liberalization.[256]

In contrast, Cape Verde, which is island country with a small domestic market, expects the AfCFTA to lead to an expansion of sales channels for domestic products and the diversification of its industrial structure, which relies on tourism,[257] but there is no information that its has moved toward its ratification.

As mentioned, African countries have a mix of broad expectations and major concerns about the AfCFTA and it seems that it will take some time before all the countries that have signed the agreement eventually ratify it.

Appendix 1 provides details on the circumstances of each country.

[256]https://m.facebook.com/mociliberia/photos/a.689611507788563/3710020749080942/?type=3&source=57&paipv=0
[257] See https://trde4devnews.enhancedif.org/en/op-ed/cabo-verde-tourism-and-trade-crossroads.

3. Overview of Regional Organizations Related to this Survey

3.1 The African Union Commission (AUC)

The African Union (AU) is one of the largest regional organizations in the world, with 55 Member States or regions. Its secretariat is the African Union Commission (AUC), which fulfills many functions, e.g., it represents the AU externally, proposes policies and amendments of regulations, and implements decisions of AU Summits. The AUC consists of a Chairperson, a Deputy Chairperson, eight commissioners, and staff. As of May 2020, it had 1,720 staff members. Staff are divided into two categories, professional staff (ranks P1 to D1) and general staff (GSS).[258] The Chairperson and Deputy Chairperson are elected by the AU Summit, and eight commissioners are elected by the Executive Council and appointed by the AU Summit (the terms of commission members are for four years, renewable once). Figure 23 presents the organization chart of the AU.

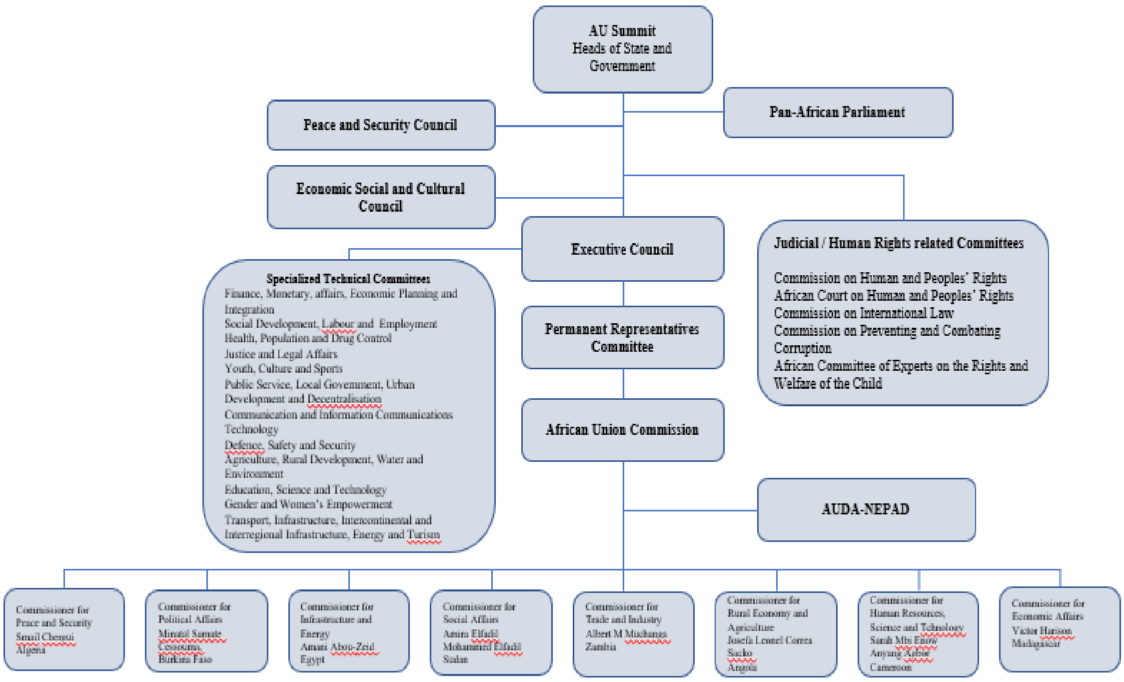

Figure 23: Organization Chart of the African Union

Source: African Union

The AfCFTA Negotiation Unit, which was established in the AUC Department of Trade and Industry (DTI), has supported AfCFTA negotiations to date based on Article 13, Paragraph 2, of the Agreement Establishing the AfCFTA [General Rules], which provides that the AUC will serve as the interim secretariat. Currently, the AfCFTA Negotiation Unit is integrated into the AfCFTA Secretariat.

[258] See https://blogs.lse.ac.uk/africaatlse/2021/07/05/what-does-african-union-recruitment-staffing-mean-good-international-governance-public-administration/.

3.2 The African Union Development Agency / New Partnership for Africa's Development (AUDA-NEPAD)

In 2001, the Summit of the OAU, the predecessor of the AU, proclaimed the Millennium Partnership for the African Recovery Programme, according to which African leaders would work together to eradicate poverty and continue growth and development, and the so-called OMEGA Plan for Africa, which was to encourage the African economy to expand and integrate into global markets; a New African Initiative was thereby adopted. In 2010, the New African Initiative was revised and integrated into the AU framework as the New Partnership for Africa's Development (NEPAD), and a NEPAD Planning and Coordinating Agency was established; in July 2019, it was reorganized as the AU Development Agency-NEPAD (AUDA-NEPAD).

AUDA-NEPAD is operated by a Steering Committee under the Heads of State and a Government Orientation Committee, which is composed of two representatives from each of the five NEPAD-initiating countries (Algeria, Egypt, Nigeria, Senegal, and South Africa) and one from each of the elected rotating representatives from 15 of the AU Member States, and a representative of the AUC. Each Member State has only one vote regardless of the number of Committee members it has. Figure 24 shows AUDA-NEPAD committees.

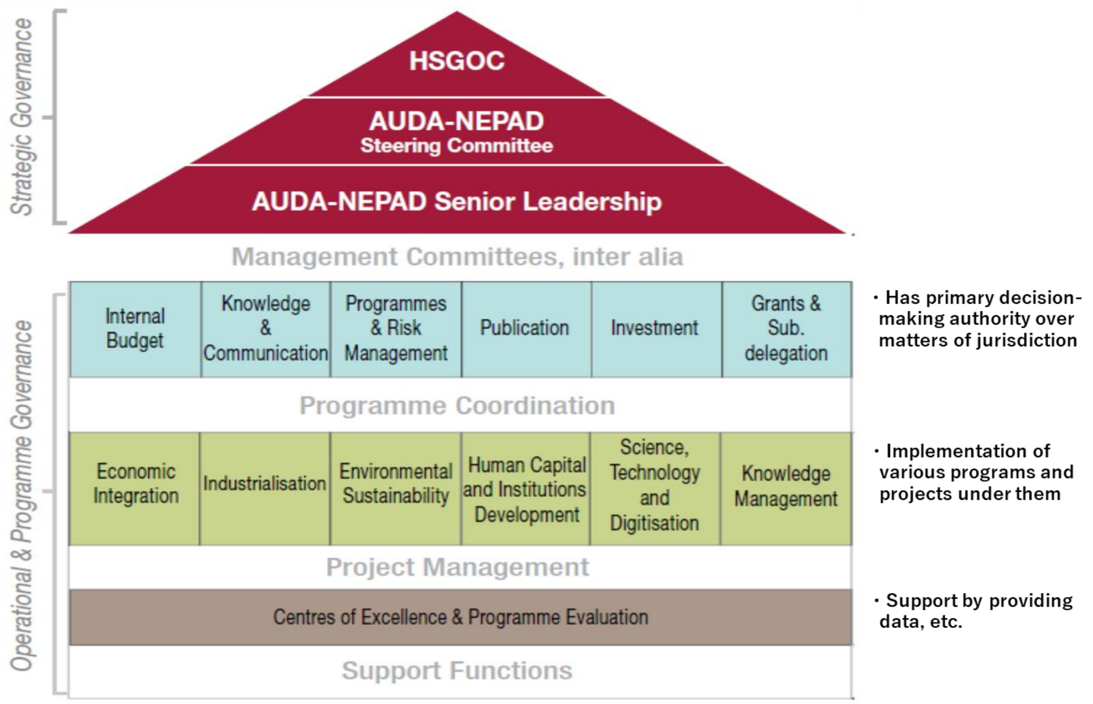

Figure 24: AUDA-NEPAD Committees

Abbreviations: AUDA-NEPAD = African Union Development Agency / New Partnership for Africa's Development, HSGOC = Heads of State and Government Orientation Committee
Source: Created by the Survey Team based on interviews with AUDA-NEPAD, 2 and 5 October 2020

Representatives from the African Peer Review Mechanism (APRM),[259] the eight AU-recognized RECs, the AfDB, the United Nations Development Programme (UNDP), the United Nations Office of the Special Advisor on Africa (OSAA),[260] and the United Nations Economic Commission for Africa (UNECA) participate in the AU-NEPAD Steering Committee as observers.

Under the Steering Committee, there is an organizational hierarchy called Senior Leadership to support the Steering Committee; in the implementation of the AUDA-NEPAD program, six departments are placed under six committees divided by field, and the departments that support and evaluate the implementation of programs and projects are placed under the Management Committees.

To realize Agenda 2063, AUDA-NEPAD has implemented programs in various fields, including human capital development, technological innovation, regional integration, infrastructure development, natural resource management, and food security.

3.3 The United Nations Economic Commission for Africa (UNECA)

UNECA is one of the five regional commissions that were established under the United Nations Economic and Social Council (ECOSOC)[261] in 1958. It includes all 54 UN Member States on the African continent. Figure 25 presents its organization.

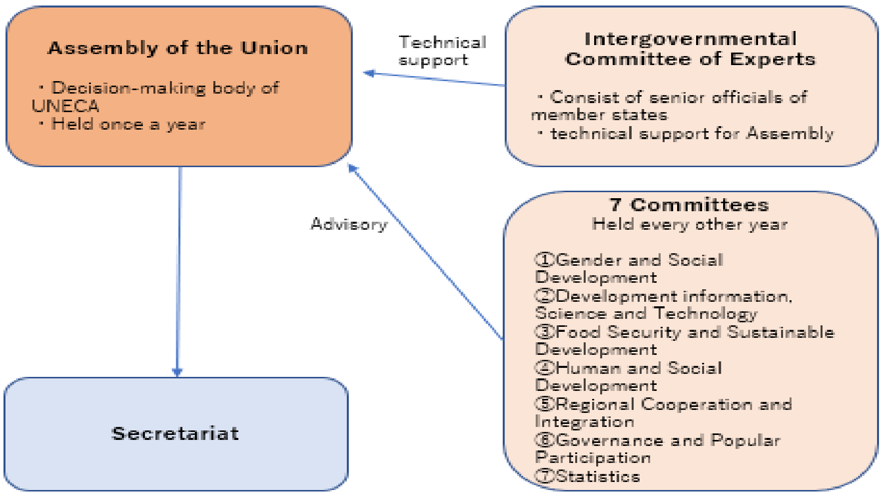

Figure 25: Organization of the United Nations Economic Commission for Africa

Source: United Nations Economic Commission for Africa

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[259] The APRM is a mechanism for self-monitoring established by the AU Summit of 2002. One of its objectives is to share experiences among AU Member States in various fields (e.g., political stability, economic growth, sustainable development, and regional economic integration) through country reviews. The AU and NEPAD, as well as concerned governments and the private sector, participate in the monitoring procedure.

[260] OSAA was established in 2003 to analyze and offer policy recommendations on African development and security, promote intergovernmental negotiations on the NEPAD, and carry out related tasks. Since 2012 it also has had the function of monitoring efforts for African development.

[261] The ECOSOC was established as one of the six major organizations in the Charter of the United Nations, developing UN projects on economics, society, and human rights. Its main task is to coordinate specialized agencies including IMF. The Council consists of 54 countries, which are allocated based on geographical distribution: 14 in Africa, 11 in Asia, 6 in Eastern Europe, 10 in Latin America and the Caribbean, and 13 in Western Europe and others. The term of office for each country is three years.

To carry forward the 2030 Agenda for Sustainable Development[262] and Agenda 2063, UNECA fulfills a convening function, a thinktank function, and an operational function. The convening function is to provide a platform for dialogue among stakeholders to reach consensuses, the thinktank function is to conduct research and analysis, and the operational function is to make policy recommendations to Member States.

Figure 26 presents the organization chart of the Secretariat of UNECA. Under the Secretary General (one person), there are research divisions such as the division for macroeconomic policy and the division for regional integration and trade. Under the Deputy Secretary General (two persons), there are regional offices and accumulated knowledge in UNECA is provided to various parties through several projects.

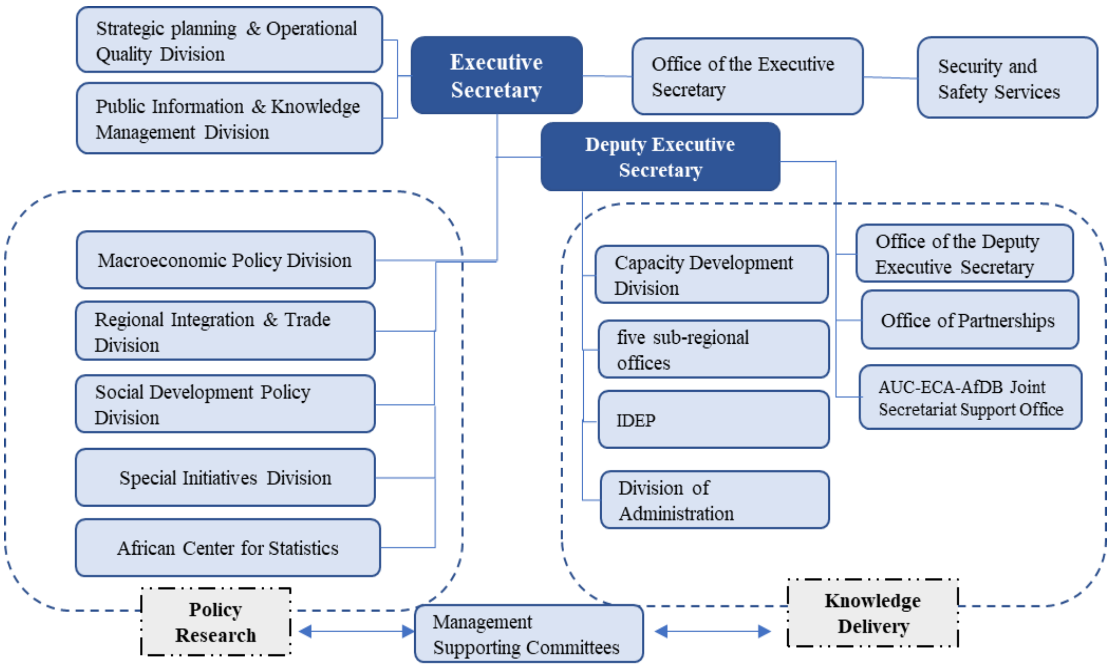

Figure 26: Organization Chart of the Secretariat of the United Nations Economic Commission for Africa

Source: United Nations Economic Commission for Africa, *Consultations on ECA's New Organizational Structure with Senior Management Team*, 2012

[262] The 2030 Agenda for Sustainable Deevelopment presents a set of Sustainable Development Goads (SDGs) from 2016 to 2030, which were established by United Nations General Assembly in 2015 as a successor to the Millennium Development Goals adopted in 2001.

3.4 AU-Recognized Regional Economic Communities

3.4.1 EAC

The EAC has six Partner States: Burundi, Kenya, Rwanda, Tanzania, Uganda, and South Sudan. As of 2019, the EAC had a population of about 177 million, a GDP of about US$193 billion,[263] and total intraregional trade of about US$4.03 billion.[264]

The origins of the EAC can be traced back to the Customs Union between Kenya and Uganda in 1917 and the Treaty for East African Cooperation, which was signed by Kenya, Tanzania, and Uganda in 1967. Regional integration under the Treaty for East African Cooperation was halted in 1977 due to a conflict between Partner States, but the alliance was formed again in 1999. The Treaty for Establishment of the East African Community was signed in 1999 and entered into force in 2000. Subsequently, Burundi and Rwanda joined the EAC in 2007, and South Sudan (which gained independence in 2011) joined in 2016.

The Summit is the highest decision-making body in the EAC, with the Council of Ministers under it. The Council of Ministers meets twice a year and has substantial power to decide practical matters. Under the Council of Ministers, there is a Coordinating Committee that coordinates cooperation among Partner States and Sectoral Committees. The Secretariat headquarters is in Arusha, Tanzania, and includes a Secretary General, four Deputy Secretaries General, the Council of Ministers, and staff.

An East African Legislative Assembly enacts various rules for operational procedures, and is divided into seven subcommittees. It has 61 seats other than chairman, with 54 elected by Partner States and 7 selected ex officio (i.e., by virtue of position or status).

The EAC has established an East African Court of Justice (EACJ) as a dispute resolution body. The Summit appoints judges, with a total of 11 judges at present. The EACJ's jurisdiction is wide – in addition to interpretation of the EAC Treaty, human rights issues and trade disputes within the region are within its jurisdiction.

The EAC is the most integrated REC among the eight RECs formally recognized by the AU, with the following achievements:

(i) In 2005, the EAC established a customs union, introduced common external tariffs, agreed on rules of origin, eliminated internal tariffs, and proceeded with the elimination of non-tariff barriers.

(ii) In 2010, the EAC established a common market; the protocol for the establishment of the East African Monetary Union was signed in 2013 and ratified in 2015.

[263] https://www.eac.int/eac-quick-facts.

[264] East African Community, *East African Community Facts and Figures 2019*, 2019, p. 48.

(iii) In 2014, it formed a single customs territory (SCT), and it has promoted information sharing between and among customs authorities of the Partner States.
(iv) In recent years, the EAC has been made efforts to promote industries such as the automobile industry, tourism, and the textile industry, and endeavored to improve agricultural production.
(v) The EAC is now preparing to implement a monetary union within 10 years.

In 2015, 22 countries signed the COMESA-EAC-SADC Tripartite Free Trade Agreement, with current participation by 53% of AU Member States accounting for 60% of the AU's GDP. Establishment of this large free trade area is ongoing. The agreement is to enter into force with ratification by 14 countries – as of October 2021, it had been ratified by 10 countries: Botswana, Burundi, Egypt, Eswatini (formerly Swaziland), Kenya, Namibia, Rwanda, South Africa, Uganda, and Zambia. At the Extra-Ordinary Meeting of the Tripartite Council of Ministers held in February 2021, the deadline for ratification was set as June 2021, but the agreement has not yet come into effect.[265]

3.4.2 ECOWAS

ECOWAS was established by the Treaty of Lagos, which was signed in 1975. ECOWAS has 15 Member States: Benin, Burkina Faso, Cabo (Cape) Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. The initial focus of ECOWAS was on economic matters (e.g., the creation of a common market), but later its mission expanded to peacekeeping and security.

Under the Authority of the Heads of States and Government, which is the highest decision-making body in ECOWAS, the ECOWAS Commission was established, in Abuja, Nigeria. The Commission consists of a President, Vice President, and 13 Commissioners.

In addition, ECOWAS has a Community Parliament, consisting of elected members from each Member State. The Community Parliament formulates action plans for ECOWAS, discusses common issues (e.g., fundamental human rights, public health, and education in the region), and makes recommendations to relevant organizations. The Community Parliament has 115 seats, with the seats allocated based on the population of each Member State, but with each Member State guaranteed a minimum of five seats.[266]

Also, ECOWAS has a Community Court of Justice, composed of five judges. It rules on disputes between Member States over the interpretation of Treaties, Protocols, and other legal instruments.

[265] See https://www.comesa.int/new-deadline-set-for-ratification-of-tripartite-free-trade-area/.
[266] Nigeria has 35 seats; Ghana has 8 seats; Côte d'lvoire has 7 seats; Burkina Faso, Guinea, Mali, Niger, and Senegal have 6 seats; and the other Member States have 5 seats each.

As of 2018, the population of the ECOWAS region was about 355 million, its GDP was US$623 billion, and its rate of intraregional trade was 13.8 %.[267] However, it is considered that statistics on trade within the region are not accurate because it is impossible to count the widespread, informal, cross-border transactions.[268]

In the market within the ECOWAS region, Nigeria's economy is overwhelmingly large compared to other non-UEMOA (Union Economique et Monétaire Quest Africaine) ECOWAS Member States, and Nigeria has not always actively worked toward market integration, so the ECOWAS market is often regarded as UEMOA + Nigeria.[269]

ECOWAS has initiatives to promote the freedom of movement for ECOWAS Member State nationals between Member States and to promote intraregional trade. Free entry into any of the Member States without a visa and the granting of residence rights for ECOWAS Member State Nationals has already been implemented.

In the field of trade facilitation, ECOWAS has proceeded with the introduction of an electronic accreditation application system; also, it commenced implementation of common external tariffs in 2015. In addition, the ECOWAS Customs Code was adopted by the Heads of States in 2017, which has led to various activities such as capacity building programs among customs authorities.

Furthermore, ECOWAS has planned to introduce a single currency since 1983. However, due to political and economic issues in the Member States, none has been able to meet the convergence criteria,[270] which were established as necessary conditions for establishment of the single currency. Therefore, the target year for currency integration has been postponed many times. However, eventually it was decided to introduce the Eco as a single currency by 2020; the ECOWAS Summit held in Abuja, Nigeria, in June 2019, reconfirmed introduction of the Eco in 2020 for Member States that meet the convergence criteria. However, since no Member States meet the convergence criteria at present, the outlook for the single currency remains uncertain.

Among the ECOWAS Member States, Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, and Togo, former colonies of France, and Guinea-Bissau, a former colony of Portugal, established the

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267 AUC, *2019 African Regional Integration Report, Towards an Integrated prosperous and Peaceful Africa*, 2019, P 28.

268 UNCTAD, supra note 125, P 20.

269 See Nomura Research Institute, Ltd., *FY 2016 International Economic Research Project on Building Economic Growth Strategies (Africa Regional Economic Partnership, Third Country Enterprises), Final Report*, 2017.

270 The convergence criteria are: (i) the ratio of budget deficit (including grants) to GDP is less than or equal to 3% of GDP, (ii) the average annual inflation rate is less than 10% (in the short term and 5% from December 2019), (iii) central bank financing of budget deficits is less than or equal to 10% of the previous year’s tax revenue, (iv) gross external reserves are greater than or equal to three months of imports cover, (v) nominal exchange rate variation is +/-10%, and (vi) the public debt to GDP ratio is less than or equal to 70%.

UEMOA (the West African Economic and Monetary Union, in English)[271] uses the [West African] CFA franc as a single currency. Therefore, it is not easy to simply convert the CFA franc into the single-currency Eco, which has been a major issue regarding monetary integration in ECOWAS.[272] UEMOA has already introduced common external tariffs, but the frameworks of ECOWAS and UEMOA overlap, which has caused confusion. In this regard, in December 2019, an agreement between France and UEMOA Member States was reached to abolish the requirement that the countries that use the CFA franc are required to keep 50% of their foreign currency reserves in the French treasury.

3.4.3 COMESA

In 1978, Ministers from Eastern and Southern African countries held a conference in Lusaka, Zambia, to promote regional economic integration, and adopted the Lusaka Declaration of Intent and Commitment to the Establishment of a Preferential Trade Area for Eastern and Southern Africa (PTA), which was signed at a 1981 Summit and entered into force in 1982.

The PTA members later agreed to establish a common market in Eastern and Southern Africa in accordance with the Lagos Action Plan proclaimed by the OAU Summit of 1980 and reorganize or transform the PTA into COMESA. The Treaty Establishing COMESA was signed in 1993 and ratified in 1994.

COMESA has 21 Member States: Burundi, Comoros, Djibouti, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Eswatini (formerly Swaziland), Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Somalia, Tunisia, Uganda, Zambia, and Zimbabwe. As of 2020, COMESA had a population of about 560 million and a GDP of about US$768 billion.[273] Overall exports were US$113.5 billion and imports totaled US$196.1 billion, while intraregional trade was US$10.3 billion and imports totaled US$10.2 billion (indicating that the proportion of intraregional trade is low). [274]

The headquarters of COMESA is in Lusaka, Zambia. The highest decision-making body of COMESA is the COMESA Authority, and a Council of Ministers, Committee for the Heads of Central Banks, Intergovernmental Committees, and Technical Committees are under it. In addition, a COMESA Court of Justice has been established to settle disputes between Member States.

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[271] UEMOA is a regional economic community formed in 1994 by West African countries that use the CFA franc as their currency. UEMOA's headquarters is in Ouagadougou, Burkina Faso. The Agreement on Establishment of UEMOA states that it will strengthen the economic competitiveness of Member States and create a common market; it has already achieved currency integration and common external tariffs.

[272] See Toyumu Masaki, *From the CFA Franc to the ECO? – An Interpretation on the Announcement of the New Common Currency for ECOWAS*, Institute of Developing Economies, Africa Report No. 57, 2019, pp. 87-92.

[273] See https://www.comesa.int/quick-facts-about-comesa-2/.

[274] Manaseh O. Oiro, A Paper Prepared for the 7th COMESA Annual Research Forum, p. 4.

COMESA has established multiple relevant authorities to support revitalization of the regional economy and investment by the private sector, such as the COMESA Competition Commission (CCC)[275] and the COMESA Regional Investment Agency (COMESA RIA).[276]

The COMESA Authority in 2018 approved the revised Investment Agreement for the COMESA Common Investment Area[277] to improve the investment environment in the region, and it has actively sought to attract foreign investment. In addition, for Member States in the region, an action plan based on the COMESA Industrial Strategy[278] adopted in 2017 was approved by the Council of Ministers in 2019 to promote intraregional trade. Also, the Council of Ministers approved the COMESA Industrial Strategy in 2017 to promote intraregional trade.

Free trade zones have been established in 17 of the 21 COMESA Member States since 2000,[279] and intraregional trade has increased at an annual average rate of 7% since 2000,[280] but intraregional trade is still a low proportion of total trade, which is considered one of the factors that hinders the participation of COMESA Member States in the free trade zone.[281]

In addition, in 2009, a COMESA Customs Union was formed and has introduced common external tariffs. Since 2010, COMESA has simplified customs procedures for low-value intraregional transactions of less than US$2,000 equivalent and has proceeded with digitization of customs procedures and sharing of electronic information between customs authorities, as well as introduction of single windows and OSBPs.[282]

3.4.4 SADC

SADC has 15 Member States: Angola, Botswana, Democratic Republic of Congo, Eswatini (formerly Swaziland), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe. SADC had a population of about 345 million and a GDP of

[275] In 2004, the COMESA Competition Regulations were enacted, and the CCC has been operating since 2013 as a competition authority that monitors competition in COMESA.

[276] Established in 2006, the COMESA RIA promotes foreign direct investment through activities such as providing overseas investors with information necessary for investment in the COMESA region.

[277] The agreement adopted at the COMESA Authority in Nairobi, Kenya in 2007. It sets out activities that Member States should undertake to enhance the competitiveness of the regional economy by creating a free and transparent investment environment. Peter Muchlinski, *The COMESA Common Investment Area: Substantive Standards and Procedural Problems in Dispute Settlement*, SOAS School of Law Legal Research Paper Series Research Paper No. 11/2010, https://eprints.soas.ac.uk/22042/1/Muchlinski_22042.pdf.

[278] This startegy sets a strategic goal until 2026. By diversifying products, adding value, and increasing the ratio of intraregional trade from the current 7% to 20%, the goal is to change the industrial structure, create employment, and strengthen competitiveness.

[279] Ethiopia, Eritrea, Eswatini, and Somalia are not included.

[280] AUC, supra note 267, p. 68.

[281] https://www.comesa.int/opportunities-abound-to-turn-around-the-low-intraregional-trade/.

[282] AUC, supra note 267, pp. 68-71.

about US$721 billion as of 2018,[283] and intraregional trade of the 13 countries that formed the free trade zone was about US$29.8 billion in 2019.[284]

The Southern African Development Coordination Conference (SADCC), the predecessor of SADC, was formed in 1980. Initially, countries in the Southern African region cooperated with each other to extricate themselves from excessive economic reliance on South Africa under the apartheid regime.

In 1989, at the SADCC Summit in Harare, Zimbabwe, it was decided that SADCC would no longer be an informal body but become a formal, legally binding REC. In 1992 in Windhoek, Namibia, the Heads of Government of the region agreed to transform SADCC into SADC, and the SADC Agreement was signed. This agreement was amended in 2001 to promote a Regional Indicative Strategic Development Plan (RISDP),[285] which served as a comprehensive guide for the SADC Integration Agenda from 2005 to 2020.

SADC's highest decision-making body is the Summit, with a Council of Ministers, Sectoral and Cluster Ministerial Committees, and a Standing Committee of Senior Officials below it. The SADC Secretariat, which is the REC's body for policy implementation, is headquartered in Gaborone, Botswana. There is also a SADC Tribunal, which rules on disputes between Member States over interpretation of the Treaty.

SADC established a free trade area in 2008, and as of 2012 the SADC Member States participating in the free trade area had eliminated about 98% of intraregional tariffs.[286] However, intraregional trade in SADC remains relatively low at 23%.[287] Of the SADC Member States, Angola and the Democratic Republic of Congo have not yet participated in the SADC free trade zone, but final adjustments are underway for Angola to join.

SADC has not yet introduced common external tariffs, but five of the SADC Member States are members of the Southern African Customs Union (SACU),[288] which has already introduced common external tariffs. The SADC development plan prepared in 2005 aimed to introduce a customs union by 2010, but it has not yet been introduced.

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283 See https://www.sadc.int/about-sadc/overview/sadc-facts-figures/.

284 See https://www.tralac.org/blog/article/15016-intra-sadc-fta-trade-and-sadc-fta-trade-with-the-rest-of-africa-2019.html.

285 The RISDP was a comprehensive development and implementation framework guiding the Regional Integration Agenda of SADC over a period of 15 years (2005-2020). It was adopted and approved by the SADC Summit in 2003.

286 AUC, supra note 267, p. 108.

287 See https://www.tralac.org/blog/article/15016-intra-sadc-fta-trade-and-sadc-fta-trade-with-the-rest-of-africa-2019.html.

288 SACU is a customs union that was formed in 1910 (making it the oldest existing customs union in the world) and consists of five countries: Botswana, Eswatini (formerly Swaziland), Lesotho, Namibia, and South Africa. From 1910 to 1969, it was an alliance managed by South Africa, but now it operates under a 2002 agreement, with its secretariat headquartered in Windhoek, Namibia.

SADC is also introducing a unified financial system, which will reduce the average remittance cost per transaction between South Africa and the Democratic Republic of Congo, Eswatini (formerly Swaziland), Lesotho, Malawi, and Mozambique from about 20% to 13%.[289]

3.4.5 ECCAS

ECCAS was established in 1983 and has 11 Member States: Angola, Burundi, Cameroon, Chad, Central Africa, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Rwanda, and São Tomé and Príncipe. The Secretariat of ECCAS is in Libreville, Gabon. As of 2020, the population of the ECCAS region was about 189 million,[290] its GDP was about US$236 billion,[291] and intraregional trade in 2017 was only 6.7%, the lowest of all eight RECs formally recognized by AU.[292]

France established the Afrique Équatoriale Française (AEF, French Equatorial Africa) as a federation of French colonies in Equatorial Africa, including what are today the Republic of Congo, Chad, the Central African Republic, and Gabon, from 1910 to 1959, and in which a CFA [Central African] franc was pegged to the French franc and used as a single currency. In the AEF common external tariffs were implemented on imports.[293] The AEF was dissolved in 1958, with four countries becoming independent (in 1960, after a brief period in an interim association) but economic ties were maintained, with establishment of the Union Douanière Equatoriale (UDE), which Cameroon joined in 1962.

The five UDE Member States signed the Brazzaville Treaty in 1964 to create a common market and strengthen economic ties. The Union Douanière et Économique de l'Afrique Centra (UDEAC)[294] was established in 1966, and Equatorial Guinea joined in 1983.

A UDEAC Summit in 1981 agreed to establish ECCAS, which was created in 1983. However, due to a lack of funds and a conflict in the Great Lakes region of Africa and the Republic of Congo, ECCAS's activities were suspended for a long time.

Its activities were eventually restarted, and in 2004 it was agreed to eliminate internal tariffs by 2008 and introduce common external tariffs. However, these aims could not be achieved, and ECCAS is now the REC with the lowest intraregional trade on the African continent. Nevertheless, in 2007, ECCAS adopted a strategic action plan to 2025, including activities to achieve regional peace, establish

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[289] AUC, African *Regional Integration Report, Towards an Integrated Prosperous and Peaceful Africa, Voices of RECs*, 2019, p. 115.

[290] See https://comstat.comesa.int/wiqcbkg/afdb-socio-economic-database-1960-2019?tsId=1682870.

[291] See https://countryeconomy.com/countries/groups/economic-community-central-african-states.

[292] AfDB, *Central Africa Regional Integration Strategy Paper 2019-2025*, 2019, p. 25.

[293] See (i) Minoru Obayashi, Central African Customs and Economic Union, JETRO Africa Report No. 5, September 1987; and (ii) Akio Okada, *Establishment of the Union Douanière des États Afriques Centrals (CEMAC)*, Ministry of Foreign Affairs, Monthly Report No. 2, 2002.

[294] UDEAC was reorganized into the Central African Economic and Monetary Community (CEMAC) in 1999. ZEMAC is still in the preparatory stage, and it has not yet been decided when it will start activities.

a common market, and promote economic development and the free movement of people, goods, and services, step by step.

3.4.6 IGAD

IGAD is a REC formed by the countries in the Horn of Africa,[295] the Nile River Valley region in northern Africa,[296] and the Great Lakes region.[297] Its predecessor, the Intergovernmental Authority on Drought and Development (IGADD), was established in 1986 to combat famine and desertification due to natural disasters such as drought. IGADD was initially composed of six countries: Djibouti, Ethiopia, Kenya, Somalia, Sudan, and Uganda; Eritrea joined in 1993. In 1996, IGADD was reorganized into IGAD, and its aims were expanded from not only food security and environmental protection to also include peacekeeping and economic development. South Sudan acceded to IGAD in 2011.

As of 2020, the population of the IGAD region was about 279.3 million and its GDP was about US$278.3 billion,[298] with intraregional trade accounting for 28.5% of total trade in 2019, second only to the REC with the highest proportion (the EAC with 37.9%).[299] IGAD has an Assembly of Heads of State and Government as its highest decision-making body, with a Council of Ministers and Secretariat below it. In addition, a Committee of Ambassadors, which consists of ambassadors from each country, advises the Secretary-General. The headquarters of the Secretariat is in Djibouti City, Djibouti.

Economic integration was one of the top priorities in the Minimum Integration Plan[300] that was adopted by the Assembly of Heads of State and Government in 2012. The IGAD region is now seeking to introduce OSBPs with cooperation from the EU, and it is developing infrastructure with support from the Horn of Africa Regional Initiative.[301] In addition, IGAD has launched a business forum with joint public- and private-sector participation, and it is attempting to reflect the voices of the private sector in regional integration policies and initiatives. However, market integration negotiations in IGAD have not progressed as expected.

One of the reasons for the limited progress toward regional integration in IGAD is that most Member States (except for Somalia and South Sudan) are also members of COMESA, which is more integrated.

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[295] The Horn of Africa is a peninsula in Eastern Africa situated along the southern side of the Red Sea and extending hundreds of kilometers into the Gulf of Aden.

[296] The Nile River Valley region is the coastal region of the Nile in northern Africa and includes Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, South Sudan, and Tanzania.

[297] The Great Lakes region is the area around lakes such as Lake Victoria and Lake Tanganyika in the Great Rift Valley of East Africa, and includes Burundi, Democratic Republic of Congo, Kenya, Rwanda, Tanzania, and Uganda.

[298] See https://countryeconomy.com/countries/groups/intergovernmental-authority-development.

[299] AfDB, supra note 292, p. 25.

[300] The plan for market integration was divided into six stages, with a customs union to be established by 2017. However, progress has not been achieved as planned.

[301] This is an initiative to invest more than US$8 billion to develop infrastructure to promote regional economic integration, in cooperation with the United Nations, the World Bank, the AU, the European Union, the African Development Bank, and the Islamic Development Bank.

In addition, the objectives of IGAD and COMESA duplicate each other. Further, Kenya, South Sudan, and Uganda are also members of the highly integrated EAC, in which a common market has already been formed.

3.4.7 CEN-SAD

CEN-SAD was established in 1998 following a conference of Leaders and Heads of States in Tripoli, Libya. The REC originally had six Member States: Burkina Faso, Chad, Libya, Mali, Niger, and Sudan. In 2000, CEN-SAD was recognized as a REC at the AU Summit in Lomé, Togo, and it gained observer status in the UN General Assembly in 2001.

In addition to the six founding Member States, CEN-SAD has a total of 24 Member States, including Benin, the Central African Republic, Cabo Verde, the Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea-Bissau, Mauritania, Morocco, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Somalia, Togo, and Tunisia. As of 2018, CEN-SAD had a population of about 550 million and a GDP of about US$403 billion, and 10.2% of its trade was intraregional within Africa.[302] CEN-SAD has a relatively large population and a moderate GDP, but the progress of integration in the REC is still at an early stage.

The agreement signed in Tripoli to establish CEN-SAD aimed at strengthening economic, social, and cultural ties between and among the founding Member States as well as regional peacekeeping. Various activities have been initiated to date, but the Libyan Civil War, which started in 2011, stopped the activities of CEN-SAD. In 2013, a new agreement was adopted at the CEN-SAD extraordinary session of the Conference of Heads of State and Government held in N'Djamena, Chad, to revitalize the REC.

The Conference of Heads of State and Government is CEN-SAD's highest decision-making body, with an Executive Council, a Permanent Peace and Security Council, a Permanent Council in charge of Sustainable Development, a Committee of Ambassadors and Permanent Representatives under it, and with a Secretariat (located in Tripoli, Libya) serving as the implementing agency.[303]

The 9th Conference of Heads of State and Government of CEN-SAD decided that a free trade zone, a customs union, and a bank would be established in the region to promote integration. However, since 15 of its Member States have duplicated membership in ECOWAS or ECCAS, and consequently have little incentive for integration (like the challenge faced by IGAD), and since the civil war in Syria is continuing, progress towards trade liberalization in the region has been limited.

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[302] AUC, supra note 267, p. 55.

[303] See NEPAD Agency of the African Union Capacity Developing Division, *Strengthening the Institutional Capacity of the Communauté des Sahélo-Sahariens (CEN-SAD)*, 2015, P 9; see also Institute for Security Studies, *Peace and Security Council Report*, Issue 42, 2013, pp. 10-13.

3.4.8 AMU

In 1988, the leaders of Algeria, Libya, Mauritania, Morocco, and Tunisia agreed to establish the AMU at a summit held in Zéralda, Algeria. In the following year, 1989, in Marrakech, Morocco, the Treaty Instituting the Arab Maghreb Union was signed, establishing the AMU as a REC. As of 2018, the AMU had a population of about 102 million, a GDP of about US$375 billion,[304] and as of 2017, its proportion of intraregional trade to total trade was only 7.9%, the second lowest of all RECS after IGAD.[305]

The Treaty Instituting the Arab Maghreb Union provides for strengthening of relations between and among Member States and peacekeeping, as well as the free movement of people, goods, services, and capital, but regional integration in the Maghreb region has not proceeded as planned.

The attempts for regional integration in the Maghreb can be traced back to tripartite cooperation among Algeria, Morocco, and Tunisia during the 1958 Algerian Revolutionary War. In 1964, a regional integration agreement was adopted by four countries (including Libya). However, the political situation in the Maghreb region has not been stable for a long time due to a conflict between Algeria and Morocco, the borders of which have been closed since 1994, and a conflict between Morocco and neighboring countries over the territory of the Western Sahara.[306]

The AMU is headed by the Presidency Council, with an Advisory Council, a Monitoring Committee, a Meeting of the Prime Ministers, a Council of Foreign Ministers, and Ministerial Specialized Commissions below it. A Secretariat serves as an implementing agency and is headquartered in Rabat, Morocco.

In addition, an *Instance Judiciarie* has been established as a court for the settlement of disputes over the interpretation of treaties between Member States; it is in Nouakchott, Mauritania. To promote intraregional trade and investment, the Maghreb Bank for Investment and Foreign Trade has been established as a regional financial institution in Tunis, Tunisia. However, due to repeated conflicts between Member States, it has been difficult for the AMU to hold summit talks since 1994, which makes it difficult to implement regional integration plans.

In 2010, five Member States of the AMU signed a draft agreement to create a free trade zone within the REC, and the Ministerial Council for Maghreb Trade approved it in 2014. At the technical level, draft rules of origin are being developed to facilitate market integration,[307] but there has been no noticeable movement since then.

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[304] AUC, supra note 267, p. 119.

[305] AfDB, supra note 292, p. 25.

[306] See Kunio Fukuda, *Current Stage of Maghreb Economic Integration, Development Strategy and Regional Economic Integration – Focusing on Egypt Mainly*, Institute of Developing Economies, 2005, pp. 65-74.

[307] AUC, supra note 267, p. 120.

In recent years, there has been a movement among the AMU Member States to “escape” from the obstructive situation in the Maghreb region. For example, Libya, Sudan, and Tunisia joined COMESA to strengthen cooperation for market integration. Tunisia also signed an MOU with ECOWAS in 2017 to strengthen cooperation.

In 2017 Morocco applied to join ECOWAS, and in 2018 Algeria (which has complicated relations with Morocco) started negotiations to conclude a preferential trade agreement with ECOWAS. In addition, Mauritania signed an economic and security agreement with ECOWAS in 2017 and commenced negotiations with ECOWAS on a free trade agreement in 2020.

4. Regional Integration in ASEAN and AfCFTA

Many studies on the AfCFTA have been published and some make statistical comparisons between the AfCFTA and the region of the Association of Southeast Asian Nations (ASEAN). However, there have been almost no studies considering the initiatives in ASEAN in relation to the operation of the AfCFTA. On the other hand, when considering the future of the AfCFTA, the EU example is often introduced as a model for regional integration. However, the EU example is not always aplicable to the AfCFTA, because the AfCFTA does not have a supranational organization as does the EU. In this regard, ASEAN also do not have a supranational organization, the degree of economic development among Member States varies, and there are various national systems, ethnicities, and religions. Therefore, the experiences of ASEAN, both its successes and failures, seem to provide many useful references for planning the future of the AfCFTA.

Accordingly, this chapter will provide an overview of the history of regional integration and efforts for regional integration and trade promotion in ASEAN, to provide useful guidance for the operation of the AfCFTA.

4.1 Current Status, History, and Operational System of ASEAN

4.1.1 Current Status of ASEAN

ASEAN is a regional community consisting of 10 countries: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam, and is now a huge market. While the population growth rate of ASEAN is slowing, its population, which was 355.2 million in 1985, increased to 655.9 million in 2019[308] (see Figure 27).

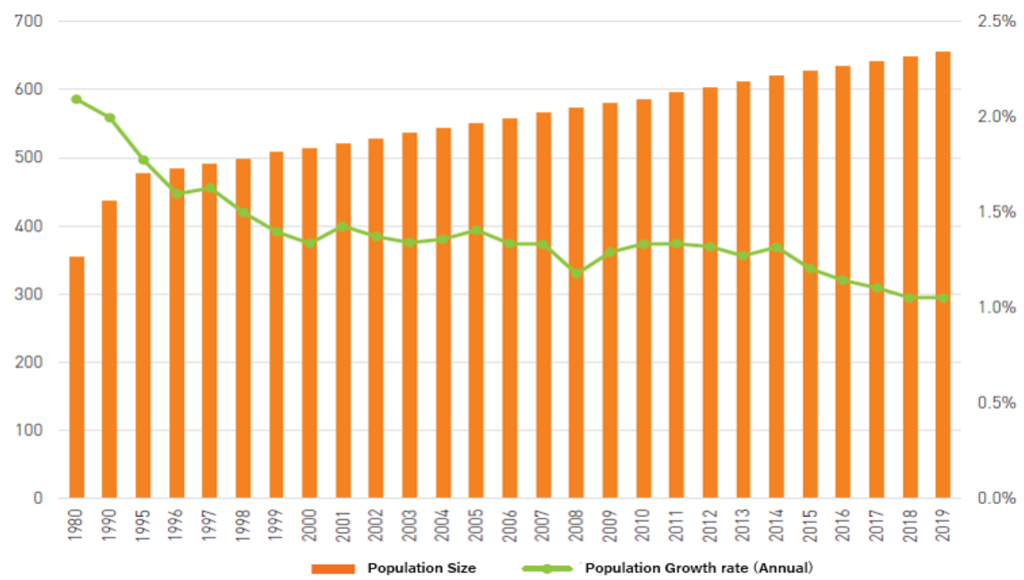

Figure 27: Population Size and Population Growth in ASEAN (millions)

Source: ASEAN Secretariat, *ASEAN Key Figures 2020*, 2020

[308] ASEAN Secretariat, *ASEAN Key Figures 2020*, 2020, p. 3.

In 2019, young people up to the age of 19 in ASEAN accounted for 33% of the region's total population, and the working population between the ages of 15 and 65 has been increasing.[309] The ASEAN region's economy has also been greatly affected by COVID-19; economic recovery in Member States has depended on the extent to which the pandemic has been suppressed and differences in industrial structure.

In this regard, until recently at least, Vietnam not only effectively controlled COVID-19, but in 2021 it achieved growth economic greater than in the pre-pandemic period, due to public investment and large-scale FDI. In contrast, the economic recovery of the Philippines, which is heavily dependent on tourism, has been slow.[310]

As shown in Table 17, Singapore's economy has been recovering at a faster pace than initially expected, with the construction and retail industries showing significant growth.[311] Myanmar's economy, where the political situation is unstable, is expected to fall sharply.

Table 17: GDP Growth Rates in ASEAN (%)

	2018	2019	2020e	2021f
Brunei	0.1	3.9	1.2	1.6
Cambodia	7.5	7.1	-3.1	4
Indonesia	5.2	5	-2.1	4.4
Laos	3.8	3.9	-1.9	3
Malaysia	4.8	4.3	-5.6	6
Myanmar	6.4	6.8	1.7	-10
Philippines	6.3	6	-9.6	4.7
Singapore	3.5	0.7	-5.2	7
Thailand	4.2	2.3	-6.1	2.2
Viet Nam	7.1	7	2.9	6.6

Sources: World Bank, *Global Economic Prospects 2021*, 2021; ASEAN, *ASEAN Statistical Yearbook 2020*, 2021; and Singapore Ministry Trade and Industry Press Release, 11 August 2021

From 2000 to 2019, GDP in ASEAN Member States generally showed an upward trend, even continuing to grow without being significantly affected by the 2008 global financial crisis, as shown in Figure 28.[312]

309 Ibid., p. 4.
310 World Bank, *Global Economic Prospects 2021*, 2021, p. 59.
311 See https://www.singstat.gov.sg/-/media/files/news/gdp2q2021.pdf.
312 ASEAN Secretariat, supra note 308, p. 39.

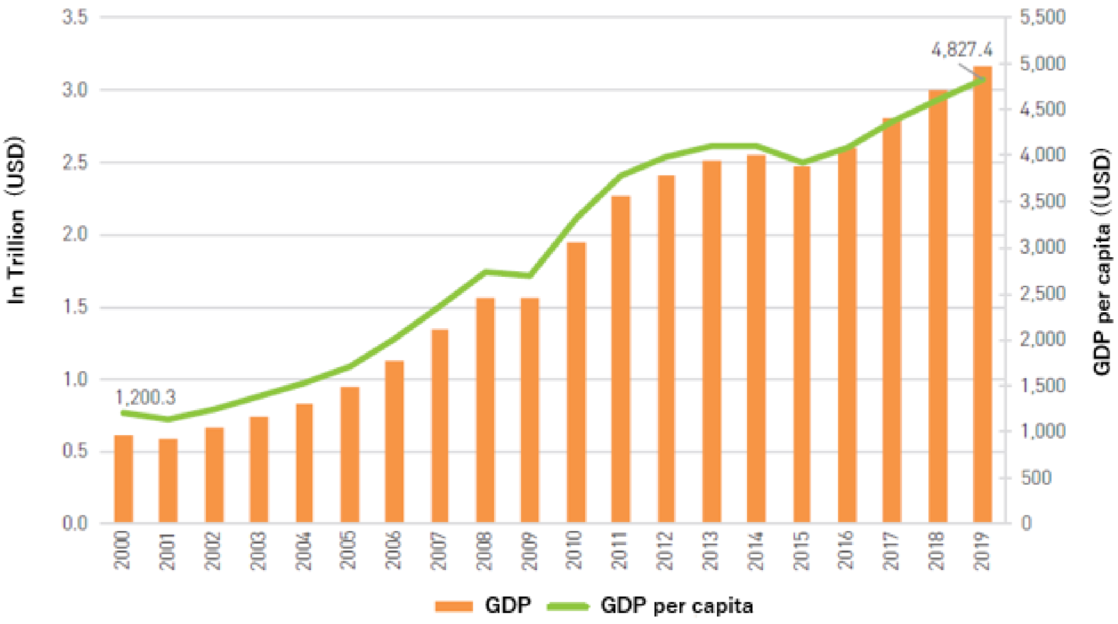

Figure 28: ASEAN GDP (US$ trillion) and GDP Per Capita (US$)

Source: *ASEAN Statistical Yearbook 2020*, 2021

GDP per capita has also been growing steadily since 2000, with GDP per capita for ASEAN in 2019 at US$4,827. However, Singapore's GDP per capita in 2020 was US$59,797, while Myanmar's GDP per capita in 2020 was US$4,793, showing that a large development gap between Member States is a major challenge for ASEAN.[313]

Intraregional trade in ASEAN has been about 23% of total trade, as shown in Table 18. This percentage is relatively low – according to the Asian Development Bank, the figures for intraregional trade in Developing Asia were stable at 57.5% in 2019 and 56.5% on average from 2012 to 2018.[314] Although there is a tendency to emphasize the low level of African intraregional trade, relatively low levels of intraregional trade is also an important issue in ASEAN.

[313] See https://asean.org/our-communities/initiative-for-asean-integration-narrowing-development-gap-iai-ndg%E2%80%8B/.
[314] Asian Development Bank, *Asian Economic Integration Report 2021*, 2021.

Table 18: Intraregional Trade in Goods in ASEAN (US$ million)

	2015	2016	2017	2018	2019
Total Trade in Goods	2,272,862	2,239,897	2,571,300	2,824,916	2816432
Intra-regional Trade	535,380.40	517,954.40	589,116.70	648,785.40	632,604.30
Percentage	23.60%	23.10%	22.90%	23.00%	22.50%

Source: ASEAN, *ASEAN Statistical Yearbook 2020*, 2021

4.1.2 Road to Integration in ASEAN

ASEAN is often regarded as a successful example of regional integration, but the road to ASEAN's current success has not been easy. While the Southeast Asia Treaty Organization (SEATO), a Western-led anti-communism military alliance formed in 1954,[315] preexisted ASEAN, a regional framework led by Southeast Asian countries did not exist in the years immediately after World War II.

The first international regional cooperation organization initiated by Southeast Asian countries was the Association of Southeast Asia (ASA), which was formed in 1961. The establishment of ASA was led by the Prime Minister of the Federation of Malaya, which had become newly independent of British colonial rule, and invited neighboring countries in Southeast Asia to participate. However, since Myanmar and Indonesia did not participate because ASA was anti-communist and pro-Western,[316] eventually ASA was launched with the Federation of Malaya, the Philippines, and Thailand.

However, ASA became dysfunctional within a few years due to a conflict with the Philippines over the sovereignty of the Sarawak-Sabah region at the time of Malaysia's independence and a conflict with Indonesia, which opposed the policy of the Federation of Malaya to seek close relations with Europe and the United States.[317]

In the 1960s political instability continued in Southeast Asia, including Singapore's independence from Malaysia against the backdrop of ethnic conflicts in 1965,[318] and the Vietnam War, which intensified

[315] SEATO was a military alliance involving the United States, France, Great Britain, New Zealand, Australia, the Philippines, Thailand, and Pakistan. It was dissolved in 1977.
[316] Susumu Yamakage, "The Formation of Association of Southeast Asia: An Analysis of a Political Process in the Initiation of Regional Cooperation", *Research on Southeast Asia*, Vol. 18, Issue 1, 1980, p. 9.
[317] JICA, *A Report from the Study Group on Assistance to the Southeast Asian Region-Regional Integration and Development Aid*, 2006, P 44.
[318] Osamu Kodama, "A Study of Establishment of ASEAN and Anglo-American International Strategy from Singapore's Viewpoint", *Yamagata University the Journal of Law and Politics* 58/59, 2014, pp. 12-15.

due to United States military intervention starting in the early 1960s. Under such circumstances, the Sukarno administration in Indonesia, which had a policy of close relations with China, was ousted, and the successor Suharto administration was strongly anti-communist and adopted a more favorable diplomatic stance toward Western countries. As a result, a de facto reconciliation was reached between Malaysia and Indonesia,[319] and the Philippines also changed its diplomatic stance significantly when President Ferdinand Marcos came to power and began to move toward normalizing diplomatic relations with Malaysia.[320] ASEAN was formed against this background.

ASEAN was established in 1967 by five countries: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Regional peace and stability were important for ASEAN at first,[321] while economic cooperation was not considered at that time.[322]

The establishment of ASEAN was realized not by a binding treaty but by the Bangkok Declaration by the Minister of Foreign Affairs of Thailand. For some time after ASEAN was established, ASEAN was not a well-formed organization, but a place for foreign ministers to meet regularly. Until 1976, there was no secretariat and no summit was held. However, in fact, the holding of regular meetings by Ministers of Foreign Affairs helped foster trust among Southeast Asian countries. The norms of the ASEAN Way, in which non-interference and consensus are core elements, came to be recognized as important around that time.[323]

The oil crisis of 1973, which occurred at the same time as a food crisis, provided a test for ASEAN. In this period, Indonesian President Suharto called on Member States to make ASEAN more formal. These events led to the holding of a first summit meeting among ASEAN Member States in 1976.[324] At the first summit meeting the need for economic cooperation was discussed, and it was decided to hold regular economic ministerial meetings in addition to the regular foreign ministers' meetings.

Against the background of the so-called North-South Problem,[325] the ASEAN Industrial Project (AIP) was launched in 1976 to change the region's industrial structure, which had relied on primary products.[326] In this project, following recommendations of the United Nations, foreign capital was

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[319] Susumu Yamakage, *"The Formation of ASEAN: National Incentives to Regional Cooperation, Research on Southeast Asia"*, Vol. 19, Issue 2, 1981, pp. 223-25.

[320] Nobuhiro Ihara, "*The Sabah Dispute and ASEAN: The Process behind the Adoption of the Conflict Management Measures"*, *Kobe Law Journal*, 63 (1), 2013, p. 151.

[321] Mie Ooba, "The Essence of ASEAN's Extraterritorial Strategy and the Future of Regional Order", *JOI Overseas Investment*, November 2016, p. 10.

[322] Hidetoshi Nishimura, "Snapshots of the ASEAN Story: ASEAN's Strategic Policy Needs and Dialogue Partners' Contributions", *The ASEAN Journey: Reflections of ASEAN Leaders and Officials*, 2017, P 316.

[323] Taku Yukawa, "What Have ASEAN Member Countries Expected of ASEAN as a Regional Organization?", *Comparative Research Report on Southeast Asian Politics*, Institute of Developing Economies, 2018, P 79.

[324] Hidetoshi Nishimura, supra note 322, p. 319.

[325] The North-South problem is a general term relating to various problems regarding the economic and social development of developing countries, particularly concerning problems of trade and aid.

[326] The AIP was a project to promote intraregional trade by fostering industries that could not be developed in one country, through joint investment by Member States. It was planned to manufacture preferential trading products.

restricted. In 1977, Preferential Trading Arrangements (PTAs) were adopted to expand intraregional trade, and in 1981, ASEAN Industrial Complementation (AIC) was launched.[327] However, all these initiatives were unsuccessful due to vested interests in each country.[328]

The turning point in ASEAN came when it benefitted from subsequent major global economic trends and developments. One started from the Plaza Accord of 1985, which caused the Japanese yen to appreciate rapidly, and the United States dollar to depreciate. Since labor-intensive industries and industries manufacturing general-purpose products in Japan lost their price competitiveness, Japanese manufacturers sought production bases overseas.[329] Another was China beginning to attract FDI due to new economic policies (e.g., the establishment of special economic zones), and rapidly emerging as a major manufacturing nation.[330]

Against this background, at the 3rd ASEAN Summit in 1987, ASEAN moved from a policy of collective import substitution and resource development policy, which limited foreign capital, to an export-oriented policy (with FDI and an export promotion policy). This change generated large investments from Japan and other countries with similar interests, and succeeded in promoting rapid economic development in Southeast Asia.[331]

The policy of attracting FDI to ASEAN through tax incentives was successful, and multinational companies disassembled production processes, placing each process in the most efficient country, and collecting outputs at a final assembly base to produce products. This fragmentation strategy was adopted and deployed to complete the manufacturing of products.[332]

With the Cold War ending in 1989, developed countries formed free trade zones, with the EU established in 1993, and the North American Free Trade Agreement (NAFTA) entering into force in 1994. China rapidly gained the attention of investors, the yuan was devalued, and FDI increased. The ASEAN Summit of 1992 recognized the need to keep investors interested in ASEAN to attract investment required for economic development[333]; the Summit established the ASEAN Free Trade Area (AFTA) with the Singapore Declaration.

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[327] The framework agreement was approved at the 1981 Economic Ministerial Meeting with plans for each country to divide production of parts for specific industries to improve production efficiency.

[328] Kazushi Shimizu, “Regional Integration in ASEAN – Focus on the Establishment of ASEAN Economic Community (AEC), Current and Future of Regional Integration”, *The Japan Institute of International Affairs*, 2013, p. 18.

[329] Seiya Sukegawa, “Changing Competitive Environment of Industries and Companies in ASEAN Countries and ASEAN Entering into FTA Era”, *Pan Pacific Business Information*, Japan Research Institute 2010, Vol. 10, No. 38. pp. 68-69.

[330] Hidetoshi Nishimura, supra note 322, pp. 319-20.

[331] Ibid., p. 320.

[332] Shujiro Urata, “Free Trade Agreements (FTAs) in East Asia: Past Trend and Current Situation”, *Journal of Asia-Pacific Studies*, No. 32, 2018, p. 31.

[333] Seiya Sukegawa, supra note 329, p. 69.

In this general timeframe, Brunei joined ASEAN in 1984, Vietnam joined in 1995, Laos and Myanmar joined in 1997, and Cambodia joined in 1999. The establishment of the AFTA has brought great benefits to ASEAN. From the latter half of the 1980s to the mid-1990s, investment from Japan and emerging countries was concentrated in ASEAN countries, resulting in the ASEAN Miracle.[334]

The specific terms of the AFTA were set out in the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (CEPT Agreement, 1992), which followed the Singapore Declaration. The goal was to reduce tariff rates to 0-5% in the 15 years up to 2008, but at the 5th Economic Ministerial Meeting in 1993, the target year for tariff reduction was advanced to 2003, five years ahead of the original schedule.

The Asian currency crisis[335] of 1997 severely affected ASEAN Member States, but ASEAN decided to maintain an open market to stabilize its currencies and economies and attract FDI. At the ASEAN Summit in 1998, it was decided to further advance the target year for tariff reduction from 2003 to 2002.[336]

Cambodia joined ASEAN in 1999, and the ASEAN Summit that year decided that tariffs on sensitive items for six countries (Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand) would be 0-5% by 2010, for Vietnam by 2013, for Laos and Myanmar by 2015, and for Cambodia by 2017. In 2003, the Protocol to Amend the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) for the Elimination of Import Duties came into effect, obligating the six countries to eliminate tariffs on an inclusion list by 2010, with other countries to eliminate these tariffs by 2015.

After the currency crisis of 1997, the Leaders of the ASEAN Member States recognized the need for further measures and issued the Declaration of ASEAN Concord II at their 2003 Summit, at which they decided to establish the ASEAN Political-Security Community, the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community, by 2020.

At the ASEAN Summit in 2004, the Vientiane Action Program was adopted as a medium-term roadmap for the ASEAN Community, and at the ASEAN Summit in 2007, the establishment of the three ASEAN Communities was brought forward by five years to 2015. At the ASEAN Summit in 2007, the ASEAN Charter was signed and the AEC Blueprint 2015 was issued to provide a roadmap for establishing the AEC by 2015.

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[334] Hidetoshi Nishimura, supra note 322, pp. 328-29.

[335] In 1997, speculative selling by a hedge fund of the Thai baht caused a plunge, creating a currency crisis in Thailand and other Asian countries, leading to enormous economic losses in Indonesia, Malaysia, South Korea, and Thailand, which had adopted fixed exchange rates pegged to the United States dollar.

[336] Ryuhei Matsumoto, *Current Status of AFTA and Trade Trends in ASEAN Countries,* Policy Research Institute, Special Research on Administrative Response [Negotiation Strategy] Research Materials, 2007, No. 4, pp. 69-70.

Previously, ASEAN's activities were solely based on the 1967 Bangkok Declaration, but the enactment of the ASEAN Charter established a legal basis. The AEC Blueprint 2015 planned to review the CEPT Agreement from 2008 to 2009. The CEPT Agreement was revised in 2008 as planned, and the comprehensive ASEAN Trade in Goods Agreement (ATIGA) was signed.

ATIGA sets out tariff elimination schedules and rules of origin in detail, and it obligated Member States not to implement any new non-tariff measures[337] and to post existing non-tariff measures on a database (ASEAN Member States' National Trade Repositories)[338] and publish them to ensure transparency. In addition, the Principles of Asia-Pacific Economic Cooperation [APEC][339] on Trade Facilitation[340] were adopted, and Member States were to take necessary measures to establish the ASEAN Single Window (ASW).[341]

In 2009, the ASEAN Community Roadmap (2009-2015) was adopted as a medium-term plan, and the ASEAN Summit in 2010 approved the Master Plan on ASEAN Connectivity, which helped ensure the establishment of the AEC.[342] This Master Plan set out the need for infrastructure development for physical connectivity, the removal of non-tariff measures as for connectivity, the need to realize the ASW, and the need for mutual certification agreements for personal connectivity.[343] Before the formulation of the Master Plan on ASEAN Connectivity, infrastructure development was not proceeding as planned; this master plan reinforced the need to accelerate implementation of infrastructure plans for the establishment of the ASEAN Communities.[344]

In November 2015, the 27th ASEAN Summit held in Malaysia adopted ASEAN 2025, which indicated the direction of the ASEAN Community over the next 10 years, and the ASEAN Community was finally established. ASEAN 2025 consists of the Kuala Lumpur Declaration, the ASEAN Community Vision 2025 and three blueprints, and AEC Blueprint 2025, which set out the direction of the ASEAN Economic Community (AEC).

4.1.3 Overview of ASEAN Secretariat

As mentioned, when ASEAN was established, the ASEAN Secretariat did not exist – it was established in 1976. Figure 29 presents the organizational chart for ASEAN. Under a Secretary-General and

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337 ATIGA, Article 40, Paragraph 1.
338 Ibid., Article 40, Paragraph 4.
339 APEC is a framework for economic cooperation in which 21 countries and regions in the Asia-Pacific region participate; it was started as a ministerial meeting in 1989. It engages in activities such as liberalization and facilitation of trade and investment, and promotion of regional economic integration.
340 These principles include Transparency, Communication and Consultations, Simplification, Practicability and Efficiency, Nondiscrimination, Consistency and Predictability, Harmonization, Standardization and Recognition, Modernization and Use of New Technology, Due Process, and Cooperation.
341 ATIGA, Article 49.
342 It was followed by the Master Plan on ASEAN Connectivity 2025, adopted by the ASEAN Leaders at the 28th/29th ASEAN Summits in Vientiane, Laos, in September 2016.
343 Kazushi Shimizu, supra note 328, p. 21.
344 Koichi Ishikawa, "Current Status of the Establishment of the ASEAN Economic Community – Evaluation by Scorecard", *International Trade and Investment*, 2012, No. 90, p. 103.

Deputy Secretary-General, there are four departments, one for the three ASEAN communities and the other for an administration department. There are two directorates and seven divisions under the ASEAN Political Security Community Department, and three directorates, and nine divisions under the ASEAN Socio Cultural Community Department, and three directorates and 11 divisions under the Community and Corporation Affairs Department (Figure 29).

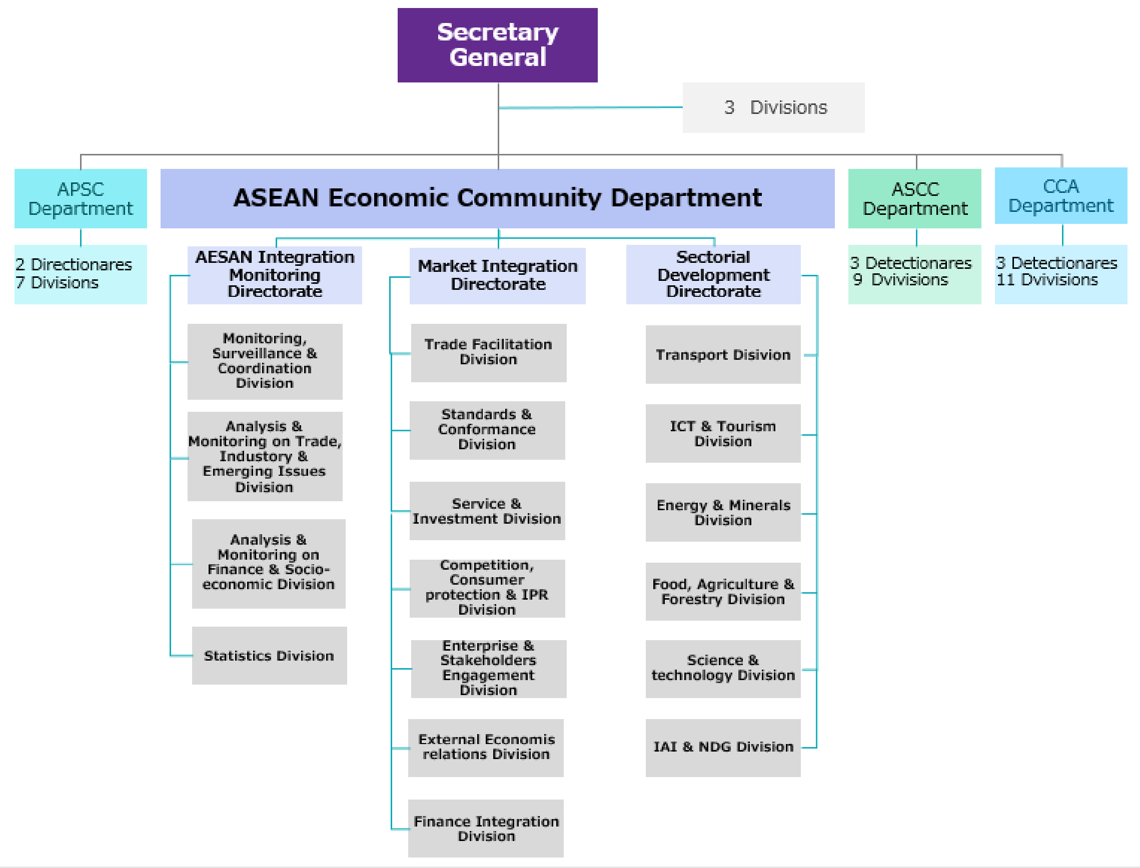

Figure 29: Organization Structure of the ASEAN Secretariat

Source: https://asean.org/the-asean-secretariat-basic-mandate-functions-and-composition/organizationalstructure-of-the-asean-secretariat-2/

An ASEAN Integration Monitoring Directorate, a Market Integration Directorate, and a Sectorial Development Directorate were established under the ASEAN Integration Monitoring Directorate to monitor implementation of the agreement. Under the Sectorial Development Directorate there are Divisions addressing issues in each sector, and a division addressing issues related to development gaps between Member States. Under the Market Integration Directorate, there are departments addressing trade facilitation, competition policy, intellectual property rights, consumer protection, and investment.

The Secretary-General is to be elected from ASEAN Member States in alphabetical order for five-year terms. The next Secretary-General is elected from the following Member State, and is to be nominated and inaugurated by the ASEAN Summit.[345]

As of 2021, the ASEAN Secretariat had 379 staff members, of which 137 were widely recruited from ASEAN Member States and 242 were locally hired (Indonesian) staff members. The duties and responsibilities of the ASEAN Secretariat are diverse; it carries out a wide variety of activities in the ASEAN region, and it monitors the implementation status of the agreement.

4.1.4 Outline of the AEC Concept and Remaining Challenges

As mentioned, before the establishment of the AEC, the AEC Blueprint 2015 was adopted at the 2007 ASEAN Summit as a roadmap for the establishment of AEC. The AEC Blueprint 2015 was created with the support of the United States Agency for International Development (USAID). The AEC Blueprint 2015 had four pillars: Single Market and Production Base, Competitive Economic Region, Equitable Economic Development, and Integration into the Global Economy. Important matters to be addressed under each pillar were listed and plans were formulated for Member States to address the pillars before the establishment of the AEC.

The AEC Blueprint 2015 identified several strategic goals necessary for the Single Market and Production Base (e.g., free flow of goods, free flow of services, free flow of investment, freer flow of capital, free flow of skilled labor). The AEC Blueprint 2015 also indicated specific actions to be taken by Member States (e.g., elimination of tariffs, elimination of non-tariff barriers, simplification and digitization of rules of origin procedures, trade facilitation measures, customs integration, introduction of the ASEAN Single Window, harmonization of assessment procedures). The AEC Blueprint 2015 stated that the CEPT would be reviewed for the elimination of tariffs.[346]

The review of the CEPT proceeded as planned. ATIGA was adopted in 2008 and came into effect in January 2010. As a result, intraregional tariffs have been eliminated by Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand. In addition, tariffs levied by Cambodia, Laos, Myanmar, and Vietnam were almost eliminated by January 2015, with tariffs on the remaining items eliminated by additional tariff elimination measures in January 2018. As a result, intraregional tariffs in ASEAN have been eliminated.

In addition, the AEC Blueprint 2015 indicated strategic goals for a Competitive Economic Region (e.g., introduction of competition policy, promotion of consumer protection measures, intellectual property policy, infrastructure development, and improvement of the taxation system and environment for E-

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[345] Deborah Elms, *Impact of the ASEAN Economic Community and Implications for Latin America*, 2020, p. 22.
[346] ASEAN Secretariat, *ASEAN Economic Community Blueprint 2015*, Paragraph 12.

Commerce). Also, the AEC Blueprint 2015 set out actions to be taken by the Member States to achieve a Competitive Economic Region.

When the AEC Blueprint 2015 was adopted in 2007, only four ASEAN Member States had competition laws in place: Indonesia, Singapore, Thailand, and Vietnam. However, all ASEAN Member States except for Cambodia have now enacted competition laws and established competition authorities, and Cambodia was expected to enact a competition law by the end of 2021. Similarly, as of 2007, intellectual property rights were not progressing in the ASEAN region, with only Singapore and Vietnam members of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol), [347] but now all ASEAN Member States have ratified the Madrid Protocol except for Myanmar.

The AEC Blueprint 2015 indicated that the development of small and medium-sized enterprises and the ASEAN Integration Initiative (IAI)[348] were necessary for Equitable Economic Development, the third pillar. Regarding the fourth pillar, Integration into the Global Economy, the AEC Blueprint 2015 indicated that a coherent approach towards external economic relations and enhanced participation in global supply networks were needed.

The AEC Blueprint 2015 was superseded by the AEC Blueprint 2025, which set goals for the decade between 2015 and 2025. The ASEAN Secretariat stated that it had implemented 469 of the 506 priority targets set out in the AEC Blueprint 2015, indicating an implementation rate of 92.4% by the end of October 2015.[349] The AEC Blueprint 2025 aims to further promote economic integration in ASEAN by adding new goals related to matters that could not be achieved during the period of the AEC Blueprint 2015.

The AEC Blueprint 2025 clarifies the five pillars of strategic goals, and unlike the AEC Blueprint 2015, it did not include an action plan; however, the ASEAN Economic Community 2025 Consolidated Strategic Action Plan (CSAP) was formulated in 2017.

Following the AEC Blueprint 2015, the five pillars of the AEC Blueprint 2025 are (i) an Integrated and Highly Cohesive Economy; (ii) a Competitive, Innovative, and Dynamic ASEAN; (iii) Enhanced Sectorial Integration and Cooperation; (iv) a Resilient, Inclusive, and People-Centered ASEAN; and (v) a Global ASEAN. Although the target year is different, the basic structure of the AEC Blueprint 2025 follows that of the AEC Blueprint 2015, as shown in Table 19.

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[347] This protocol allows a trademark to be protected in a designated Contracting Party by being internationally registered in an International Register managed by the WIPO Secretariat.

[348] This initiative was aimed at further regional integration by providing support to address development gaps in Cambodia, Laos, Myanmar, and Vietnam, which were the Member States to have most recently joined ASEAN. Japan has provided considerable support through the Japan-ASEAN Integration Fund.

[349] ASEAN Secretariat, *ASEAN Economic Community 2015: Progress and Key Achievements*, 2015, p. 9.

Table 19: The Essence of AEC Blueprints

AEC Blueprint 2015	AEC Blueprint 2025
･**Single Market and Production Base** Free flow of goods, services, investment, capital, and skilled labor ･**A Competitive Economic Region** Cooperation in competition policy, consumer protection, intellectual property rights, infrastructure development, taxation, e-commerce ･**Equitable Economic Development** Cooperation in SME development and initiatives to address development gaps ･**Full Integration into the Global Economy** A coherent approach towards external economic relations; enhanced participation in global supply networks	･**A Highly Integrated and Cohesive Economy** Seamless movement of goods, services, investment capital, and skilled labor ･**A Competitive, Innovative, and Dynamic ASEAN** Effective competition policy, creation and protection of knowledge, participation in global value chains, strengthening of related regulatory frameworks ･**Enhanced Connectivity and Sectoral Cooperation** Transport, information and communication technology, e-commerce, etc. ･**A Resilient, Inclusive, People-Oriented, and People-Centered ASEAN** Strengthening of the role of SMEs and the private sector; narrowing of development gaps ･**A Global ASEAN**

Source: ASEAN Secretariat, *AEC Blueprint 2015* and *AEC Blueprint 2025*

The AEC Blueprint 2025 indicated strategic goals for an Integrated and highly Cohesive Economy (e.g., promotion of trade in goods and trade in services, improvement of the investment environment, promotion of financial integration, financial inclusiveness and financial stability, facilitation of the movement of skilled labor and business visitors, enhancement of participation in global value chains). Like the AEC Blueprint 2015, the AEC Blueprint 2025 continues to set strategic goals such as simplification of rules of origin in the trade in goods. In addition, as a preliminary step to building an ASEAN Single Window for trade facilitation, it set a goal to fully rollout National Single Windows in all ASEAN Member States. Further, the AEC Blueprint 2025 set not only traditional strategic goals such as financial inclusion of small and medium-sized enterprises and the free flow of skilled labor, but also facilitation of the movement of business visitors.

Regarding the pillar for a Competitive, Innovative, and Dynamic ASEAN, the AEC Blueprint 2025 indicated strategic goals (e.g., establishment of effective competition policies and a common consumer protection legislation framework; strengthened cooperation between and among intellectual property rights authorities; promotion of productivity-driven growth; innovation, research, and development; technology commercialization and taxation cooperation; strengthened governance through transparency and private sector cooperation; promotion of efficient, effective, efficient, coherent, and responsive regulations; sustainable economic development; and measures to address global megatrends and emerging trade issues).

Regarding Enhanced Connectivity and Sectoral Cooperation, the AEC Blueprint 2025 indicated strategic goals such as the establishment of transport networks and the development of ICT infrastructure, and the harmonization of legal frameworks for e-commerce.

Further, the AEC Blueprint 2025 indicated strategic goals for a Resilient, Inclusive, and People-Centered ASEAN, such as narrowing of development gaps.

Finally, for a Global ASEAN, the AEC Blueprint 2025 indicated strategic goals such as enhancing economic partnerships with non-FTA Dialogue Partners.

The CSAP, enacted in 2017, was revised in 2018 and included 30 key areas, 153 previous strategic measures, and 554 key action plan items under the five pillars set out in the AEC Blueprint 2025. It provides the full picture of the plans that the AEC is currently working on or is about to work on.

The AEC succeeded in eliminating tariffs and has made rapid progress in promoting competition policy, protecting intellectual property rights, and improving the investment environment. However, many challenges remain. One is the low FTA utilization rate, due to a lack of awareness of the FTA system among SMEs and the high procedural costs for SMEs despite relatively low export values.[350]

The biggest issue left for the AEC is non-tariff measures. While both the AEC Blueprint 2015 and the AEC Blueprint 2025 set a goal of removing non-tariff measures, the number of such measures has increased. Non-tariff measures totaled 1,634 in 2000 but increased to 5,975 in 2015.[351]

The ASEAN Secretariat provided Member States with information on non-tariff measures under Article 11, and Article 40, Paragraph 3, of ATIGA, with a particular focus on non-tariff barriers affecting intraregional trade in minerals, electronical appliances, and machinery. The ASEAN Secretariat color coded non-tariff measures that do not pose a problem according to WTO standards in green, those that cannot be judged in yellow, and non-tariff measures that are clearly obstructing trade in red; the ASEAN Secretariat then cross-checked this classification with the Member States. In response to this cross-check, the ASEAN Secretariat created a list and provided information to Member States to reduce non-tariff measures.[352] However, as shown in Table 20, the approach was not effective in eliminating such measures.

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[350] Seiya Sukegawa, "ASEAN Economic Integration and AFTA-AEC 2025 Progress and Challenges", *ASEAN Challenges and Prospects Celebrating 50th Anniversary*, Institute of Developing Economies, Asian Research Series, 2017, No. 101, p. 122.

[351] Minh Hue Nguyyen, Deborah Elms, and N. Lavanya, *"The ASEAN Trade in Goods Agreement: Evolution and Regional Implications"*, *ASEAN Law in the New Regional Economic Order*, Cambridge University Press, 2019, p. 38.

[352] Oliver Cadot, Ernawati Munadi, and Lili Yan Ing, *Streamlining NTMs is ASEAN: The Way Forward,* ERIA Policy Brief, 2017, p. 4.

Table 20: Number of Non-Tariff Measures in ASEAN Member States (as of June 2021)

Country	SPS	TBT	ADP	CV	SG	SSG	QR	TRQ	XS
Brunei	3	2							
Cambodia		22							
Indonesia	134	130	50		8			2	1
Laos	3	1					12		
Malaysia	46	263	23		2			13	
Myanmar	1	3							
Philippines	462	293	2		10	11	21	14	
Singapore	67	69					143		
Thailand	320	680	45		1		112	23	
Viet Nam	113	170	18		4			2	

Abbreviations: ADP = anti-dumping, CV = countervailing, QR = quantitative restrictions, SG = safeguards, SPS = sanitary and phytosanitary, SSG = special safeguards, TBT = technical barriers to trade, TRQ = tariff-rate quotas, XS = export subsidies
Source: WTO Integrated Trade Intelligence Portal

With the approval of the 2018 Economic Ministers Meeting, ASEAN issued guidelines on non-tariff barriers to address the continuation of these barriers. The guidelines set out five criteria to balance the public interest of non-tariff measures with the effects of trade distortions: (i) Necessity and Proportionality, which requires that measures not be unnecessarily restrictive; (ii) Consultation and Engagement, which requires that stakeholders must be given the opportunity to express their views; (iii) Transparency, which requires notification to stakeholders 60 days before the introduction of non-tariff measures and also requires ASEAN Member States to call for opinions from stakeholders; (iv) Non-Discrimination and Impartiality, which requires not giving unfair preferential treatment to domestic products; and (5) Periodic Review, which requires regular reviews.

If the guidelines are effective, the situation would improve for companies looking for transparent, accurate, and up-to-date information.[353] However, the guidelines are not legally binding. While there seems to be a plan to address the issue of non-tariff barriers by strengthening ATIGA, no definitive breakthrough measures are on the horizon.[354]

4.1.5 Monitoring Implementation of the Agreement

The monitoring of trade agreements is important in many ways. There is no point in concluding a trade agreement if the provisions made in the agreement are not implemented. In addition, trade agreements

[353] Minh Hue Nguyyen, Deborah Elms, and N. Lavanya, supra note 351, p. 40.
[354] Seiya Sukegawa, *Protectionism Movement in ASEAN-The Rise of Protectionism in the New Corona Crisis and Its Response, ASEAN-Trade, Supply Chain, Economic Integration Trends Under the Corona Crisis and the US-China Conflict*, Institute for International Trade and Investment, 2021, p. 39.

are meaningful only when they are used by entrepreneurs in actual transactions; the usefulness of agreements not used by entrepreneurs may be questioned.

Until 2015, before the establishment of AEC, a scorecard mechanism was used as a monitoring tool in ASEAN. The scorecard divided the period from 2008 to 2015 into four phases, with each phase spanning two years; the achievement rate for each of the four pillars set out in the AEC Blueprint 2015 was assessed and announced, e.g., in speeches of the Secretary-General.

This scorecard mechanism had the effect of encouraging the implementation of plans listed in the AEC Blueprint 2015 by having the ASEAN Secretariat evaluate the performance of Member Countries and publishing the results. It is also functioned effectively as a public relations tool.[355]

However, there were many problems with the scorecard mechanism. For example, the results were not verified by a third party because the details of the scores were not formally disclosed, and they were based on self-reporting of the Member States. In addition, because the enactment of related domestic laws was not evaluated, some indicators were evaluated as implemented even when they were not.

In addition, intermediate progress was not taken into consideration in the scorecards. Even if an item or activity was almost completed, it was sometimes considered unimplemented. Furthermore, since the scorecard method did not evaluate the importance of each item, and since it was not clear when an item was implemented, developing valid numerical values was difficult.[356]

Therefore, regarding the monitoring of the AEC Blueprint 2025, a new method called the AEC 2025 Monitoring and Evaluation Framework (the M&E framework) was adopted by the 2016 Economic Ministerial Meeting.

In the scorecard method, only compliance monitoring was conducted to determine whether implementation was in accordance with the agreement, and monitoring was performed by a simple question of yes or no assessment, but in the M&E framework, not only Compliance Monitoring, but also Outcomes Monitoring and Impact Evaluation are being conducted.

While Compliance Monitoring in the M&E framework was not much different from previous methods, Outcomes Monitoring, using indices called Key Performance Indicators (KPIs), such as ATIGA utilization, the intraregional trade ratio, and intraregional FDI, has provided for evaluations once every two to three years.[357] Also, in Impact Evaluation, socio-economic indicators, such as feedback from

[355] Yoshihumi Fukunaga, "Implementation Monitoring of the ASEAN Economic Community," *Asia Research Report*, 2016, Vol. 62. No. 3, p. 67.

[356] Yoshifumi Fukunaga, "Issues on the Progress Assessment of the ASEAN Economic Community and the AEC Scorecard", *World Trends*, Institute of Developing Economies, 2015, No. 231, pp. 36-37.

[357] ASEAN Secretariat, *Towards ASEAN Economic Community 2025: Monitoring ASEAN Economic Integration*, 2017, p. 10.

private companies and assessments of the impact on the policies of Member States, are being taken into consideration when making evaluations.[358]

As an example, in the monitoring of the ASEAN Strategic Action Plan for SME Development 2016-2025 for the development of small and medium-sized enterprises during the period, the strategic goals in this action plan were reviewed: (i) Promote Productivity, Technology, and Innovation; (ii) Increase Access to Finance; (iii) Enhance Market Access and Internationalization; (iv) Enhance Policy and the Regulatory Environment, and (v) Promote Entrepreneurship and Human Capital Development. In addition, KPIs were set for each of these five strategic goals and monitored.[359]

Specifically, for the goals set to Promote Productivity, Technology, and Innovation, the ratio of labor productivity and R&D expenditure to GDP was set as a KPI. For the goal to Increase Access to Finance, the percentage of business loans to SMEs was set as a KPI. In addition, for the goals set to Enhance Market Access and Internationalization, the percentage share of SMEs' contribution to national exports was used as a KPI. Further, for the goals set to Enhance Policy and the Regulatory Environment, KPIs such as time and the cost required to start a business were used, and for the goals set to Promote Entrepreneurship and Human Capital Development, KPIs such as the contribution of SMEs to employment were used.

Regarding the progress of the plan, indicators that have improved compared to the baseline are displayed in green, indicators that have not changed are displayed in yellow, and indicators that have worsened are displayed in red. Challenges were extracted in consideration of the impact of COVID-19 and the circumstances of each Member State.[360]

In this way, the M&E framework allows for more detailed monitoring than before. It is necessary to follow its ongoing use as to whether this monitoring method will address the issues that were previously identified.

4.2 Efforts to Facilitate Trade in ASEAN

4.2.1 ASEAN Single Window and Simplification of Rules of Origin

(1) ASEAN Single Window

The ASEAN Single Window (ASW) is aimed at facilitating trade by digitizing customs clearance procedures. It is an information communication system and legal framework that enables the exchange of electronic information related to customs clearance procedures among the authorities of ASEAN Member States.

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[358] Ibid., pp. 12-13.
[359] ASEAN Secretariat, *ASEAN Strategic Action Plan for SME Development 2016-2025: 2020 KPI Monitoring Report*, 2021, p. 4.
[360] Ibid., pp. 9-12.

Specifically, this information communication system speeds up customs clearance processes throughout the ASEAN region by linking National Single Windows (NSWs) with each other on an integrated platform. The NSWs are systems that digitize customs clearance procedures in each ASEAN Member State and enable applications and notifications to related domestic organizations by submitting data once.

The origin of the concept of the ASW can be traced back to the 2003 ASEAN Summit, after which the Agreement to Establish and Implement the ASEAN Single Window was signed in 2005 and the initiative was officially launched. In 2006, the Protocol to Establish and Implement the ASEAN Single Window, which is a technical agreement for the implementation of ASW, was adopted. Article 18, Paragraph 2, of the protocol, provides that the Steering Committee, which is composed of ministerial members, directs the operation of the ASW, and the Working Group on Technical Matters and the Working Group on Legal and Regulatory Matters carry out operations. The ASW initiative has been pursued since 2006 with support from USAID.

During implementation it took time to establish the NSW system, on which the ASW is based. The 2010 ASEAN Connectivity Master Plan urged the start of NSW operations. NSWs were introduced in Singapore in 1989 (i.e., before the initiative), in Indonesia in 2007, in the Philippines in 2009, in Thailand in 2011, in Brunei and Malaysia in 2013, in Vietnam in 2014, in Myanmar in 2016, in Cambodia in 2019, and in Laos in 2021. Now all ASEAN Member States have started operating NSWs.

The protocol on the legal framework for ASW operation was signed in 2015, and starting in 2018, operation of the electronic certificate of origin stipulated in Annex 8 of ATIGA started among five ASEAN Member States: Indonesia, Malaysia, Singapore, Thailand, and Vietnam. In December 2019, the electronic exchange of documents (e-Form D) began among all ASEAN Member States, and in 2020, more than 800,000 e-Forms D were exchanged via the ASW.

In December 2020, the exchange of ASEAN Customs Declaration Documents using the ASW commenced between Singapore, Cambodia, and Myanmar, and it was planned that other ASEAN Member States will participate in this exchange by the end of 2021. Also, there are plans to exchange trade-related documents such as electronic phytosanitary certificates (e-phyto) via the ASW in the future.

In addition, ASEAN has begun to establish a single window system outside the ASEAN region, and Singapore is moving towards establishing a bilateral single window to exchange electronic certificates of origin with Japan, South Korea, and Australia.[361]

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[361] https://www.customs.gov.sg/news-and-media/media-releases/2020-11-11-Media-Release.pdf.

(2) ASEAN Trade Repository

The ASEAN Trade Repository (ATR) is a trade-related database that enables access to National Trade Repository (NTR) of each ASEAN Member State from one portal site free of charge for anyone from the viewpoint of ensuring the transparency of procedures. In the ATR, all users can access information on trade-related laws and procedures, and there are links to a free complaint window regarding trade.

This system has been introduced with the support of the EU. The information items shown in the ATR are stipulated in Article 13, Paragraph 2, of ATIGA: (i) Tariff Nomenclature, (ii) Most Favored Nation Tariffs and Preferential Tariffs, (iii) Rules of Origin, (iv) Non-Tariff Measures, (v) National Trade and Customs Laws and Rules, (vi) Procedures and Documentary Requirements, (vii) Administrative Rulings, (viii) Best Practices for Trade Promotion, and (ix) a List of Authorized Economic Operators.

However, ATIGA does not require ASEAN Member States to clarify these matters in the NTRs. Therefore, some countries do not disclose non-tariff measures and some do not have links to related ministries and agencies, which adversely affects user convenience. Thus, it appears that the monitoring of non-tariff measures is not fully functioning.[362]

(3) Self-Certification Scheme

One of the goals of the AEC Blueprint 2025 is to simplify the rules of origin, and the ASEAN Wide Self-Certification (AWSC) scheme was designed for this purpose.

Until introduction of the AWSC scheme, the AFTA certificate of origin used only a third-party certification system in which a government agency issued a certificate, but it required considerable paperwork and required delivery of the original documents to the authorities, with time and cost implications.[363] Since ASEAN countries are relatively close to each other, in the case of weekend shipments and air transport, goods could clear customs before the certificate of origin Form D was issued, which caused clerical problems.[364] Therefore, businesses strongly requested introduction of the AWSC scheme as soon as possible.[365]

There were separate AWSC pilot projects, one in which Brunei, Cambodia, Malaysia, Myanmar, and Singapore participated, and another in Indonesia, Laos, Philippines, Thailand, and Vietnam participated. Unification of these separate pilot projects was an issue. At an Economic Ministers Meeting in August 2018, Article 38 of ATIGA on certification of origin was amended, and the First Protocol to Amend the

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[362] Haniff Ahamat, Nurul Hanan, and Abdull Manaf, "Regulatory Convergence against Non-tariff Barriers in ASEAN and the Effectiveness of the ASEAN Trade Repository", *ASEAN Journal of Legal Studies*, 2018, Vol. 1, p. 11.
[363] Deborah Elms, supra note 345, p. 44.
[364] Seiya Sukegawa, supra note 354, p. 125.
[365] Ibid., P 135.

ASEAN Trade in Goods Agreement was signed to unify the pilot projects, with effect from 20 September 2020.[366]

AWSC allows exporters or producers with certain requirements, such as sufficient experience and a history of no violations, to be registered as Certified Exporter (CEs),[367] and the CEs to declare their origin (Origin Declaration). Application of preferential tax rates based on ATIGA can be requested. The CE's registration information is stored in a database managed by the ASEAN Secretariat, and the Member States can access this database.[368]

The CEs are required to grant access to the data for the Origin Declaration by the authorities and to retain the data for at least three years,[369] and if the authorities determine that the CE does not meet the requirements, the certification will be revoked.[370]

The introduction of the AWSC scheme is expected to reduce transaction costs, simplify authentication procedures, and provide substantial benefits for users, but it has not be used much by companies so far. It has been observed that the existence of the system is not well known and there is a potential risk for system users to receive a large penalty in the event of a mistake.[371]

(4) ASEAN Customs Transit System

One of the purposes of establishing the AEC was the free flow of goods, and the legal framework for achieving that purpose was provided in the ASEAN Framework Agreement on the Facilitation of Goods in Transit (the AFAFGIT or Goods in Transit Agreement). The Goods in Transit Agreement was signed at the 1998 Economic Ministers Meeting and entered into force in 2000, with details to be provided in nine attached protocols (listed in Table 21).

The practical purpose of the Goods in Transit Agreement was to create an environment in which goods can be transported from the point of departure to point of arrival in the ASEAN region with minimal border procedures without transshipment. At the Economic Ministers Meeting in 2017, goals were set to reduce trade transaction costs by 10% by 2020 and double intraregional trade between 2017 and 2025. One of the initiatives to achieve these goals was the ASEAN Customs Transit System (ACTS), which was supported by the EU.

ACTS is an integrated, online customs system that allows traders to make one electronic customs declaration even if they pass through multiple Member States, requiring no transshipment to different

366 Koichi Ishikawa, *AEC Action Plan Progressed 2025 in Corona Crisis, ASEAN-Trade, Supply Chain, Economic Integration Trends under the Corona Crisis and the US-China Conflict*, Institute for International Trade and Investment, 2021, p.. 79.
367 ATIGA, Annex 8, Rule 12A, Paragraph 2.
368 Ibid., Annex 8, Rule 2, Paragraph 5.
369 Ibid., Annex 8, Rule 12A, Paragraph 4.
370 Ibid., Annex 8, Rule 12D.
371 Minh Hue Nguyyen, Deborah Elms, and N. Lavanya, supra note 351, p. 44.

trucks in each Member State. It is a system that provides for complete payment to all countries at once, to reduce paperwork and reduce the time required for customs clearance.[372]

DHL, a major global logistics company, had established a land transport logistics system connecting Singapore, Malaysia, and Thailand in 2011, was a predecessor of ACTS. Also, the EU itself had introduced a Common Transit System and New Computerized Transit System, which had successfully expanded trade in Europe.[373]

In introducing ACTS, experiments were undertaken in a three-phase pilot project along the North-South Economic Corridor and the East-West Economic Corridor, with completion on 2 November 2020.[374] ACTS was officially launched on 30 November 2020.[375]

Table 21: AFAFGIT Protocols

	Title	Classification	Signature Date	Status of ratification
AFAFGIT	ASEAN Framework Agreement on the Facilitation of Goods in Transit		December 1998	Effective in October 2000
Protocol 1	Designation of Transit Transport Routes and Facilities	Transportation	February 2007	Ratified by all ASEAN Member States
Protocol 2	Designation of Frontier Posts	Customs	May 2018	Ratification process is underway.
Protocol 3	Types and Quantity of Road Vehicles	Transportation	May 1999	Ratified by all ASEAN Member States
Protocol 4	Technical Requirements of Vehicles	Transportation	May 1999	Ratified by all ASEAN Member States
Protocol 5	ASEAN Scheme of Compulsory Motor Vehicle Insurance	Transportation	April 2001	Ratified by all ASEAN Member States
Protocol 6	Railways Border and Interchange stations	Excluded from ACTS	April 2011	Ratification process is underway.
Protocol 7	Customs Transit System	Customs	February 2015	Ratified by 9 countries except Myanmar
Protocol 8	Sanitary and Phytosanitary Measures	Excluded from ACTS	October 2000	Ratified by all ASEAN Member States
Protocol 9	Dangerous Goods	Excluded from ACTS	September 2002	Ratification process is underway.

Abbreviations: ACTS = ASEAN Customs Transit System, AFAFGIT = ASEAN Framework Agreement on the Facilitation of Goods in Transit
Source: https://acts.asean.org/Legal_Framework/asean-framework-agreement-facilitation-goods-transit-afafgit

The nine protocols of the Goods in Transit Agreement cover various areas. Detailed procedures related to ACTS are provided in Protocol 7 on the Customs Transit System.

The six countries that participated in the launch of ACTS are Cambodia, Laos, Malaysia, Singapore, Thailand, and Vietnam, which are connected by land. There is a desire to use ACTS for ferry transport,[376] and with the support of the EU, a survey on the applicability of ACTS in the Borneo Corridor was initiated.[377]

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[372] EU Mission to ASEAN, *EU ASEAN Strategic Partners Blue Book 2021*, 2021, p. 41.
[373] Ibid.
[374] https://acts.asean.org/news/news/asean-customs-transit-system-acts-live-operations.
[375] https://acts.asean.org/news/news/joint-press-release-asean-and-eu%E2%80%99s-new-online-customs-transit-system-set-boost-trade-asean.
[376] EU Mission to ASEAN, supra note 372, p. 41.
[377] Joint Media Statement of the 30th Meeting of the ASEAN Directors-General of Customs, 2021, p. 2.

To use ACTS, it is necessary to meet certain requirements and be approved as an Authorized Transit Trader by the customs authorities of ACTS Member States. Authorized Transit Traders only need to submit an e-transit declaration to the customs authorities one time for the transport of goods. It will be interesting to see how much use of ACTS, which can reduce distribution costs, increases over time.

(5) ASEAN Solutions for Investments, Services and Trade

Companies may be affected by unexpected government measures in the process of trade in goods and services. In such cases, it would be beneficial for the companies if they could request a consultation or file an appeal with the relevant organizations through out-of-court procedures and obtain a prompt response.

In July 2005, ASEAN introduced the ASEAN Consultation to Solve Trade and Investment Issues (ACT) system to resolve trade and investment issues with the aim of improving the convenience of the private sector, facilitating trade within the ASEAN region, and improving the business environment.[378] The ACT system was developed with EU support based on the SOLVIT (Solutions to Problems with Your EU Rights)[379] system introduced by the EU, and was proposed in the Annex of the Declaration of ASEAN Concord II in 2003.[380] In ASEAN, Article 88 of ATIGA provides for ACT as an advisory and consultation mechanism.

ACT allowed companies or individuals to file complaints free of charge through a dedicated portal site. When a complaint was filed, the authorities of the country first confirmed the content of the complaint and then contacted the authorities of the other ASEAN Member State. After that process, the authority of the other ASEAN Member State decided whether to consider the complaint, and later notified the petitioner of the result of the examination. The content presented through ACT was not legally binding, but the time limit for proposing a solution was set at 30 days, which was a quick procedure compared to court procedures.[381]

However, the number of ACT users was small, and there were many problems. For example, the role of the ASEAN Secretariat and the scope of matters on which claims could be filed were unclear, the operational results were not published, and the language used was limited to English.[382] The operations of ACT virtually ceased around 2011.[383]

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378 See https://www.miti.gov.my/index.php/pages/view/359.

379 SOLVIT is a system that allows EU citizens or entrepreneurs to file a claim free of charge through a window set up in each member state outside of the judicial system if rights are infringed by the authorities of member states other than in their own country. Through this system, entrepreneurs can obtain an answer within a week.

380 Yoshifumi Fukunaga, *Efforts to Reduce Non-Tariff Barriers in ASEAN: Focusing on the ASSIST Mechanism and the Matrix of Actual Cases, ASEAN-Trade, Supply Chain, Economic Integration Trends Under the Corona Crisis and the US-China Conflict*, Institute for International Trade and Investment, 2021, p. 100.

381 Ibid., p. 101.

382 Ibid., p. 102.

383 Ibid., p. 100.

With lessons from this first experience, ASEAN Solutions for Investments, Services and Trade (ASSIST) was launched as a successor system in 2016. Like ACT, the ASSIST system was introduced with EU support and it inherited aspects of the ACT. ASSIST also provides a system that allows users to file a petition free of charge from the portal site, and the answers provided are not legally binding. ASSIST is just an advisory/consultation system, as was ACT. ASSIST can be used by companies, business associations, lawyers registered in ASEAN, law firms, and others in the private sector, but unlike ACT, individual complaints are anonymous.

In the ASSIST system, the complainant (e.g., a company) submits the complaint to the ASEAN Secretariat via the internet, and after completing its formal examination of the complaint within two weeks, the ASEAN Secretariat sends the complaint to the authority that serves as the contact point for the complaint called the Destination Contact Point (DCP). The DCP then decides whether to accept the complaint within two weeks. If the complaint is accepted, the DCP circulates the complaint to the country's Responsible Agencies (RAs), and the RAs will consider their answer within 10 weeks, and send it back to the DCP. The DCP will then send the answer to the ASEAN Secretariat, which will register it, and notify the petitioner of the proposed solution.

ASSIST is a voluntary procedure and does not form part of the judicial procedure; dissatisfied petitioners can appeal to the court system. However, the complainant company is not allowed to use the information exchanged through ASSIST as evidence in court proceedings or other dispute resolution proceedings.

Matters dealt with by ASSIST must be related to transactions between ASEAN Member States, and not be purely domestic matters, such as labor issues or complaints against specific individuals or companies. Compared to its predecessor, ACT, ASSIST is an improved system, since it clarifies the role of the ASEAN Secretariat and the matters to be addressed, but (like ACT) it has not been used often. It has been suggested that companies fear some adverse action revenge after filing a complaint, and the transparency of ASSIST procedures is not trusted. Also, as was the case with ACT, ASSIST requires the use of the English language, which has contributed to its limited use.[384]

ASSIST includes a function of monitoring non-tariff barriers, which should facilitate trade if the system functions sufficiently, and active use of this function is envisaged.

4.2.2 Promotion of Competition Policy in ASEAN

A Competitive, Innovative and Dynamic ASEAN – one of the five pillars of the AEC Blueprint 2025 – has the goal of promoting effective competition policy. The ASEAN Blueprint 2025 seeks to (i)

[384] ASEAN Regional Integration Support by the European Union – ARISE Plus, *Overall Work Plan*, 2020, p. 37.

establish an effective competition regime in all ASEAN countries, (ii) strengthen the capabilities of competition-related authorities, (iii) foster a competition-aware region, (iv) establish regional cooperation arrangements on competition policy, and (v) achieve greater harmonization of competition policy and law among ASEAN Member States.

To achieve the goals set out in the AEC Blueprint 2025, ASEAN formulated an ASEAN Competition Action Plan from 2016 to 2025, and conducted an interim review of the plan in 2020. The various activities in the ASEAN Competitive Action Plan were led by an ASEAN Experts Group on Competition (AEGC), which was established as a forum for the competition authorities of ASEAN Member States to hold policy discussions at the practitioner level. AEGC is an organization that was approved by the 2007 Economic Ministers Meeting.

As one of the efforts to harmonize competition policy in the ASEAN region, the AEGC formulated ASEAN Regional Guidelines on Competition Policy in 2010 to provide a framework for regional competition policy, with support from Germany. These guidelines have not been approved at the ministerial level and are not legally binding, but they were formulated based on active exchanges of views among competition authorities at the working level. As was mentioned, nine of the ten ASEAN Member States have set up competition laws and established competition authorities to enforce them, and the remaining Member State (Cambodia) was expected to enact a competition law by the end of 2021.

In the interim review of the ASEAN Competitive Action Plan in 2020, it was decided to establish a capacity building roadmap to reduce the capacity gap between competition authorities, develop an investigation manual for the digital economy by 2022, develop guidelines for sharing merger cases, and establish an information portal site on merger cases by 2023.[385] ASEAN is now moving to the next stage, competition policy harmonization.

In today's globalized economy cross-border merger cases are not uncommon, and international cartel cases are being discovered all over the world. Under such circumstances, cooperation between competition authorities is indispensable, and competition policy harmonization is an important issue for competition authorities in ASEAN countries.

However, achieving that goal in ASEAN is not easy. Unlike the EU, ASEAN does not have a supranational competition authority, and the competition authorities of each country are supposed to enforce the law based on the competition law of each respective country. Therefore, it is difficult to conduct coordinated investigations without an investigation cooperation agreement among competition authorities.

[385] See https://www.globalcompliancenews.com/2021/07/22/asia-pacific-four-new-deliverables-in-the-updated-asean-competition-action-plan-2025-08072021/.

While such investigation cooperation agreements have been concluded between developed countries (on which basis the authorities of the respective countries have cooperated to collect evidence), there is no such framework in ASEAN. In addition, the background of the enactment of competition laws in ASEAN Member States varies, as do the competition laws. Harmonization is only possible if they understand the process of enactment of each other's competition law, legislative process, and differences in current competition laws, and then approach each other toward a common purpose.

Indonesia introduced a competition law in 1999, the earliest among ASEAN Member States. However, it was enacted due to external pressure because enactment of a competition law was a condition to receive the support of IMF during the Asian financial crisis.[386] Malaysia, which was also severely affected by the Asian financial crisis, promoted mergers of companies as a national policy to counter foreign companies entering its market after trade liberalization required by the WTO, and hesitated to enact a competition law.[387] Therefore, Malaysia did not enact its competition law until 2010, which was much later than Indonesia.

Singapore – which has achieved economic development in a liberal economy – enacted a competition law in 2004 with the aim of complementing the trade liberalization policy promoted by the government and complying with the Free Trade Agreement. On the other hand, Vietnam has a history of introducing competition laws because it has had state-owned companies with market-dominant positions, with adverse effects on market competition, and the government planned to join the WTO.[388]

Regarding the contents of competition laws, although there are many similarities in the regulation of so-called hardcore cartels, there are differences from country to country in other respects. For example, some competition authorities have strong investigative powers, while others have only weak ones, such as the Indonesian competition authority, which lacks the authority to conduct dawn raids.[389] Furthermore, regarding leniency programs,[390] which have been introduced in the competition laws of developed countries, some ASEAN countries have introduced such programs, while others have not.[391]

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[386] Kazuhira Nakasato, "Current Status and Challenges of Indonesian Competition Law", *Journal of the Japanese Institute of International Business Law*, Vol. 48, No. 2, 2020, p. 195.

[387] Cassey Lee, *Competition Policy in Malaysia*, Centre on Regulation and Competition Working Paper Series No. 68, 2004, p. 5.

[388] Alice Pham, *Development of Competition Law in Vietnam in the Face of Economic Reforms and Global Integration, The Symposium on Competition Law and Policy in Developing Countries*, Northwestern Journal of International Law & Business, 2006, Volume 26, Issue 3, pp. 550-51.

[389] Kazuhira Nakasato, supra note 386, p. 196.

[390] A leniency program is an investigative procedure in which a person involved in a cartel act can receive a reduction or exemption of fines or other penalties by admitting his/her own violation, submitting evidence to the authorities, and fully cooperating with the investigation. It is a procedure introduced in many competition laws in the world because it is otherwise difficult to investigate cartel activities.

[391] See https://www.financierworldwide.com/cartel-leniency-programmes-in-asean-practical-implications-of-seeking-leniency#.YXUaRRxUtdh.

Thus, there is a difficult issue of whether the information obtained through leniency programs can be shared among competition authorities of ASEAN Member States.[392]

Therefore, challenges remain that must be overcome to realize the harmonization of competition policy and competition law as envisaged by the AEC Blueprint 2025. Nevertheless, ASEAN has been moving toward its goals, and in 2018, a cooperation framework among competition authorities for the execution of cross-border projects, called the ASEAN Competition Enforcers' Network, was established.

Recently, ASEAN has been moving toward building a realistic cooperative relationship between and among competition authorities by using the word "Convergence" (referring to a loose form of harmonization),[393] and planned future developments are drawing attention.

4.2.3 Promotion of Investment in ASEAN

There were two investment agreements in ASEAN. As mentioned, after the Plaza Accord in 1985, ASEAN changed from a policy of restricting foreign capital to promote heavy industrialization to an export-oriented policy of attracting FDI. Around this time, the ASEAN Investment Guarantee Agreement (AIGA) was signed, in 1987. It was a short agreement with only 14 articles,[394] the main purpose of which was to protect and promote investment among the contracted ASEAN Member States.[395]

ASEAN also had an agreement called the ASEAN Investment Area (AIA), which was signed in 1998. The AIA focused on creating a freer and more transparent investment environment within the ASEAN region to increase FDI from within and outside the region.[396]

The ASEAN Comprehensive Investment Agreement (ACIA) integrated the AIGA and AIA into one comprehensive investment agreement. It was signed in 2009 and entered into force in 2012.

The main purpose of the ACIA is to build a free and open investment system in ASEAN,[397] and in 2019, the negative list method[398] was adopted to promote liberalization.[399] The ACIA targets six major fields:

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392 International Competition Network, *Guidance on Enhancing Cross-Border Leniency Cooperation*, 2020, PP 7-9.

393 Rachel Burgess, *Commonalities and Differences across Competition Legislation in ASEAN and Area Feasible for Regional Convergence*, 2020, pp. 12-13.

394 Koichi Ishikawa, "Outline and Significance of the ASEAN Comprehensive Investment Agreement*", International Trade and Investment*, No.79, 2010, p. 4.

395 ASEAN Secretariat, *ASEAN Comprehensive Investment Agreement, A Guidebook for Businesses and Investors*, 2015, p. 3.

396 Ibid.

397 ACIA, Article 1.

398 While the positive list method is a method of writing out the service fields that are liberalized, the negative list method is a method of listing the fields that are not to be liberalized on the premise that all fields are liberalized in principle.

399 See https://www.iisd.org/itn/en/2019/04/23/asean-member-states-to-sign-fourth-protocol-amending-comprehensive-investment-agreement/.

(i) manufacturing, (ii) agriculture, (iii) fisheries, (iv) forestry, (v) mining and quarrying, and (vi) services incidental to manufacturing, agriculture, fisheries, forestry, mining and quarrying. There has been criticism that the targets are limited.[400]

The COVID-19 pandemic also had a major impact on investment in ASEAN. FDI in ASEAN in 2019 was US$182 billion, the most invested developing region in the world, but in 2020 it fell by 25% to US$137 billion.[401] Nevertheless, ASEAN's share of FDI in the world increased from 11.9% in 2019 to 13.7% in 2020 amid the pandemic-induced slump in the global economy.[402]

The top three ASEAN countries receiving investment have remained unchanged since 2017: Singapore, Indonesia, and Vietnam. As shown in Figure 30, the impact of COVID-19 was particularly large on Singapore, but relatively small on Vietnam (until recently).

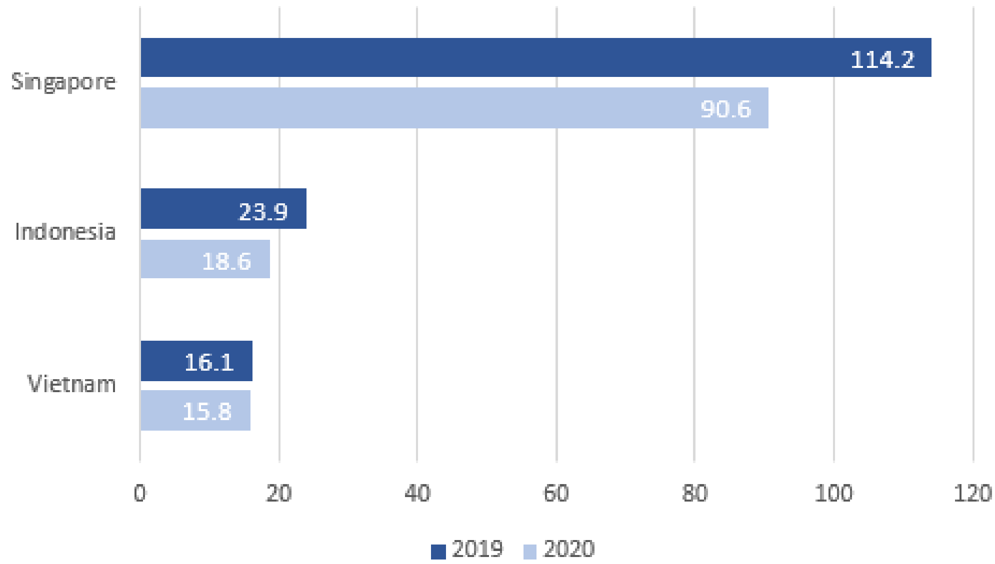

Figure 30: Major Direct Investment Destinations in ASEAN (US$ billion)

Source: ASEAN Investment Report 2020-2021

As shown in Table 22, the top 10 countries investing in ASEAN accounted for more than 70%, and this concentration was increasing in 2020. In addition, since 2010, the United States and Japan have maintained the 1st and 2nd places in investing in ASEAN,[403] but investment from Japan decreased significantly in 2020.

Table 22: Top 10 Countries Investing in ASEAN, 2019-2020

[400] Deborah Elms, supra note 345, p. 60.
[401] ASEAN Secretariat, *ASEAN Investment Report 2020-2021 Investing in Industry 4.0*, 2021, p. 3.
[402] Ibid., p. 4.
[403] ASEAN Secretariat, *ASEAN Statistical Yearbook 2020*, 2021, Table 7.2, 2020, p. 124.

2019		2020	
国	FDI（billion USD）	国	FDI（10億ドル）
United States	34.6	United States	34.7
Japan	23.9	Singapore	14
Singapore	15.7	Hong Kong	12
Hong Kong	12.9	Japan	8.5
Canada	10.1	China	7.6
China	9	Korea	6.8
United Kingdom	7.9	Thailand	5.5
Korea	7.5	Canada	5.2
Switzerland	4.2	Switzerland	4.6
Thailand	3.8	Holand	4.6
Top 10	129.5	Top 10	103.6
Share of Top 10（%）	71.2	Share of Top 10（%）	75.4

Source: ASEAN Secretariat, *ASEAN Investment Report 2020-2021*, 2021

The sectors receiving the most FDI in ASEAN in 2019-2020 were finance and insurance, followed by wholesaling, retailing, and manufacturing. In 2020, FDI fell sharply, especially in the manufacturing sector, but investment in information and communication infrastructure increased.[404]

A major recent development related to investment in ASEAN investment was the Regional Comprehensive Economic Partnership (RCEP), which was signed in November 2020 by the 10 ASEAN countries and Japan, China, South Korea, Australia, and New Zealand. The GDP of the countries in the RCEP is US$26.285 trillion, which is almost 30% of the world's total GDP, and it has a market of 2.26 billion people, which is about 30% of the world's population. Exports of the countries in the RECP total US$5.479 trillion (36.1% of world exports), and imports total US$4.961 trillion (32.1% of world imports).[405] The RCEP had not yet come into effect as of the end of September 2021, but at the Economic Ministers Meeting of Japan, China, South Korea, and ASEAN held on 13 September 2021, a joint statement was issued that it is planned that the RCEP will take effect by January 2022.[406]

ASEAN has taken notice that RCEP Member States are now hubs of the global value chain and are major production bases in the world from the perspective of investment. About half of the world's automobile manufacturing, and 70% of the world's electronic devices are produced in RCEP Member

[404] Ibid., p. 6.
[405] Hiromi Ooki, “RCEP is a diverse and growing market of 2.2 billion people-is RCEP the Chinese economic zone?”, *Flash 475*, Institute for International Trade and Investment, 2020, http://www.iti.or.jp/flash475.htm.
[406] See https://www.meti.go.jp/press/2021/09/20210913005/20210913005-1.pdf.

States.[407] ASEAN is strategically about to be incorporated into the global value chain. Already, about 40% of the investment in ASEAN is from RCEP Member States and this is expected to increase.[408]

ASEAN has been one of the relocation destinations of production bases of global companies in response to rapidly increasing labor costs in China. Since 2019, trade frictions (or even a "trade war") between the United States and China have intensified, and the COVID-19 pandemic has accelerated restructuring of the supply chain, with ASEAN emerging as an alternative investment destination to China.[409]

4.2.4 Strengthening Intellectual Property Rights in ASEAN

The history of intellectual property rights in ASEAN started in December 1995, when the ASEAN Agreement on Intellectual Property Cooperation was concluded between the seven countries of Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

The agreement consisted of only eight articles and declared that ASEAN Member States would cooperate with each other in the field of intellectual property rights in view of the importance of intellectual property in trade and investment. The following year, in 1996, the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) was established. AWGIPC still plays a central role in intellectual property cooperation in ASEAN.

The ASEAN Intellectual Property Association was established in December 1996, and was recognized as a formal private organization by the ASEAN Secretariat in 1998, and continues to support the activities of AWGIPC.

The 1998 ASEAN Summit adopted the 1998 Hanoi Plan of Action, with one of its goals to promote cooperation on intellectual property rights. In 2004, the ASEAN Intellectual Property Action Plan 2004-2010 was formulated, the Work Plan for ASEAN Cooperation on Copyrights was formulated to complement it in 2006, and awareness campaigns related to intellectual property rights in ASEAN have been promoted.

In 2007, the AEC Blueprint 2015 was formulated, including goals to establish an ASEAN design registration system and to join the Madrid Protocol of ASEAN Member States. In 2011, these goals were unified into the ASEAN Intellectual Property Rights Action Plan 2011-2015 (Action Plan 2011). Compared to the Action Plan 2004, the contents of the Action Plan 2011 have been refined by setting goals for each major intellectual property right, although most actions include seminars, research studies, and information exchange.

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[407] ASEAN Secretariat, *ASEAN Statistical Yearbook 2020*, Table 7.2, 2020, p. 32.
[408] Ibid., p. 33.
[409] Ibid., pp. 37-38.

At the initial stage when the cooperative relationship on intellectual property rights commenced, during the period from the conclusion of the ASEAN Agreement on Intellectual Property Cooperation to the formulation of Action Plan 2004, ASEAN had planned to establish an ASEAN-specific, ASEAN wide-area patent and trademark system. ASEAN had also planned to establish an ASEAN Patent Office and Trademark Office. However, by the time of the Action Plan 2011 was formulated, these plans were no longer pursued.[410] Around this time, ASEAN changed its policy from establishing its own patent and trademark system, to a policy to promote accession of international treaties (conventions) such as the Patent Cooperation Treaty operated by WIPO and the Madrid Protocol on Trademarks.

Several reasons have been given for this policy change: (i) there was a big difference in the development of intellectual property rights systems in ASEAN Member States; (ii) there was a strong demand for intellectual property protection on a global scale rather than on the scale of the ASEAN region; (iii) ASEAN needed an international system to strengthen its international competitiveness; (iv) it was difficult to have a unified language in ASEAN, where there are various languages; and (v) there was a sense of caution from Member States regarding the establishment of a supranational institution.[411]

Thus, ASEAN has made a pragmatic policy shift on intellectual property rights, similar to the shift from harmonization to convergence in competition policy. Regarding the development status of intellectual property rights systems in ASEAN, all Member States have participated in the TRIPS Agreement, and all ASEAN Member States have ratified the Madrid Protocol except Myanmar. However, there are still many international treaties (conventions) that ASEAN Member States have not yet joined, as shown in Table 23.

[410] Kenji Takei, *JAPAN-ASEAN Intellectual Property Cooperation-Focusing on Discussions at the 7th Japan-ASEAN Patent Office Director Generals' Meeting*, JAPLO Yearbook 2017, p. 82.
[411] Yoshifumi Fukunaga, "Development and Current Status of Intellectual Property Rights Cooperation in ASEAN", *Flash No. 164,* Institute for International Trade and Investment, p. 8.

Table 23: Participation by ASEAN Member States in International Treaties on Intellectual Property Rights

	TRIPS Agreement	Madrid Protocol	Hague Agreement	Cooperation Treaty	Singapore Agreement
Brunei	4/10/2015	6/1/2017	24/12/2013	24/7/2012	
Cambodia	1/11/2011	5/6/2015	25/2/2017		
Indonesia	20/ 10/2011	2/1/2018		5/9/1997	
Myanmar	16/12/2015				
Laos	29/9/2015	7/3/2016			
Malaysia	10/12/2015	27/12/2019		16/8/2006	
Philippines	30/3/2007	25/7/2012		17/8/2001	
Singapore	28/9/2007	31/10/2000	17/4/2005	23/2/1995	16/3/2009
Thailand	28/1/2016	7/11/2017		24/12/2009	
Vietnam	23/1/2017	11/7/2006	30/12/2019	10/3/1993	

Source: WTO Website and WIPO Lex Database Search

Looking at the status of applications for intellectual property rights, there are large disparities among ASEAN Member States. This is one of the difficult issues that ASEAN must overcome, as shown in Table 24.

Table 24: Status of Applications for Intellectual Property Rights in ASEAN Member States

	2018			2019		
	Patent	Trademark	Design	Patent	Trademark	Design
Brunei	25	397		21	314	
Cambodia						
Indonesia	1,451	65,208	2,667	3,141	51,150	2,077
Laos	1	277				
Myanmar						
Malaysia	2,060	30,933	971	2,122	32,810	914
Philippines	736	33,244	947	674	36,628	1,295
Singapore	7,415	72,008	6,454	7,354	74,904	5,152
Thailand	1,685	46,092	5,063	1,766	47,648	4,758
Vietnam	749	67,975	2,316	838	84,547	2,569

Source: WIPO Statistical Country Profiles

The ASEAN Blueprint 2025 adopted in 2015 set goals that have been further advanced than the goals set out in the Action Plan 2011. The ASEAN Blueprint 2025 sets goals such as establishment of a network for cooperation between intellectual property enforcement agencies in ASEAN countries. The current ASEAN Intellectual Property Rights Action Plan 2016-2025 sets out 19 initiatives under four strategic goals, among which the ASEAN Patent Search and Examination Cooperation (ASPEC) will continue to be promoted.

Started in 2009, ASPEC is a regional patent work sharing program among the participating ASEAN intellectual property agencies. In the ASPEC procedure, the second intellectual property agency and subsequent agencies can use the examination results of the first agency as a reference to eliminate potential duplications in search and examination and shorten the time required for examinations. The procedure resembles that of the Patent Prosecution Highway.[412]

Nine ASEAN Member States, excluding Myanmar, participate in ASPEC, and according to the ASEAN website, 804 applications had been submitted as of 2021, and the average time required for an examination was eight months. ASPEC slightly changed its operations in 2019 to preferentially examine applications related to Industry 4.0[413] within six months. It is now possible to apply for ASPEC using a written opinion prepared by a specific international preliminary examination body.

ASPEC has been promoted as an initiative unique to ASEAN, and although operational revisions have been made, it is not widely used. Since global efforts are required, it seems that it may be unnecessary for ASEAN to pursue independent efforts in this field.

Challenges related to intellectual property rights in ASEAN to date have included insufficient information disclosure, excessive examination time, insufficient protection of business secrets, and inadequate crackdown enforcement on counterfeit products.[414]

In this regard, on 24 September 2021, an ASEAN IP Enforcement Week was held to promote cooperation for the enforcement of intellectual property rights within the ASEAN region. Cooperation between intellectual property authorities is needed to seize counterfeit products and secure the identity of offenders.[415] In the future, it is expected that ASEAN will be required to further cooperate in the enforcement of intellectual property rights.

4.2.5 Promotion of E-Commerce in ASEAN

In ASEAN cooperative relations between Member States regarding e-commerce began after the e-ASEAN Framework Agreement was signed in November 2000. This 15-article agreement was to promote the development of a basic e-commerce environment, including the development of

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[412] The Patent Prosecution Highway is a system by which an inventor who has a patent that was approved by one office can request a simplified examination procedure on the same invention to a second office based on an agreement between the patent offices.

[413] Industry 4.0 refers to the "Fourth Industrial Revolution", i.e., the ongoing automation of traditional manufacturing and industrial practices, using modern smart technologies.

[414] ERIA, *Reforming the Intellectual Property System to Promote Foreign Direct Investment in ASEAN*, 2013, pp. 182-185.

[415] See https://www.aseanip.org/News-Events/Latest-News-Events/ctl/Details/mid/1956/aid/89.

information and communication infrastructure. At that time, e-commerce was still an issue for the future.

Even in the AEC Blueprint 2015 adopted in 2007, the only goals set out were the development of laws and guidelines on e-commerce. In 2008 there was a country in ASEAN that had a mobile phone penetration rate of 138% of its population, while at the same time there was another country within ASEAN with a mobile phone penetration rate of only 1%.[416] There was also a large difference in the internet penetration rate among ASEAN Member States; as of 2010, the internet penetration rate was 81% in Brunei, 78% in Singapore, 65% in Malaysia, 8% in Laos, 1.3% in Cambodia, and 0.2% in Myanmar.[417]

In 2011, the ASEAN ICT Masterplan 2015 (AIM2015) was formulated, with six strategic goals and 17 initiatives under four pillars. Under AIM2015, the ASEAN Telecommunication and IT Ministers Meeting (TELMIN) was supported by the ASEAN Telecommunication and IT Senior Officials Meeting (TELSOM) and the ASEAN Telecommunication Regulators' Council (ATRC). In addition, some working groups were established under the TELSOM and the ATRC.

The AEC Blueprint 2025 adopted in 2015 aimed to further strengthen the cooperative relationships established by the e-ASEAN Framework Agreement. Also in 2015, the ASEAN ICT Masterplan 2020 (AIM2020) was formulated, under which TELMIN was renamed to the ASEAN Digital Ministers' Meeting (ADGMIN) and TELSOM was renamed to the ASEAN Digital Senior Officials Meeting (ADGSOM), and the ADGMIN was supported by the ADGSOM and ATRC, and eight strategic goals and 16 initiatives under five pillars were set.

Since e-commerce has been involved in various initiatives implemented in ASEAN, activities related to e-commerce are being promoted in parallel in several activity plans. For example, the Master Plan on ASEAN Connectivity 2025[418] and the ASEAN Strategic Action Plan for SME Development 2016-2025[419] included activities related to e-commerce. In addition, related issues were also discussed in the Framework on Personal Data Protection[420] and the ASEAN Framework on Digital Data Governance.[421]

[416] ASEAN Secretariat, *We're Stronger When We're Connected*, 2011, p. 9.
[417] Department of Trade and Industry of Philippines and TELSOM, *The ASEAN E-commerce Database Project*, 2010, p. 14.
[418] This is an action plan for connectivity in the ASEAN region from 2016 to 2025, with action goals on sustainable infrastructure, digital innovation, seamless transport, and the movement of people.
[419] This is an action plan for the promotion of small and medium-sized enterprises from 2016 to 2025, one activity of which was to promote greater use of e-commerce by small and medium-sized enterprises.
[420] This was a framework agreement adopted by an IT Ministers Meeting in 2016, at which an agreement was reached on a general framework for personal information protection based on international standards.
[421] This was a framework agreement adopted by an IT Ministers Meeting in 2018, which included arrangements for digital data management, cross-border data management, digitization and new technologies, and data protection regulations.

Since various discussions on e-commerce were held in many forums within ASEAN at about the same time, at the Economic Ministers Meeting in 2017 there were discussions on e-commerce-related issues, and it was decided to establish an ASEAN Coordinating Committee on Electronic Commerce (ACCEC). The ACCEC formulated the ASEAN Digital Integration Framework,[422] which is related to digital trade in general, including e-commerce, and the framework was adopted at the Economic Ministers Meeting in 2018.

The ASEAN Agreement on Electronic Commerce (AAEC) was then formulated, summarizing many matters related to e-commerce, and it was signed in January 2019. As of the end of September 2021, the AAEC had been ratified by all ASEAN Member States except for Indonesia, in which a bill to ratify the agreement was enacted by the parliament in September 2021 and awaits the president's signature; the AAEC is expected to come into effect by the end of 2021.

The ASEAN Digital Integration Framework Action Plan 2019-2025 (DIFAP), which is an action plan for the ASEAN Digital Integration Framework, was adopted by the Economic Ministers Meeting in September 2019, and many activities are proceeding in line with this plan. In January 2021, the ASEAN Digital Master Plan 2025, the successor to AIM2020, was adopted by the ADGMIN, and the ASEAN Digital Master Plan 2025 set out eight strategic goals until 2025 and activities are underway, including a quick revival from COVID-19 using digital technology.

The e-commerce market has expanded explosively in ASEAN since 2015. According to a joint study by Google, Temasek, and Bain & Company, the size of the ASEAN internet market increased from US$3.2 billion in 2015 to US$100 billion in 2019, and even during the COVID-19 pandemic, it continued to grow to US$105 billion in 2020, and is expected to grow to US$309 billion by 2025.[423]

Although ASEAN has generally made remarkable progress, there is a large disparity in the internet penetration rate in the region, with the rate as low as only 25.5% in Laos. In Singapore, where the internet has become more widespread, the speed of broadband connections is faster than in Cambodia, Laos, and Myanmar, even at the entry level.[424] In Cambodia, Laos, and Myanmar, electronic power supply to rural areas where large proportions of the population live is insufficient, resulting in disparities in the internet environment between urban and rural areas.[425]

The internet disparity has also been noted from other angles. A survey conducted in 2019 found that 90% of SMEs in ASEAN had basic digital tools such as email and standard software, but the proportion

[422] A framework agreement adopted in 2018, the action plan includes six priority areas such as seamless trade, data protection to support digital trade and innovation, seamless digital payments, broaden digital talent base, and foster entrepreneurship.
[423] Google, Temasek, Bain & Company, *e-Conomy SEA 2020*, 2020, p. 32.
[424] ERIA, *E-commerce Connectivity in ASEAN*, 2020, pp. 10.
[425] Ibid., p. 11.

accessing websites was only 34% and only 10% were using social media and ecommerce platforms.[426] Thus, there is still a long way to go for widespread digitalization in the region.

A more difficult issue related to e-commerce is the sharing of digital information within the ASEAN region. In Indonesia and Vietnam, the export of personal information to foreign countries is restricted by law, which presents an obstacle to the cross-border sharing of information.[427] Such national data protectionist measures are expected to continue to be controversial.

Generally, the number of wired internet contracts is small in the ASEAN region; most internet users connect through mobile phones. The number of internet users in the region has increased substantially in recent years, with Table 25 presenting access to the internet in ASEAN in 2019.

Table 25: ASEAN Access to Internet (2019)

	Internet Penetration Percentage (users as percentage of population)	Mobile Subscriber Penetration (per 100 inhabitants)
Brunei	94.9	126.6
Cambodia	34	126.3
Indonesia	32.3	173.8
Laos	25.5	54.1
Malaysia	80.1	133.9
Myanmar	30.7	89.8
Philippines	60.1	110.4
Singapore	84.4	148.2
Thailand	52.9	176
Viet Nam	49.6	125.6

Source: ERIA, *E-commerce Connectivity in ASEAN*, 2020

The COVID-19 pandemic has had a major impact on the lifestyles of people in the ASEAN region, and the purpose of using the Internet has shifted from purchasing clothes to ordering fresh food and meals, and attending classes.[428] In the ASEAN countries where smartphones have become widespread, investment is in progress to switch from 4G networks to 5G networks.[429]

4.3 Implications of ASEAN for the AfCFTA

This chapter provides an overview of ASEAN initiatives that may be useful for the future operation of the AfCFTA. This section examines some implications for the AfCFTA from the various ASEAN initiatives that have been reviewed.

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[426] UNCTAD, *COVID-19 and E-commerce: A Global Review*, 2021, p. 31.
[427] UNDP, *Enabling Data Flow: ASEAN and Beyond*, 2021, p. 16.
[428] Google, Temasaek, Bain & Company, supra note 423, p. 34.
[429] ASEAN Secretariat, *ASEAN ICT Masterplan 2020 Final Review*, 2020, p. 36.

4.3.1 Implications from the Experience of ASEAN

The ASEAN region, like the African region, continues to grow in population and has a large young population. Before the COVID-19 pandemic, GDP growth rates in Africa maintained high levels, and during the pandemic, the economics of countries that have been relatively successful in containing the virus have been rapidly recovering.

Relations between ASEAN Member States are now friendly, but looking back on the history of ASEAN, it is apparent that this has not always been the case. At first, ASEAN did not have a secretariat and was just a venue for foreign ministers to meet regularly, but through continuing dialogue, friendships gradually deepened, and external factors such as the oil crisis of 1973 led to closer relationships.

Since the Plaza Accord in 1985, ASEAN has succeeded in capitalizing on economic trends and making major policy shifts to actively attract FDI rather than restrict foreign capital. Since that time, the Cold War ended and free trade areas were formed all over the world, ASEAN started to establish the AFTA, maintained an open market even during the Asian currency crisis, and advanced tariff reduction targets. It became even more successful with bold policies that surprised investors.

The history of ASEAN provides a reminder of the importance of accurately grasping economic trends and promptly reflecting them in policies. Currently, in ASEAN, capturing lifestyle changes brought about by the COVID-19 pandemic, various efforts are being made toward the digitization of society. ASEAN is rapidly developing by utilizing the vitality of the private sector. The paths taken by ASEAN in developing the digital environment can be used as a reference for the activation of digital trade that the AfCFTA is seeking to promote.

In recent years, it has been observed that labor-intensive manufacturing industries have moved away from China due to rapidly increasing labor costs, and there has been a shift of production bases from China to Southeast Asia.[430] Increasing trade tensions between the United States and China are accelerating this movement, and there has been a great deal of controversy as to whether China can continue to serve as the “world’s factory”.[431]

Based on objective data, it is necessary to determine where the next world production base will be, how internationally competitive Africa is, and whether it can compete with China and ASEAN, within the framework of the AfCFTA. Necessary measures should be implemented quickly.

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[430] Chun Yang, “Relocating Labor-Intensive Manufacturing Firms from Chine to Southeast Asia: A Preliminary Investigation”, *Bandung Journal of Global South*, 2016, pp. 11-12.

[431] See https://www.channelnewsasia.com/business/us-toymaker-doubles-down-china-despite-rising-costs-political-tensions-1998376.

4.3.2 Implications from the ASEAN Consensus Making Process

ASEAN Member States, like AfCFTA Member States, have different levels of economic development, different races, and different religions, but no country is considering withdrawal, as the United Kingdom did from the EU with Brexit. The relationships between ASEAN Member States are based on the ASEAN Way, which is the norm of ASEAN in which noninterference in domestic affairs and consensus decision-making are core elements.

Noninterference in domestic affairs has its literal meaning, while the term consensus in ASEAN has a slightly different meaning from the usual one. Former ASEAN Secretary-General Rudolfo Severino explained that consensus in ASEAN does not imply unanimity per se, nor does it involve voting, since not all members need to explicitly agree with the discussion, but it does that there is require sufficient support to endorse adoption of a proposal and that no member votes against it.[432]

There has been some controversy about the ASEAN Way, with both pros and cons. From a positive standpoint, it is argued that it creates an environment that facilitates discussion without worrying about interventions into sovereignty, facilitates the gathering of diverse countries, and prevents the tyranny of one rule.[433] Although decision-making takes time in the ASEAN system, it is an amicable process, and it is argued that a Brexit could not occur in ASEAN because the basic promise of not interfering in other nations' sovereignty is kept.[434]

On the other hand, from a negative point of view, the ASEAN Way does not permit addressing regional peace and human rights issues, such as China's military encroachments into the South China Sea[435] and the suppression of citizens by the Myanmar military.[436] It has been argued that the ASEAN Way concept should be reviewed. There are also discussions from the perspective of trade facilitation. For example, although tariffs were successfully eliminated in ASEAN, non-tariff measures are increasing in place of tariffs, and governance issues in customs departments continue. Therefore, it is also claimed that ASEAN Way is harmful.[437]

As mentioned, Article 5(k) of the AfCFTA Agreement clarifies that the consensus method is adopted, and Article 5(i) of the AfCFTA Agreement adopts variable geometry as a principle. However, the AfCFTA Agreement lacks an explanation of the definition of the consensus method and variable geometry. These definitions may be clarified over time. If the mechanisms for properly monitoring the implementation of the AfCFTA Agreement and properly coordinating different views among State Parties do not function well, the entire agreement may fail.

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432 Atena S. Feraru, ASEAN *Decision-Making Process: Before and After the ASEAN Charter*, 2015, p. 29.
433 See https://www.reportingasean.net/asean-consensus-blessing-curse/.
434 See https://theasiadialogue.com/2017/08/23/asean-the-way-of-the-past-or-the-way-of-the-future/.
435 Le Hong Hiep, *Can ASEAN Overcome the Consensus Dilemma over the South China Sea?*, 2016, p. 3.
436 See https://www.justsecurity.org/76126/beyond-the-coup-in-myanmar-the-asean-way-must-change/.
437 Noel Chow Zher Ming, "The ASEAN Way: A Sore Thumb for ASEAN Solidarity in the Face of an Ailing Global Trade System?", *Asian Yearbook of International Law*, 2018, Vol. 24, pp. 141-42.

In this regard, the EU has introduced a procedure called Enhanced Cooperation since 1997 as a form of consensus building. This procedure was introduced with the aim of preventing stoppages of the process of integration due to the exercise of veto rights by a small number of countries, and the Treaty on European Union has a related provision in Article 20.

Enhanced Cooperation allows participating countries alone to promote integration and cooperation in certain sectors, and non-participating countries are not bound by it. When there is a request for Enhanced Cooperation from more than nine EU Member States, the EU Commission decides whether there is any problem under EU law, and if there is not, it sends the proposal to the European Council. Finally, the proposal is to be approved by the European Council with the consent of the European Parliament.[438] This procedure once required a majority request from Member States and unanimous consent of the European Parliament, but it was relaxed by a 2010 revision of the law.

Although ASEAN does not have a supranational organization, it has a procedure that has the same function as Enhanced Cooperation in the EU. This procedure is called ASEAN Minus X. It was approved in the Framework Agreement on Enhancing ASEAN Economic Cooperation signed by Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand in 1992. In this procedure, all ASEAN Member States participate in intra-ASEAN economic arrangements. However, in the implementation of those economic arrangements, two or more Member States may proceed first if other Member States are not ready to implement these arrangements.[439]

In 2003, the ASEAN Framework Agreement on Services (AFAS) was amended to allow the use of ASEAN Minus X procedures to accelerate the liberalization of trade in services.[440] Countries participating in agreements using ASEAN Minus X are obliged to report the progress of negotiations to the ASEAN Secretariat so that non-participating Member States can participate at any time.[441]

Article 21, Paragraph 2, of the ASEAN Charter adopted in 2007 made it possible to use the ASEAN Minus X approach not only for trade in services but also for economic agreements in general, but the ASEAN Charter requires previous consensus of all ASEAN Member States for the use of ASEAN Minus X. The requirement of consensus for the use of ASEAN Minus X has been criticized as an obstacle to regional integration.[442]

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438 Treaty on the Functioning of the European Union, Article 329.

439 ASEAN Framework Agreement on Enhancing ASEAN Economic Cooperation, Article 1, Paragraph 3.

440 AFAS is a framework agreement on trade in services consisting of 14 articles and signed in 1995. In October 2020, the text of the ASEAN Service Trade Agreement, a comprehensive agreement, was signed. However, according to Article 12, Paragraph, 1 of the ASEAN Service Trade Agreement, the schedule annex must be submitted within 13 years for Cambodia, Laos, and Myanmar, within 7 years for Vietnam, and within 5 years for other Member States. AFAS will be applied for now.

441 ASEAN Protocol to Amend the ASEAN Framework Agreement on Services Article 1, Paragraph 2.

442 Usanee Aimsiranun, *Comparative Study on the Legal Framework on General Differentiated Integration Mechanism in the European Union, APEC, and ASEAN*, ADBI Working Paper Series No.1107, 2020, p 12.

With 54 countries and territories participating in the AfCFTA, strict consensus demands could lead to organizations that cannot move forward. Therefore, adopting the concept of variable geometry is a rational choice based on reality. However, the concept of variable geometry, which the EU controls through supranational organizations, could simply postpone problems and delay regional integration if it is not controlled to some extent. It seems useful for the AfCFTA, which does not have a supranational organization, to take inspiration from the experience of ASEAN.

In the case of ASEAN, decision-making necessarily takes a long time since the consensus method is used. It is helpful to adopt procedures for a leading group to move forward in case negotiations cannot move forward, and it is necessary to monitor progress firmly rather than leave the lagging groups alone.

4.3.3 Implications from the ASEAN Monitoring System

The ASEAN experience demonstrates the importance of monitoring the implementation of agreements, and the importance of monitoring has also been recognized in the AfCFTA negotiations, with a monitoring mechanism incorporated into the AfCFTA regime.

According to Article 12, Paragraph 2(c), of the AfCFTA Agreement, monitoring of the entire AfCFTA Agreement is to be carried out by the Committee of Senior Trade Officials. According to Article 6, Paragraph 2(a), of Annex 5 of the Protocol on Trade in Goods, non-tariff barriers will be monitored by the National Monitoring Committee of each Member State. According to Article 10, Paragraph 1, of Annex 5 of the Protocol on Trade in Goods, the RECs will establish a monitoring system for non-tariff measures and support Member States.

Thus, monitoring of the AfCFTA is more focused on monitoring non-tariff measures than on monitoring the implementation of the agreement. Moreover, although each REC is to conduct monitoring in its own way, it may be better if unified procedures were put in place. That said, monitoring non-tariff measures is itself important to promote trade, and in parallel, it is desirable to establish a system for monitoring the implementation status of agreements.

In this regard, in ASEAN, the implementation of the agreement was monitored mainly by the ASEAN Secretariat, and research institutes such as ERIA, which supported the Secretariat's work with objective analysis. To further enhance the monitoring system, it may be possible to set up a research institute such as ERIA separate from the AfCFTA Secretariat.

As mentioned, in ASEAN, the scorecard mechanism was adopted to monitor the status of agreement implementation. This mechanism had the effect of encouraging the implementation of regional integration plans, and it functioned effectively as a public relations tool. However, there were several challenges in implementing the scorecard mechanism, e.g., it was based on self-reporting, it did not evaluate the development of domestic related laws and intermediate progress, and the period of evaluation was not clear. Consequently, an M&E Framework was introduced in ASEAN.

In the M&E Framework, in addition to Compliance Monitoring, Outcomes Monitoring and Impact Evaluation are conducted, responding to the failures of the scorecard method, which focused too much on simple yes or no questions. In particular, the data to which KPIs are applied in Outcomes Monitoring provides important information for investors and is therefore effective in attracting FDI. Investors require disclosure of accurate information, and to attract more investment through the AfCFTA, it is necessary to disclose the information that investors want in a timely manner.

Unfortunately, the current operation of the AfCFTA has been inadequate in terms of information disclosure. In this regard, the ASEAN Secretariat publishes an ASEAN Investment Report, which provides trends in FDI and an overview of FDI policies. It may be a useful reference for how the AfCFTA Secretariat should disseminate information in the future.

4.3.4 Implications from Various Trade Facilitation Efforts in ASEAN

ASEAN is making various efforts to facilitate trade, and this report covered the ASEAN Single Window (ASW); the ASEAN Trade Repository (ATR); ASEAN Wide Self-Certification (AWSC); the ASEAN Customs Transit System (ACTS); and ASEAN Solution for Investments, Services and Trade (ASSIST). Some of these efforts have been successful and some have not, but they are all helpful references for the AfCFTA.

Looking at the implications of each of ASEAN's efforts in turn, first, the Single Window has already been incorporated into the framework of the AfCFTA. In this regard, Article 1(h) of Annex 4 of the Protocol on Trade in Goods clarifies the definition of a Single Window as a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point. Article 18, Paragraph 1, of Protocol Annex 4 states that State Parties shall endeavor to establish a Single Window; Article 18, Paragraph 3, requires State Parties to notify the details of operations of the Single Windows to the AfCFTA Secretariat. In other words, the Single Window specified in AfCFTA is same as a National Single Window (NSW) in the ASEAN Single Window (ASW) scheme.

Of course, the establishment of NSWs will contribute to trade facilitation, but the effect of NSWs alone is limited, and the heart of the ASW is to connect NSWs with a network. Recently, ASEAN has been proceeding not only with the electronic exchange of electronic certificates of origin, but also with the exchange of electronic customs declarations and electronic phytosanitary certificates. It seems that the AfCFTA will be unable to survive in international competition unless it sets a goal to establish an NSW network, rather than just trying to establish (separate) NSWs.

Next, regarding the disclosure of information such as through the ASEAN Trade Repository (ATR), Article 5(e) of the AfCFTA Agreement clarifies that the AfCFTA adopts the principle of transparency and disclosure of information. Article 4, Paragraph 1, of the Protocol on Trade in Goods Annex 4 requires that trade-related information must be published on the internet to the extent possible. However, it does not include disclosure of information on non-tariff measures.

In this regard, the ATR has also been criticized for the insufficiency of information on non-tariff measures, but in the case of the AfCFTA, disclosure of information on non-tariff measures is not required in the first place, and each State Party is required only to disclose this information to the extent possible. Apparently, it is considered difficult to request sufficient information disclosure.

Second, the ASEAN Wide Self-Certification (AWSC) scheme may at present be a step too far for the AfCFTA, which has not yet completed the negotiation of rules of origin. Operations of this scheme have only just begun in ASEAN, and full-scale operations are yet to come. The AfCFTA's certificate of origin is only a third-party certification system issued by a government agency, and it is likely that it would be difficult to introduce a new system.

FTAs are meaningless unless they are used by companies, and ASEAN is concretely starting to develop a system that is easy for companies to understand and does not cost them money.

To make the AfCFTA attractive in the global market, it is necessary to simplify rules of origin, and the AWSC approach seems to be a helpful model for the AfCFTA in the long term. On the other hand, regarding the ACTS, as mentioned, a similar system called the ECTS has been introduced in Africa by the EAC. Specifically, the EAC introduced RECDTS in 2020 to save time in checking drivers for negative COVID-19 tests. Both ACTS and RECDTS are systems that use GPS to track the location of trucks, and have the common goal of preventing cargo theft and smuggling.

A critical difference between ACTS and RECDTS is that ACTS is an online customs system built with reference to similar systems developed in Europe, and even when passing through multiple countries, information is shared among authorities, so the customs procedure will be complete with one customs declaration and a single customs payment. However, the RECDTS system implemented in Africa does not have these capabilities.

In fact, it has been pointed out that while the introduction of the ECTS has reduced the damage caused by theft, the number of document checks has not decreased, and there has not been a reduction in customs clearance time. Nevertheless, it would be beneficial if such a system was more frequently adopted in Africa, and the sharing of information among the authorities were enhanced.

Lastly, ASSIST is a system that was introduced in response to the failure of its predecessor system (ACT). In ASSIST, companies, business associations, law firms, and other private-sector actors file a complaint free of charge about problems that have arisen in cross-border transactions.

The Non-Tariff Barriers Reporting, Monitoring and Elimination Mechanism introduced in the AfCFTA is a similar system. A characteristic of this mechanism is that it allows women and youth working in the informal sector to file a report. ASSIST does not allow individual complaints, but the Non-Tariff Barriers Reporting, Monitoring and Elimination Mechanism provides for individual complaints, specializes in non-tariff barriers, and provides multilingual support.

The lesson from the operation of ASSIST for the AfCFTA seems to be that ASSIST is not being used much despite improvements of its predecessor system. One reason why ASSIST is not used is that it only supports English. In this regard, the Non-Tariff Barriers Reporting and Monitoring and Elimination Mechanism of the AFfCTA is superior. The implementation of ASSIST has been hindered by challenges; for example, people fear retaliation if they file a complaint and the transparency of the procedure is not trusted. Perhaps the AfCFTA needs to devise a system to prevent similar problems from occurring.

4.3.5 Implications from Competition Policy, Investment, Intellectual Property Rights, and E-Commerce in ASEAN

ASEAN does not have a supranational competition authority like the EU. For ASEAN to promote competition policy, it is necessary for each country to develop a competition law, establish a competition authority, and promote competition policy in cooperation with each other. Competition laws and competition authorities have already been established in nine ASEAN Member States, and the remaining one is expected to enact a new law by the end of 2021. Currently, ASEAN is proceeding to the next stage of harmonization of competition policy.

To investigate international cartel cases, it is necessary to establish a system for sharing evidence, which is not easy. In ASEAN, there is also a large gap in the investigation capacity of competition authorities, and harmonization will probably take some time.

In the case of Africa, there are many countries that have not yet enacted competition laws or established competition authorities, and even if there are laws, they may not functioning. Therefore, the first actions Africa should take in this field, as did ASEAN, is for all AfCFTA State Parties to develop and improve their competition laws and competition authorities, and it is expected that the protocol on competition policy will encourage this development.

It would also be beneficial for Africa to have a forum for dialogue such as the ASEAN Competition Experts Association and the ASEAN Competition Authority Network. In this regard, there is an organization called the African Competition Forum (ACF) in Africa, which is a realistic choice to promote competition policy in cooperation with existing organizations and the AfCFTA.

Another lesson from ASEAN in relation to competition policy is not to aim for unreasonable harmonization, but to aim for a slightly looser convergence. Such a pragmatic approach pursued by ASEAN could probably be productively adopted in Africa.

On the other hand, regarding investment, there is a markedly different point between ASEAN and Africa. While ASEAN has signed a comprehensive investment agreement on a regional scale, Africa is at the stage of considering one of the AfCFTA protocols. Indeed, the AfCFTA is the first step in fulfilling the long-standing dream of African Continental Free Trade Area integration, and at this time it is not possible to conclude a comprehensive continental investment agreement. However, for Africa to be incorporated into the global value chain as a region, it will be necessary for it to conclude a continental-scale investment agreement, and it is expected that the AfCFTA's investment protocol will be the cornerstone of such an agreement.

ASEAN is not particularly advanced with respect to Africa in terms of intellectual property rights. A total of 44 African countries are members of the WTO, and most of AfCFTA State Parties are members or observers, and the WTO TRIPS Agreement has become the minimum standard for intellectual property rights in Africa.

Most AfCFTA State Parties are also members of WIPO, and in addition, organizations such as ARIPO and OAPI at the regional level have been established. The status of accession of African countries to international treaties (conventions) is not much different from that of ASEAN Member States. A total of 37 African countries are members of the Madrid Protocol, 14 are participating in the Hague Agreement, and 44 are participating in the Patent Cooperation Treaty.

Agenda 2063 planned to create PAIPO as a unified intellectual property authority in Africa. However, this plan has not progressed, and the lessons learned from ASEAN are likely to be relevant in this regard. ASEAN abandoned the establishment of an ASEAN Patent Office and Trademark Office and changed to a policy of moving toward accession to international treaties (conventions). Since there is a strong demand for protection of intellectual property rights on a global scale, an international system is needed to enhance competitiveness as a region, and it is difficult to unify languages in the presence of various national languages. This approach is likely to also apply to Africa. As with competition policy, the idea of aiming for convergence rather than harmonization seems to apply in Africa.

Finally, regarding e-commerce, ASEAN is far ahead of Africa. The various initiatives on e-commerce undertaken in ASEAN seem to be of great relevance to the AfCFTA in developing protocols for e-commerce. In particular, the contents of the ASEAN Digital Integration Framework and its action plan (DIFAP), may provide hints when thinking about future action plans of the AfCFTA.

The problem of disparities in access to the internet has been pointed out in Africa, and there is a similar problem in ASEAN. Disparities between urban and rural areas and between large companies and SMEs regarding access to the internet is a major problem in ASEAN.

In addition, issues related to data protectionism, reflecting tensions between regulations on the protection of personal information and e-commerce, are present both in ASEAN and Africa. It will be beneficial to implement measures to address these issues in the negotiation of the AfCFTA e-commerce protocol.

5. Possibility of Support for Full-Scale Operation of the AfCFTA

5.1 Development Partner Cooperation with the AfCFTA

Development partners around the world are interested in supporting the AfCFTA, and among them, the EU, GIZ, and USAID were interviewed in this survey, of which the EU and GIZ have already provided various forms of support for the AfCFTA (e.g., capacity building).

As shown in Figure 31, with the two goals of economic integration and trade, the EU has provided support for the AfCFTA in three programs: the Pan-Africa Programme, EU Aid for Trade, and the EU External Investment Plan.

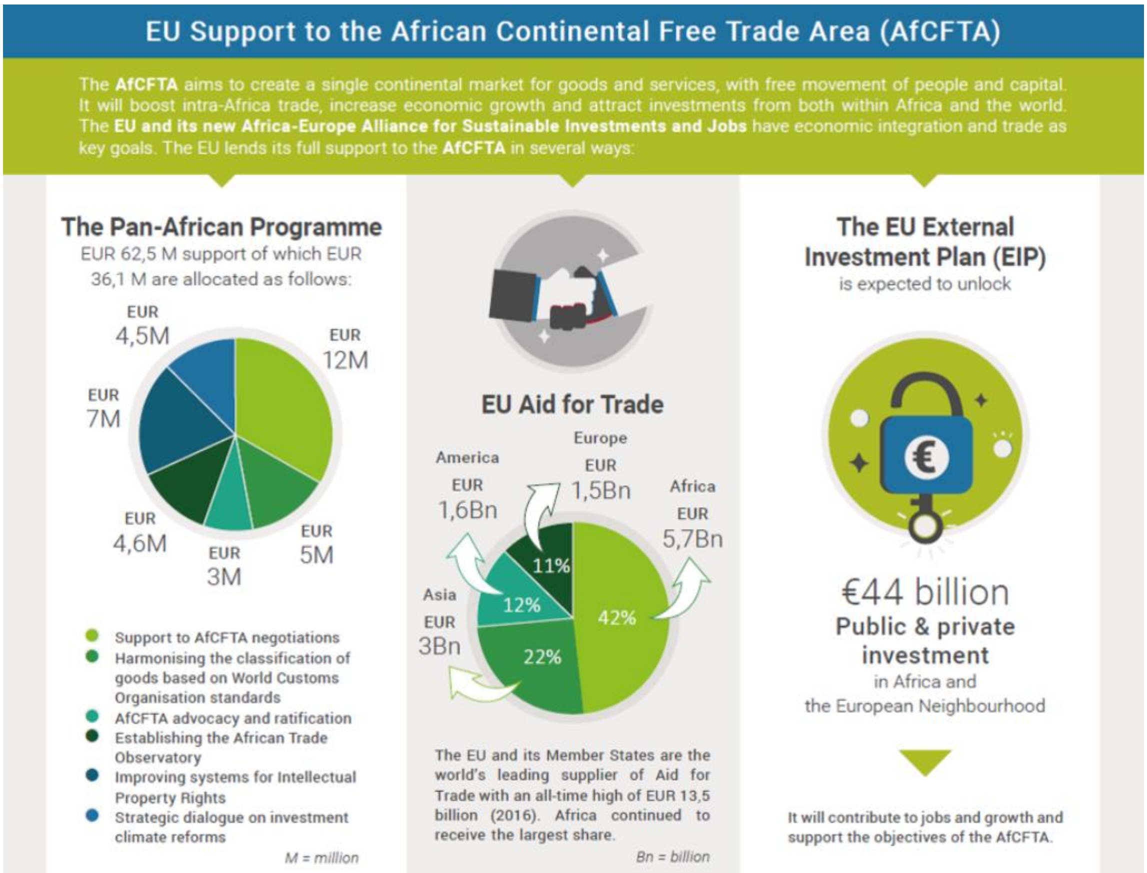

Figure31: EU Support for AfCFTA

Source: The Africa-EU Partnership Website (https://africa-eu-partnership.org/en/afcfta)

An outline of the three EU programs follows:

- The Pan-Africa Programme: The EU supports the AfCFTA from two aspects: (i) the negotiation/ratification process and (ii) the implementation process (Figure 32).

(1) Promotion of Negotiations and Strengthening of the AfCFTA System ✓ Support for facilitating negotiations (support for the AU Trade and Industry Committee / AFCFTA Secretariat, provision of a forum for negotiations, implementation of surveys based on requests from each country) ✓ Support for advocacy activities in African countries for signing and ratification ✓ Support for establishment of the AU Trade Observatory
(2) Promotion of AfCFTA Implementation ✓ Harmonization of goods classification (capacity building for customs/RECs, establishment of customs classification system based on the WCO HS Code) ✓ Improvement of intellectual property rights regime (e.g., the Pan African Intellectual Property Organization / AUC / technical support for each country) ✓ Support for development of the AfCFTA implementation strategy in pilot countries

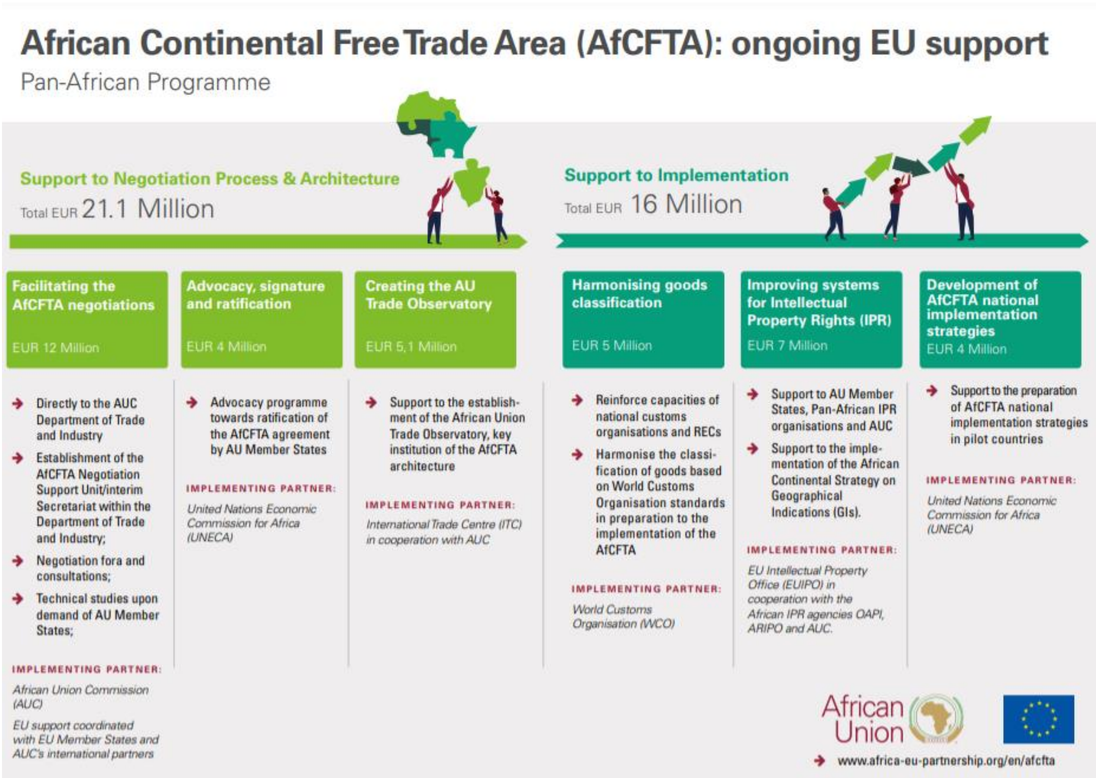

Figure32: Contents of Pan-African Programme

Source: The Africa- EU Partnership Website (https://africa-eu-partnership.org/en/afcfta)

● EU Aid for Trade: The EU provides capacity building on trade in African countries in line with the WTO's Aid for Trade initiative, which seeks to achieve economic development and poverty reduction through the enhancement of trade-related capacities in developing countries. Specific areas of support include negotiations on trade agreements, establishment of value chains for specific products, and infrastructure development.[443]

[443] See https://ec.europa.eu/international-partnerships/topics/trade_en.

- EU External Investment Plan: This EU project promotes private investment in African and Eastern European countries. It consists of (i) provision of funds for trade insurance and compensation for damage, (ii) technical support to formulate investment projects, and (iii) support to improve the investment environment of the country.[444]

Since the beginning of 2021, the AfCFTA Secretariat has actively built cooperative relationships with external organizations. The AfCFTA Secretariat signed a strategic partnership agreement with UNDP on 29 March 2021.[445] In addition, on 4 September 2021, the Government of the United Kingdom signed a landmark MOU with the AfCFTA Secretariat to provide concrete support for trade facilitation.[446] It may be surprising that the bilateral development partner that signed an MOU with the AfCFTA Secretariat was the United Kingdom, and not the EU or Germany, but the British government is about to embark upon the provision of concrete support for the AfCFTA. In this MOU between the Government of the United Kingdom and the AfCFTA Secretariat, Britain commits to (i) promote and facilitate future trade and investment opportunities across the continent, (ii) support implementation of the AfCFTA Agreement across African nations, and (iii) continue to strengthen trading links between the United Kingdom and countries across Africa.

Further, the Secretariat signed an MOU with Trademark East Africa (TMEA) on 17 September 2021.[447] TMEA had signed a Partnership Agreement with the AU in the early stages of the AfCFTA.[448] Priority areas in this Partnership Agreement included (i) collaborating on the development of an action plan for implementation of the AfCFTA by selected countries in Southern and Eastern Africa; (ii) complementing each other's efforts in supporting the implementation of the AfCFTA, especially supporting initiatives for boosting intra-Africa trade; (iii) jointly encouraging the inclusion of private-sector inputs in negotiations and the implementation of the AfCFTA; (iv) increasing export growth and diversification; (v) developing and monitoring trade corridors to improve the flow of goods, services, people, and information between countries; (vi) collaborating in transport infrastructure and operations, trade facilitation, trade logistics, ICT for trade, integration of regional trade networks, and support for regional value chains of goods and services; and (vii) collaborating on investments and industrial development. Pillars of this MOU include (i) reducing barriers to trade across Africa, (ii) digitalizing key trade processes, (iii) developing regional value chains and investments, and (iv) developing Africa's cross-border trade with a focus on women, youth, and micro, small, and medium enterprises (MSMEs).

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[444] See https://ec.europa.eu/eu-external-investment-plan/home_en.
[445] See https://www.undp.org/press-releases/afcfta-and-undp-announce-new-partnership-towards-inclusive-growth-africa.
[446] See https://thebftonline.com/13/09/2021/afcfta-secretariat-signs-landmark-agreement-with-uk-government/.
[447] See https://www.the-star.co.ke/business/africa/2021-09-18-tmea-and-afcfta-join-forces-to-unlock-africas-trade-potential/.
[448] See https://www.trademarkea.com/press-release/au-and-trademark-east-africa-forge-partnership-to-boost-intra-african-trade-and-realise-ambitions-for-the-continental-free-trade-area/.

Also, in October 2021, the Ministry of Commerce of China and the AfCFTA Secretariat signed an MOU to establish an expert group, promising to cooperate on intellectual property rights, customs clearance, digital trade, and competition policy.

Table 26 summarizes support for the AfCFTA from other development partners.

Table 26: Support for the AfCFTA by Other Development Partners

開発パートナー	支援の概要
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH Germany	GIZ started a project from 2020 to 2023, strengthening the management system of the AfCFTA secretariat, supporting service trade negotiations, supporting schedule of concession negotiations, supporting investment, competition policy, and digital trade negotiations. However, there is no MOU between GIZ and AfCFTA. Secretariat and the dispatch of experts to AfCFTA Secretariat has not been confirmed. On the other hand, GIZ has dispatched trade policy advisors to the AU headquarters, and has also provided support and financial assistance to the AfCFTA National Office in Ghana to strengthen the capacity of customs officers and to help SMEs and women participate in AfCFTA.
European Commission EU	As part of the African Continental Free Trade Area for Sustainable Investment and Employment, the EU has pledged € 62.5 million to support AfCFTA. Since the start of negotiations in 2015, the EU has provided a variety of support and spend € 40 million so far. EU has been provided to AUC for public relations activities such as holding webinars and support for intellectual property rights. Currently, the Directorate General of EU International Partnerships is formulating a support plan for the next seven years, 2021 to 2027 and the EU claims to have sent intellectual property experts to AU headquarters.
USAID FROM THE AMERICAN PEOPLE USA	The United States is supporting the introduction of the WTO Trade Facilitation Agreement through its own support program called Prosper Africa, which is believed to contribute to the revitalization of intra-regional trade by AfCFTA. In 2019, the United States and AU issued a joint statement on support for AfCFTA, but have not yet started a concrete project.
AID Care for the Future China	In November 2020, the Chinese Foreign Minister promised AfCFTA financial and capacity building support as part of its Belt and Road Initiative In October 2021, the Ministry of Commerce of China and the AfCFTA Secretariat signed an MOU on the creation of an expert group, promising to cooperate on intellectual property rights, customs clearance, digital trade and competition policy.
KOICA Korea	KOICA has promised to support development in Africa. In November, South Korean customs authorities held a webinar with the support of the African Development Bank, expressing support for digitizing customs procedures. However, no concrete support movement has been seen so far.
TRADE MARK EAST AFRICA Growing Prosperity Through Trade	Trademark East Africa, operated with the support of the EU, United Kingdom, France, Belgium, Canada, Ireland, Denmark, Finland, the Netherlands, Norway and the United States, signed a MOU with the AfCFTA Secretariat on September 17, 2021. In addition to supporting the digitization of trade procedures, it has been promised to share the cost burden.
UNDP	UNDP signed a strategic partnership agreement with the AfCFTA Secretariat on March 29, 2021 for socio-economic recovery from COVID-19 and the sustainable development of women and youth in particular. UNDP has started activities to make AFCFTA work for women and youth.
THE WORLD BANK IBRD · IDA	The World Bank has launched a project from 2021 to 2023 in June 2021 to support the deepening of economic integration and economic recovery from COVID-19, in which it will support AfCFTA.
AfDB	AfDB provided a total of approximately 4.9 million dollars from April 2019 to March 2021 as support for the full-fledged operation of AfCFTA. On October 30, 2021, the AfCFTA Secretariat has concluded an MOU with AfDB and AfDB promised to provide financial support continuously to AfCFTA Secretariat.

Abbreviations: AfCFTA = African Continental Free Trade Area, AfDB = African Development Bank, AUC = African Union Commission, EU = European Union, KOICA = Korea International Cooperation Agency,
USAID = United States Agency for International Development
Note: The logos are from the websites of the respective development partners.
Source: Created by the Survey Team based on interviews with African-related organizations, a review of websites of the development partners, and media reports

5.2 Japan's Support for Trade Facilitation for Africa and ASEAN

The Government of Japan's support for trade facilitation in Africa has been in three main areas: capacity building for customs, OSBPs, and infrastructure development. In the events (e.g., workshops) conducted in this survey, many voices from the African side stressed the necessity to improve the capacity of customs officers, and there were also views stated that it is necessary to improve the infrastructure that connects economic zones in Africa.

These problems have long been observed as issues in Africa even before the AfCFTA, and although they have been gradually addressed in recent years, they remain major challenges. Discussions on the AfCFTA have frequently addressed issues such as non-tariff barriers (e.g., related to customs clearance time and inefficient customs procedures), and particularly the digitization of customs procedures has attracted considerable attention, as demonstrated by the MOU between TMEA and the AfCFTA Secretariat. Annex 2 presents details of Japan's support related to trade facilitation in Africa.

On the other hand, an overview of Japan's support for trade facilitation in the ASEAN region shows that it is more diverse than that for Africa. It includes both hard and soft support, not only to improve the capabilities of customs officers, but also to modernize customs operations, and promote competition policy and intellectual property rights. All these activities could be considered applicable to the discussions on the AfCFTA. Attachment 3 presents details of support for trade facilitation in the ASEAN region.

5.3 Expectations for Support from Japan for Full-Scale Operation of the AfCFTA

The Survey Team sent questionnaires to and interviewed related organizations in Africa. The responding organizations made the requests for support shown in Table 27.

An overview of the requests made by the African side shows that there are many parts where the content of JICA's support in the ASEAN region would meet the requests of the from African side. As noted, regarding trade facilitation, the Government of the United Kingdom has signed an MOU with the AfCFTA Secretariat, and the EU and GIZ have also provided support for trade facilitation. If Japan can provide support focusing on a specific theme or themes, it will be possible to differentiate itself from other development partners.

Table 27: Requested Support from Japan by AfCFTA-Related Organizations

Organization(s)	Request(s)
AfCFTA Secretariat	Strengthening of the capacity of competition law legal frameworks; support related to trade facilitation procedures including national single windows, and quarantine and trade technical obstacles; technical assistance related to general trade; and the building of trade and investment database(s).
AUC	National capacity building for countries lacking the knowledge needed to implement the AfCFTA Agreement; regarding competition policy, capacity building for countries that do not have competition laws.
UNECA	Capacity building in the areas relatively new to African countries such as competition policy, intellectual property rights, e-commerce, and data collection and analysis for review of the AfCFTA five years from now.
AUDA-NEPAD	Strengthening of knowledge on free trade agreements, strengthening of OSBP capacity, strengthening of digital transformation capacity, and sharing of experiences and knowledge in corridor development.
EAC	Strengthening of capacity for data collection and analysis, monitoring and evaluation, policymaking, crisis management, and the like.
AMU	Strengthening of research capabilities (e.g., on AfCFTA sectoral impacts, African market entry opportunities, African market trade barriers, data collection and analysis), trade monitoring systems, policy coordination (e.g., in the fields of industry, trade, agriculture, services, tourism, energy), and communications (e.g., strengthening ICT tools at the AMU Secretariat).
IGAD	Strengthening of the capacity of staff in all fields and personnel exchange of staff with related organizations.

Abbreviations: AfCFTA = African Continental Free Trade Area, AMU = Arab Maghreb Union, AUC = African Union Commission, AUDA-NEPAD = African Union Development Authority – New Partnership for Africa's Development, EAC = East African Community, ICT = information and communications technology, IGAD = Inter-Governmental Authority on Development (IGAD), OSBP = one-stop border post, UNECE = United Nations Economic Commission for Africa
Source: Questionnaire and interview surveys with African organizations, August-October 2020

5.4 Private Companies and the AfCFTA

5.4.1 Japanese Companies Entering the African Market and Using FTAs

There are many young people in Africa and rapid population growth is expected in the future. In addition, since the continent has abundant oil and mineral resources, it offers the prospect of a high-potential market over a long period of time. However, although the number of Japanese companies entering African markets is gradually increasing, it is still small compared to the number of companies entering African markets from other countries.

According to a survey conducted by the Ministry of Foreign Affairs, Japan, in 2020 the number of Japanese companies expanding overseas was 80,373, with 70% expanding in the Asian region (not including China) and 59% expanding in China. The number of Japanese companies in Africa was 900, with the presence of Japanese companies in the African market still low.

The relationship between Japan and Africa is distant geographically and psychologically. There is no historical relationship such as that between a former colonizer and colony. However, many Japanese companies are rethinking their business strategies due to the COVID-19 pandemic, and therefore it is inevitable that Japanese companies will need to rethink their vision(s) for African markets.

Political and economic conditions in Africa vary significantly by region, and business risks vary widely. In general, risks in the African markets have been observed as including unstable political and social situations, financial challenges (e.g., difficulties in raising funds), and labor challenges (e.g., high personnel expenses and difficulties in securing highly skilled human resources). It has been observed that there are legal challenges (e.g., underdeveloped legal systems and unstable law enforcement), infrastructure challenges (underdeveloped infrastructure such as roads and electric power), and trade-related issues (e.g., a proliferation of non-tariff barriers and high customs clearance costs). Due to the various business risks in African markets, it is considered that it is difficult for a single Japanese company to manage the risks, and if Japanese companies seek to enter African markets, it would be effective for them to affiliate or associate with foreign companies with extensive experience in the region.[449] According to JETRO's 2020 Survey on Business Conditions of Japanese Affiliated Companies in Africa, the top three countries that could be potential partners are France, South Africa, and India (see Figure 33).

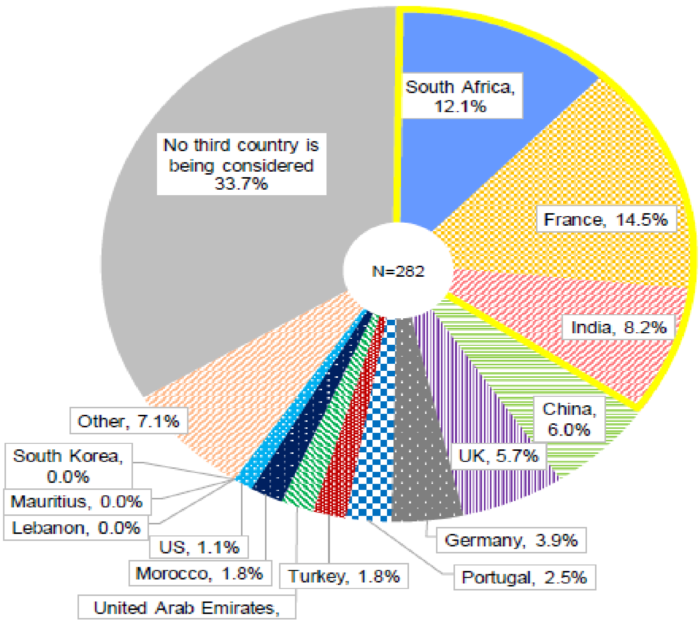

Figure 33: Third-Country Partners for Japanese Investment in Africa

Source: Japan External Trade Organization, *Survey on Business Conditions of Japanese Affiliated Companies in Africa*, 2020

449 See PricewaterhouseCoopers Arata LLC, *2015 International Economic Survey Project for Economic Growth Strategy (Basic Survey on Economic Cooperation in African Communities), Final Report*, 2016; see also (i) Nomura Research Institute, *2017 Emerging Markets Pioneering, Final Report*, 2018 [factfinding survey to build partnerships with companies of third countries to expand into Africa]; and (ii) Japan External Trade Organization, *Expansion of Major Country Companies in Africa and the Possibility of Collaboration with Japanese Companies*, 2018.

Generally, to decide to enter a new market, it is necessary for a company to decide whether the market is large enough for their business and the risks are within an acceptable level. It is also important for Japanese companies considering expansion into African markets to determine whether the AfCFTA can reduce business risks.

In the past, many Japanese companies have expanded into African markets, but many withdrew due to political instability and a shift to Asian markets. However, in recent years African markets have regained the attention of Japanese companies. As a result, the number of Japanese companies entering African markets has been increasing. In the 2020 JETRO survey, about half of the companies responded that the African market became more important than it was five years ago, and 60% stated it would become more important in the next five years. A total of 80% of the companies surveyed had high expectations for the potential future of African market, and 60% were considering business expansion.[450]

The use of existing African FTAs and customs unions by Japanese companies has been increasing, but was still only 15.8% in 2020. However, nearly 40% stated they would consider using the AfCFTA, suggesting high expectations for the AfCFTA (Figure 34).

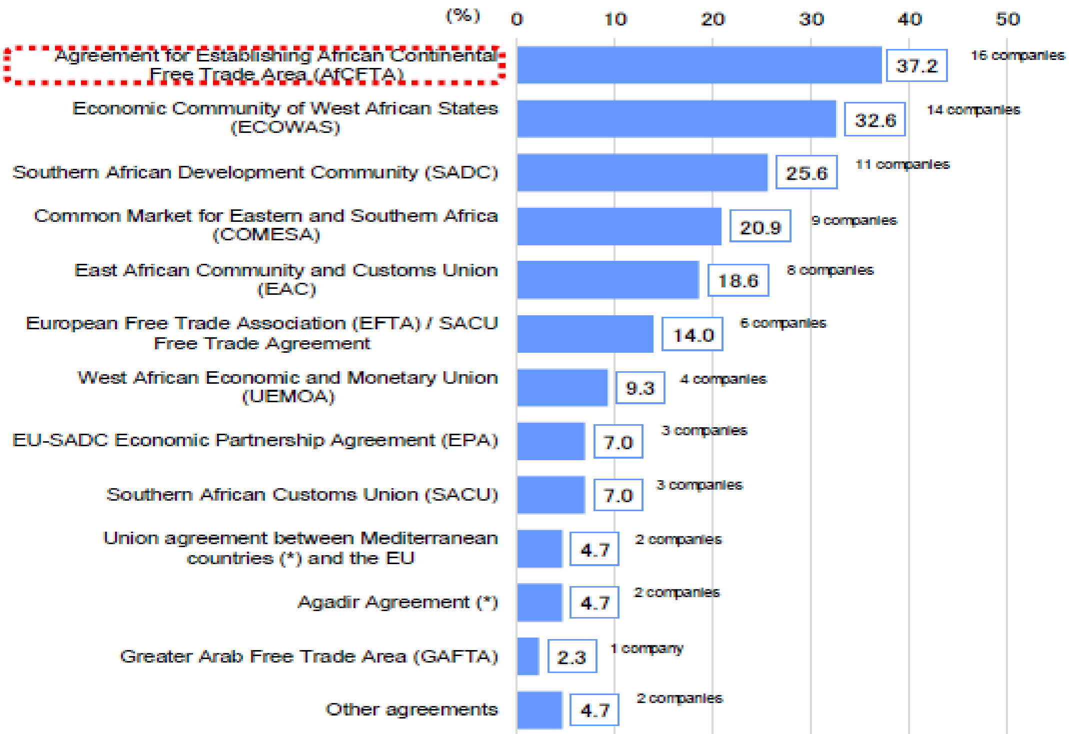

Figure 34: FTA and Customs Unions Under Consideration (Multiple Answers)

Source: Japan External Trade Organization, *Survey of Business Conditions of Japanese-Affiliated Firms in Africa*, 2020

[450] JETRO, *Survey of Japanese Companies Expanding into Africa (FY 2020 Survey)*, 2020, p. 29.

5.4.2 Views of Japanese Companies Doing Business in Africa

To better understand the situation of Japanese companies regarding their operations in Africa, the survey team conducted interviews with seven companies (manufacturing, food, and trading companies) and two business groups that are developing business on the continent. Table 28 summarizes the views of these Japanese companies and business groups.

Similar to Japanese government officials, companies with operations in Africa have high expectations for the AfCFTA, but they have not taken any immediate actions, having rather decided to "wait and see". Anecdotal reports suggest that Japanese companies with operations in Africa face complicated customs clearance procedures and high customs clearance costs when importing and exporting goods, and many support the digitization/digitalization of customs clearance procedures.

Table 28: Views of Japanese Companies Doing Business in Africa

Company / Business Group	Summary of Views
Companies with Operations in Africa	・Tariff rates may differ significantly depending on whether a machine itself is imported or parts are imported. ・Currently, import clearance procedures take time, often more than a week even when an order is shipped the next day. Japanese companies expect that the AfCFTA will solve this problem. ・There is an expectation that Africa will unify customs rules and disclose the information necessary for customs clearance in a timely manner. ・There is no sense of speed in administrative procedures, and system operations change depending on the person in charge. ・The elimination of tariffs by itself will not change Africa. It will not be possible to move forward without also improving customs procedures and removing non-tariff barriers. ・The AfCFTA can effectively promote economic development centered on economic hubs. ・Since there are limited skilled workers in Africa, it is necessary to recruit human resources from overseas. It would be greatly appreciated if the AfCFTA could facilitate the movement of people. ・Due to foreign currency regulations, it is often difficult to buy raw materials in Africa (even in United States dollars). This constraint needs to be addressed. ・Since there is limited infrastructure (e.g., industrial parks, water, road, electric power) in Africa, it is difficult to set up a sales base. In addition, there are challenges related to security, bribery, and infringement(s) of intellectual property rights. It is necessary to comprehensively develop Africa not as individual countries, but also as a region or regions. ・Import and export clearance procedures are complicated, and taxes accrue in the process of moving materials, significantly increasing costs. ・Africa will realize market integration similar to the EU, where economically leading countries and surrounding areas develop successfully, and gradually this success spreads to other regions. The AfCFTA may be similarly successful, but it will take time for the impacts to spread across the continent. ・In the EU, customs duties are paid only once, but in Africa, in some cases customs duties are paid when importing goods from outside Africa, and again during transport operations within Africa, and therefore it is necessary in these

Company / Business Group	Summary of Views
	cases to pay duties multiple times. Duties are imposed even in areas such as the SADC region where tariffs are said to have been eliminated. ・ It is important to develop distribution networks, especially networks that connect RECs. ・ It is necessary to promote digitalization of import and export clearance procedures and paperless operations. ・ In the EAC region, the customs system is supposed to have been unified to facilitate trade, but in fact the situation differs by country (e.g., one country may have a bonded area, while another country may not).
Business Associations	・As China and Europe expand their investments in Africa, there is a sense of urgency so that Japan does not fall behind. It may be too late to act after the new trading environment is established.

Abbreviations: AfCFTA = African Continental Free Trade Area, EAC = East African Community, EU = European Union, REC = regional economic community, SADC = Southern African Development Community
Source: Interviews with Japanese business organizations, August-October 2020

5.5 Views and Requests of Government of Japan Officials Related to the AfCFTA

The Survey Team conducted interviews with Japanese government officials, specifically with officials in (i) the Mission of Japan to the African Union; (ii) the Ministry of Economy, Trade and Industry's Trade Policy Bureau's Africa Office, which oversees trade policy with Africa and the promotion of Japanese trade supported by Japanese companies expanding into African markets; (iii) the Asia-Pacific Division of the Trade Policy Bureau of the Ministry of Economy, Trade and Industry, which is responsible for trade policy with ASEAN; and (iv) the Planning Division of the Planning Department of the Japan External Trade Organization (JETRO). The views and requests of Government of Japan officials are summarized in the Table 29.

In summary, the position of Government of Japan officials toward the AfCFTA seems to be "wait and see", although they have high expectations. The officials indicated a willingness to support the expansion of Japanese companies into African market, and it is expected that the AfCFTA will provide an opportunity to improve the business environment and lead to the expansion of Japanese companies in African market.

Table 29: Views and Requests of Government of Japan Officials Related to the AfCFTA

Summary of Views and Requests
Japan's Contribution • It is desirable to continue the OSBP support that Japan has provided so far. • Since various development partners have been providing support for the AfCFTA, it would be desirable to determine the direction of this support, with Japan observing the support of each partner. • For TICAD 8, the Government of Japan will support Japanese companies' business development activities in Africa, mainly in line with the framework of the African Business Council. • The Government of Japan would like to spread Japanese ways of thinking on e-commerce to Africa.
Status of Japanese Companies / Expectations for the AfCFTA • If tariffs are successfully eliminated, trade within Africa will be revitalized, making the continent more attractive as an investment destination, and new investment from Japan could be expected. • In response to COVID-19, some companies are reviewing their management strategies for Africa, but the willingness and motivation of problem-solving, start-up companies to enter the African market is still high. • The travel restrictions due to the COVID-19 are a hindrance for companies considering expansion into the African market • For Japanese companies expanding into Africa is not the same as expanding into Asia. An option for doing business in Africa is to collaborate with African companies or to collaborate with companies familiar with the African market. • Although the AfCFTA is expected to facilitate the movement of people and goods, there remain concerns about measures against infectious diseases and the danger of terrorism.

Abbreviations: AfCFTA = African Continental Free Trade Area, OSBP = one-stop border post, TICAD 8 = Eighth Tokyo International Conference on African Development [to be held in Tunisia in 2022]
Source: Interviews with Japanese governmental organizations, August-October 2020

5.6 Direction of JICA's Cooperation toward Full-Scale Operation of AfCFTA

As stated in Section 5.1, the provision of "AfCFTA support" by other countries and international organizations is wide-ranging. Even if support is not for AfCFTA negotiations/ratification or capacity building support for the AfCFTA Secretariat, if an initiative contributes to regional integration, trade / investment promotion, and industrial development in Africa, it is regarded as "AfCFTA support". With reference to the frameworks of Germany and the EU, support for the AfCFTA support can be classified as follows.

(1) Support for AfCFTA Negotiations and Ratification

First, there is support for establishing the implementation regime for the AfCFTA and for facilitating negotiations between and among Member States. The former includes capacity building for the organizations responsible for implementing the AfCFTA (e.g., the AU, the AfCFTA Secretariat, AfCFTA departments in each Member State) and support for promoting communication between these organizations. The latter includes the promotion of awareness of the AfCFTA by major stakeholders in each Member State, and technical support (e.g., sharing model cases) for creating agreement frameworks in fields such as competition law, intellectual property law, and e-commerce (in which negotiations will begin in earnest).

(2) Support for Improving the Trading Environment for Operation of the AfCFTA

In addition, there is support for the realization of smooth trade within African countries under the AfCFTA regime. This support is mainly at the national level, for the proper operation of the rules (e.g., tariff concessions, rules of origin) stipulated by the Agreement Establishing the AfCFTA (e.g., the development of institutions, capacity building of the Ministry of Trade and Customs, advocacy activities for private companies) and the establishment of legal systems such as competition laws and intellectual property laws that have not yet been developed.

Also, for the free flow of goods between African countries based on the AfCFTA, support for regional economic integration such as the development of hard infrastructure (e.g., roads, bridges) to strengthen connectivity and facilitate trade at borders (e.g., the development or strengthening of OSBPs), disaster management (e.g., implementation of countermeasures against infectious diseases and terrorism), and improvement of logistics are important.

(3) Support for Linking AfCFTA-based Trade to the Sustainable Development of Individual Member States

As mentioned in subsection 2.3.1 (e), the objectives of the Agreement Establishing the AfCFTA include sustainable and inclusive socio-economic development, gender equality, and the promotion and achievement of structural transformation of Member States. Considering the risk that promotion of the AfCFTA could widen income gaps on a country-by-country basis (with the emergence of winners and losers) and the risk of unemployment due to the shift to free trade, areas such as industrial development, entrepreneurship development, the establishment of value chains, empowerment of women and youth, provision of quality vocational training, and enhancement of social security systems are indispensable and could be targeted for AfCFTA support.

(4) Support for Investment / Trade Promotion Outside Africa

African countries aim to promote economic integration of the continent through the AfCFTA, by creating a huge single market in Africa, while promoting investment and trade from outside Africa. Based on this aim, the EU and the United States have regarded their efforts to promote investment and trade between African countries / regions as "AfCFTA support."

In terms of the four categories, JICA's existing efforts can be summarized as follows (not necessarily exhaustively).

Categories	Related Efforts by JICA
(1) Support for AfCFTA negotiations and ratification	✓ Sharing the experience of the ASEAN Secretariat through this survey and setting up a forum for an exchange of views with Japanese private companies, and similar activities
(2) Support for improving the trading environment for operation of the AfCFTA	✓ Support for training master trainers on rules of origin ✓ Data Collection Survey on Cooperation in Business-related Legal and Judicial Sectors ✓ Infrastructure development to strengthen connectivity centered on corridor development ✓ Technical cooperation related to trade facilitation and OSBPs ✓ Project research – Grand Design Formulation for Global Logistics in Africa ✓ Border management support (basic information collection / confirmation survey, gratis fund aid) based on cooperation with the International Organization for Migration (IOM)
(3) Support for linking AfCFTA-based trade to the sustainable development of each Member State	✓ Support for strengthening corporate competitiveness through Kaizen, Project NINJA (Next Innovation with Japan), and similar projects in the agricultural sector ✓ Data Collection Survey on the Promotion of the African Regional Automobile Industry (post-COVID-19 supply chain and mobility reform) ✓ Strengthening employability through support for vocational training and higher education ✓ Basic Data Collection Survey on the Digitization of Public Services in Africa (including employment / social security-related issues, and support for youth and vulnerable groups)
(4) Support for investment / trade promotion outside Africa	✓ Support for improving the investment environment ✓ Investment and business promotion by Japanese companies through overseas loans and investments and SME/SDG business support projects
Common to all categories	✓ Training on related issues

Based on the foregoing, the future direction of JICA's efforts may be considered as follows:

● Regarding cooperation for AfCFTA negotiations and ratification, Phase 1 negotiations are in the final stages (Phase 2 is yet to come), the EU and Germany have provided considerable support, and the negotiations contain a lot of political and diplomatic elements. Therefore, it would not be easy for JICA to provide support for this purpose by itself without an economic diplomatic commitment of the Government of Japan. On the other hand, activities to share experiences of ASEAN and support exchanges of views with Japanese companies, as conducted in this survey, are highly regarded by the AfCFTA Secretariat. For these reasons, as support for enhancing the knowledge of the AfCFTA Secretariat, it would be useful to carry out new activities continuously to share the experiences of ASEAN's regional economic integration and the Trans-Pacific Partnership (the TPP, of which Japan is a member) through training in Japan and training in third countries. Such Japanese cooperation promoting ASEAN economic integration and the TPP could be unique support not provided by other development partners.

● Since JICA has notable achievements in Africa regarding cooperation for improving the trade environment for operation of the AfCFTA and cooperation for linking AfCFTA-based trade to the sustainable development of each country, it would be appropriate to position such activities as the core of JICA's AfCFTA cooperation in the future. On the other hand, since there are many activities that have not always been positioned within the framework of AfCFTA promotion, it is important to reorganize the various efforts that have been undertaken from the perspective of AfCFTA promotion, and to show concrete results and effectiveness to the African side.

At the same time, when considering existing activities and new activities, it would be effective to add elements in view of their contribution to the AfCFTA. With this in mind, the efforts to promote the Kaizen Initiative with the collaboration of AUDA-NEPAD and the Africa Infrastructure Development Plan (PIDA) may be considered.

In addition, legal development support such support for competition laws, intellectual property laws, and rules of origin at the country level would be indispensable elements for realization of the AfCFTA. Therefore, based on the results of the ongoing survey of African regional business law, by implementing cooperation on the development of business-related legal and judicial sectors in cooperation with the AfCFTA Secretariat and AUDA-NEPAD, JICA's cooperation on the promotion of the AfCFTA would be further enhanced. In addition, since the AfCFTA Secretariat is keenly interested in building value chains in the region, it may be productive to consider specific support based on the current automobile-related survey.

- Regarding Japan's efforts to promote trade and investment in Africa, considering that the governments of African countries and the AfCFTA Secretariat have high expectations for investment promotion and trade promotion from Japan, it would be meaningful for JICA to further proceed with various activities for the improvement of the business environment in Africa and achieve good results by promoting investment from Japanese companies with which JICA has been engaged. At the same time, since the African Business Council established with TICAD 7 and various Japanese economic organizations are keenly interested in AfCFTA, this would be an important role for JICA that would meet the expectations of both the Japanese and African sides to disseminate the potential of Africa as a single market to the Japanese business community and to strengthen the business environment to propel the continuous development of the AfCFTA.

Appendix 1: Country-Specific Information

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
	East Africa							
1	Burundi	July 2, 2018	●	●	COMESA EAC ECCAS	Burundi officially ratified the Agreement Establishing the African Continental Free Trade Area on June 17, 2021.	https://www.bilaterals.org/?burundi-has-officially-ratified&lang=en	2021/7/7
2	Comoros	March 21, 2018			CEN-SAD COMESA	The SADC Council of Ministers has urged Member States that have not yet signed and ratified the AfCFTA and the COMESA-EAC-SADC Tripartite Free Trade Area to do so to allow for the implementation of the agreements.	https://www.sadc.int/news-events/news/sadc-urges-member-states-sign-and-ratify-afcfta-and-tfta/	2021/3/29
3	Djibouti	March 21, 2018	●	●	CEN-SAD COMESA IGAD	Djibouti terminated a contract with Dubai-based port operator DP World in 2018, renationalized the facility, and then transferred a 25% interest in the facility to a Chinese company. This type of action risks alienating potential investors and runs counter to the spirit of the AfCFTA.	https://eastafricamonitor.com/afcfta-djibouti-obstinacy-threatens-to-undermine-african-free-trade-and-investment/	2021/1/14
4	Eritrea				CEN-SAD COMESA IGAD	Eritrea's Information Minsiter explained why Eritrea has not signed the AfCFTA Agreement. He stated that the country's position reflects the Government of Eritrea's historic stance advocating regional integration over continental aspirations [“In terms of the academic discourse on ACFTA, Eritrea's long-held stance is crystal-clear. First articulated at the 1994 OAU Summit, GOE's pragmatic position transcends abstract platitudes to focus on incremental/achievable results; i.e nurturing first the building blocs or RECs.”]	https://www.vanguardngr.com/2020/08/eritrea-defends-decision-to-sit-out-africa-free-trade-pact/	2020/8/8
5	Ethiopia	March 21, 2018	●	●	COMESA IGAD	A significant benefit of the AfCFTA will be the lifting of trade barriers between Kenya and Ethiopia, the two largest economies in East Africa. Despite previous efforts to deepen bilateral economic relations, the volume of bilateral trade between the two countries remains low because Ethiopia has not yet acceded to the COMESA Free Trade Area and therfore relatively high tariffs are still imposed on bilateral trade. A similar issue Burundian, Rwandan, and Ugandan trade with neighboring Democratic Republic of Congo (DRC); while all are members of COMESA, the DRC has yet to accede to the FTA.	https://www.brookings.edu/blog/africa-in-focus/2020/10/20/the-countdown-to-implementing-the-african-continental-free-trade-area-in-east-africa/	2020/10/20
6	Kenya	March 21, 2018	●	●	COMESA EAC IGAD	Kenya's Chief Administrative Secretary for the Ministry of Industrialization, Trade and Enterprise Development, Hon. David Osiany, stressed the need for the AfCFTA to be accompanied by a massive scaling up of private and public cooperation to boost cross-border infrastructure on the continent.	https://www.africanews.com/2021/08/31/2021-east-africa-trade-and-industrialization-week-positions-afcfta-at-the-heart-of-the-east-african-community-integration-process/	2021/8/31
7	Madagascar	March 21, 2018			COMESA SADC	—	—	—
8	Malawi	March 21, 2018	●	●	COMESA SADC	Malawi submitted its instrument of ratification of the AfCFTA on January 15, 2021, making it the 35th member state to ratify the agreement.	https://www.uneca.org/stories/malawi-ratifies-afcfta-after-submitting-instrument-ratification	2021/1/15

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
9	Mauritius	March 21, 2018	●	●	COMESA SADC	Positive impacts of the AfCFTA in Mauritius will include diversification of exports, acceleration of growth in its trade, competitive integration into the global economy, increased foreign direct investment, increased employment opportunities and incomes, and broadened economic inclusion. Mauritius has undergone an economic transformation from a low-income, agriculturally based economy to a diversified, upper-middle-income country that has attracted considerable foreign investment, which should ensure that it can fully take advantage of the opportunities offered by the AfCFTA.	https://www.einnews.com/pr_news/540212606/how-can-mauritius-take-advantage-of-the-african-continental-free-trade-area-afcfta-by-chido-pamela-mafongoya-veedushi-mooloo	2021/5/4
						With the coming into force of the AfCFTA, Mauritius has preferential access to key African markets and to China. Customs duties, non-tariff barriers, and other restrictions on trade in goods and services among the member states have been eliminated. Mauritius is positioning itself as an intermediary for the importation and exportation of goods and trade services from China to member states of the AfCFTA and vice versa.	https://www.bowmanslaw.com/insights/corporate-services/mauritius-new-free-trade-agreement-positions-the-country-as-a-middleman-between-asia-and-africa/	2021/5/6
10	Mozambique	March 21, 2018			SADC	Ms. Celeste Banze (an economist at the Centre for Public Integrity) concluded that although the AfCFTA "is commendable at the continental level and will certainly bring numerous advantages, given the heterogeneity of countries the advantages will not all come at the same time". She found that "Mozambique still needs to consolidate its position in the commercial exchanges it carries out at the SADC level, then explore new markets."	https://www.bilaterals.org/?mozambique-is-not-in-a-position-to&lang=en	2021/1/14
11	Rwanda	March 21, 2018	●	●	COMESA EAC	Rwanda was one of the first African countries to declare readiness to trade under the AfCFTA. Its Minister of Trade and Industry expressed a hope that the agreement will increase Rwandan exports to the rest of the continent and facilitate greater trade opportunities for micro, small, and medium-sized businesses for women and youth.	https://www.cnbcafrica.com/2021/rwanda-declares-readiness-to-trade-under-african-continent-free-trade-agreement/	2021/1/18
12	Seychelles	March 21, 2018	●		COMESA SADC	Businesses in Seychelles will be able to access a market of 1.2 billion after its National Assembly approved ratification of the AfCFTA.	http://www.seychellesnewsagency.com/articles/15045/National+Assembly+approves+ratification+of+African+Continental+Free+Trade+Area%2C+opening+door+between+Seychelles+and+.+billion+customers	2021/6/25
						The Principal Secretary for Trade, Ms. Cillia Mangroo, explained to local stakeholders that the AfCFTA Agreement will benefit the country's private sector.	http://www.finance.gov.sc/news/368/Private-Sector-will-benefit-with-the-ratification-of-AfCFTA	2021/6/28
13	Somalia	March 21, 2018	●		CEN-SAD COMESA IGAD	Somalia ratified the AfCFTA Agreement in August 2020, looking forward to the opportunity "to sell its products on the continent, tap investment, and boost intra-Africa trade".	https://www.poandpo.com/politics/somalia-approves-africa-free-trade-area-treaty-for-ratification/	2020/8/15

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
14	South Sudan	March 21, 2018			EAC IGAD	National consultations and an online survey were launched by stakeholders in South Sudan to provide a platform for women in trade and business to voice their needs and interests regarding participation in regional and continental trade, to inform the proposed Protocol on Women in Trade of the African Continental Free Trade Area. The online survey was launched by the UN Women Regional Offices of West and Central Africa, East and Southern Africa and the Arab States, in partnership with UNDP and the AfCFTA Secretariat.	https://www.ss.undp.org/content/south_sudan/en/home/presscenter/pressreleases/2021/afcfta-women-crossborder-traders-consultations-unwomen-undp.html	2021/7/13
						The African Export-Import Bank (Afreximbank) announced its support for the first memorandum of understanding on trade collaboration between the Governments of Malawi and South Sudan. Afreximbank will provide financial support and payment instruments to facilitate the trade of agricultural commodities and essential consumer goods between the two nations.	https://www.afreximbank.com/afreximbank-supports-ground-breaking-trade-collaboration-agreement-between-malawi-and-south-sudan/	2021/7/12
15	Uganda	March 21, 2018	●	●	COMESA EAC IGAD	"Uganda needs to do more to fully benefit from the AfCFTA because this agreement is more complex and sophisticated compared to past trade agreements. To start with, Uganda must concentrate on building a more comprehensive trade policy strategy that focuses on improving the quantity and quality of the existing exports and taking advantage of the new markets. This implies that standards must be at the forefront of Uganda's market access penetration activities. Also, key on the reform agenda should be export diversification by learning the product and service exports that can be sold profitably to new and existing markets. This will give Uganda a greater advantage in exporting and maneuvering through price fluctuations that affect economies that rely on commodity exports. This must be supported by improvements in productivity that facilitate quality improvements and efficiency."	https://eprcug.org/blog/771-is-uganda-ready-to-exploit-the-benefits-from-the-afcfta/	2020/1/20
16	United Republic of Tanzania	March 21, 2018	●	●	EAC SADC	Tanzania ratified the AfCFTA Agreement, joining the pact connecting countries with a total gross domestic product of $3.4 trillion equivalent.	https://nation.africa/kenya/news/africa/tanzania-ratifies-treaty-for-africa-free-trade-area-3544944	2021/9/10
17	Zambia	February 10, 2019	●	●	COMESA SADC	Zambia deposited its instruments of accession documents for the AfCFTA following Parliamentary ratification.	https://www.mofa.gov.zm/zambia-ratifies-afcfta-deposits-instruments-of-accession-to-au/	2021/2/5
18	Zimbabwe	March 21, 2018	●	●	COMESA SADC	Zimbabwe has plans to boost its manufacturing industries and its exports in volume and diversity. The Foreign Affairs and International Trade Minister urged focusing on the positive rather than negative impacts from AfCFTA liberalization.	https://www.herald.co.zw/zim-targets-afcfta-market-opportunities/	2020/12/3
	Central Africa							
19	Angola	March 21, 2018	●	●	ECCAS SADC	Angola's ratification (October 2020) made it the 30th country to become a State Party to the AfCFTA Agreement, about two months before the start of trading based on the AfCFTA Agreement on January 1, 2021.	https://www.uneca.org/storys/afcfta-expects-wave-ratifications-following-angola	2020/11/8
20	Cameroon	March 21, 2018	●	●	ECCAS	Cameroon ratified the AfCFTA Agreement on December 1, 2020, one month before the commencement of trading on January 1, 2021.	https://www.uneca.org/storys/cameroon-becomes-33rd-country-ratify-afcfta-one-month-start-trading	2020/12/1

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
21	Central African Republic	March 21, 2018	●	●	CEN-SAD ECCAS	Only CEMAC and all its Member States (Cameroon, CAR, Congo Republic, Chad, Equatorial Guinea and Gabon) have submitted tariff offers as a Union. This implies that CEMAC is ready for full trading with all other State Parties that are ready for trading.	https://www.ey.com/en_gl/tax-alerts/africa-union-launches-africa-continental-free-trade-area-status-of-trading-among-african-countries	2021/2/10
						CEMAC's schedule of tariff commitments includes tariff offers for non-sensitive and sensitive goods and the products excluded from liberalization.	https://www.tralac.org/documents/resources/infographics/4276-afcfta-comparative-tariff-offer-analysis-march-2021/file.html	3/1/2021
22	Chad	March 21, 2018	●	●	CEN-SAD ECCAS	At a retreat co-organized by Chad's National AfCFTA Negotiation Committee and UNECA's Subregional Office for Central Africa, bringing together government officials and representatives of the private sector, the main concerns raised related to Chad's readiness to compete with Africa's industrial giants and the impact on customs revenue.	https://www.kapitalafrik.com/2019/06/26/eca-supports-chad-to-flesh-out-afcfta-strategy/	2019/6/6
23	Congo	March 21, 2018	●	●	ECCAS	—	—	—
24	Democratic Republic of the Congo	March 21, 2018			COMESA ECCAS SADC	The Economic Commission for Africa (ECA) in collaboration with The Democratic Republic of Congo's Ministry of Foreign Trade is organizing a workshop to validate the country's national implementation strategy for the African Continental Free Trade Area (AfCFTA).	Workshop to validate the Democratic Republic of Congo's national strategy for the implementation of the African Continental Free Trade Area (AfCFTA) | United Nations Economic Commission for Africa (uneca.org)	2021/6/15
25	Equatorial Guinea	March 21, 2018	●	●	ECCAS	Only CEMAC and all its Member States (Cameroon, Central African Republic, Congo Republic, Chad, Equatorial Guinea, and Gabon) submitted tariff offers as a Union. This implies that CEMAC is ready for full trading with all other State Parties that are ready for trading.	https://www.ey.com/en_gl/tax-alerts/africa-union-launches-africa-continental-free-trade-area-status-of-trading-among-african-countries	2021/2/10
26	Gabon	March 21, 2018	●	●	ECCAS	See above.	https://www.ey.com/en_gl/tax-alerts/africa-union-launches-africa-continental-free-trade-area-status-of-trading-among-african-countries	2021/2/10
27	São Tomé and Principe	March 21, 2018	●	●	ECCAS	UNECA supports São Tomé and Principe, a country small in area and population, with limited natural resources and vulnerablity to enviromental changes. A workshop was held to increase knowledge of the AfCFTA by the country's stakeholders to enable them to accelerate their preparations to better benefit from the AfCFTA Agreement. Small Island Developing States such as São Tomé and Principe face specific challenges and difficulties.	https://allafrica.com/stories/201910240513.html	2019/10/24
	North Africa							
28	Algeria	March 21, 2018	●	●	AMU	Minister of Trade and Export Promotion, Hon. Kamel Rezig, stated that the entry into force of the AfCFTA will offer the economies of African countries improved opportunities for trade and the exploitation of raw materials in manufacturing industries.	https://www.aps.dz/en/economy/40716-afcfta-will-allow-better-exploitation-of-african-raw-materials	2021/9/3
29	Egypt	March 21, 2018	●	●	CEN-SAD COMESA	In December 2020, Prime Minister Mostafa Madbouly virtually attended the 13th Extraordinary Summit on the AfCFTA. In his speech, he stated that "Africa is on the cusp of a historic milestone which started when the AfCFTA was signed in Kigali, Rwanda in March 2018. We aggressively implement the AfCFTA as one of the tools for effecting a fundamental structural transformation of Africa's economy and placing Africa on a path of long term industrial development. Now is the time to take action to dismantle this colonial economic model by accelerating our industrial development objectives."	Egypt PM attends AU's 13th extraordinary summit on AfCFTA - Daily News Egypt	2020/12/5

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
30	Libya	March 21, 2018			AMU CEN-SAD COMESA	—	—	—
31	Morocco	March 21, 2018			AMU CEN-SAD	Morocco continues to take steps towards a more prosperous economic future by committing to the AfCFTA and focusing on the objectives of Agenda 2063.	https://www.moroccoworldnews.com/2021/05/342411/morocco-ensures-prosperous-financial-future-after-meeting-with-afcfta	2021/5/18
32	Saharawi Arab Democratic Republic	March 21, 2018	●	●		On 29 April 2019, Sierra Leone and the Saharawi Arab Democratic Republic (Western Sahara) deposited their instruments of ratification of the Agreement Establishing the African Continental Free Trade Area (AfCFTA).	https://www.tralac.org/blog/article/14052-the-afcfta-what-enters-into-force-now-and-what-does-it-mean.html	2019/5/17
33	Sudan	March 21, 2018			CEN-SAD COMESA IGAD	Mr. Khaled Hussein, Interim Director of the UNECA Office for North Africa, stated that: "We need to work together and in a very practical way so as to ensure Sudan benefits from the AfCFTA and makes the most of its strong points - its workforce, its agriculture and industry – to increase exports to African countries".	https://www.uneca.org/storys/afcfta-joint-practical-efforts-needed-sudan-make-most-its-strong-points	2020/12/21
34	Tunisia	March 21, 2018	●	●	AMU CEN-SAD COMESA	Tunisia submitted its instruments of ratification to the AUC, the depository for such instruments, on November 2, 2020.	https://www.tunisianmonitoronline.com/index.php/2020/12/01/tunisia-joins-countries-to-ratify-afcfta/	2020/12/1
	Southern Africa							
35	Botswana	February 10, 2019			SADC	Impacts of trade liberalization on real wages across African countries will be uneven. For example, real wages are expected in increase by 16.6% (and 12.5% in Angola and 6.5% in Ghana) [period unclear in the source].	https://www.brookings.edu/blog/africa-in-focus/2021/09/22/quantifying-the-impact-on-nigeria-of-the-african-continental-free-trade-area/	2021/9/22
						UNECA is supporting the Government of Botswana to develop its AfCFTA national implementation strategy.	https://www.uneca.org/stories/eca-to-help-botswana-develop-its-afcfta-national-implementation-strategy%2C-says-president	2021/3/10
						At the 49th SADC Parliamentary Forum, Dr. Mokgweetsi Masisi stated that the AfCFTA is one of the key drivers that can position Africa as an economic powerhouse. He stated that with the agreement, there should be no reason why SADC and Africa as a whole cannot be major players in global GDP at par with other regions of the world.	https://allafrica.com/stories/202106280240.html	2021/6/27
36	Eswatini	March 21, 2018	●	●	COMESA SADC	Businesses have started to respond to the AfCFTA market. For example, Ethiopian Airlines, DHL, and the African Electronic Trade Group partnered to ship the first goods under the AfCFTA. On 1 January 2021, the African Electronic Trade Group transported goods produced in eSwatini to various countries that had signed and ratified the AfCFTA, including Ethiopia and South Africa.	https://trade4devnews.enhancedif.org/en/op-ed/implementing-afcfta-2021	2021/3/16
37	Lesotho	July 2, 2018	●	●	SADC	—	—	—
38	Namibia	July 2, 2018	●	●	SADC	While Namibia may be able to theoretically benefit from the AfCFTA, a practical assessment of the country's readiness has not been undertaken. The president of the country's Chamber of Commerce and Industry stated that they identified strengths versus weaknesses of the country's private sector, with an emphasis on the ("obvious") weaknesses. Strengths include the country's political stability, climate, natural resources, and trading infrastructure, but most of the strengths were also found to be weaknesses, if not managed appropriately, as "they also create a certain vulnerability that invites exploitation".	https://www.namibian.com.na/206267/archive-read/Namibia-is-not-ready-for-AfCFTA-%E2%80%93-Part-I	2020/11/12

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
39	South Africa	July 2, 2018	●	●	SADC	A November 9, 2020 opinion article asked why African leaders proceeded with the AfCFTA in the absence of an agreement on investor protections. The South African investment-protection framework – which restricts certain sectors (e.g., textiles, automobiles) – illustrates the challenges many African countries face in AfCFTA negotiations.	https://mg.co.za/opinion/2020-11-09-the-africa-investment-protocol-a-prickly-pear-for-africans/	2020/11/9
	West Africa							
40	Benin	July 7, 2019			CEN-SAD ECOWAS	In West Africa, particularly in Benin and Nigeria, informal cross-border trade represents about 75% and 20% of GDP in the respective countries. However, despite the huge prospects of the informal economy, tax authorities in most African countries still find it difficult to effectively tax and regulate it.	https://futureafricaforum.org/2021/08/31/the-role-of-the-afcfta-in-improving-informal-cross-border-trade-in-africa/	2021/8/31
41	Burkina Faso	March 21, 2018	●	●	CEN-SAD ECOWAS	In late October 2020, government officials and experts in Burkina Faso met to develop the country's strategy for implementation of the AfCFTA under which trading was to commence on January 1, 2020. In addition to sensitizing participants on the themes of the AfCFTA, the meeting discussed the risks and opportunities associated with implementation of the agreement as well as the implications for stakeholders. Senior government officials responsible for trade, integration, industry, economy, finance, agriculture and livestock, the environment, youth, and women participated, along with representatives of research institutes, thinktanks, bilateral development partners, and subregional and international organizations.	https://allafrica.com/stories/202010231038.html	2020/10/23
42	Cabo [Cape] Verde	March 21, 2018			ECOWAS	An Advisor to the Minister of Industry, Trade and Energy observed that this small country consisting of 10 islands seeks to benefit from scale economies through regional integration (e.g., through ECOWAS) and opportunities presented by the AfCFTA.	https://trade4devnews.enhancedif.org/en/op-ed/cabo-verde-tourism-and-trade-crossroads	2020/11/10
43	Côte d'lvoire	March 21, 2018	●	●	CEN-SAD ECOWAS	A World Bank publication titled *The African Continental Free Trade Area: Economic and Distributional Effects* found that Côte d'Ivoire may be the country that will benefit the most from the AfCFTA. The report found that Côte d'Ivoire has one of the largest trading costs on the continent and the implementation of the AfCFTA may increase the nation's gross domestic product by 14%, the largest gain forecasted for countries on the continent.	https://www.ecofinagency.com/public-management/2907-41685-world-bank-sees-cote-divoire-as-the-biggest-beneficiary-of-afcfta	2020/7/29
44	The Gambia	March 21, 2018	●	●	CEN-SAD ECOWAS	In November 2020 in Cotonou, Benin, The Gambia's Majority Leader attended a meeting of the ECOWAS Parliament Joint Committee on Trade, Customs and Free Movement, Macroeconomic Policy and Economic Research, Public Accounts, Administration, Finance and Budget, on the AfCFTA. Propsects of achievement of the AfCFTA were considered within the context of cross-border threats (i.e., terrorism and insecurity, pandemics, and protectionism).	https://allafrica.com/stories/202011110986.html	2020/11/11
45	Ghana	March 21, 2018	●	●	CEN-SAD ECOWAS	On January 1, 2021, free trading officially commenced under the AfCFTA. Two Ghanaian companies became pioneer exporters of products using the AfCFTA preferences, marking a major milestone in the short but eventful history of the agreement.	https://www.un.org/africarenewal/magazine/april-2021/afcfta-100-days-start-free-trading-prospects-seem-bright	2021/4/7
						On 4 January 2021, a shipment of beverage and cosmetic products under AfCFTA documents and rules took place from Ghana to South Africa and Guinea.	https://trade4devnews.enhancedif.org/en/op-ed/implementing-afcfta-2021	2021/3/16
46	Guinea	March 21, 2018	●	●	ECOWAS	Enabled by the AfCFTA, a methanol delivery from Guinea to Gabon is expected to lead to a significant increase in regional petrochemical and liquified natural gas trade.	https://www.africanews.com/2021/08/30/equatorial-guinea-and-gabon-drive-afcfta-with-energy-deal-african-energy-week-in-cape-town-will-place-post-afcfta-opportunities-at-the-forefront-of-the-african-energy-agenda//	2021/8/30

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
47	Guinea-Bissau	February 8, 2019			CEN-SAD ECOWAS	—	—	—
48	Liberia	March 21, 2018			ECOWAS	In his Fourth Annual Message to the "54th Legislature", President George Weah stated urged ratification of the AfCFTA Agreement.	https://frontpageafricaonline.com/front-slider/liberia-president-george-weahs-fourth-annual-message-to-the-54th-legislature/	2021/1/26
						Liberia's Vice President Jewel Taylor called for an "African industrial revolution". He stated an expectation that the AfCFTA would increase intra-African trade by 52% by 2022. He noted that in West Africa only Benin and Liberia had not yet ratified the AfCFTA Agreement. He stated that the Agreement was before the National Legislature and expressed his hope that it would be ratified soon.	https://www.un.org/africarenewal/magazine/may-2021/its-time-african-industrial-revolution	2021/5/6
						The Secretary General of the AfCFTA Secretariat noted that Liberia (as well as Benin and Guinea-Bissau) had not yet ratified the agreementm but AfCFTA Secretariat was interfacing with these countries to create "an avenue through which their reservations can be addressed".	https://www.proshareng.com/news/TRADE%20INVESTMENT/AfCFTA-Holds-2nd-Quarterly-Press-Briefing-2021/58101	2021/7/9
49	Mali	March 21, 2018	●	●		—	—	—
50	Mauritania	March 21, 2018	●	●	AMU CEN-SAD	In September 2020, Mauritania finalized its AfCFTA Implementation Strategy and held a workshop with UNECA to validate the strategy. Mauritania was among the first African countries to ratify the AfCFTA Agreement. The workshop has been part of a series of national efforts to facilitate effective implementation of the AfCFTA with a positive impact on the Mauritanian economy.	https://allafrica.com/stories/202009171011.html	2020/9/17
51	Niger	March 21, 2018	●	●	CEN-SAD ECOWAS	In October 2020, Niger organized a trade fair to accelarate the process of the industrialization and economic diversification with implementation of the AfCFTA.	https://www.marketscreener.com/news/latest/AfCFTA-The-Government-of-Niger-the-ECA-and-the-Organization-of-Industrial-Professionals-of-Niger-o--31494161/	2020/10/6
52	Nigeria	July 7, 2019	●	●	CEN-SAD ECOWAS	Nigeria has the largest economy and population in Africa with a GDP of more than US$500 billion equivalent and a population approaching 200 million. This market size allows manufacturers to increase capacity and expand into other African countries, which enables investors to benefit not only from the Nigerian market but also from the markets of other countries on the continent. For example, Nigeria contributes an estimated 76% of the total trading volume in the ECOWAS region, which is made by the ECOWAS Treaty, which provides for the free movement of people and goods throughout 15 West African countries.	https://www.mondaq.com/nigeria/international-trade-investment/1007942/afcfta-and-trade-benefits-to-nigeria	2020/11/20
						Nigeria hesitated to ratify the accord amid complaints from local businesses that their markets would be endangered by an influx of goods from China or Europe via African neighbors. The government later set up a committee to assess potential costs and impacts for Nigeria of acceding to the agreement, and stated that the AfCFTA would be implemented in phases. Nigeria's ratification is an important endorsement as the largest economy on the continent.	https://www.reuters.com/article/africa-trade-nigeria-idINL1N2HY20R	2020/11/13
53	Senegal	March 21, 2018	●	●	CEN-SAD ECOWAS	Speaking at a trade forum in Dakar, Senegal, AfCFTA Secretary General, H.E. Wamkele Mene, called for the swift implementation of the AfCFTA to lift Africa out of the economic downturn caused by COVID-19.	https://www.mmegi.bw/index.php?aid=87485&dir=2020/october/23	2020/10/23

No.	Region/Country	Date of Signing	Ratification	Deposit	RECs	Country-Specific Information	Information Sources	Date of Information
54	Sierra Leone	July 2, 2018	●	●	CEN-SAD ECOWAS	In February 2020, the Government of Sierra Leone, in collaboration with UNECA, held a validation workshop on the country's National Trade Strategy: Repositioning Trade for the African Continental Free Trade Area. Participants included experts from the public and private sector, representing government, civil society, youth, women, and academia. The strategy focuses on implementation of the AfCFTA to reposition Sierra Leone's trade away from an overdependence on iron and other mining products, towards more diversified goods and services.	https://allafrica.com/stories/202002050835.html	2020/2/4
55	Togo	March 21, 2018	●	●	CEN-SAD ECOWAS	Togo's Ministry of Commerce, Industry and Local Consumption, in collaboration with UNECA, organized a series of workshops for women traders and entrepreneurs to develop their capacity to participate in the AfCFTA.	https://www.uneca.org/stories/women-traders-and-entrepreneurs-in-togo-receive-training-on-afcfta-issues	2021/7/7

＊This color indicates countries that are mentioned in the body of the report.

Abbreviations: AfCFTA = African Continental Free Trade Area, AMU = Arab Maghreb Union, AUC = African Union Commission, CEMAC = Economic and Monetary Community of Central Africa, CEN-SAD = Community of Sahel–Saharan States, COMESA = Common Market for Eastern and Southern Africa, DRC = Democratic Republic of Congo, EAC = East African Community, ECCAS = Economic Community of Central African States, ECOWAS = Economic Community of West African States, GOE = Government of Eritrea, ICT = information and communication(s) technology, IGAD = Intergovernmental Authority on Development, LDC = least developed country, NFTC = national trade facilitation committee, REC = regional economic community, SADC = Southern African Development Community, UNCTAD = United Nations Conference on Trade and Development, UNDP = United Nations Development Prgramme, UNECA = United Nations Economic Commission for Africa

Sources: (i) The source of most table entries is shown in the last column of the table. (ii) The status of signing, ratification, and deposit is from https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html.

Appendix 2: Examples of JICA's Cooperation in relation to Trade Facilitation in the African Region[1]

Country/Region	Project Name	Cooperation Period[2]	Type[3]
African Region	Project for Capacity Building for the Customs Administrations of the Eastern African Region	July. 2007-Sept. 2013	TC
	Project on Capacity Development for International Trade Facilitation in the Eastern African Region	Dec. 2013-Dec. 2017	TC
	Project on Capacity Development for Trade Facilitation and Border Control in East Africa	Dec. 2017-May 2022	TC
	OSBP Sourcebook 2 (Preparation and Revision)	2011, 2015-2016	Survey
	Knowledge Sharing Workshop on How to Make OSBPs Operational as an Instrument of Trade Facilitation in the West and Central African Regions	Dec. 2018	Seminar
	OSBP Sourcebook 3 (Preparation and Revision)	2021-2022	Survey
	UEMOA Customs Policy Advisory Services Trade Facilitation	2012-2014	Expert
	UEMOA Capacity Building of Customs Operations for Trade Facilitation	2012-2014	Expert
	Facilitation of Trade and Investment in the Indian Ocean-Rim Economic Region	Aug. 2014	Seminar
	Seminar on Promoting Private Finance and Investment	Sept. 2014	Seminar
	The Project on the Corridor Development for the West Africa Growth Ring Master Plan	Jun. 2015-Jan. 2018	TC
	Project for Master Plan on Logistics in the Northern Economic Corridor	Mar. 2015-Aug. 2016	Survey
	Data Collection Survey on Infrastructure Development in the Maghreb Region	Sep. 2015-Feb. 2017	Survey
	Project for the Interconnection of Customs Clearance Systems between Togo and Burkina Faso	May. 2016	G/A
	TICAD VI - Boosting Intra-African Trade: A Key for Regional Economic Integration and African Competitiveness	Aug. 2016	Other
	The Project for Capacity Development on Smooth Operation of OSBPs on the North-South Transport Corridor	Dec. 2020- Mar. 2025	TC
OSBPs JICA Supported	Chirundu (Zambia / Zimbabwe)		
	Rusumo (Rwanda / Tanzania)		
	Namanga (Kenya / Tanzania)		
	Malaba (Kenya / Uganda)		
	Kazungula (Botswana / Zambia)		
	Cinkansé (Burkina Faso / Togo)		
	Taveta / Holili (Kenya / Tanzania)		
	Lungalunga / Horohoro (Kenya / Tanzania)		
	Isebania / Sirari (Kenya / Tanzania)		
	Busia (Kenya / Uganda)		
	Mutukula (Tanzania/Uganda)		
	Gasenyi I / Nemba (Burundi / Rwanda)		
	Kobero/Kabanga (Brundi / Tanzania)		
	Gatuna / Katuna (Rwanda / Uganda)		
	Mamuno / Trans Kalahari (Botswana / Namibia)		
Angola	The Project for Emergency Rehabilitation of Port Facilities at the Port of Lobito and the Port of Namibe	May. 2008	G/A
	The Project for Improvement of Namibe Port	Feb. 2017	G/A
Uganda	Construction of a New Bridge across the River Nile at Jinja	Apr. 2018	L/A
Ghana	Construction of a New Bridge across the Volta River	Dec. 2016	L/A
	The Project for Improvement of Ghanaian International Corridors	Mar. 2017	G/A
Cameroon	Douala Port Container Terminal Modernization Project	May. 1987	L/A
	Yaounde-Brazzaville International Corridor Development Project (Mintom-Lele Section)	May. 2017	L/A
Kenya	Mombasa Port Development Project	Nov. 2007	L/A
	Trade Training Programme for SME Exporters (Phase 2)	Aug. 2010-Nov. 2012	TA
	The Project for the Construction of Nairobi Western Ring Road	Nov. 2010	G/A
	Mombasa Port Area Road Development Project	Jun. 2012	L/A

Country/Region	Project Name	Cooperation Period[2]	Type[3]
Kenya	The Project for Dualling of Nairobi-Dagoretti Corner Road C60/C61	Jun. 2012	G/A
	Mombasa Port Development Phase 2	Mar. 2015	L/A
	Mombasa Port Area Road Development Project (2)	Jul. 2017	L/A
	Mombasa Special Economic Zone Development Project (1)	Feb. 2020	L/A
Côte d'Ivoire	The Project for the Improvement of the Japan-Ivorian Friendship Intersection	Jul. 2015	G/A
	Abidjan Port Cereal Berth Construction Project	Mar. 2017	L/A
Zambia	Kazungula Bridge Construction Project	Dec. 2010	L/A
Zimbabwe	The Project for Construction of the Chirundu Bridge	Jun. 1999	G/A
	The Project for the Road Improvement of the Northern Part of the North-South Corridor	Jun. 2018	G/A
Senegal	Road Improvement and Transport Facilitation Program on the Southbound Bamako-Dakar Corridor	Mar. 2006	L/A
	Project for Construction of a New Bridge across the Republic of Mali and the Republic of Senegal (Phase II)	May. 2009	G/A
	Project for Construction of a New Bridge across the Republic of Mali and the Republic of Senegal (Phase III)	Jul. 2009	G/A
	Project for Rehabilitation of The Third Wharf in Dakar Autonomous Port	Mar. 2017	G/A
Tanzania	Arusha-Namanga-Athi River Road Development Project	Mar. 2007	L/A
	The Project for the Comprehensive Transport and Trade System Development Master Plan	Jul. 2011-Aug. 2013	TC
	The Project for Construction of Rusumo International Bridge and One Stop Border Post Facilities	Aug. 2011	G/A
	Project for the Enhancement of Taxation Training	Feb. 2012-Mar. 2015	TC
	The Project for Improvement of the Tazara Intersection	Jun. 2013	G/A
	Project on Capacity Building for Tanzania Revenue Authority	Nov. 2017-Nov. 2020	TC
Togo	The Project for the Study on Togo Logistics Corridor Development	Aug. 2012-Sep. 2013	TC
Nigeria	Federal Ministry of Industry Trade and Investment Coordination Advisor	Nov. 2017-Oct. 2018	Other
Namibia	Project on Master Plan for Development of an International Logistics Hub for SADC Countries in the Republic of Namibia	Feb. 2014-Mar. 2015	TC
	Project on Implementation of International Logistic Hub Master Plan	Feb. 2016-Mar. 2019	TC
South Sudan	The Project for Improvement of Juba River Port	Jan. 2013	G/A
	Project for Capacity Development of South Sudan Customs Services for Introduction of the Harmonized System Code	Jun. 2016-Sep. 2019	TC
	Project for Capacity Development of South Sudan Customs Services for Introduction of Harmonized System Code Phase 2	Oct. 2019-Sep. 2022	TC
Burundi	The Master Plan Study for the Port Sector in the Republic of Burundi	Jun. 2016-May. 2012	TC
	The Project for the Improvement of the Port of Bujumbura	May. 2014	G/A
Botswana	Kazungula Bridge Construction Project	Dec. 2010	L/A
Madagascar	Toamasina Port Development Project	Mar. 2017	L/A
Malawi	Project for the Study on Development of the Sena Corridor	Oct. 2010-Mar. 2012	TA
	The Project for the Replacement of the Air Navigation System at Kamuzu International Airport	Jan. 2011	G/A
	The Project for Expansion of the Terminal Building at Kamuzu International Airport	Nov. 2015	G/A
	The Project for Capacity Development of Radar Control Services at Kamuzu International Airport	Jun. 2017-Jan. 2019	TC
	The Project for the Improvement of Main Roads in the City of Lilongwe	Sep. 2020	G/A
Mali	Project for Construction of a New Bridge across the Republic of Mali and the Republic of Senegal (Phase II)	May. 2009	G/A
	Project for Construction of a New Bridge across the Republic of Mali and the Republic of Senegal (Phase III)	Jul. 2009	G/A
Mozambique	The Project for Reinforcement of Dredging Capabilities for Beira Port	May. 2005	G/A
	Montepuez-Lichinga Road Upgrading Project	Mar. 2007	L/A
	Nampula-Cuamba Road Upgrading Project	Mar. 2010	L/A

Country/Region	Project Name	Cooperation Period[2]	Type[3]
Mozambique	The Project for Nacala Corridor Economic Development Strategies in the Republic of Mozambique	Mar. 2012-Jan. 2016	TC
	The Project for Urgent Rehabilitation of Nacala Port	Dec. 2012	G/A
	Nacala Port Development Project Phase 1	Mar. 2013	L/A
	The Project for Construction of Bridges on the Road between Ile and Cuamba	Jun. 2013	G/A
	Mandimba-Lichinga Road Upgrading Project	Nov. 2013	L/A
	The Project for Reinforcement of Transmission Network in the Nacala Corridor	Apr. 2015	G/A
	Nacala Port Development Project Phase 2	Jun. 2015	L/A
Rwanda	The Project for Construction of Rusumo International Bridge and One Stop Border Post Facilities	Sep. 2011	G/A
	Ngoma-Ramiro Road Upgrading Project	Mar. 2018	L/A

[1] The list shows projects from 1987 to January 2021. The list is non-exhaustive.

[2] Cooperation Period of L/A: Month and year of signing Loan Agreement, G/A: Month and year of concluding Grant Agreement

[3] Abbreviations: TC = Technical Cooperation, G/A = Official Development Assistance Grants, L/A = ODA Loans

Appendix 3: Examples of JICA's Cooperation in relation to Trade Facilitation in the ASEAN Region

Country	Project Name	Cooporation Period	Type*	Subject
Indonesia	The Study of Improvement of Customs' System in Indonesia	Dec.1997—Feb.1999	D/D	Economic Policy
	Project for Establishment and Capacity Building of Reigional Export Training and Promotion Centers	July.2002—Jun.2006	TC	Private Sector Development
	ASEAN Customs Post-clearance audit system improvement project	Apr.2004—Sep.2006	TC	Economic Policy
	Customs business improvement Project	Apr.2004—Mar.2007	TC	Economic Policy
	Project on Capacity Development for Trade-related Administration	Mar.2010—Jun.2013	TC	Governance Private Sector Development
	Project for Competition Policy	July.2004—July.2007	TC	Economic Policy
	Project for Competition Policy Phase 2	Sep.2009—Sep.2013	TC	Economic Policy
	Project for Capacity Building for Partnership Supervision and Competition Law Enforcement	Oct.2015—Oct.2019	TC	Economic Policy
	Project on Service Improvement of National Agency for Export Development	May.2010—May.2015	TC	Private Sector Development
	Project on Intellectual Property Ritghts Protection and Legal Consistency for Improving Business Environment	Dec.2015—Dec.2020	TC	Governance Private Sector Development
Cambodia	Technical Cooperation Project for Risk Management in Customs	Dec.2005—Nov.2007	TC	Economic Policy
	Customs Policy and Administration	July.2009—July.2011	TC	Economic Policy
	Customs Policy and Administration	July.2011—July.2013	TC	Economic Policy
	Customs Risk Management Database System	Sep.2011—Mar.2013	TC	Economic Policy
	Customs Policy and Administration	Sep.2013—July.2019	TC	Economic Policy
	Project for Capacity Development of General Department of Taxation Under the Framework of PFM Reform of Cambodia,Phase 2	Aug.2015—Jun.2019	TC	Economic Policy
	Advisor for Container Terminal Operation and Management to PAS	May.2016—May.2021	TC	Economic Policy
	The Project for Improving the Logistics System of Cambodia	May.2018—May.2023	TC	Economic Policy
	The Project for the Development of Port Electric Data Interchange System for Port Modernization	Feb.2019	G/A	Transportaion
	Advisor on Trade Facilitation through Customs Modernization	July.2019—July.2021	TC	Economic Policy
Thailand	Project for Enhancing the Transparency and Predictability of Tariff Classification and Customs Valuation	Oct.2012—Oct.2015	TC	Economic Policy
	Project for Capacity Development on Rules of Origin for Efficient Customs Procedures	Oct.2015—Jun.2018	TC	Economic Policy
	Enhancing the Capacity of Data Analysis and Risk Management	Sep.2018—July.2020	TC	Economic Policy
Philippines	The Project on SME "Shindan" for Philippine SME Counselors -Capacity Development for DTI-SME Counselors-	Jan.2007—Dec.2009	TC	Private Sector Development
	Project on Capability Building for a Comprehensive National Competition Policy	Mar.2010—Apr.2013	TC	Economic Policy
	Project on Capability Building for a Comprehensive National Competition Policy and Law Phase 2	Aug.2013—Mar.2016	TC	Economic Policy
	Project on Philippine Customs Intelligence System (PCIS) for Enhancement of its System Environments and Training of Customs Officers	July.2007—Jun.2011	TC	Economic Policy
	Assistance Project on Introduction of Customs Post Entry Audit	Jun.2008—Mar.2011	TC	Economic Policy
	Long-Term Expert for the Enhancement of Customs Operations and Risk Management	July.2011—July.2015	TC	Economic Policy
	Enhancement of Customs Operation	July.2015—July.2019	TC	Economic Policy
	Enhancement of Customs Operation	July.2019—July.2022	TC	Economic Policy
Viet Nam	Project for Modernization and Internationalalization of Customs Administration	Aug.2004—July.2007	TC	Economic Policy
	The Project on Tax Administration Reform Phase 2	Aug.2008—July.2011	TC	Economic Policy
	The Project for the Reinforcement of Custom Functions at the Tan Cang Cat Lai Port of Ho Chi Minh City	Oct.2008	G/A	Transportaion
	The Project for the Reinforcement of Custom Functions at the Haiphong Port	Sep.2009	G/A	Transportaion
	Project on Strengthening the Training System for Improving Capacity of Frontline Officers of Vietnam Custom	Sep.2009—Sep.2012	TC	Economic Policy
	The Project for E-Customs and National Single Window for Customs Modernization	Mar.2012	G/A	Private Sector Development
	Project for promoting E-customs in Vietnam	Apr.2012—July.2015	TC	Economic Policy Private Sector Development
	Technical Cooperation Project for strengthening the effectiveness of Viet Nam Automated Cargo Clearance System（VNACCS）	Aug.2015—Jun.2018	TC	Economic Policy
	Project for Capacity Building for Enforcement of Competition Law and Implementation of Competition Policy	Sep.2008—Jun.2012	TC	Economic Policy
	Project for the Improvement of Legal Framework for Competition Law and Policy	July2012—Jun.2016	TC	Economic Policy
	Project for Improving Competition Policy and Enhancing the Effective Enforcement of Competition Law	Oct.2021－Nov.2022	TC	Economic Policy
Malaysia	Risk Management System for customs	July.2006—Aug.2010	TC	Economic Policy
	Human Resource Development in the Intellectual Property Rights' Administration	Jun.2007—May.2010	TC	Economic Policy
	Risk Management Approach at Clearance and Post-Clearance Process	Sep.2008—Aug.2010	TC	Economic Policy
	Human Resource Development and Improvement in Tax Administration	July.2010—July.2013	TC	Economic Policy
	Policy Adviser to Director-General of Customs on Trade facilitation	July.2011—July.2015	TC	Economic Policy
	Training Management Course for Myanmar Customs	Apr.2014—Mar.2017	TC	Economic Policy
	Project for "Enhancing Transparency and Predictability of Preferential Role of Origin on EPA/FTAs in Customs Clearance"	July.2015—Jun.2018	TC	Economic Policy
	Advisor on Competition Law	Sep.2020—Mar.2023	TC	Economic Policy
	Trade Promotion for African Countries	Apr.2016—Mar.2019	TC	Private Sector Development
	Consolidating procedures for enhancing trade facilitation and securing of revenue collection toward strengthening risk management	July.2018—Jun.2021	TC	Economic Policy
	Enhancing Capacity of Trade Facilitation Measures and Relevant Risk Management	Apr.2019—Mar.2021	TC	Economic Policy
Myanmar	Project of Capacity Development for National Single Window and Customs Modernization by Introducing Automated Cargo Clearance System in Myanmar	Feb.2014—Feb.2019	TC	Economic Policy Telecommunications
	The Project for National Single Window and Customs Modernization by Introducing Automated Cargo Clearance System	Feb.2014	G/A	Private Sector Development

Country	Project Name	Cooperation Period	Type*	Subject
Laos	Project on Support to Trade Promotion	Mar.2009—Mar.2012	TC	Private Sector Development Poverty Reduction
	Customs Administration	Jan.2012—Mar.2013	TC	Private Sector Development
	Strengthening of Governance and Trade Facilitation in the Field of Customs	Nov.2013—Jun.2017	TC	Economic Policy
	Strengthening of Governance and Trade Facilitation in the Field of Customs	July.2017—July.2019	TC	Economic Policy
	Strengthening of Governance and Trade Facilitation in the Field of Customs	Sep.2019—July.2021	TC	Economic Policy
ASEAN Region	Data Collection Survey for the ASEAN Single Window	Feb.2019 - Mar 2020	TC	Economic Policy
	Regional Cooperation Project on Risk Management for Customs in the Mekong Region	Feb.2008—Mar.2011	TC	Economic Policy

* TC：Technical Cooperation　G/A：Official Development Assistance Grants　D/D：Detailed Design