

# CHARTING A ROADMAP TO REGIONAL INTEGRATION WITH THE WTO TRADE FACILITATION AGREEMENT



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Charting a roadmap to regional  
integration with the WTO  
Trade Facilitation Agreement

## About the paper

Small and medium-sized enterprises (SMEs) can benefit more if the WTO Trade Facilitation Agreement is implemented in a coordinated manner at regional level.

This report charts a roadmap for regional policy frameworks on trade facilitation. Such arrangements have the potential to boost intraregional trade, reduce bottlenecks and increase the participation of SMEs in regional value chains, thus deepening regional integration.

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## Foreword

Effective regional integration is an important stepping stone for countries to have greater insertion into global trade. Trade facilitation – both in terms of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) and the wider interpretation including non-tariff barriers, rules of origin, standards and the business environment – is a fundamental element of making integration work for economies and for people.

Removing obstacles to cross-border trade is one of the key objectives of regional economic communities (RECs) as they work towards this deeper integration. But this is not an automatic process. It takes careful planning, sequencing and investment in both hard and soft infrastructure at the country and regional level for trade facilitation initiatives to be sustainable and have real impact.

However, the figures on intraregional trade continue to show a disconnection between the well accepted policy objective of deeper integration and what is actually happening on the ground. Africa still has incredible unrealized potential in increasing its level of intraregional trade, which, at just 18%, compares unfavorably to that in Europe and Asia with 69% and 52% respectively. But policies are going in the right direction. One only has to look at the progress made in some regional integration movements such as the East African Community (EAC) and the commitment to the Continental Free Trade Agreement to know that this remains high on the policy radar.

A multilateral milestone was reached in 2017 with the entry into force of WTO's Trade Facilitation Agreement. The TFA creates binding obligations for WTO Members to improve the transparency, predictability, fairness and efficiency of their cross-border procedures by simplifying, standardizing and automating trade practices and expanding the coordination of border regulatory agencies.

Although trade facilitation reforms are already under way in many countries, the Agreement gave new impetus to tackle bureaucratic delays and 'red tape' – giving RECs a unique opportunity to promote concerted cross-border reforms.

Regional approaches to implement trade facilitation measures can deliver greater benefits to individual countries and the regional community than just unconnected national reforms. Coordinated cross-border reforms would help create a more consistent and predictable regional trading environment by avoiding the imposition of diverging administrative procedures and requirements in each member state. Harmonized formalities across regions would reduce business transaction costs, create the necessary condition for the development of regional value chains and be an important investment tool.

To help RECs foster a conducive business environment, the International Trade Centre (ITC) has developed a 'toolkit' to assist policymakers in designing, implementing and monitoring regional trade facilitation reforms. This toolkit provides a comprehensive review of relevant instruments and approaches available to regional institutions and their member states. Its aim is to support RECs in designing regional trade facilitation reforms – tailored to their needs and resources – that will deepen the regional integration process by promoting simpler, cheaper and faster intraregional trade transactions for businesses.

We encourage policymakers in RECs to make use of this roadmap to implement regional trade facilitation policies to help business communities thrive and reinvigorate paths of regional integration.



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## Acronyms

Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

AEO	Authorized Economic Operator
ASEAN	Association of Southeast Asian Nations
ATFF	ASEAN Trade Facilitation Framework
ATIGA	ASEAN Trade in Goods Agreement
ATR	ASEAN Trade Repository
CAREC	Central Asia Regional Economic Cooperation
CARICOM	Caribbean Community
CCC	Community Customs Code
CCT	Common Customs Tariff
CEF	Connecting Europe Facility
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EAEU	Eurasian Economic Union
ECCAS	Economic Community of Central African States
ECJ	Court of Justice of the European Union
ECOWAS	Economic Community of West African States
EU	European Union
GATT	General Agreement on Tariffs and Trade
INDIRA	Customs Register Information Exchange
ITC	International Trade Centre
LDCs	Least Developed Countries
Mercosur	Mercado Común del Sur
NTB	Non-tariff Barrier
NTFC	National Trade Facilitation Committee
OSBP	One-stop Border Post
RADDEX	Revenue Authorities Digital Data Exchange
RASFF	Rapid Alert System for Food and Feed
RECs	Regional Economic Communities
RTFC	Regional trade facilitation committee
SADC	Southern African Development Community
SAFTA	South Asian Free Trade Area
SASEC	South Asia Subregional Economic Cooperation
TACB	Technical Assistance and Capacity Building
TFA	Trade Facilitation Agreement
UCC	Union Customs Code
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
WAEMU	West African Economic and Monetary Union
WCO	World Customs Organisation
WTO	World Trade Organization

## Executive summary

Regional approaches to trade facilitation can greatly benefit the members of a regional economic community (REC). Traditionally identified as a key policy area to deepen regional integration, coordinated trade facilitation initiatives at the REC level can expand intraregional trade flows considerably and deliver coherent outcomes.

This publication highlights how the far-reaching impact of trade facilitation reforms can play a bigger role across RECs in the implementation of measures that streamline and modernize the procedural requirements related to cross-border trade.

In particular, concerted trade facilitation reforms can contribute to a harmonized environment for traders, enhance the functioning of customs unions and yield economies of scales through exchanges of best-practices, tools and shared implementation costs.

By tackling border administration challenges, addressing procedural obstacles to trade and building on the provisions of the World Trade Organization's Trade Facilitation Agreement (TFA), coherent regional trade facilitation reforms can be instrumental in creating a framework where traders in the same region are not burdened by different customs formalities, procedures and requirements.

As there is no 'one-size-fits-all' regional trade facilitation roadmap, each community must take into consideration its specific mandate, institutional arrangement, procedures, political economy and implementation capacity to design its own way forward.

### *Towards a regional trade facilitation roadmap*

ITC suggests the following step-wise process for developing a regional trade facilitation roadmap to help national and RECs policymakers set in place and coordinate meaningful regional trade facilitation reforms:

- Consolidate member states' trade facilitation needs and identify common requirements for regional interventions;
- Build consensus on the specific trade facilitation measures where a regionally harmonized and coordinated implementation approach is relevant and can bring significant improvements;
- Define the appropriate mix of legal and non-legal instruments to support implementation, based on a regional economic community's specific institutional setting and rule-making power;
- Specify the responsibilities of member states and regional bodies based on the instruments chosen to implement trade facilitation measures, whereby:
  - A decentralized option implies that the prerogative to implement remains exclusively with each member state;
  - A shared option implies that the REC and member states jointly contribute to the implementation of trade facilitation reforms;
  - A centralized option provides that the regional body takes full responsibility for the implementation of selected trade facilitation reforms on behalf of member states.
- Define the target implementation approach for each measure identified in the regional trade facilitation roadmap.

Finally, ITC recommends establishing an institutional platform at the community level to facilitate the design, implementation and monitoring of a regional trade facilitation roadmap in a coherent and unified manner.

## CHAPTER 1 A REGIONAL APPROACH TO TRADE FACILITATION REFORMS



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### The economic rationale of regional integration

Regional economic integration is defined as a process that gradually abolishes discrimination between national economies.<sup>1</sup> This refers to agreements among countries in a geographic region to reduce, and ultimately remove, tariff and non-tariff barriers to the free flow of goods and services between each other.

Regional integration is a powerful driving force for growth in many countries, leading to the creation of regional value chains and improved economic efficiency. Although regional communities have different models and approaches to regional integration, trade has traditionally been the bulwark of regional agendas and a major success factor.

The goal of regional economic integration is to increase the welfare and reduce the economic divide of participating countries by creating a larger market. By fostering competition and enabling economies of scale, regional economic integration promotes innovation, drives inputs and consumer prices down, triggers specialization of economies and encourages the development of regional production networks.<sup>2</sup> In developing countries, and LDCs in particular, regional economic integration is a key driver in reducing social instability, poverty and economic divergence through trade, investment and regional cooperation programmes.<sup>3</sup>

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<sup>1</sup> Balassa, B. (1961). Towards a theory of economic integration. *Kyklos*, 14(1), 1-17.

<sup>2</sup> Ginsberg, R. H. (2007). *Demystifying the European Union: The enduring logic of regional integration*. Rowman & Littlefield.

<sup>3</sup> Kweka, J., & Mboya, P. (2004). *Regional Integration and Poverty: A case study of Tanzania*. Working Paper, Economic and Social Research Foundation, Dar Es Salaam.

Regional economic integration thus plays a vital role in boosting intraregional trade, supporting more employment-intensive activities and sharing the benefits of growth and greater prosperity. This suggests that accelerating integration among members of a trade bloc leads to improved economic performance and less income divergence within a scenario of more proactive policy coordination.<sup>4</sup>

## Regional economic integration models

Regional communities depend on different models and approaches to regional integration (Box 1). However trade has traditionally been central to regional agendas and a major factor in achieving success. For this reason, many regional programmes seek to align trade policies and address trade barriers, and trade is one of the first areas targeted by members of a regional community pursuing integration.

All economic integration models are premised on the gradual removal of barriers to reduce intraregional trade timeframes and cost, as this – alongside the free movement of people, services and capital – is considered to be the stepping-stone to greater regional integration. Better regional cooperation and expanded intraregional trade flows are likely to significantly benefit developing and least developed countries (LDCs), reducing vulnerabilities in their economies (especially in the case of landlocked states).

### Box 1 Five types of regional economic integration models

#### **Free trade areas**

No tariffs or quotas are applied between member countries, but each member maintains its own tariff barriers against third countries. Examples include the area of the North American Free Trade Agreement and the ASEAN Free Trade Area.

#### **Customs unions**

No tariffs or quotas are applied between member countries that jointly apply a common external tariff to third countries. Examples include the Southern Common Market (Mercosur) and the East African Community (EAC).

#### **Common markets**

In addition to the free movement of goods, such as in a free trade area or a customs union, member states of common markets also agree on the free movement of labour, capital and services. Examples include the European Union (EU) and the Economic Community of West African States (ECOWAS).

#### **Economic and monetary unions**

Harmonization of economic policies and adoption of a single currency. Examples include the West African Economic and Monetary Union (WAEMU) and the EU's Economic and Monetary Union.

#### **Total economic integration**

Unification of monetary, fiscal and social policies and establishment of a binding supranational organization. The EU has achieved a monetary union and is now attempting to attain convergence in the fiscal and social policy domains.

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<sup>4</sup> Kamau, N. L. (2010). The impact of regional integration on economic growth: empirical evidence from COMESA, EAC and SADC trade blocs. *American Journal of Social and Management Sciences*, 1(2), 150-163.

## Removing supply chain barriers

Approaches to regional integration have tended to focus on eliminating or reducing tariffs with third countries or regions. However, one of the key benefits of regional integration – increased welfare of participating countries through the creation of a larger market – can best be achieved when barriers to trade are minimized.<sup>5</sup> This means that to improve market access conditions and enhance the benefits of economic integration, it is equally important to address and remove supply chain barriers to intraregional trade, which can be more significant impediments to trade than import tariffs.<sup>6</sup>

The World Economic Forum identifies four main categories of supply chain barriers:<sup>7</sup>

- **Lack of transport infrastructure** due to inadequate road, rail, sea or air transportation networks that leads to massive costs and delays when moving goods across a large territory.
- **Non-tariff measures**, including safety and sanitary requirements, technical standards and other regulations that add to the compliance costs of importing or exporting.
- **Border administration**, including inefficiency thereof and burdensome or non-transparent import-export procedures.
- **Business environment**, including a discriminatory and uncertain regulatory environment as well as physical security issues along the supply chain.

A joint study of the World Economic Forum, Bain & Company and the World Bank says that ‘reducing supply chain barriers to trade could increase GDP up to six times more than removing tariffs.’<sup>8</sup> In addition, these supply chain barriers have been ‘undermanaged both by countries and companies’. Reforms addressing these supply chain challenges would help reduce the time and cost of cross-border transactions, increasing intraregional trade and eventually deepening regional economic integration.

## The role of trade facilitation

The WTO describes trade facilitation as ‘the simplification, modernization and harmonization of export and import processes’ to reduce the time and cost of trade. Reforms typically aim to enhance the transparency, predictability, fairness and efficiency of the cross-border environment.

By tackling ‘border administration’ challenges and addressing procedural obstacles to commerce, trade facilitation reforms, including those in the TFA, can be instrumental in deepening regional integration.

The TFA that entered into force in February 2017 creates binding obligations for WTO Members to implement reforms to expedite the movement, release and clearance of goods, including goods in transit. This is a unique opportunity for countries and RECs to include trade facilitation as a priority agenda item in their regional integration processes or build upon/deepen trade facilitation initiatives already in place.

Evidence suggests that the complexity of cross-border operations is a key obstacle to intraregional trade. Trade facilitation reforms are thus extremely importance to the regional integration process. Businesses in developing countries and LDCs must cope with many, sometimes-redundant, documentation requirements, inconsistent, unpredictable and insufficiently transparent procedures and formalities, high fees and charges,

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<sup>5</sup> Venables, A. J. (1999). Regional Integration Agreements: a force for convergence or divergence?

<sup>6</sup> Gibson, B. J., Hanna, J. B., Defee, C. C., & Chen, H. (2013). The Definitive Guide to Integrated Supply Chain Management: Optimize the Interaction Between Supply Chain Processes, Tools, and Technologies. Pearson Education.

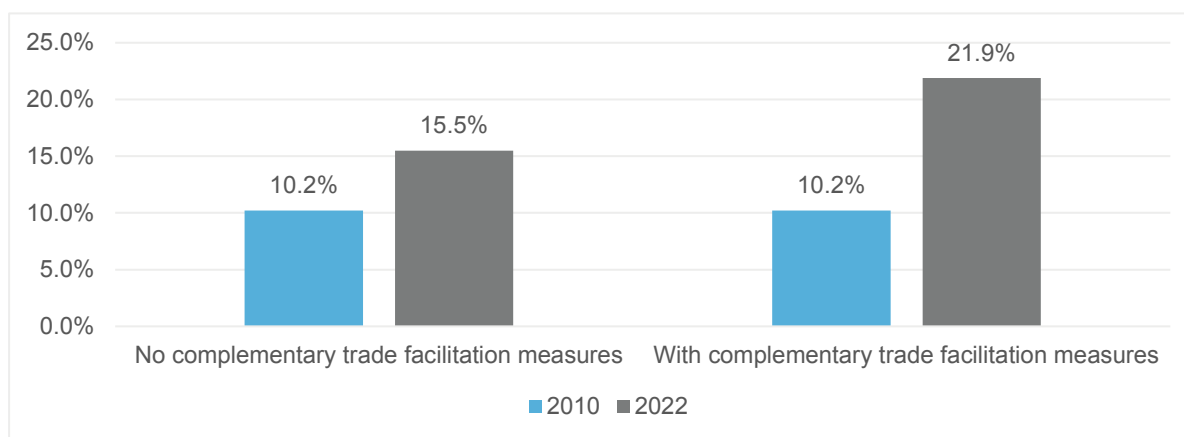
<sup>7</sup> World Economic Forum (2013). Enabling Trade, Valuing Growth Opportunities.

<sup>8</sup> Ibid.

and long and complex conformity assessments (examples include sanitary and phytosanitary requirements as well as requirements on technical barriers to trade).

An ITC survey on non-tariff measures that was conducted within ECOWAS in 2016 indicates the same issues. According to this report, 73% of the companies facing non-tariff barriers (NTBs) to trade refer to procedural obstacles as the main challenge. These include informal or unusually high payments, time constraints, administrative burdens related to regulations and discriminatory behaviour of officials.

Figure 1 Share of intra-African trade in the continent's total trade



Source: ITC elaboration of Mevel, S. and Karingi, S. (October 2012).

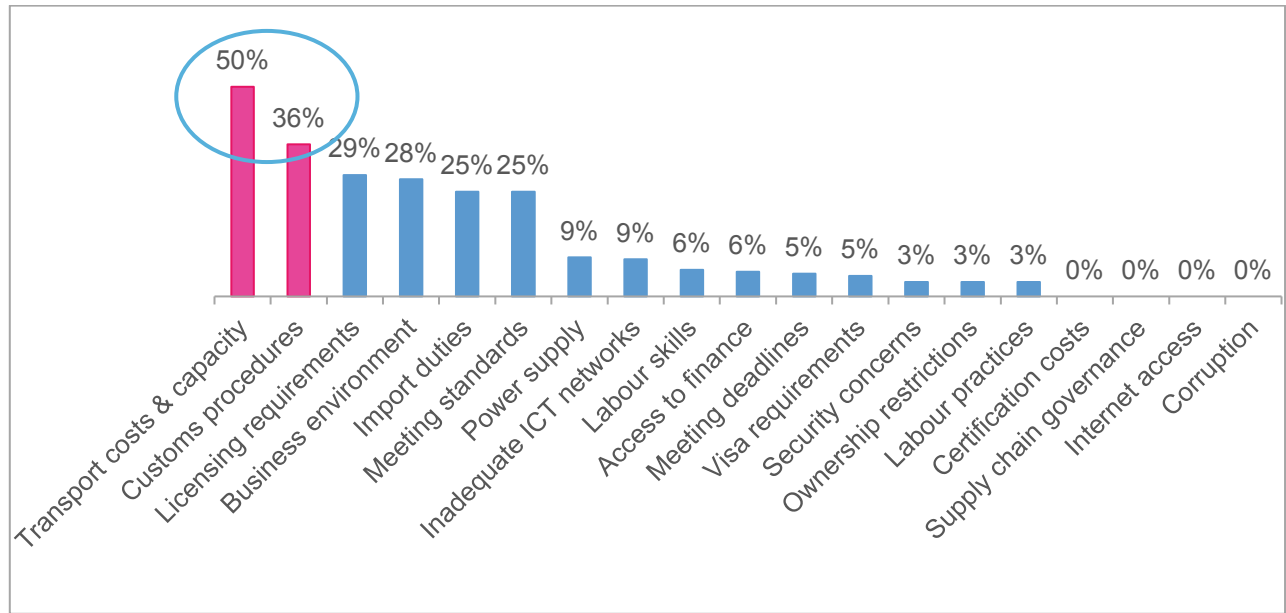
Trade facilitation reforms address most of these issues by creating a conducive cross-border environment. A simulation conducted in 2012 by the United Nations Economic Commission for Africa (UNECA) indicated that complementary trade facilitation measures – other than free trade agreements – would more than double the share of intra-African trade in the continent’s total trade in over a decade – from 10.2% in 2010 to 21.9% in 2022 – compared with an increase of 15.5% without trade facilitation interventions.<sup>9</sup>

More specifically, trade facilitation reforms will help improve intraregional trade and foster regional economic integration by:

- Revising the regulatory and administrative frameworks governing cross-border trade to simplify and modernize obsolete, inefficient and opaque requirements and formalities;
- Improving border regulatory agency coordination to avoid redundant procedures, data requirements and formalities;
- Implementing information technology solutions to modernize and automate information and data processing to enable frictionless, paperless interaction between border regulatory agencies and economic operators;
- Changing the mindset of border agencies to better balance revenue collection and national protection objectives with the rightful need of businesses to have simple, transparent, predictable and efficient cross-border formalities;
- Attracting investors and multinational corporations to invest in the region and outsource their supply chains as trade facilitation is shown to be one of their key decision criteria.

<sup>9</sup> Mevel, S., & Karingi, S. (2012, October). Deepening regional integration in Africa: A computable general equilibrium assessment of the establishment of a continental free trade area followed by a continental customs union.

Figure 2 Traders' view of the main barriers in connecting firms to value chains



Source: OECD/WTO Aid for Trade Questionnaire 2013, accessible from [http://www.oecd-ilibrary.org/development/aid-for-trade-at-a-glance-2013\\_aid\\_glance-2013-en](http://www.oecd-ilibrary.org/development/aid-for-trade-at-a-glance-2013_aid_glance-2013-en)

## CHAPTER 2 BENEFITS OF REGIONAL TRADE FACILITATION REFORMS



Source: Shutterstock

A regional approach to simplify trade could be supported by several key arguments demonstrating how concerted solutions could be more efficient and effective than isolated and disjointed initiatives carried out individually by each member of an REC.

### A more conducive business environment for traders

A consistent, coherent and predictable regional trade environment eases trade barriers across the region and leads to a smoother, streamlined and more efficient trade experience for traders.

Complex procedures and requirements as well as inconsistent, unpredictable and insufficiently transparent procedures due to limited publication have proved to be far more restrictive for trade transactions than tariffs. Procedural obstacles result in major hurdles and uncertainties for traders at the national level.

These challenges are compounded at the regional level when countries do not attempt to harmonize and coordinate their cross-border reforms. When member states within an REC do not opt for a concerted approach, diverging formalities on each side of the border occur. These, in turn, lead to higher transaction costs for traders operating at the regional level. Businesses will therefore have to invest time and resources to understand the specific import, export and transit requirements in each of the region partner countries, as well as specific developing country processes, to comply with member states' cross-border requirements.

When adopting regionally harmonized and coordinated trade facilitation reforms, RECs contribute to a more predictable and consistent trade environment for their business community. United trade formalities and documentation requirements at the regional level reduce uncertainties among traders and allow them to build economies of scale by harmonizing their practices and internal procedures across the region.

Coordinated and harmonized trade facilitation mechanisms can also deliver greater benefits to the business community. One example is Article 7.7 of the TFA on trade facilitation measures for authorized operators. If each member within an REC develops its own mechanism and qualifying criteria without consulting partner states, businesses operating at the regional level may have to comply with diverging requirements, leading to additional costs for traders. But if member states within an REC agree on a common set of qualifying criteria, it will support business participation to each national scheme and create a basis for mutual recognition agreements.



A regional approach to trade facilitation reforms can make cross-border transactions less complex by harmonizing formalities and trade facilitative mechanisms, while helping to reduce the cost of doing business across the region and enabling producers to become more competitive in regional and global markets.

#### Box 2 Benin and Mali

Difficulties in comparing the requirements for the same product in different African countries prevent traders from entering more markets and exporting more goods. For example, trade portals in Benin and Mali provide the necessary steps for exporting completely different products. While Benin has all the requirements for exporting rice, Mali provides steps for exports of vegetables and leather. In this case, inconsistent information hinders traders from making informed business decisions.

## Enhanced functioning of customs unions

Differing national trade facilitation measures within a customs union can distort regional trade and hamper the proper functioning of the REC. When procedures, costs and times at national customs vary, importers choose the port of entry and transit routes for their goods based on lower costs and faster processing times. This paints a skewed picture of commerce among member states in the same REC.

A customs union must function properly to promote regional integration and enhance cooperation. This can be achieved by adopting uniform tools in areas such as revenue management, border control and customs formalities.

Particularly relevant for trade facilitation, the application of a uniform tariff for third countries in a customs union must be efficiently accompanied by uniform documentation and procedures to streamline activities and create a more predictable environment for traders.

#### Box 3 European Union

The former European Community, which later became the European Union, is a classic example of progressively harmonized regional customs regulations and procedures. By 1968, national customs duties and import quotas were abolished in the European Economic Community and a Common Customs Tariff (CCT) for third commercial partners was adopted.

But there was no common comprehensive customs legislation, and member states maintained customs controls on borders until the official completion of the European Single Market in 1993. As a result, the European Union Customs Union rested on a complex set of scattered community instruments and diverging national customs laws and administrations, creating intraregional imbalances and bottlenecks.

To resolve these discrepancies, the European Commission has progressively moved towards common customs legislation. The Community Customs Code (CCC) and its implementing regulation entered into force on 1 January 1994, creating a unique codified body of law with direct effect on all member states. The CCC has pioneered the path towards a single regional customs law through what is commonly acknowledged as the 'Europeanization of national administrative law'.

An additional step, the Union Customs Code (UCC) complements the CCC, introducing several changes to modernize customs procedures. Since entering into force in 2013 – although many of its substantive provisions have only applied since 1 May 2016 – the UCC has applied across the EU, representing the framework regulation on the rules and procedures for customs throughout the bloc.

The UCC was enacted to modernize and simplify trade in the EU through electronic procedures and documentation. The code and the related delegated and implementing acts aim to completely harmonize and streamline customs legislation and procedures in all EU member states. They also seek to simplify customs rules and procedures to facilitate more efficient customs transactions in line with today's needs.

In completing the shift of customs within the EU towards a fully paperless and electronic environment, the UCC also offers greater legal certainty and uniformity to businesses, and strengthens swifter customs procedures for compliant and trustworthy authorized economic operators.

Proper regional harmonization of customs legislation and procedures helps guarantee that the customs union will function correctly and equitably. It also ensures the uniform application of the customs union's

provisions at both external and internal borders.<sup>10</sup> As the degree and instruments of this cooperation may vary, the first steps usually focus on community-relevant issues – such as control of external borders or issues that require action by more than one state, duty drawbacks and information exchange – before moving on to evaluating and harmonizing internal aspects of member states' customs services.

Regional trade facilitation reforms solve the problem of conflicting bilateral agreements. A single uniform regional framework helps to avoid complications and ensures harmonized requirements for all relevant countries.

#### Box 4 European Union customs blueprints

The EU has rounded out its regional customs law body with customs blueprints. These are intended as tools to help member states' customs administrations to improve the operational capacity of their customs services by setting benchmarks of achievement in key areas, and to assess strengths, weaknesses and development needs.

REC member states can establish bilateral agreements with each other to coordinate and apply trade facilitation measures. However, this approach may create problems. It is difficult for traders to export to other countries in the region if they must comply with the specific procedures set down in each bilateral agreement. There is also a risk of conflicting legal requirements for a country that has entered into several overlapping bilateral agreements.

## Coherence with supranational rule-making authority

Rulemaking authority in certain policy domains is delegated to supranational bodies to achieve coherence and efficacy and to ensure compliance and implementation of regional commitments. In such cases, member states cannot decide themselves to enact laws in those areas, and the supranational authorities must act on their behalf. In fact, member states seeking to implement initiatives in areas already covered by regional bodies' legislation may face resistance from regional authorities, leading to extra costs and preventing them from carrying out their plans.

Trade facilitation measures should be implemented regionally when regional rule-making authority has already been allocated in trade facilitation-specific domains. This will avoid inconsistent national measures that hamper the coherent and meaningful implementation of activities at the REC level and that may contravene regional legislation.

#### Box 5 Western Africa Economic and Monetary Union

The electronic certificate of origin initiative undertaken by two Western Africa Economic and Monetary Union (WAEMU) member states – Senegal and Côte d'Ivoire – is an excellent example of the drawbacks that uncoordinated actions at the national and regional levels may produce. Senegal and Côte d'Ivoire launched a pilot project to exchange a paperless version of the certificate of origin between each other through an electronic portal. The project was intended to simplify and accelerate the procedures for submitting the certificate of origin, reducing the time and costs of issuance and ensuring the speed and efficiency of border controls.

The initiative was put on hold, however, because an earlier regional regulation mandated member states to accept only paper versions of certificates of origin. WAEMU regional institutions are seeking to repeal the regional legislation so certificates of origin can be submitted electronically, in light of the demands of member states for this procedural requirement to be changed.

This case example demonstrates how regional rules should be coherently accompanied by a region-level implementation modality to avoid incompatibility and impasses at the intrastate level.

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<sup>10</sup> Although customs tariffs on intraregional trade are removed, in most customs unions member states' customs administrations maintain some internal powers to control immigration, collect value-added tax and retain jurisdiction over other elements of trade policy that are not integrated in the Common External Tariff (CET), such as sensitive product controls.

## Leveraging economies of scale

Some states may lack the required tools or may be unable to undertake certain reforms because of inadequate budgets or other macroeconomic constraints. This makes it more difficult to achieve regional objectives. Given a scenario of this nature, it may be better for governments to pool resources and develop joint solutions to improve the region's economic competitiveness.

Implementing trade facilitation measures will be less expensive if countries in the region share the costs.

Streamlining investments at the regional level will ensure that governments can plan their resources strategically and thus reach regional objectives to exploit economies of scale and attain economic efficiencies. Regional actions leveraging such economies of scale may be very beneficial to developing well-designed ICT infrastructure and facilitating the flow of large amounts of data related to import and export procedures.

This means that members of an REC would be able to gather resources at the regional level to trigger investment and then share the benefits of tools they have created among themselves. There may also be economies of scale and synergies on training facilities and capacity-building programmes.

### Box 6 Association of South-East Asian Nations

The Association of South-East Asian Nations (ASEAN) has significantly improved customs coordination through the ASEAN Single Window initiative, which connects and integrates the national single windows of member states. The ASEAN Single Window enables border documents to be exchanged electronically among ASEAN countries and considerably expedites the time required for cargo clearance.

Regional implementation of such trade facilitation tools means that information is shared electronically with all other ASEAN national customs authorities simultaneously. This enables traders to reduce time at the border and avoid duplicating documentation to be submitted at multiple borders. Consequently, instead of having each member state develop its own technological infrastructure – which could be very costly for many developing countries and LDCs – ASEAN members chose to implement the initiative regionally to cut costs and boost competitiveness at both the international and regional levels.

As a result, ASEAN member states share a common infrastructure and software. This initiative has been very valuable in helping these states leverage economies of scale and avoid spending funds on similar infrastructure for national projects.

## Addressing development asymmetries within a REC

National economies perform differently, which results in different growth levels and structural gaps between REC member states. This hampers both regional integration and the creation of regional value chains.

In fact, quantitative and qualitative asymmetries in the development of economies – which are determined by differences in market size, competitiveness and growth – lead to distorted dynamics, whereby traders tend to focus on the strongest countries within the REC. These states, in turn, may grant incentives to keep the movement and clearance of goods in their territory. This widens the economic divide to the detriment of the other member states and distorts competition in intraregional trade.<sup>11</sup>

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<sup>11</sup> Giordano, P., Lanzafame, F., & Meyer-Stamer, J. (2005). Asymmetries in regional integration and local development. Inter-American Development Bank.

A regional trade facilitation approach helps to avoid these structural imbalances. It provides a 'level playing field' for least developed countries (LDCs) and, taking into account the needs and resources of each member, accommodates them in the best way.

#### Box 7 Connecting Europe Facility

The EU Cohesion Fund is a notable example of regionally redistributed resources that are earmarked for the infrastructural and economic development of member states that are lagging behind. This fund, established to reduce economic and infrastructural disparities among member states, allocates the necessary funding to less developed regions for investment projects.

As part of its portfolio, the EU Cohesion Fund supports infrastructure projects to develop and strengthen trans-European transport networks under the Connecting Europe Facility (CEF) for Transport. Relevant to trade facilitation on a broader level, the CEF has financed transport projects for corridors carrying freight. This has improved infrastructures, alleviated bottlenecks and used more multimodal services supported by advanced information and communication technologies.

Under the Cohesion Fund, the CEF financed a project called e-Freight Implementation Action in Italy, Portugal and Poland to reduce the cost of exchanging information between different actors and transport modes along the transport logistics chain (involving shippers, freight forwarders, transport carriers and network managers, as well as authorities). The project also sought to facilitate the use of multimodal freight transport solutions, providing real-time information to track and trace cargo and to manage freight flows.

This case shows that the regional approach allows infrastructure investments and trade facilitation measures to be applied in a coherent, sequenced and coordinated manner. This helps less developed countries strengthen their infrastructural and economic capacity to benefit from more effective trade routes.

Greater regional cooperation on trade facilitation and expanded intraregional trade flows can hence benefit developing countries and LDCs, making their economies less vulnerable. Especially for landlocked least developed countries, trade facilitation assumes considerable importance. Lack of territorial access to the sea, isolation from international markets and high transit and transportation costs impose serious constraints on the trade competitiveness of landlocked countries.

Therefore, cutting red tapes in customs and other border procedures, and implementing comprehensive trade facilitation programmes, can significantly reduce the time and cost of doing business in these landlocked countries.

## CHAPTER 3 PATHS TO REGIONAL INTEGRATION



Source: Shutterstock

The main goal of regional approaches to trade facilitation is to harmonize and coordinate cross-border reforms to create a consistent, predictable trade environment throughout the community, while reducing compliance and transactions costs for traders.

As already discussed, trade facilitation measures seek to harmonize practices across countries and are easier to implement through a regional approach in which RECs play a leading role. Besides being instrumental in reducing trade barriers and attracting foreign direct investment, regional trade facilitation reforms also improve regional economic integration by boosting trade volumes, including intraregional trade flows. RECs can hence leverage trade facilitation reforms to leapfrog regional economic expansion and achieve more geographical closeness.

Most RECs recognize the importance of trade facilitation objectives and include them in their economic integration agendas. This can be done directly, by incorporating trade facilitation commitments in founding agreements or in complementary frameworks and blueprints (e.g. the Common Market for Eastern and Southern Africa, or COMESA, and the Association of Southeast Asian Nations, or ASEAN), or indirectly, through commitments to establish a customs union (e.g. the Caribbean Community, or CARICOM, and the Eurasian Economic Union, or EAEU), or to eliminate 'other barriers to trade' (e.g. ECOWAS and the Economic Community of Central African States, or ECCAS).

### Explicit references to trade facilitation reforms in REC mandates

Some RECs explicitly refer to trade facilitation as an area of cooperation in their founding agreements. For instance, Chapter 9 of the COMESA Treaty contains detailed commitments to initiate trade facilitation programmes to increase and promote intraregional trade. Article 70 says that members 'undertake to reduce the cost of documents and the volume of paper work required in respect of trade ... and to promote the development and adoption of common solutions to problems in trade facilitation'. Article 71 calls for the 'simplification, harmonization, standardization and computerization of customs regulations, documents and procedures facilitated by the regional Automated System for Customs Data Centre'.

The ASEAN Charter says that improving trade and investment is a fundamental purpose of the ASEAN community. ASEAN seeks ‘to create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment’.

Leaders reaffirmed their pledge to deepen regional economic integration in a blueprint for the ASEAN Economic Community in which trade facilitation reforms are seen as highly beneficial. ‘Simple, harmonized and standardized trade and customs processes, procedures and related information flows are expected to reduce transaction costs in ASEAN, which will enhance export competitiveness and facilitate the integration of ASEAN into a single market for goods, services and investments and a single production base,’ they said.

#### Box 8 ASEAN Economic Community Blueprint 2025

ASEAN has detailed binding commitments on trade facilitation in the ASEAN Trade in Goods Agreement, which entered into force in May 2010 and instructs member states to develop and apply concrete trade facilitation measures at both the regional and national levels.

In 2015, ASEAN adopted the ASEAN Economic Community Blueprint 2025, which sets out an ambitious agenda of strategic actions to support trade facilitation efforts in the region.

Other examples of regional cooperation on trade facilitation include the Southern African Development Community (SADC) and the EAC, which incorporated detailed trade facilitation provisions in protocols to their founding treaties. The SADC Protocol on Trade says members will aim ‘to reduce the cost of all trade documentation and procedures by reducing to a minimum the number of national documents and copies required for intracommunity and international trade transactions’. Another article says that members will ‘encourage and facilitate the use of data-processing techniques in processing and transmitting trade data between the various parties and authorities involved in intra-SADC and international trade’.

Along the same lines, the EAC Protocol on customs unions expressly calls upon partner states to facilitate trade by ‘collecting and disseminating information on trade and trade documentation, and by promoting the development and adoption of common solutions to problems in trade facilitation’.

Trade facilitation is a central element also in the South Asian Free Trade Area (SAFTA) agreement. In text of the agreement, Article 3 states that member countries shall eliminate non-tariff barriers, and entail the adoption of trade facilitation measures and the progressive harmonization of legislations by contracting States in the relevant areas.

## Implicit references to trade facilitation reforms in REC mandates

RECs also refer to trade facilitation commitments indirectly through initiatives such as creating a customs union or eliminating administrative barriers to trade. Many RECs ultimately aim to establish a customs union, which usually implies transferring decision-making to the community level and implementation coordinated by regional bodies to guarantee smooth operations. In fact, institutions at the community level are usually responsible for deciding and implementing customs law and customs union-related matters, as well as for overseeing the approval of rules in customs tariff and NTB regulations and in customs administration.

RECs have a good track record in implementing regional trade facilitation initiatives to deepen economic integration. Best practices include exchange of information among customs authorities, coordinated actions to establish regional single windows, one-stop border posts, regional transit and transport facilitation programmes, and regional trade facilitation frameworks.

Simplifying and coordinating trade documentation and customs procedures are often mentioned in the context of creating a customs union. The Treaty of Chaguaramas establishing CARICOM says member states ‘undertake to establish harmonized customs legislation and customs procedures’ needed to

implement a customs union, while the grouping's Council for Trade and Economic Development 'shall establish procedures for cooperation in customs administration'.

Similarly, the treaty establishing the EAEU says that 'to ensure information support for the integration processes in all spheres affecting the functioning of the customs union, measures aimed at ensuring information exchange using information and communication technologies shall be developed and implemented'. In addition, 'to ensure efficient cooperation and coordination of public information resources and integrated information systems, the member states shall conduct agreed policy in the field of electronic communication development and information technologies'.

RECs also indirectly address trade facilitation by pledging to remove administrative barriers that impede trade by raising the cost of doing business across regions.<sup>12</sup> Although RECs tend to tackle non-tariff barriers by focusing on technical regulations, standards and conformity-assessment procedures, some also include references to cross-border procedures and administrative formalities as practices requiring simplification.

For example, the ECOWAS Treaty includes 'administrative obstacles to trade' as an example of barriers to trade among member states. Likewise, the treaty establishing ECCAS specifies that member states agree to progressively establish a mutual customs union involving the 'elimination between member states of ... administrative trade barriers'.

## Examples of trade facilitation initiatives by RECs

Following are examples of trade facilitation initiatives carried out by RECs, including cross-border data exchanges, regional single windows, one-stop border posts, regional transit frameworks and regional trade facilitation programmes. While these examples do not represent an exhaustive overview, they illustrate the types of trade facilitation interventions in place in various economic regions across the world.

### *The Revenue Authorities Digital Data Exchange and the Customs Records Information Exchange*

Customs authorities in RECs frequently exchange information to verify declaration information, set up a risk management system, combat illicit trade and smuggling, and address other risks to the health and security of domestic consumers.

The Revenue Authorities Digital Data Exchange (RADDEX) in the EAC and the Customs Register Information Exchange (INDIRA) in Mercosur are two examples of successful regional cross-border data-exchange initiatives. RADDEX a software application and data-exchange system that allows near real-time transmission of customs documentation to accredited public and private sector users working at key transit border posts and cities across the six EAC member states. The platform's main objectives are to reduce the cost of doing business and to advance clearing of goods across borders. This means that once a truck has submitted its initial customs declaration at the port of entry, all information regarding the cargo is immediately released to the clearing agent at the border.<sup>13</sup>

<sup>12</sup> Aware that administrative barriers restrict trade, in Africa, SADC, COMESA and the EAC are working to harmonize their strategies. They have begun collaborating to eliminate such obstacles in the Tripartite Free Trade Area. Identifying, removing and monitoring administrative barriers to trade – *inter alia* – is a priority area for policy harmonization and coordination under the framework, as stated in Article 5 of the founding treaty of the Tripartite Free Trade Area. To this end, COMESA, the EAC and SADC use a mechanism for reporting, monitoring and eliminating non-tariff barriers that includes timelines for the removal of NTBs.

<sup>13</sup> The lack of capacity for regional reporting or comprehensive regional risk management – together with insufficient human resources – has undermined the correct implementation of RADDEX. Better coordination by the EAC Secretariat might help the system function more effectively at the regional level and avoid imbalances, as RADDEX used to be applied at the bilateral level between two states. Smith, M. (2014). Strategy for a Centralized ICT Platform for the Single Customs Territory.

### Box 9 East African Community

The Revenue Authorities Digital Data Exchange (RADDEx) was implemented based on a memorandum of understanding between the Kenyan and Ugandan revenue authorities. RADDEx aimed to facilitate and secure transit traffic from Kenya to landlocked countries, and statistics showed that 95% of the transit transaction between Kenya and Uganda has passed through the system since 2007. But when Rwanda tried to join the system on a bilateral basis in 2010, it encountered operational and technical problems.

One of the main failures of RADDEx appears to be bilateral implementation rather than regional management and implementation, as the operational processes, regional reporting and risk management were not identical. Differences in software also aggravated the problem.

EAC members are now trying to identify a suitable system for interconnectivity of customs systems for an Integrated Regional Customs ICT Interconnectivity for the EAC in line with international best practice. This initiative aims to create 'a flexible solution that will enable seamless flow and exchange of information irrespective of the various customs systems being used' in the EAC.

Similarly, Mercosur members have implemented INDIRA, an interconnected computerized system aimed at easing consultations and better managing risk by easing exchanges of customs records on imports and exports to prevent illicit trade. Specifically, INDIRA gives members electronic access to data for all exports and imports among Mercosur parties, so the importing country can obtain real-time access to data reported in the exporting country about a particular shipment. Once an import or export declaration is accepted, the main data elements of the declaration are available in the system and can be requested through a virtual private network, where data is encrypted for communication in XML format.<sup>14</sup>

#### *ASEAN member states and national single windows*

The new security landscape underscores the value of a single entry point for traders to submit all relevant documentation to governments and comply with import- or export-related regulatory requirements. A single entry point focuses on advanced information and risk analysis. Against this backdrop, efforts to create regional single windows are growing.

The ASEAN Single Window connects and integrates the national single windows of member states. It seeks to promote ASEAN economic integration by expediting the electronic exchange of the data that traders use to clear customs, as well as permits and other required documentation. This regional initiative provides the necessary IT and legal framework that allows trade, transport and commercial data to be exchanged electronically among government agencies or the business community, which eventually benefits from the reduced costs and time to do business, and better trade efficiency and competitiveness.<sup>15</sup>

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<sup>14</sup> World Customs Organization (WCO) has recognized INDIRA as an international best practice for customs, providing an adequate tool for information exchange among customs authorities. Moreover, in 2012 the Argentine Customs presented INDIRA as an efficient applicable model in the proof-of-concept phase of the WCO-led initiative Globally Networked Customs. Juárez, H. H., & Conde, T. (2015). La importancia de las aduanas en el proceso de integración MERCOSUR. *Revista de la Secretaría del Tribunal Permanente de Revisión*, 3(6), 251-268.

<sup>15</sup> The ASEAN Single Window is being successfully implemented and will allow for greater business-to-government interaction at a whole-of-government level and not just at "individual agency" level, ensuring that trade transactions take place in a more transparent and cohesive manner. Koh, J., & Mowerman, A. F. (2013). Towards a Truly Seamless Single Windows and Trade Facilitation Regime in ASEAN Beyond 2015 (No. DP-2013-29). Economic Research Institute for ASEAN and East Asia (ERIA).



Likewise, the Trans-Kalahari Regional Single Window connecting Botswana, Namibia and South Africa adopts cloud-computing technology to automate customs authorities' processes and ease communication among their respective systems.<sup>16</sup>

### *One-stop border posts: A popular way to deepen regional integration*

One-stop border posts (OSBPs) eliminate the need for goods to stop twice for border-crossing formalities, avoiding duplication of clearance procedures for people and goods. As a result, they improve the smooth flow of traffic at crossing points.

An integrated system under the OSBP model brings together all border agencies to improve efficiencies through streamlined, coordinated and harmonized operations. The benefits are manifold. Besides reducing transit times for traders, OSBPs make the supply chain more trustworthy, meaning cargo moves predictably and reliably. They also lead to better operational controls, because the exchange of information among border agencies of neighbouring countries is better coordinated. This leads to shorter processing times at the border – which translate into reduced costs for businesses – and greater competitiveness for goods in the region.

EAC and COMESA, *inter alia*, are developing joint border post initiatives to enhance intraregional trade. EAC opened the first of 15 planned OSBPs in Holili/Taveta on the border between Tanzania and Kenya in February 2016 to facilitate trade and expedite the clearance of people in a secure environment.

#### Box 10 One-Stop Border Post

Drawing from the African experience, the EAC enacted a regional bill (that is, a legal instrument) in November 2012 authorizing the establishment and implementation of OSBP arrangements in the community to expedite the movement of goods and people within the region.

The EAC complemented this step in 2016 by publishing a comprehensive OSBP Sourcebook with other African RECs, thus providing a unique and useful tool to OSBP implementers on how to drive the full operationalization of this model (that is, a non-legal instrument).

Among the best practices on the African continent, COMESA's OSBP in Chirundu – on the border between Zambia and Zimbabwe – has successfully decongested the region's borders.<sup>17</sup> In this case, the Zambian authorities check and clear northbound trucks, while the Zimbabwean authorities check southbound trucks. Transaction costs have dropped, resulting in a greater volume of goods traded across the border. It now takes just two hours for trucks to cross the border, compared with two or three days before the OSBP (Mo Ibrahim Foundation, 2014).

### *Transit and transport facilitation programmes*

RECs often include transit and transport facilitation programmes in their regional integration agendas to address critical development challenges faced by their partner states.

<sup>16</sup> Microsoft has collaborated with the United States Agency for International Development and the Customs Agencies of Botswana and Namibia to provide the technological architecture needed to realize the Trans-Kalahari Corridor Regional Single Window.

<sup>17</sup> Implementation of the OSBP in Chirundu has helped reduce fraudulent activities on the part of both importers and clearing agents. The enforcement of a simplified trade regime at the border has also created a more sustainable trade environment for small traders, who can now enjoy duty-free access for certain types of goods and benefit from simplified documents. Viljoen, W. (2013). The evolution of the trade facilitation concept, best practices and the Comprehensive Tripartite Trade and Transport Facilitation Programme (CTTTFP). Tralac.

Transit initiatives tend to focus on customs procedures, such as common transit documents and surety programmes, and data exchange between customs administrations. Many REC founding agreements set forth the general legal framework within which these transport facilitation plans are carried out.

For instance, the treaty establishing the EAC contains detailed provisions to improve roads and road transport. They say that members 'shall harmonize their traffic laws, regulations, highway codes and the provisions of their laws concerning licensing, equipment, markings and registration numbers of vehicles for travel and transport within the community'.

Furthermore, EAC members are to 'establish common measures for the facilitation of road transit traffic [and] adopt common and simplified documentation procedures for road transportation within the community and harmonize road transit charges'.

Similarly, the COMESA Treaty says that members 'shall harmonize the provisions of their laws concerning the equipment for and markings of vehicles used for interstate transport within the common market; [...] agree on measures for the gradual reduction and eventual elimination of all non-physical barriers to road transport within the common market [and] make road transport efficient and cost effective by promoting competition and introducing a regulatory framework to facilitate road haulage industry operations'.

Good practice shows that trade facilitation frameworks designed and applied at the regional level are vital for greater economic interconnection between members of the same REC.

COMESA introduced a regional customs transit guarantee to facilitate the movement of goods under customs seal – and to provide the required customs security and guarantee to the transit countries. Under this system, the bonds issued in the country where the goods originate will cover transit up to the destination of the cargo, thus reducing the transit time and simplifying the clearing process.

At the same time, the guarantee system helps protect the revenues of each country through which goods are carried. Customs administrations are asked to make their claims within 60 days after the transit was completed, and any bond called up will be paid within a short period of time.

EAC countries are also integrating their customs systems into a single customs territory as part of their Regional Bond for Goods in Transit project. Designed to fast track the movement of goods under customs seal in the East African region, the single customs territory will ensure that goods destined for countries in the EAC are assessed and taxes collected at the port of entry.

#### *The Regional Road Transport and Transit Facilitation Programme for West Africa: ECOWAS and ECCAS*

The ECOWAS and UEMOA commissions established the Regional Road Transport and Transit Facilitation Programme for West Africa to harmonize their transit facilitation programmes, promote intra- and interregional trade, and ensure regional integration. The key pillars of the programme include simplifying and coordinating road transport regulations, procedures and documents, establishing joint control posts at borders along interstate corridors and updating road transit information system.

ECOWAS is also implementing a Transport Facilitation Project – which includes the creation of a single-country OSBP between Nigeria and Cameroon – for the 443-kilometer Bamenda-Mamfe-Ekok/Mfum-Abakaliki-Enugu Corridor in conjunction with the ECCAS and the Governments of Nigeria and Cameroon. This example is particularly relevant, because it seeks to boost cooperation and increase trade volumes between members of two different RECs – ECOWAS and ECCAS – ultimately benefiting the living environment of populations living in the project area.

#### *Leveraging the interplay between hard and soft infrastructure: increasing connectivity through trade facilitation initiatives in the CAREC region*

Many regions have traditionally thought to improve their connectivity by building roads, corridors, railways and other physical infrastructures. However, hard infrastructure alone is not sufficient to produce optimum

results on the intraregional trade potential. In connecting regions through transport corridors, it is essential that efficient trade facilitation procedures complement the physical investments to improve a region's competitiveness.<sup>18</sup>

Partner countries of the Central Asia Regional Economic Cooperation (CAREC) Program have adopted the Transport and Trade Facilitation Strategy 2020 to improve transport infrastructure and promote trade facilitation through a more integrated approach. In particular, this strategy emphasizes policy and institutional reforms – the “software” that sustains the “hardware” infrastructure – to enhance new investments in roads and corridors, focusing on the harmonization of regulations, procedures and standards for cross-border movements of goods, in addition to implementing a more efficient border management approach.<sup>19</sup> So far, CAREC countries' priorities on trade facilitation have included simplification of customs procedures, joint border controls, data exchange and development of a regional intelligence system.

#### *The Pacific Alliance: a coordinated framework in trade facilitation and customs cooperation*

In Latin America, the Pacific Alliance endorsed a coordinated framework to facilitate trade and cooperate on customs. Members agreed to tackle customs obstacles quickly by exchanging information, and commitments to release goods at the border were based on international standards and automated information.

The Pacific Alliance has supported the development of the Inter-American Network of International Trade Single Windows – *Red Interamericana de Ventanillas Únicas de Comercio Exterior*. This interoperable system allows companies to use an electronic single entry point for all administrative procedures required by various government offices and to obtain authorization to import or export transshipments. Pacific Alliance members have also agreed to recognize each other's authorized economic operator programmes to reduce the cost and transit times related to risk management, and to build a reliable reputation within its network of partners.<sup>20</sup>

#### *ATFF: fostering regional trade facilitation cooperation in ASEAN*

In South-East Asia, the ASEAN Trade Facilitation Framework (ATFF) aims to foster cooperation in trade facilitation regionally and within the relevant ASEAN bodies by simplifying, coordinating and modernizing customs rules and procedures. The framework covers customs and transport facilitation, transparency of trade regulations and procedures, standards and conformance, and private sector engagement and business facilitation. The ATFF encourages the active involvement of the private sector – particularly emphasizing the development of micro, small and medium-sized enterprises during regional economic integration – through greater participation of ASEAN business associations in the pertinent forums.

The ASEAN Trade Facilitation Joint Consultative Committee has been tasked to develop a 2017–2025 strategic plan for trade facilitation. It will direct and coordinate trade facilitation activities of all relevant ASEAN bodies, develop a more inclusive and consultative process to involve the private sector, and address specific concerns raised by private sector representatives requiring trade facilitation interventions.

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<sup>18</sup> When governments invest equally in hardware and software infrastructure, intra-regional exports nearly double. This implies not only that investments in infrastructure are profitable, but also that the returns on investment are distributed evenly between the software and hardware of trade. Inter-American Development Bank (2011). Investing in Integration: The Returns from Software-Hardware Complementarities.

<sup>19</sup> Key to the transport and logistics agenda of developing and least developed countries is a more holistic approach to the clearance of goods, which requires more collaboration among all border management agencies and the adoption of modern approaches to regulatory compliance. Arvis, J. F., Mustra, M. A., Ojala, L., Shepherd, B., & Saslavsky, D. (2012). Connecting to compete 2012: Trade logistics in the global economy. World Bank.

<sup>20</sup> The WCO's SAFE Framework encourages customs administrations to collaborate with each other to design mechanisms to mutually recognize authorized economic operator authorizations and validations as well as customs security control standards, and other mechanisms to eliminate redundant requirements.

Only revived in 2016, the Committee is working to lower trade costs by addressing issues related to customs procedures, facilitation of intraregional trade and implementation of the ASEAN Single Window. The Committee's greatest challenge in the coming years will probably be removing non-tariff barriers, as half of all NTBs must be eliminated to meet the ASEAN gross domestic product growth promise.<sup>21</sup>

### *SASEC: Boosting trade through a strategic trade facilitation framework*

The rapid expansion of comprehensive trade facilitation strategies at the regional and subregional levels reflects the growing willingness of policymakers to broaden their trade policy agenda beyond traditional tariff policies. This could be attributed to a desire to participate in regional and global value chains.

Even at the subregional level, the South Asia Subregional Economic Cooperation (SASEC) has built a strategic framework to boost intraregional trade by improving intraregional trade facilitation efficiency in five priority areas. These are modernizing and harmonizing customs; strengthening standards and conformity assessment; improving cross-border facilities; easing transport; and institution and capacity-building.

The SASEC Customs Subgroup was created to advance subregional trade facilitation initiatives through coordinated customs reform and modernization, strengthened interagency cooperation and enhanced partnership with the private sector. At its most recent meeting in Bhutan in June 2017, the Subgroup signed a Memorandum of Intent (MoI) for capacity-building initiatives in customs operations, presenting a framework for cooperation between and among customs administrations of participating SASEC countries and the Asian Development Bank. It has also begun to identify SASEC members' capacity-building needs to implement the TFA, and has agreed how to move forward to build the necessary capacities to comply with the agreement.<sup>22</sup>

## **WTO Trade Facilitation Agreement: A unique opportunity**

The previous sections illustrate that most RECs have trade facilitation programmes in place to enhance intraregional commerce. The TFA entered into force as many regions of the world were already taking steps to smooth trade in the hopes of furthering regional integration. The TFA is instrumental in developing countries and LDCs, bolstering their efforts to improve the business environment and remove the most burdensome barriers to trade at the national level, while at the same time, being fully consistent with – and fostering – regional trade facilitation objectives.

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*'Poor trade facilitation partly explains why only 14% of total African trade is intraregional, compared to 50% for Asia and 70% for Europe. In fact, when shipping goods between two countries in West Africa, it's often cheaper to ship them through the Netherlands than directly from one country to the other.'*

*Joakim Reiter, Deputy Secretary-General of UNCTAD*

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The TFA offers RECs a unique opportunity to meet regional economic development goals by reforming trade facilitation. It provides a basis for greater cooperation among countries and sets forth a definite framework within which trade facilitation measures shall be implemented.

The TFA is an important step forward in harmonizing the trade facilitation environment, as it provides an approved legal framework within which neighbouring countries – and RECs – can coordinate and adjust their reform programmes.

It also highlights those issues that demand policy interventions and technical and financial assistance from the international community.

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<sup>21</sup> Munir, M. (2017, April 8). Barriers to Asean promise. The Star Online.

<sup>22</sup> South Asia Subregional Economic Cooperation (2017, June). Sixth SASEC Customs Subgroup Meeting. SASEC website.

The cooperative environment that the TFA enables is thus a strong driver of regional integration that will expand access to regional markets.<sup>23</sup>

Another major feature of the TFA that supports regional integration involves technical assistance and capacity building (TACB). Developing countries and LDCs not only benefit from a differential timetable to meet their TFA commitments (based on their needs and means at their disposal), but they also enjoy specific TACB measures. The TFA gives WTO Members the opportunity and flexibility to schedule implementation timelines based on three categories (A, B and C). For example, developing countries and LDCs are granted a transition period after the TFA enters into force to apply their Category C provisions, which are conditional upon technical support and/or assistance in capacity building.

#### *Shifting away from a one-size-fits-all approach*

This innovative method of negotiating, planning and implementing reforms – shifting away from a one-size-fits-all approach – encourages steadier and more sustainable regional integration by tailoring the implementation of trade facilitation measures to the needs of countries with less capacity.

The complementary role of RECs for TACB-related provisions is highlighted in Article 21, which lays out specific conditions on technical assistance. Article 21 lists the principles under which technical assistance is delivered and considers three principles relevant for RECs: '(i) include, where relevant and appropriate, activities to address regional and subregional challenges and promote regional and subregional integration; (ii) promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance; (iii) encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities'.

While the TFA is binding for individual WTO country members, the agreement recognizes the contribution of regional bodies to implementation, with specific references to regional arrangements. The WTO's General Agreement on Tariffs and Trade 1994 (GATT 1994) obliges each Member to 'ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements'. Therefore, unless an REC joins the WTO, individual contracting parties must meet obligations and apply global trade rules. A regional body can become a WTO Member through accession – as was the case with the European Economic Community, which was the contracting party to GATT in 1947 and successfully took on commitments on behalf of its member states due to its exclusive competence in trade policy – and may only then be entitled to fulfil binding commitments under WTO rules on behalf of partner countries.

Nonetheless, the TFA explicitly mentions regional bodies and acknowledges that they may contribute to meaningful implementation of the agreement. Article 24.5 paves the way for regional approaches to meet TFA obligations, saying that 'members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under this Agreement, including through the establishment and use of regional bodies'.<sup>24</sup>

Although regional approaches are permitted, they are not mandatory. Still, the contribution that regional bodies can make to the implementation of the agreement is recognized and appreciated.

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<sup>23</sup> The poor status of trade facilitation in Africa, for example, helps to explain why just 14% of African trade is intraregional, compared with 50% in Asia and 70% in Europe. See the statement by Joakim Reiter, Deputy Secretary-General of the United Nations Conference on Trade and Development (UNCTAD), at <http://unctad.org/en/pages/SGStatementDetails.aspx?OriginalVersionID=207>.

<sup>24</sup> The TFA uses different terms to refer to regional economic integration and regional entities: regional economic communities, regional economic arrangements or members involved in regional integration and regional approaches. It does not define the terms and it is unclear if a customs union under the TFA must comply with the definition of GATT Article XXIV:3 and XXIV:8. The legal implication of non-consistent terminology must be analysed in more detail. For this study, it is assumed that the inconsistent terminology is due to difficulty in describing a phenomenon such as regional economic integration with its different characteristics.

The TFA also refers specifically in various articles to regional arrangements among individual Members.

- Article 1.3.2 authorizes members of a customs union or those involved in regional integration to ‘establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures’;
- Article 21.3 (b) says that Members – when aiding capacity-building – should include activities to address regional challenges and promote regional integration;
- Article 21.3 (d) says that Members must try to promote coordination among themselves and other relevant institutions, including RECs, to ensure maximum effectiveness of this assistance;
- Article 24.5 affirms that members of a customs union or a regional economic arrangement may adopt regional approaches to help implement their obligations, including through the establishment of regional bodies.

The implementation of other Articles of the TFA may also have a (indirect) regional dimension. Albeit not an exhaustive list, there are many examples of measures with potential regional implementation capacity in the Agreement. For instance, Article 1.1 and Article 1.2 on publication and availability of information through the Internet can be implemented in a coordinated manner to provide traders with a common regional platform where to retrieve information.

Although Article 5.1 does not explicitly refer to regional arrangements, it may give regional communities a role in coordinating or setting up a uniform mechanism for notifications of enhanced controls or inspections at the border of one of their member states in respect of foods, beverages or foodstuffs to protect human, animal or plant life or health within their territory.

Similarly, Article 7.6 on the establishment and publication of average release times can entail a role for RECs if comparable standards and benchmarks are established on a regional level. Moreover, Article 7.7 on trade facilitation measures for authorized operators can involve mutual recognition of authorized operators within a region.

Article 8.2 also has a potential regional dimension regarding a role for regional bodies in border agency cooperation regarding, *inter alia*, the establishment of OSBP control and alignment of procedures and formalities. It says: ‘Each Member shall ... cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade.’ Likewise, Article 12 on customs cooperation provides for a wide range of possibilities for concerted implementation and coordination at the regional level, including through technical assistance, capacity-building and information exchange.

Implementation of Article 10.3 can also have a regional dimension. In fact this article encourages the use of international standards with the aim to harmonize data and codes globally. However, a first step can be harmonization at the regional level.

Similarly, Article 11.16 and Article 11.17 suggest that RECs can play a key role in harmonizing charges, formalities, legal requirements and practical operation of transit projects to enhance the freedom of transit within their territory. They can also act as regional transit coordinators to address inquiries and proposals related to the good functioning of transit operations in the region.

To sum up, while the WTO TFA does not create specific obligations for RECs, it does acknowledge their importance in implementing trade facilitation reforms and in the effective realization of TACB initiatives. More specifically, it may be concluded that: (i) regional approaches can be chosen as an ancillary way to apply WTO law, (ii) regional arrangements can further expand on WTO rules and (iii) regional economic communities play an important role in coordinating and receiving technical assistance.

## CHAPTER 4 POLICY OPTIONS FOR REFORMS



Source: Shutterstock

Many legal and non-legal instruments are available to RECs and their member states to deepen their integration in trade facilitation.<sup>25</sup> This section aims to equip policymakers with a ‘toolkit’ of policy options to promote regionally coordinated and harmonized trade facilitation reforms. This would enable governments to choose the most suitable instruments to address their needs and, at the same time, increase awareness of the benefits and drawbacks of each proposed tool.

Legal instruments and non-legal instruments are complementary tools that RECs and their member states can use to shape the regional integration process in trade facilitation. They are not mutually exclusive, and most RECs rely on a combination of both to promote their regional integration agenda.

There is a tendency in the literature on different regional integration processes to assume that legalization and judicialization – meaning greater reliance on legal instruments to regulate public policy issues and on courts and judicial means to address public policy questions, respectively – are necessary for effective regional integration. But a growing body of scholars and policymakers argue – especially regarding African integration processes – that non-legal instruments are more suitable and effective due to a lack of the political will and economic resources necessary to enforce rules. Ultimately, the instruments chosen by RECs depend on their mandate, governance structure and implementation capabilities and, of course, on the political commitment to regional integration among their member states.

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<sup>25</sup> Legal instruments are legally binding tools that impose obligations and confer rights both on individuals and member states. They can entail enforcement mechanisms where rules are submitted to judicial control, with possible resort to coercion or constraint. On the other hand, non-legal instruments are non-binding declaratory instruments or concerted action taking the form of recommendations, mechanisms for converging national policies and exchanging information, regional programmes and financial support, which are not enforceable and do not pose obligations upon states or individuals. Saurugger, S., & Terpan, F. (2013). *Analyser les résistances nationales à la mise en œuvre des normes européennes: une étude des instruments d'action publique*. Quaderni, (1), 5-24.

## Legal instruments available to RECs

A REC's legal framework is the structural backbone that defines the vertical and horizontal relationships between member states, and between community institutions and member states. It defines, among others, the rules of cooperation, the decision-making procedures and the jurisdiction related to the enforcement of regional law and dispute resolution mechanisms. It also determines the goals and scope of integration, and the areas in which member states will cooperate more deeply.

*Leveraging binding legal commitments and relying on case-law to shape the integration process are among the key pillars of deeper unification.*

The primary source of regional law is its founding treaty/treaties and general principles. All subsequent actions and decisions are derived from the body of primary law, which prevails over subordinate sources, including domestic sources of law.

Beyond primary law, REC institutions may craft their own 'secondary' law consisting of legal acts to carry out regional policies and actions. Legal acts aim to establish a uniform legal framework common to and binding on all member states, and imply deeper integration, with more evident political implications. Regional approaches relying on binding legal instruments can create obligations for member states, whose non-compliance can be challenged before a regional judicial court. Such legal instruments have the power to displace or pre-empt national legislation, and can prevent national parliaments from enacting new norms in policy areas where regional law prevails.<sup>26</sup>

### *Mutual recognition agreements, legal harmonization and legal unification*

Mutual recognition agreements, legal harmonization and legal unification are the main legal instruments available to promote regional trade facilitation approaches. Positive integration – an attempt to intervene in the economy through re-regulative policies and instruments at the supranational level – involves a broader institutional adaptation at the national level. Mutual recognition agreements, legal harmonization and legal unification aim to bridge differences in regulatory objectives and modalities between member states, but each offers a different level of flexibility for countries to define the forms and means of implementation.

*Legal unification tools such as regulations and decisions are binding and directly applicable to all member states or, in the case of decisions, to specific countries*

Legal unification tools require efforts to systematically create uniform rules by adopting detailed binding rules, disciplines and methods of implementation at the community level. Several RECs have adopted or are in the process of adopting unified customs legislation. The approaches range from unification, as in the case of the EU and the EAEU, to harmonization, as in the case of the EAC, WAEMU and ECOWAS (see discussion on harmonization below).

This category of legislation requires concerted effort as well as a great degree of political commitment. In fact, unifying the laws of different countries means homogenizing or replacing, to different degrees, existing national legislation with common rules that are not enacted at the domestic level. This type of top-down rule-making is especially appropriate when regional interconnectedness is high and community institutions have the power to compel member states to modify existing legislation or to enforce new norms in a way that prevents national intercession.

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<sup>26</sup> Gordillo, L. (2012). *Interlocking Constitutions – Towards and Interordinal Theory of National, European and UN Law*, Hart Monographs in Transnational & International Law.



Regulations are particularly intrusive legal acts, because they compel member states to comply with common rules without discretion on their own side, and yet directly affect each state. This means that, in case of total harmonization, states lose the power to deviate from the provisions enacted at the community level, unless exemptions are explicitly included in the regional legal act.<sup>27</sup>

*Binding, legal harmonization tools, such as directives, give member states the discretion to choose the means and forms of implementation that are best suited to achieve the objectives.*

More specifically, harmonizing laws aims to create consistency among various national laws, regulations, standards and practices. Member states are obliged to transpose the provisions of the act – and make changes if needed – in their national legal systems in accordance with minimum standards outlined at the community level.<sup>28</sup>

Harmonization tools are by nature vague, as they simply order member states to achieve certain minimum standards. Due to their non-direct effect, harmonization tools typically give member states wider margins of manoeuvre in terms of form and means of implementation within a fixed deadline.<sup>29</sup>

A directive adopted by ECOWAS in 2013 is one example of a harmonization tool on trade facilitation used at the REC level. ECOWAS was seeking to rationalize strategies to fight corruption by customs authorities and to reinforce the capacity of customs administrations in terms of improving human resources, logistics and information systems. A directive can be an easier and a more politically sustainable legislative tool for RECs, as it lets member states use their discretion and allows them to take specific national characteristics into account when applying community rules.

*The mutual recognition principle rests on an agreement between two or more states to acknowledge the adequacy of each other's regulations.*

The mutual recognition principle promotes trade in goods, despite differences in technical regulations, if the regulatory objectives are considered equivalent. Mutual recognition engenders positive integration pressure in the absence of a harmonized legal framework, given that it removes trade barriers and, indirectly, leads to an alignment of regulatory objectives.<sup>30</sup> In many other areas, bilateral mutual recognition rests on agreements between two governments or administrations on the substantive and procedural aspects of mutual recognition.

The WTO TFA urges members to 'afford to other Members the possibility of negotiating mutual recognition of Authorized Operator Schemes' to improve uniformity and predictability, and to maximize security along supply chains. In principle, mutual recognition is advantageous and politically desirable because it leaves national regulations largely intact rather than requiring all national technical rules to be harmonized. It is also more flexible than harmonization, involving lower implementation costs and faster impact. Mutual recognition is feasible when regulatory divergence is limited.

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<sup>27</sup> Craig, P. and De Búrca, G. (2015). *EU Law – Text, Cases and Material*. Oxford University Press, Sixth Edition

<sup>28</sup> In the case of the EU, directives must be transposed into member states' national legal framework through new legislation.

<sup>29</sup> However, it must be noted that in the EU, the European Court of Justice (ECJ) has recognized the direct effect of directives in certain cases on protecting the rights of individuals. The ECJ has said in its case-law that a directive can have direct effect when its provisions are sufficiently clear and precise, and when a member state has not transposed the directive into the national legal order by the deadline (Judgement of 4 December 1974, Van Duyn).

<sup>30</sup> The European Union, for instance, has implemented and formalized multilateral mutual recognition agreements dealing with product quality and safety standards, sanitary and phytosanitary protection, and environmental regulation.

## Non-legal instruments available to RECs

Member states have a wide range of non-legal instruments at their disposal to coordinate their actions to a looser degree than with legal instruments. ‘Soft law’ and informal rule-making have improved cooperation in some RECs, as non-binding rules are often better-suited to the diverse political cultures of individual countries. These instruments include non-binding decisions, diplomatic or political instruments of dialogue and cooperation, and public funding.

### *Non-binding decisions*

Non-binding decisions such as recommendations, expert advice, explanatory notes and guidelines can complement legal acts and provide detail on how to apply legal norms.<sup>31</sup> Non-binding documents and decisions can also be used when member states fail to reach consensus about a legal decision, but agree to collaborate at a technical level to solve a problem.

Non-binding decisions are particularly appealing for countries in a regional community that want to avoid enforceable solutions. Such decisions can be speedily adopted and they spare member states from the burden of the procedural requirements of traditional legal instruments.

As an example of a complementary non-legal document used to guide the implementation of trade facilitation measures, five African RECs – ECOWAS, the EAC, COMESA, SADC and WAEMU – published a joint one-stop border post source book to give policymakers a unique guide and best practice tool when fully and efficiently implementing planned OSBPs across the continent. In this same vein, African Union customs experts met in 2015 to discuss developing a trade facilitation strategy for Africa that would lead to the creation of a continental free trade area.

### *Diplomatic and political instruments of cooperation*

These include member states’ consultations and decisions to direct regional policies and actions towards certain common objectives and may include monitoring missions, high-level meetings and peer reviews. In this case, when governance relies on the voluntary cooperation of member states, RECs play a limited role in the process and are often restricted to supervising and monitoring decentralized implementation of policies at the national level.

The experience of the European Union with this ‘light structure of cooperation’ is symbolic. With the launch of the Lisbon Strategy in 2000, the EU inaugurated a systematic form of soft coordination called the Open Method of Coordination, which is used in policy areas where member states still retain supporting competences, such as education, culture and tourism.<sup>32</sup> The Open Method of Coordination was founded on the identification and definition of objectives and best practices, measurement of instruments and benchmarking, backed by peer evaluations and periodic assessments.

High-level meetings and seminars are also an important tool for delineating future guidelines for a coordinated approach to the regional implementation of policies. For example, in 2016, the WAEMU Commission organized a high-level seminar with the participation of ITC and the Global Alliance for Trade Facilitation to refine the modalities of a coordinated, harmonized regional approach to the implementation of the TFA.

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<sup>31</sup> In the EU, the European Commission makes wide resort to binding guidelines in support of its directives to facilitate the transposition of laws by outlining a common understanding of the provisions of the directive.

<sup>32</sup> The Lisbon Strategy was launched in 2000 by EU heads of state and government to make the European economy more competitive and knowledge-based. It comprised a package of initiatives, institutional structures and funding mechanisms.

These political instruments are particularly useful because they have a less formal structure and impose no obligations. Nevertheless, they create a common sense of understanding the problems and help to build consensus on solutions and on their practical implementation.

### Public funding

Public funding refers to financial instruments provided by a REC that can be accessed by member states to apply community policies. These funds, used to support the integration of community objectives with member state policies, may be individual member states' allocations, external funds such as loans and grants from development banks and development partners, or REC internal resources. The *Fonds à l'Aide d'Intégration Régionale* of the WAEMU is a structural fund to co-finance infrastructure projects in member states. It is financed by WAEMU fees charged on every import, the *Prélèvement Communautaire de Solidarité*, and contributions from external partners. The fund is used to cover interest-rate payments for project-related loans and to provide security.

## Pros and cons of legal and non-legal instruments for regional trade facilitation

The different legal and non-legal instruments at the disposal of policymakers carry equally benefits and shortcomings, which must be pondered before drawing reformative agendas on trade facilitation. The reliance on binding legal norms may have certain outcomes when there is sufficient political commitment to regional laws and if member states of a regional community have adequate resources to bring their domestic laws into line with Community rules. However, the benefits of counting upon legal tools must be counterbalanced with possible shortcomings of a statutory model of cooperation.

Among the greater benefits entailed, legal instruments produce clear rules of convergence to which Member States must abide by. The legal certainty of the law and its enforcement create transparent rights, expectations and obligations for the governments and citizens alike, regulating to the most detailed level the relationship between regional authorities and member states, and between public authorities and citizens.

An additional benefit, when deciding the norms and general principles underlying the law that States shall comply with, regional institutions will tend to choose the national best practices, entailing a bottom-to-the-top dynamic for the introduction of similar (high) standards in all the member states' domestic legal orders.

Moreover, when legal instruments are interpreted by a regional court either narrowly or extensively, that interpretation will create accepted principles and will lead to their uniform compliance across the REC, thus aligning efforts and resources in the quest for common solutions.<sup>33</sup>

Lastly, the enforceability of legal norms at the community level, or at least mechanisms that discourage non-compliance, gives states a greater sense of observance of legal rules. This exposes them to constraints and sanctions for non-compliance. States also risk hurting their reputation or harming their relations with other member states if they depart from or violate regional law.

However, practice has shown that there are some downsides to the use of legal instruments. When legal instruments have a binding force which in principle can constrain states, they apply equally to all member states, irrespective of structural imbalances among the countries. In fact, enacting binding laws at the

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<sup>33</sup> In the case of the EU, the ECJ became a pivotal actor of the integration process at a time when formal decision-making rules mainly hampered progress. As already highlighted, the court has de facto become a crucial pro-integration rule-making actor. For instance, a strict interpretation of the free movement of goods underpins the ECJ's ruling that the community principle of free movement of goods should prevail over national policy concerns and differences. The formulation of this straightforward community principle came in two landmark rulings – the *Dassonville* and *Cassis de Dijon* cases – that established the mutual recognition and equivalence principle as binding norms bridging regulatory differences of member states.

regional level does not provide for sufficient flexibility to tackle development asymmetries within the region. As a result, member states may lose interest or fail to comply with and implement regional law, becoming less cooperative.

Another shortcoming lies in the inadequacy of credible monitoring of compliance and enforcement. When member states set up weak regional institutions – with narrow mandates and vaguely attributed powers – compliance monitoring at the regional level can be poor or absent. Even when regional institutions are created to implement the regional integration agenda, they often fail to play a robust role in ensuring national compliance with supranational rules.

This is particularly the case when conflicting obligations arising from overlapping memberships of RECs, coupled with the absence of political will to implement the objectives of the treaties and to streamline national policies with regional policies, become clear impediments for non-compliance by Member States. This creates an uncertain ground for the enforcement of regional commitments.<sup>34</sup> This is the very reason that RECs should also consider non-legal instruments to move their integration agendas forward.

Non-legal instruments are more suitable and effective when lack of political will and of economic resources does not move forward regional agendas. Hence, non-legal tools become a more adequate way to invite countries to cooperate and commit to the integration process, leaving aside the use of enforcing mechanisms.

This type of instruments are especially helpful for less-integrated regional communities as they permit more flexibility and can accommodate ‘weaker’ states. Unlike judicial enforcement, which might antagonize some REC members, non-legal tools invite countries to cooperate and commit voluntarily to the integration process.<sup>35</sup>

The increasing use of non-legal instruments provides more room for adaptability, and coordination – rather than regulation – benefits RECs that might lack technical capacity to transpose regional community law at the national level and have insufficient resources to ensure enforcement mechanisms. Indeed, ‘soft enforcement’ relies on procedures to ensure compliance without necessarily resorting to coercion, constraint or sanctions.

However, non-legal instruments often lack the clarity and certainty needed to ensure predictability and a reliable framework for action and enforcement. As they do not bind states to implement legal rules, these instruments may discourage the real commitment of member states in absence of enforcement mechanisms, and reduce the speed of integration, which widely depends on national governments’ willingness.

This is why a hybrid solution that involves both binding and non-binding tools better suits many regional integration processes, as REC institutions can use a variety of instruments according to the policy domain concerned. When it comes to facilitating trade within a regional community, it might be the most beneficial for REC institutions with the necessary legal capacity to enact clear and binding solutions. This would support landlocked countries that stand to profit from trade facilitation measures enacted at the regional level, such as OSBPs to reduce the time spent at the border.

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<sup>34</sup> As argued by Afadameh-Adeyemi, the mere transfer of supranational authority to regional institutions will not necessarily lead to compliance or effective economic integration. For example, three African RECs – COMESA, EAC and ECOWAS – have regional courts in place that have jurisdiction on all matters covered by the integration treaties. Their decisions are binding on member states. However, while these courts have delivered important rulings in human rights disputes and have created a solid jurisprudence in the area, they have not been used as a forum for litigating disputes arising from non-compliance with regional norms. Afadameh-Adeyemi, A. (2013). *Securing compliance with African economic integration treaties*. p. 20.

<sup>35</sup> Gathii, J. T. (2009). African regional trade agreements as flexible legal regimes. Albany Law School Working Paper Series No. 20 of 2009.

## Factoring in REC institutional arrangements

When deciding which instrument best fits their regional community, REC policymakers should bear in mind that each tool is well-suited to a specific approach to regional integration. Legal instruments are especially effective and coherent when several competences have been transferred fully at the supranational level. Non-legal instruments, on the other hand, are preferable when loose regional integration is based primarily on an intergovernmental approach and member states retain their sovereignty in most of the policy areas. Differing degrees of integration within policy areas and future ambitions for deeper intraregional ties determine whether an intergovernmental or a supranational approach to governance – or a combination of the two – is the best option.

### *Assessing the features of intergovernmental and supranational governance*

Regions have used different institutional arrangements to make and implement decisions at the regional level because they have experienced different models of integration. The disparate integration processes that many regions have witnessed in the last seven decades have led to a redefinition of how political authority is used, enforced and monitored at the supranational level.

Different regional governance approaches must be scrutinized to understand the assorted tools available for RECs to manage interstate cooperation more coherently, based on their institutional pattern. Whether the contraposition of intergovernmental-supranational is placed along a flexible continuum or seen as characterizing opposite governance systems to be analysed independently from one another, a precise categorization of these two ideal-typical modes of governance will help to identify the benefits and disadvantages of each approach.

### *The intergovernmental approach relies heavily on unanimity and consensus decision-making procedures and places states' political will (and resistance) centre stage*

The national executives of participating states are the key players in intergovernmental politics. In this model of governance, individual countries' national interests dominate in interstate cooperation, which is sought only in policy domains that do not impinge on national sovereignty. This means that national interests play a major role in determining whether to cooperate under the intergovernmental *modus operandi*.<sup>36</sup>

Indeed, participating states retain and exercise 'their autonomous sovereign power in acting upon legislation, setting policies or taking decisions'.<sup>37</sup> Consequently, the regional body's institutional capacity is weak, with mutual (loose) institutions lacking the legislative and operational capacity to act independently of partner countries for the sake of a common purpose, and every decision requires considerable negotiation, compromise and diplomacy.

States remain in full control of all decisions and common institutions merely facilitate decision-making among state representatives who pool their sovereignty. Independent appointees of governments or elected representatives have only advisory or implementing functions. With this underlying rationale, decisions are generally made in a collegial manner by unanimity or consensus, while permanent 'supranational' committees and bodies have very limited scope and authority.

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<sup>36</sup> Among the most renowned theorists of the (liberal) intergovernmentalist approach, Andrew Moravcsik theorizes a 'two-level game' where interstate cooperation is modelled as a process that takes place in two successive stages: governments first define a set of domestically constrained interests, and then bargain among themselves at the 'supranational' level to realize those interests. According to Moravcsik, national governments have an incentive to cooperate when policy coordination increases their control over domestic policy outcomes, allowing them to achieve goals that would not otherwise be possible. This situation arises most often when coordination eliminates negative international policy externalities. See Moravcsik, A. (1993). *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, Volume 31, No. 4.

<sup>37</sup> Goebel, R. J. (2013). *Supranational: Federal: Intergovernmental: The Governmental Structure of the European Union after the Treaty of Lisbon*. Colum. J. Eur. L., 20, 77.

A dispute settlement mechanism – if envisaged – relies more on arbitral practices than on a proper judicial process, and tribunals have little or no authority to enforce their decisions. Moreover, in intergovernmental politics, legislative assemblies are usually not directly elected by universal suffrage, but represent second-order assembly of national parliamentarians. They have purely consultative roles rather than real decision-making powers.

Box 11 Mercosur and ASEAN: Non-EU followers

As a purely intergovernmental body, Mercosur has always been characterized by institutional shortcomings, with decisions made unanimously in the absence of any form of supranational institution. Partner countries retain broad freedom to manoeuvre without having to comply with the interests and autonomous decisions of a ‘communitized’ bureaucracy, detached from each state’s administration and internal policymaking process.

The dispute resolution arrangement has been grounded on this logic, characterized by the search for diplomatic or negotiated solutions, rather than remedies based on supranational rules, through an intergovernmental institutional mechanism in which the partner states themselves negotiate to reach a solution.

ASEAN’s organizational structure is also purely intergovernmental with no supranational authority, though less formalized and more moderate in its ambitions. Its highest decision-making body, the meeting of heads of state and government who make decisions based on consultation and consensus, is a clear example of how decision-making powers remain firmly under the control of member governments. Consensus-based decision-making ensures that any member at any time can veto any regional proposal that is perceived as threatening vital national interests. The ASEAN way relies on networking, consultation, mutual accommodation and consensus rather than on binding rules.

In conclusion, the intergovernmental approach to regional governance is particularly suited to RECs that have decided not to transfer any of their sovereignty at the regional level and are not politically or economically willing to pursue ambitious regional integration agenda. Under this approach, regional communities should rely on non-binding rules, political declarations and frameworks whose actual implementation will be determined by the degree of political commitment of the REC in the field and by its economic capacity.

*In the supranational approach, regional institutions have the power to bind member states to change their legal orders*

A supranational approach to cooperation indicates a deeper commitment of geographically close states to pursue regional integration more vigorously. In this mode of governance, institutions are empowered to limit the behaviour of member states. Majority voting is the characteristic decision-making procedure that moves integration forward.

In a supranational mode of governance, centralized governmental structures – established at the supranational level – have exclusive binding jurisdiction over specific policy domains within the territory of the member states that created them. Supranational organizations can curtail the behaviour of any actor, including a member state, in areas where supranational institutions have been granted exclusive competences.

Accordingly, majority voting is intentionally used to prevent reluctant (minority) states from jeopardizing the integration process. This ensures that member states that vote against a regional law are unable to block it if most countries adopt it. Independent appointed officials or parliamentarians who are directly elected by the citizens of the regional community represent the supranational interest and push for further expansion of community powers in new policy domains: they hold the core of supranational power. In areas where member states have agreed to transfer authority to the supranational level, regional law supersedes national law – meaning member states are precluded from enacting contradicting legislation – and is enforced by the judicial decisions of a powerful supranational court of justice.

**Box 12** The EU: The highest degree of supranationalism in the world

The most supranational institutions – the European Commission, the European Parliament and the Court of Justice of the European Union – have been pivotal in boosting the community agenda. They have proved to be a fundamental catalyst for the integration process of the European Community by counterbalancing resistance on the part of some member states. The Commission, for instance, acts independently of national governments and exclusively in the interest of the European Union.

Moreover, once European rules – such as relevant treaty provisions, secondary legislation and the ECJ's case law – are established in a given domain, they encourage the gradual deepening of integration in that sector, with not infrequent spillover into other sectors. Even the intergovernmental nature of the Council of Ministers of the European Union – which acts as a co-legislator of the EU along with the European Parliament – is mitigated by using qualified majority voting in domains where the EU enjoys exclusive competence. This speeds the adoption of legislative acts and ultimately the autonomous capacity to pursue integrative agendas.

Under the intergovernmental approach to regional convergence, participating countries in a regional arrangement pool their powers to reach mutual solutions for common problems. On the other hand, policymaking and decision-making powers are transferred from the national to the supranational level when regional organizations have put into place a supranational cooperation model. Regional institutions are the main actors in this case, and the process of integration is driven by an internal institutional logic that goes beyond national interests.

**Box 13** ECOWAS Treaty

The ECOWAS Treaty permits citizens of member states to elect the members of the community parliament by direct universal suffrage. However, true legislative powers have not been conferred on this parliament, which is composed of indirectly appointed national representatives from each ECOWAS state.

The recently established ECOWAS Court of Justice should perform a supranational function: it is expected that the court will operate independently of member states and community institutions, and will deliver binding rulings on member states, community institutions and individuals. In areas where it has been granted competences, the court will be at the apex of the hierarchy of judicial institutions in West Africa.

Member states of WAEMU have also tried to achieve EU-inspired institutional integration. WAEMU's efforts differ from other South-South integration initiatives in that supranational institutions – including the Commission, the Council of Ministers, the Court of Justice and the Court of Auditors – have been set up.

The Commission is the vital body of WAEMU's institutional machinery and its driving force. Unlike the ECOWAS Executive Secretariat, the regulations, directives and decisions of the WAEMU Commission are binding on all member states. Consistent with its aim of regional economic and monetary integration through a 'union' approach, the WAEMU Treaty contains elaborate provisions for regulating and managing the macroeconomic policies of its member states, especially in fiscal matters. Convergence rules are now to be negotiated and enforced to promote policy harmonization and the emergence of common regimes in key sectors.

As shown, the supranational approach requires strong proof of political commitment, which translates into the transferral of some member states' power to supranational institutions. When regional bodies enact supranational rules that are granted superiority over national laws, the enforceability of rules confers credibility and effectiveness on the results that a REC wishes to achieve.

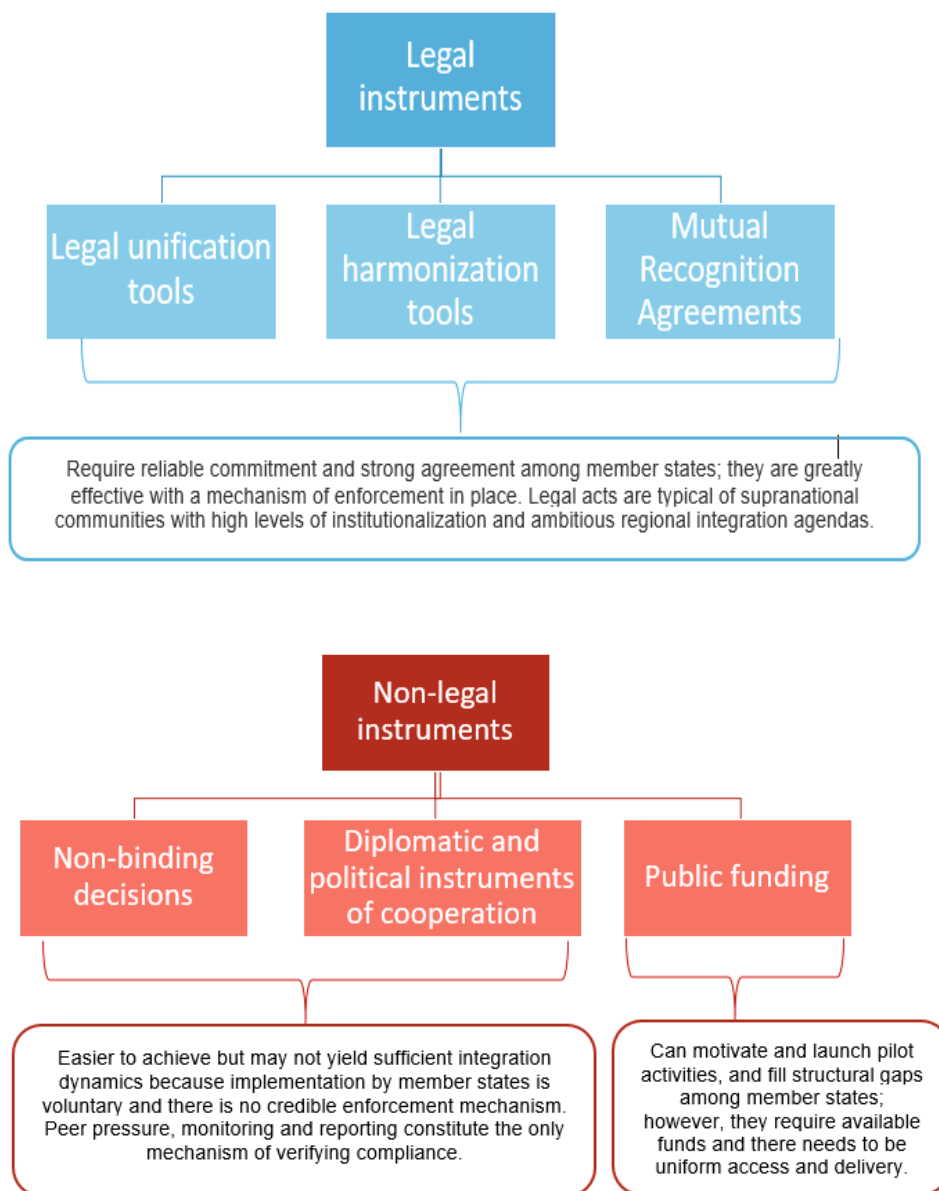
*Most regional communities' structures and operations are produced through intergovernmental bargaining*

As already mentioned, in the intergovernmental governance decisions are usually reached through consensus or unanimity by the heads of state and government in the appropriate bodies. This is achieved using a political/diplomatic style of intergovernmental negotiations, where all members can assert their interests and formally (or informally) veto on unwanted decisions. In light of their structures and levels of integration, in most RECs member states decide to rely on intergovernmental dynamics rather than supranational ones, as they prefer not to bind themselves to legally enforceable norms.

## Synthesis of tools to advance a regional trade facilitation agenda

The instruments presented in this section vary in terms of legal nature, institutional approach and political commitment. Each tool comes with specific challenges with which all individual RECs must cope.

Figure 3 Types of tools to implement regional trade facilitation measures



Source: ITC elaboration



## CHAPTER 5 DESIGNING A REGIONAL TRADE FACILITATION ROADMAP



Source: Shutterstock

Since the WTO Trade Facilitation Agreement entered into force in February 2017, Members have been legally obliged to carry out commitments and create a more advantageous trade environment for their business community.

Trade facilitation reforms and the TFA are instrumental in deepening regional integration, as they help reduce time and cost in intraregional trade. The benefits of cross-border reforms can be maximized when RECs take regionally coordinated approaches to improve trade. RECs should collaborate more closely on trade facilitation to build a transparent, predictable and efficient trade environment at the community level.

Each REC should design and adopt a trade facilitation roadmap that will support its business community's competitiveness and expand regional integration.

A regional trade facilitation roadmap aims to explain in detail how members of an REC can work together more deeply on cross-border reforms to encourage intraregional commerce and strengthen the regional integration process. This roadmap should identify the reforms to be targeted, define the methods to be used and set up a mechanism at the community level to facilitate the harmonized design, implementation and monitoring of the reforms.

There is no 'one-size-fits-all' regional trade facilitation roadmap. This means that each community must consider its specific mandate, institutional arrangement, procedures, political economy and implementation capacity to design its own way forward. However, there are key methodological principles that can guide RECs and their member states as they design a regional trade facilitation roadmap tailored to their particular environment.

## Six steps to a regional trade facilitation roadmap

Figure 4 A six-step regional trade facilitation roadmap



Source: ITC elaboration

### Step 1: Consolidate member states' needs and identify common requirements

Given the attention that WTO Members paid to implementation of the TFA, the agreement provides an ideal framework for structuring community-level discussions. The TFA is the most comprehensive legal instrument on trade facilitation available today. All ratifying Members must fulfil 36 obligations that draw on international standards and best practices. The TFA thus provides a standardized, legitimate and easy-to-use framework for Members to identify and address regional trade facilitation challenges.

The TFA's 'categorization' mechanism helps Members determine what trade facilitation reforms they need. The agreement's categorization principle requires developing countries and LDCs to divide their future obligations into three categories. These are Category A commitments, which they already implement or will immediately upon the entry into force of the TFA; Category B commitments, for which they require additional time; and Category C commitments, for which they require both time and technical or financial assistance.

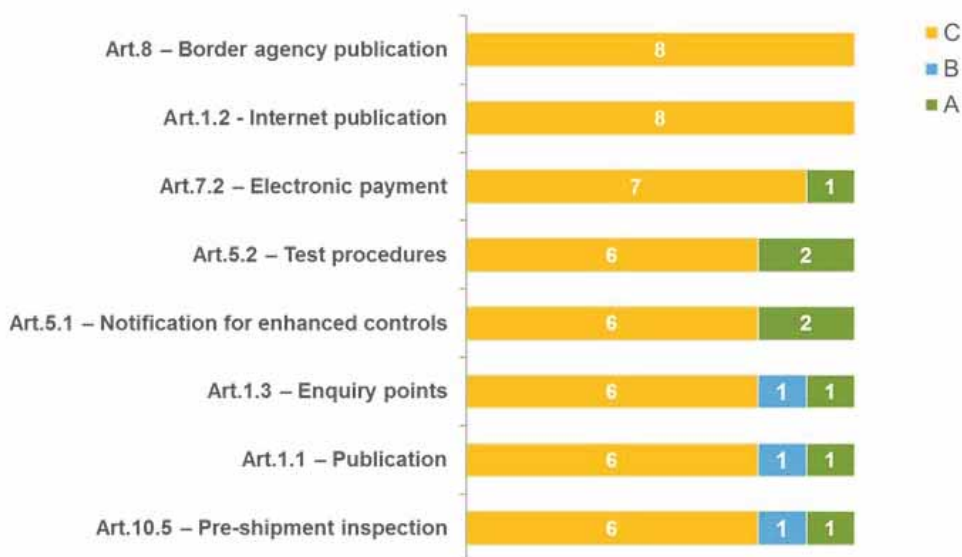
By improving information-sharing between members and consolidating categorization recommendations, the REC can identify the obligations that are the most frequently categorized in B or C within the region. In other words, the REC can determine which specific steps member states would need to take to improve the transparency and efficiency of their cross-border environment. These steps should include regionally coordinated and harmonized implementation.

Since early 2014, ITC has supported the WAEMU secretariat, and its member states' pursuit of a regionally harmonized and coordinated implementation of the TFA, with a view to achieving economies of scale while establishing a more predictable trading environment across the region. This has involved working towards region-wide consensus among public and private sector stakeholders from all WAEMU member states on modalities for implementing the TFA.

While most governments will implement the TFA at the national level, ITC worked with WAEMU on an alternative path: implementing selected Category B and Category C measures region-wide. In two successive regional workshops, the WAEMU Secretariat and ITC have consolidated and assessed the TFA compliance gaps of the 8 regional Member States.

This analysis has resulted in the identification of a list of measures that were placed in category B and C by a majority of WAEMU countries. The table below presents a consolidated view of WAEMU categorization requirements and the list of measures that have been further analysed to assess the potential for regional intervention.

Figure 5 Regional implementation of the TFA: the WAEMU experience



Source: ITC elaboration

### Step 2: Build consensus on TFA obligations to be implemented regionally

Certain obligations of the TFA are clearly more suited to regional implementation than others (e.g. transit, inquiry points and border agency cooperation). Nonetheless, a structured consultation process would help RECs and their members to identify and select areas for collaboration. This process should be based on a conceptual framework that allows for transparent and fact-based discussions. RECs should define criteria to assess the benefits of a harmonized approach to the implementation of each TFA measure, and choose the most relevant ones.

Regional approaches can yield practical benefits for member states and the community. RECs should assess the extent to which coordinating the implementation of a TFA measure would be suited to independent national approaches. Regional consultations can enable the REC to build consensus based on the criteria to apply and then, based on these criteria, to collectively agree on the measures for regional implementation.

Finally, RECs should agree on the regional priorities for implementation. This can be done by assessing the complexity of the reforms' design and application versus the expected effect on the business community and border agencies' control and revenue-collection objectives.

#### Key questions when assessing the relevance of regional approaches:

- Does the reform support the proper functioning of the regional market?
- Must the regional legal framework be amended to implement the measure?
- Are supranational interventions required to ensure effective implementation?
- Do independent national approaches create a 'spaghetti bowl'<sup>38</sup> situation?

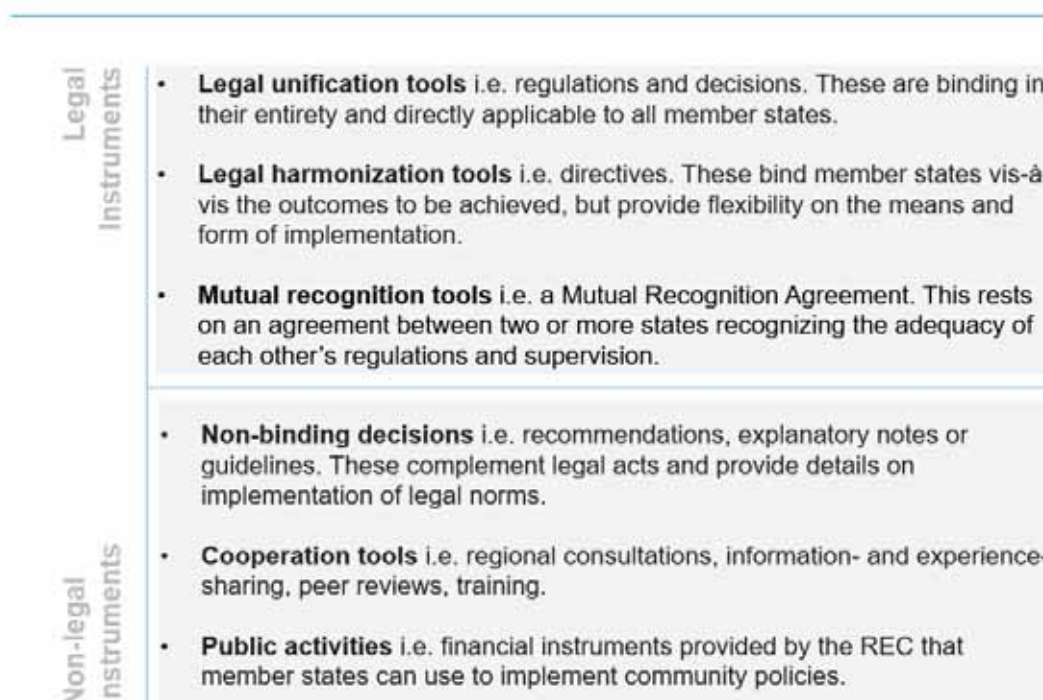
<sup>38</sup> The 'spaghetti bowl' effect is the proliferation of free trade agreements (FTAs), supplanting multilateral WTO negotiations as an alternative path towards globalization. The economist Jagdish Bhagwati first used the term in 1995 in the paper 'US Trade Policy: The Infatuation with Free Trade Agreements', in which he criticized FTAs for being paradoxically counter-productive in promoting freer and

- Can member states mutualize implementation and operation costs at the community level?
- Is there a need to bridge development gaps between member states within the region?
- Can a regional approach make the trade environment less complex for businesses?
- Is there a need for trade facilitation reform interoperability?

### Step 3: Define mix of legal and non-legal instruments to support implementation

Once the regional economic community has agreed on the specific reforms it wants to make on the regional level, it should carefully consider the implementation instruments – legal and non-legal – that best fit the regional institutional configuration and terms of collaboration. The following illustration highlights the instruments available to RECs to shape their regional integration agenda on trade facilitation.

Figure 6 Type of instruments to design a regional trade facilitation measures



Source: ITC elaboration

It is important to keep in mind that legal and non-legal instruments are complementary tools and not alternatives. The three case studies below provide examples of the way regional economic communities can combine these instruments to advance regional trade facilitation reforms.

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more open global trades. According to Bhagwati, the excessive number of crisscrossing FTAs represents a costly complication of world trade, allowing countries to adopt discriminative trade policies that, in turn, reduce trade welfare.

#### Step 4: Outline member state and regional bodies' implementation responsibilities

Legal and non-legal tools are instrumental in establishing conditions for coordination and cooperation between member states and in setting the framework for the harmonized implementation of cross-border reforms. These tools do not ensure that trade facilitation reforms will be carried out, however.

Developing regional guidelines on authorized operators does not automatically result in operational mechanisms in each member state. Operationalizing authorized operator programmes in each country would require, *inter alia*, legal review of domestic legislation, review of customs operating procedures, upgrade of customs software, training of customs officers and raising the awareness of the private sector.

When selecting the best legal and non-legal tools to shape the regional integration agenda, RECs and their member states should define their implementation responsibilities to ensure cross-border reforms are successfully enforced. Certain requirements – review of laws, regulation and administrative procedures, for instance – are naturally the responsibility of individual member states. But others, such as infrastructure and IT system development and building the capacity of border agency officials and the private sector, may be carried out by regional economic bodies or at the national level.

RECs should therefore decide how to allocate responsibility for trade facilitation reforms between the regional and national authorities by assessing their capacity, identifying opportunities for economies of scale and determining the need for system interoperability. They may identify numerous implementation options, ranging from member states retaining exclusive responsibility to implement reforms (decentralized implementation option) to the REC and member states sharing implementation responsibilities (shared implementation option) to regional bodies implementing measures on behalf of their constituents (centralized implementation option).

Figure 7 provides a synthesis of these three options.

Figure 7 Responsibility-sharing options of regional trade facilitation reforms

<p><b>Member states have the exclusive responsibility of implementing trade facilitation reforms within the regional TF roadmap.</b></p> <ul style="list-style-type: none"> <li>• e.g. EU Authorized Economic Operator programme</li> <li>• e.g. Mercosur automated information exchange system: INDIRA</li> </ul>	<p><b>Regional bodies and member states jointly contribute to the implementation of TF reforms within the regional TF roadmap.</b></p> <ul style="list-style-type: none"> <li>• e.g. Implementation of the OSBP in the EAC region</li> <li>• e.g. Implementation of ASEAN regional and national Trade Repositories</li> </ul>	<p><b>Regional bodies have the exclusive responsibility of implementing TF reforms identified within the regional TF roadmap.</b></p> <ul style="list-style-type: none"> <li>• e.g. EU Rapid Alert System for Food and Feed</li> <li>• e.g. WAEMU one-stop border posts</li> </ul>
<p>Decentralized implementation option</p>	<p>Shared implementation option</p>	<p>Centralized implementation option</p>
<p><b>Implementation responsibilities</b></p>		

Source: ITC elaboration

### Decentralized implementation option

Each member state carries out trade facilitation reforms. This approach is preferred when, *inter alia*, there is limited scope for economies of scale during implementation; implementation requires substantial financial and human resources that regional bodies cannot provide; and/or effective enforcement does not require interoperability of trade facilitation mechanisms between member states.

- An example is the EU authorized economic operator (AEO) mechanism. The legal basis for the EU AEO mechanism was adopted in 2008 through ‘security amendments’ to the Community Customs Code.<sup>39</sup> EU regulation defines the common criteria that each member state should use to grant AEO status to an economic operator as well as the common benefit to be granted by national customs to AEO operators.

The EU also developed guidelines to ensure common understanding and uniform application of the customs legislation. However, it is the exclusive responsibility of each EU member state to apply the AEO mechanism. Each national customs authority receives an AEO application and then decides whether to accept it. In this context, national customs authorities have developed domestic administrative procedures to implement EU requirements and created tools to raise awareness and build capacity in the business community.

- Another example is Mercosur’s INDIRA, an automated information-exchange system that brings together the customs administrations of Argentina, Brazil, Paraguay and Uruguay. A legal framework to exchange data was established through the Protocol of Ouro Preto, Mercosur CMC (*Conselho do Mercado Comum*) Decision No.54/04, 14 15 No.37/05 and No.26/0616.<sup>40</sup>

A regional technical committee defines INDIRA system architecture, including data-exchange formats. But each member individually develops, finances, applies and maintains the system (i.e. databases and IT communication tools).

- A third example is RADDEx. Under the regional legal framework of the East African Community Customs Management Act (2004), this system enables exchanges of exports and transit information between EAC member states. The Kenya Revenue Authority and the Uganda Revenue Authority jointly developed RADDEx with no or limited intervention by the EAC Secretariat. Each state operates the system under a bilateral memorandum of understanding, governs its own side and meets its own costs.

### Shared implementation option

The REC and member states jointly implement trade facilitation reforms. This option is preferred when certain implementation resources can be mutualized (e.g. training material and teams) and when there is a need to give a national initiative a regional component.

- One example of a shared implementation approach is the creation of one-stop border posts in the EAC in compliance with Article 8 of the TFA. The EAC has embarked on an ambitious programme to set up and operate 15 OSBPs across the region. This initiative rests on a regional legal framework – the East African Community One Stop Border Posts Act, 2016 – as well as on bilateral agreements between the relevant states and memorandums of understanding between administrations.

Within this framework, each individual member state creates, equips and operates the OSBP on its own side of the border. However, to support and supplement member states’

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<sup>39</sup> Regulation (EC) 648/2005

<sup>40</sup> Yasui, T. (2011). *Case studies on systematic exchange of commercial information between customs administrations in bilateral and regional arrangements*. World Customs Organization Research Paper, (11), 4.

measures, the EAC has launched several capacity-building initiatives to assist in the operationalization of the OSBPs. Among these, the EAC Secretariat develops a regional training curriculum to build border officials' capacity to efficiently manage cross-border operations in the specific context of OSBPs. This initiative complements other instruments adopted by the EAC to encourage the implementation and operation of OSBPs, such as the OSBP Sourcebook and the OSBP Manual.<sup>41</sup>

- Another example of shared implementation responsibility stems from Article 1.2 of the TFA. In 2009, ASEAN member states agreed to establish the ASEAN Trade Repository to publish trade-related information in line with Article 13 of ASEAN Trade in Goods Agreement. The ASEAN Trade Repository provides a single point of access to all the trade-related information of member states and complements commitments by each state to publish laws, regulations, decisions and rulings as provided for by GATT Article X (Article 12 ATIGA).

ASEAN Trade Repository structures combine two complementary levels of intervention: community and domestic. At the domestic level, each ASEAN state has developed and maintains a national trade repository following a set of technical specifications that were adopted at the regional level to ensure systems' interoperability. At the community level, the ASEAN Secretariat has developed and maintains a regional web-based platform that consolidates and links information from national trade repositories.

The choice of shared implementation has given each ASEAN member state the flexibility to adopt the organizational and technical model that best suits its situation, while ensuring that data can be consolidated at the regional level. Implementation was voluntary and was helped by peer pressure during annual meetings and donor support to national platforms.

#### Centralized implementation responsibility

The regional body takes full responsibility for implementing (but not enforcing) selected trade facilitation reforms on behalf of member states. This approach is preferred when i) economies of scale can be achieved, notably through by mutualizing investments and ii) the efficient functioning of the reforms depends heavily on trade facilitation mechanism interoperability. The standard *modus operandi* relies on the regional body investing in the development of community infrastructures (soft or hard) that are then collectively operated by member states and the regional body.

- One example relates to Article 5.1 of the TFA. The EU's Rapid Alert System for Food and Feed (RASFF) is an IT-enabled network that allows members to share information and collectively respond when risks in the food chain are identified. EC regulations (incl. No 178/2002, Article 50 and 16/2011) established the legal basis of RASFF and stipulate notification requirements for members along with the procedure for transmissions. The RASFF databases and systems (e.g. RASFF portal and RASFF consumers portal) are developed, implemented and maintained by the European Commission. Operation of the RASFF is the joint responsibility of EU members and the European Commission: each member of the network must notify public health risk under the RASFF and the Commission ensures that the notification is transmitted to all relevant stakeholders.
- Another example is linked to the implementation of Article 8 of the TFA: the establishment and operation of one-stop border posts in the WAEMU region. Within the framework of the WAEMU transport and road transit facilitation regional programme, the WAEMU Commission has adopted regulations (08/2001/CM/UEMOA and 15/2009/CM/UEMOA) to allow the development of OSBPs at member states' shared borders and to define the roles and responsibilities of the Commission and states.

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<sup>41</sup> EAC, (2017, March 23). *Tools to enhance operations at one stop border posts being developed*. EAC Press Release

- Under this legal framework, the Commission is exclusively responsible for funding, building, equipping and maintaining OSBP infrastructures, including through public-private partnerships. An OSBP in Cinkansé has been developed, equipped and maintained under a ‘build- operate-transfer’ (BOT) concession between the WAEMU Commission and the company Scanning Systems SA. The Commission and member states are jointly responsible for operating the OSBP. States conduct required controls and inspections and process customs declarations and other trade formalities, while the Commission maintains and operates the infrastructure (including scanning and weight bridges).

### Step 5: Define the target policy mix for each measure identified

The tools chosen to shape the regional agenda influence how responsibility is shared between the community and domestic levels, and vice versa. This means that steps 3 and 4, described above, should not be considered independently. For example, public funding is intrinsically linked to a decentralized implementation option, where the regional body supports domestic reforms by providing financial resources to its member states. Similarly, a centralized implementation option is likely to require the adoption of regional regulations and implementing provision to empower the regional body to make trade facilitation reforms on behalf of its constituents.

In this context, RECs institutions and member states should collectively determine which policy mix would maximize the benefits of trade facilitation reforms in the region and minimize the consolidated implementation costs at the regional level. In this situation, a policy mix refers to a unique combination of implementation tools (legal and non-legal instruments) and shared implementation responsibility at the regional and national levels.

The following graph provides a simple matrix that can help regional economic communities define specific implementation modalities. This matrix maps implementation tools on the vertical axis against implementation responsibilities on its horizontal counterpart.

Figure 8 Matrix of implementation instruments and responsibilities



Source: ITC elaboration



*Sketching a regional trade facilitation roadmap: Article 1.2 and Internet publication – an example*

The example below illustrates how the implementation modalities of one TFA measure – Article 1.2 – can vary according to the specific requirements of regional economic communities. Article 1.2 requires member states to publish on the Internet information related to international trade. (Please note that this example is fictional and none of the options described below should be regarded as an ITC recommendation).

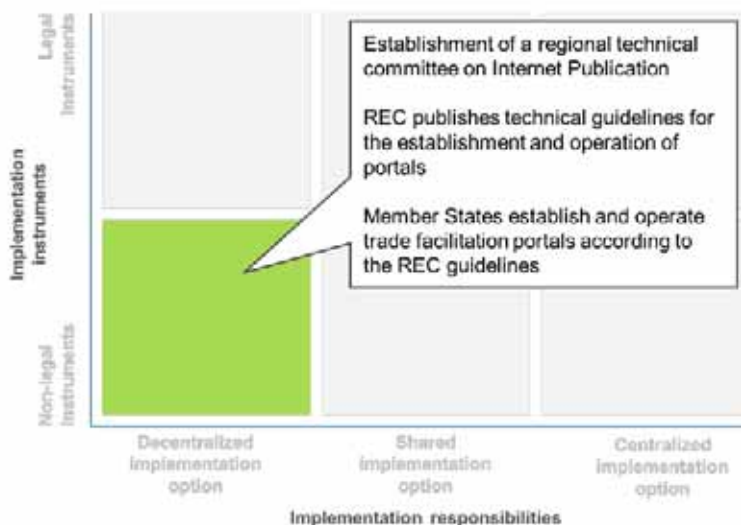
*Arguments supporting a regional approach to implement this TFA obligation*

- Firstly, transparent laws and regulations ensure proper functioning of the internal market, as traders need information about conditions and requirements to access other markets. Internet access to relevant laws and regulations is essential, as official journals are usually only available within a country and within the main economic cities.
- Secondly, implementing Article 1.2 will probably require intervention on the part of the regional body, given the publication of regional laws and regulations in addition to member states’ domestic laws, regulations and procedures.
- Thirdly, a regional approach may reduce complexity from a trader’s perspective. Harmonizing Internet portals throughout the regional economic community will allow businesses to navigate easily on member states’ websites as they share similar platforms.
- Fourthly, technology lends itself to scalability. A solution such as a database and applications can be replicated in member states, and development costs decline as a result. Using a common template solution means experts can be shared across the region.
- Finally, supranational intervention would be needed to document corridor-wide procedures, pulling together import practices in transit and destination countries in one coherent, step-by-step description.

*Defining the right policy mix to promote the regionally harmonized implementation of Article 1.2*

We have chosen to discuss four scenarios to illustrate the options that RECs should consider when developing a regional trade facilitation roadmap.

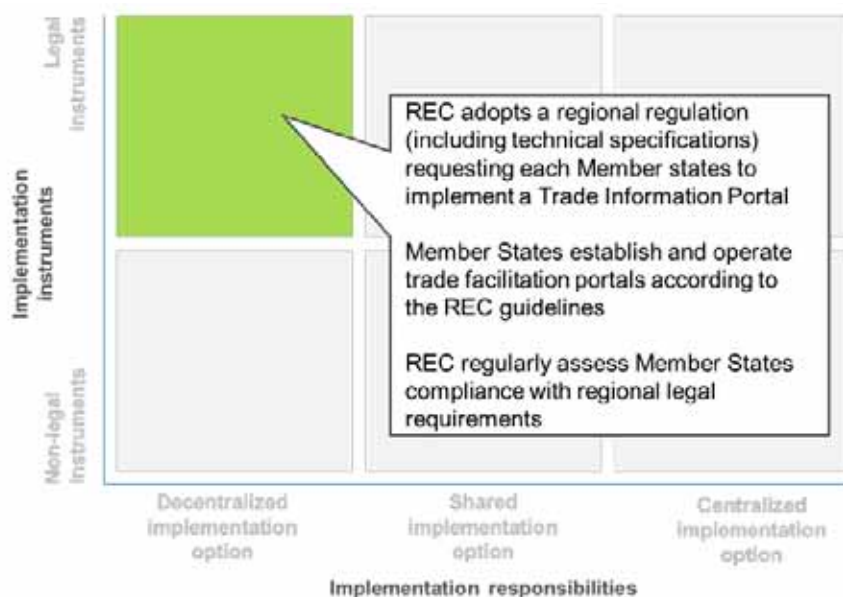
*Scenario 1 – Implementation responsibility lies exclusively with member states and the REC shapes the regional approaches through non-legal instruments*



In this scenario, the REC creates an informal working group comprising trade information experts from each member state. The working group publishes a trade information portal manual that contains non-binding guidelines for the creation and operation of trade portals within the region. Manuals cover topics such as recommended institutional frameworks, technical requirements, type of data to be published and key performance indicators. Each member state voluntarily develops, updates and maintains a domestic trade information portal, taking into consideration the guidelines issued by the working group.

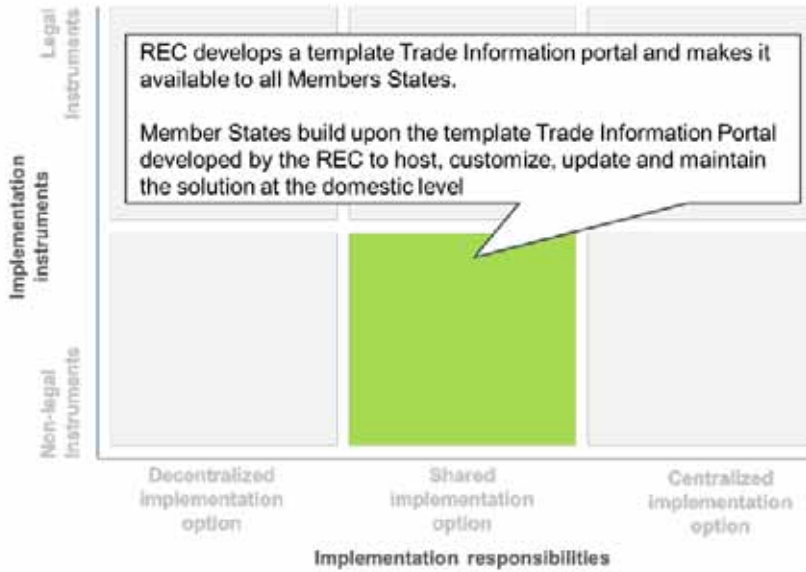
Finally, the REC organizes regular peer-review activities through which each member state provides feedback to its counterparts on its respective trade information portal.

*Scenario 2 - Implementation responsibility lies exclusively with member states and the REC shapes the regional approach through legal instruments*



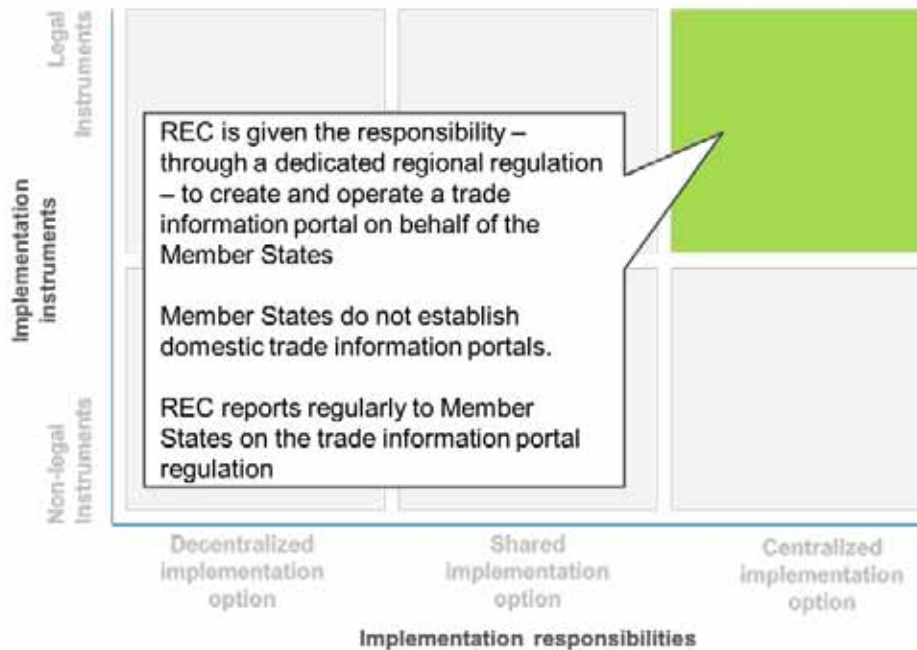
In this scenario, the REC adopts a regional regulation mandating the establishment of a trade facilitation portal in each member state. The REC may also adopt technical standards to drive harmonization of portals in areas such as information architecture, usability, accessibility, technological standards and development standards. Member states will then develop and establish domestic portals in conformity with regional regulations. The REC will organize regular reviews to ensure the consistency of member states' Internet solutions throughout the region.

*Scenario 3 – Implementation responsibility is shared between member states and the regional economic community, and the REC drives the harmonization process through non-legal instruments*



In this scenario, the regional economic community funds and manages the development of a template Internet solution (e.g. user-interface, database and content-management system) that satisfies the requirements of the WTO Trade Facilitation Agreement. This solution will be customizable to countries' specific requirements. The REC will make this Internet solution available to its member states, which will then be responsible for hosting, customizing, updating and maintaining the solution at the domestic level.

*Scenario 4 – The REC is responsible for implementing the measure on behalf of member states: the mandate is given to the REC through a legal instrument*



Member states adopt a dedicated regulation giving the regional economic community the responsibility of creating and maintaining a trade information portal. Building upon its new mandate, the REC develops, sets up and maintains a regional trade information portal. Member states do not establish domestic portals. The REC gives states regular reports on the operation of the regional portal.

### Step 6: Establish a regional institutional platform to facilitate regional reforms

Regular interaction among member states is essential to develop, and then implement and monitor, a regional trade facilitation roadmap. As already discussed, regional bodies and their members must go through an iterative process to consolidate their implementation requirements, agree where a regional approach to upgrade trade facilitation is most appropriate and define the specific policy mix required to shape the regional integration agenda.

This means that a regional coordination and cooperation forum must be institutionalized before a regional trade facilitation roadmap can be designed or implemented. Ad hoc discussions can hardly suffice, considering the complexity and timeframe of trade facilitation reforms at national and regional levels. Having an institutionalized framework that enables the exchange of best practices, and commonly accepted legal and non-legal instruments enables member states and RECs to anchor their collaboration in a sustainable framework that can stand the test of time.

#### *Mechanisms already exist to coordinate the implementation of trade facilitation reforms in RECs.*

- For example, WAEMU has presented a regional trade facilitation programme for the 2016–2020 period that provides a framework for coordinated reforms in the region. As of today, however, this programme lacks a formal coordination and concertation forum to regularly review the progress of reforms at the regional level and provide additional guidelines to the WAEMU Commission and member states on the way forward.
- The EAC Secretariat has established a trade facilitation subcommittee under the Coordination Committee on Trade that reports to the sectorial council on trade, industry, finance and investments. The committee's mandate is to supervise the implementation of the WTO TFA at the regional and national levels, to ensure the convergence of the national implementation plans and to formulate and manage a regional TF Action Plan.<sup>42</sup>
- Finally, countries desiring to cut the time and cost of trade have also explored corridor coordination initiatives. For example, the Northern Corridor Transit and Transport Coordination Authority was established to oversee implementation of the Northern Corridor Transit and Transport Agreement. The Authority comprises four technical committees, including a customs and transit facilitation committee, whose mandate includes: i) simplifying, rationalizing, harmonizing, standardizing and modernizing trade business processes and documentation; ii) promoting private sector participation in policy formulation; and iii) implementing activities related to trade and transport facilitation.

These examples illustrate the need to establish a regional coordination mechanism to facilitate the harmonized and coordinated implementation of trade facilitation reforms.

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<sup>42</sup> East African Community Secretariat (2017, September 27). African Countries losing 5% Revenue due to inefficient Border Procedures. EAC Press Release.

### *From national to regional trade facilitation committees*

WTO Members are required to establish and maintain a national trade facilitation committee (NTFC), which usually coordinates and oversees domestic trade facilitation. Most countries have a national trade facilitation committee that acts as the driver of trade facilitation reforms at the domestic level. Any regional institutional mechanism to develop, implement and monitor trade facilitation reforms within an REC should therefore be linked closely to the NTFCs.

In this context, ITC suggests that RECs establish a regional trade facilitation committee (RTFC) or another institutional mechanism that will help member states coordinate the design and implementation of a regional trade facilitation roadmap. Building on the best practices identified in existing national and regional trade facilitation platforms, policymakers should consider the following key success factors.

### *Define the mandate and activities of the regional trade facilitation committee.*

Taking into account the mandate given to the REC body by primary laws, the RTFC mandate might include:

- i) Technical guidance on trade facilitation topics that are of community interest
- ii) Coordinating and facilitating the implementation of the WTO TFA within the region
- iii) Monitoring and evaluating trade facilitation reforms at the national and regional levels
- iv) Facilitating coordination as well as the exchange of best practices, methodologies and tools between NTFCs. Within this context, the key activities to be carried out by an RTFC include, *inter alia*:
  - o Identifying the common implementation requirements of member states within a region
  - o Identifying the specific measures most relevant to regional approaches
  - o Defining the policy mix for the implementation of community-wide measures
  - o Setting up thematic regional subcommittees to develop regional regulations and/or guidelines for implementing trade facilitation reforms
  - o Organizing capacity-building and information-sharing activities
  - o Monitoring the implementation of reforms at the national and domestic levels
  - o Coordinating trade facilitation committees
  - o Designing and applying monitoring and reporting methodologies and tools
  - o Supporting or contributing to the mobilization of resources to implement the TFA.

### *RTFC membership: ensure strong connections with national trade facilitation committees*

NTFC representatives must be involved in the RTFC to ensure effective coordination and collaboration between member states and to make it easier to carry out regionally harmonized trade facilitation reforms. WAEMU and EAC regional trade facilitation committees (existing and/or foreseen) include representatives of their members' NTFCs. WAEMU's envisaged RTFC would have one representative each from the Ministry of Trade, customs and the private sector – all three of whom must be members of their respective national trade facilitation committee.

### *Ensure strong private sector participation*

Business must be involved in identifying, designing, implementing and monitoring trade facilitation to ensure success at national and regional levels. In this context, RECs should guarantee that the private sector can make its needs and requirements known within the regional trade facilitation committee. This can be achieved by:

- Appointing private sector representatives to national trade facilitation committees as members of the regional trade facilitation committee;
- And/or appointing representatives of regional institutions that support trade (chambers of commerce, business councils or consular chambers, for instance) as members of the regional trade facilitation committee;
- And/or appointing representatives of transnational companies operating throughout the regional economic community to the regional trade facilitation committee.

*Appoint a permanent secretariat to the regional trade facilitation committee, preferably building on regional body existing teams.*

Like NTFCs, regional trade facilitation committees require a permanent secretariat to ensure the smooth development, implementation and monitoring of the regional trade facilitation roadmap. In light of the regional economic body's pivotal role in easing coordination between member states, the permanent secretariat to the RTFC should be embedded within REC teams involved in trade policy and trade facilitation. This will permit synergies between the RTFC and the regional body teams in a coherent and efficient manner. It will also facilitate the endorsement of the RTFC technical committee by REC governance structures.

#### *Secretariat key activities / mandate*

- Help the RTFC develop annual draft work programmes, prepare and organize meetings, establish a substantive agenda, prepare and disseminate meeting documentation, prepare and facilitate decision-making, report on meeting results, follow up on implementation of decisions, develop proposals for and solicit financial support from donors, disseminate information to the public, support project implementation as appropriate.
- Help RTFC working groups and technical subcommittees prepare and organize meetings, establish a substantive agenda, prepare and disseminate meeting documentation, liaise and consult with technical organizations or NTFCs, prepare and update technical documents for use by the working group, prepare and facilitate decision-making, report on meetings, disseminate results.
- Support the advancement of the regional trade facilitation agenda by identifying regional trade facilitation needs and requirements for consideration by the RTFC, monitoring and reporting on international facilitation developments and best practices, preparing reports on specific trade and transport practices and possible facilitation solutions.

## CONCLUSION

Regional integration has been hugely beneficial to the global economy and its communities, bringing nations closer, lowering the economic divide and reducing social instability and poverty. Trade, especially intraregional trade, has been at the forefront of all regional integration models in the last few decades. Indeed, trade has played a defining role in the changing global dynamics. This is underscored by the fact that regional trade agreements to enhance integration and abolish discrimination have long targeted tariffs – which are at an all-time low – and non-tariff trade barriers.

### *Non-tariff measures: Used to control access to markets*

Regional agreements provide a great opportunity for member states to simplify norms and standards, coordinate cross-border procedures and formalities, and make intraregional trade easier. But trade barriers created by non-tariff measures have become increasingly prevalent in recent decades, threatening to neutralize the positive impact of falling tariffs. Evidence suggests that countries are using NTMs as alternative protectionist instruments to control access to their markets.

ITC business surveys on non-tariff measures reveal that three out of four trade barriers reported by traders around the world do not result from stringent regulations, but rather from the way they are applied. Regardless of the reasons for such inefficiencies, trade barriers are highly detrimental to regional economic agendas, because businesses face high compliance costs and cannot participate in regional and global value chains.

### *The WTO Trade Facilitation Agreement: Greater regional integration*

The WTO Trade Facilitation Agreement directly addresses the barriers that stem from inefficiencies in cross-border trade procedures. It contains binding obligations for WTO Members to carry out reforms to expedite the movement, release and clearance of goods, with greater regional integration as the outcome. The Agreement comes at an opportune time for RECs to include trade facilitation as a priority agenda item in their regional integration processes and mitigate the risks posed by the high compliance costs and time in trading across borders.

The TFA gives RECs the flexibility to coordinate and/or implement the agreement at the regional level. The benefits of such an approach to regional integration have been well documented in this report, and range from harmonized reforms and practices across a region to shared implementation costs and economies of scale.

### *Trade facilitation: A key role in enhancing regional value chains*

Within a regional economic community, countries whose development status are the least advanced would be the biggest beneficiaries of a regional implementation approach, because they would be able to learn from the experiences of their more developed neighbours and rely on their assistance. Trade facilitation can play a key role in enhancing regional value chains. This means that a level playing field will not only help the beneficiary country, but the whole region.

### *Meeting the needs of regional economic communities*

This publication recommends that RECs adopt a regional approach to implement the TFA. At the same time, it is recognized that there is no one-size-fits-all approach or guarantee that a regional economic model that worked in one region will work in another. Therefore, several case studies have been presented to offer a glimpse into models that have been implemented around the world and how they have fared.

Numerous modalities show readers what legal and non-legal instruments are available to RECs and their member states to maximize the benefits of the Agreement and use it to deepen their integration. ITC recommends that policymakers review the available instruments, including their pros and cons and the experiences of different regions that may have used them to design a strategy that fits their own dynamics and meet the development needs of the REC and its member states.

### *A roadmap for policymakers*

This report recommends that policymakers of RECs and member states use this publication as a toolkit to design and adopt regional trade facilitation roadmaps that facilitate coherent regional implementation of the TFA.

The approach seeks to consolidate national needs into regional ones to benefit all stakeholders; build consensus on TFA obligations on which regional interventions are prioritized; develop an appropriate mix of legal and non-legal instruments to support implementation; and define institutional and implementation leadership and responsibilities as well as the policy mix to maximize the benefits for the whole region.



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