The Future of Intra-regional Trade in West Africa

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The Future of Intra-regional Trade in West Africa

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A team at Enda Tiers Monde has devoted a great deal of time proofreading the contributions published in this book. They worked efficiently and with great skill since the Abidjan meeting for this project to be completed. The organization acknowledges their valuable contribution.

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Enda Third World
Systems and Prospects (SYSPRO)
## LIST OF ACRONYMS AND ABBREVIATIONS

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACP</td>
<td>African Caribbean and Pacific</td>
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<tr>
<td>AGOA</td>
<td>African Growth and Opportunity Act</td>
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<td>OAPI</td>
<td>African Organization of Intellectual Property</td>
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<tr>
<td>BOAD</td>
<td>West African Development Bank</td>
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<td>BRS</td>
<td>Regional Solidarity Bank</td>
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<td>BRVM</td>
<td>Regional Stock Exchange</td>
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<tr>
<td>CARIFORUM</td>
<td>The Caribbean Forum</td>
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<td>CEMAC</td>
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<tr>
<td>CIF</td>
<td>Cost, Insurance and Freight</td>
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<tr>
<td>CIMA</td>
<td>Inter African Conference on Insurance Markets</td>
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<tr>
<td>CRCA</td>
<td>Regional Insurance Supervision Commission</td>
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<td>DC</td>
<td>Developing Countries</td>
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<td>DDA</td>
<td>Applied Rates</td>
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<td>DDC</td>
<td>Bound Rates</td>
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<tr>
<td>DDCAG</td>
<td>Bound rates/Agriculture</td>
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<tr>
<td>DDCPI</td>
<td>Bound rates/Industrial Products</td>
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<tr>
<td>ECA</td>
<td>United Nations Economic Commission for Africa</td>
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<td>ECOWAS</td>
<td>Economic Commission of West Africa States</td>
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<tr>
<td>EPA</td>
<td>Economic Partnership Agreement</td>
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<td>EPADP</td>
<td>Economic Partnership Agreement Development Programme</td>
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<tr>
<td>ESARIPPO</td>
<td>African Regional Intellectual Property Organization for English Speaking Countries</td>
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<td>EU</td>
<td>European Union</td>
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<td>FAP Sauf</td>
<td>Major Events Cover</td>
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<td>Acronym</td>
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<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FOB</td>
<td>Free On Board</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and trade</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GI</td>
<td>Geographical Indications</td>
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<tr>
<td>IPR</td>
<td>Intellectual Property Rights</td>
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<td>IPPC</td>
<td>International Plant Protection Convention</td>
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<td>IOE</td>
<td>International Office of Epizootics</td>
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<td>IST</td>
<td>Import Safeguard Tax</td>
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<td>LDCs</td>
<td>Least Developed Countries</td>
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<td>MFN</td>
<td>Most Favoured Nation Clause</td>
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<td>MOWCA</td>
<td>Maritime Organization of West and Central Africa</td>
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<td>PAPED</td>
<td>EPA Development Programme</td>
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<tr>
<td>ROPPA</td>
<td>Network of Peasant Organizations and Agricultural Producers</td>
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<td>RTA</td>
<td>Regional Trade Agreements</td>
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<td>SADC</td>
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<td>SAP</td>
<td>Structural Adjustment Policy</td>
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<td>SMEs</td>
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<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
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<tr>
<td>TSN</td>
<td>Tariff and Statistical Nomenclature</td>
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<td>UNCTED</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<tr>
<td>WACIP</td>
<td>West African Common Industrial Policy</td>
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<tr>
<td>WAMU</td>
<td>West African Monetary Union</td>
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<tr>
<td>WAEMU</td>
<td>West African Economic and Monetary Union</td>
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<td>WTO</td>
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Introduction

What future for integration and intra-regional trade in West Africa?

Cheikh Tidiane DIEYE
Ph. D. in Development Studies

Integration and trade in West Africa are already well documented topics in history. Several studies in the past and more recently have shown that West Africa has always been crossed by trade flows of goods and services between nations. These trade flows and cultural mixing that they have conveyed over the years have wrought in part the current image of West Africa and helped to shape the spaces and territories beyond borders, aspirations of peoples to move towards integration, as well as the representation that they have of the future of this integration.

This historical dimension is a key factor for integration in West Africa. It is indeed the container or the foundation that is meant to receive the institutional building and the physical infrastructure that give substance to the community project.

The creation of a regional integrated space was a major concern of West African leaders after independence. Aware of the weak sustainability of narrow domestic markets inherited from colonization, political leaders of the postcolonial West Africa, while continuing the integration project at the continental level, focused on setting up a wide space for regional integration, which transcends administrative, linguistic or political divides left by the colonial domination and administration modes.

That political will materialized in 1975 through the creation of the Economic Community of West African States (ECOWAS). The option for integration through economy was thus clearly expressed. That choice was not accidental. Beyond the political interest that a large community of States offers as a result of the increased political weight and the negotiating power that no single state
could individually have, economic integration offers advantages that have been amply shown by economic theory and reality. Regional integration thus proved from the moment ECOWAS was created to be the right strategy to speed up the transformation of small, fragmented economies into a broader economic space that would both enable to achieve economies of scale, strengthen the competitiveness of companies at the international level, access to new technologies and investments while serving as a buffer against external shocks and internal shortcomings.

There are many and credible reasons to explain the efforts made to integrate regional markets. And there are not just abstract economic models or the analyses of a few bright minds to prove it. The reality of global economy shows it every day. The analysis shows that countries or groups of countries with the largest share of world trade are located within regions with the highest share of intra-regional trade. These include the European Union, the first global trading power which accounted for 15.9% of world trade in 2008, with a 70% exchange volume within the Union, the United States, the third trading power with 10.6%; Canada the world’s sixth trading power with 3.8% of global trade and Mexico, eleventh trading power accounting for 2.4% of global trade. The United States, Canada and Mexico make up the North American Free Trade Agreement (NAFTA) and exchanges between those countries account for 60% of their trade. We can add Latin America, which in the context of MERCOSUR has a 30% volume of internal trade and Southeast Asia where 35% of trade between countries of the Association of Southeast Asian Nations (ASEAN) is done between member countries. China is quite a remarkable exception, but it confirms this trend, because its demographic weight, the extent of its market and the efficiency of its trade policies provide it the same assets as an integration community made up of several states.

Therefore, West Africa has made the right choice by taking the path of integration and the strengthening of intra-regional trade. Just like what is happening in the regions mentioned above, the development of intra-regional trade will for sure provide it with means to cope with international competition that its countries, taken individually, could hardly resist up.

Its industrialization efforts could thus be based on structural changes driven by strong regional institutions; a dense and structured network of infrastructures, especially in the energy and transport sectors, and reduce asymmetries between countries through common sectoral policies and convergence and solidarity funds.

1 ECA 2004 ; 2009; UNCTAD 2009
Moreover, a significant element in the current configuration of the global economy is that the construction of a single economic region broadens the political space to mitigate exogenous constraints affecting the development of appropriate regional policies, to reach a critical size to consolidate domestic investment and attract foreign direct investment and ultimately, to develop a competitive offer capacity.

**Trade as an engine for regional integration**

If trade is considered everywhere as an important aspect of economic integration it is because people strongly believe that it can promote growth and development. A relatively high tendency in economics and development studies seems to agree on the fact that trade promotes growth and development by enabling, inter alia, to exchange the surplus of domestic production with products from other countries².

Baldwin tried to show the existence of a correlation between countries where there are few restrictions on trade and rapid growth, and vice versa³. Starting from the hypothesis that poverty is more quickly reduced when there is rapid and strong growth, poor countries and especially African countries have often been advised that they had better resort to trade liberalisation as a driving force for their economic policies. On may thus assume that liberalisation reduces distortions in relative prices and enables activities which are potentially competitive and comparative advantages to develop so as to boost growth and wealth creation⁴.

Other authors have also shown, with strong arguments, the relationship between trade development and the fight against poverty. Winter, McCulloch and McKay have shown that economic growth in the long term is an effective tool for poverty reduction⁵. Through their analysis, they tried to show in a simple way that by increasing economic growth, trade opening up provides governments with the opportunity to collect more tax revenues, which then gives them the possibility of adopting redistributive measures.

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³ Baldwin (2003), quoted by ECA, AU, ADB (2010) ..
⁴ Ibid.
These theories on the positive role of trade in growth and development are not, however, a new thing. We know at least since Adam Smith (18th century) and Riccardo (19th century) that trade may be positively correlated to growth and poverty reduction, since it enables a specialisation of the economy which in turn enables economies of scale, especially for niche markets. Moreover, recent economic history has shown that international trade has played an important role in industrial development of Britain starting from the 18th century, of Japan under the Meiji era, of the United States, Australia and East and South-East Asia more recently.

Yet as attractive as they may be, those theories are far from being accepted by everyone. In opposition to the theories which favour liberalization, other studies have shown in an equally convincing way, that trade liberalisation does not automatically lead to growth and development. There are a series of preliminary steps and a several conditions that need to be met over a relatively long period of time before the benefits of liberalization can be seen.

In a book on relations between trade and sustainable human development, the United Nations Programme for Development (UNDP) made an interesting comparison between two countries, according to their level of opening up to world trade, to prove such an assertion. These countries are Vietnam and Haiti.

Since the mid-80s, Vietnam has undertaken a gradual approach to reform. It did not join the WTO before 2006 and organized a State-regulated international trade, maintained a monopoly on imports, kept quantitative restrictions and high tariffs (30-50%) on imports of agricultural and industrial products. Yet, despite those measures contrary to “the recipes” generally advocated by proponents of the neoliberal doctrine, Viet Nam has achieved great success by reaching a growth rate exceeding 8% per annum since the mid-90s, which resulted in a 12% increase in trade, a significant reduction of poverty, including in rural areas and in vulnerable groups (women and youth) and an important attraction of foreign direct investment flows. Haiti on the other hand, embarked on an all out ambitious path of liberalisation and opening up since 1994-1995. It has increased its tariffs to a maximum of 15% and eliminated all its quantitative restrictions. Yet, its economy has not grown that much. Social indicators have even deteriorated and poverty has reached alarming levels in some places. Although a member of WTO since it was created, its integration in world trade is very marginal, and it has still not managed to get out of the category of Least Developed Countries (LDCs).

These two examples reflect a reality which very familiar not only to development “experts”, but also to African people themselves more and more: thoughtless or untimely economic liberalisation exposes to vulnerability and regression. The Haitian experience is to a large extent similar to that of many countries in West Africa, a region composed of 11 LDCs out of the 15 ECOWAS member states.

Between these two visions which both have more or less relevant arguments to back them up, there is a middle position, which links the two to develop an approach which may be closer to reality. Indeed, if the choice is difficult to make, it is in part because it has never been about making a binary choice between absolute liberalism and absolute protectionism. In that regard, Joseph Stiglitz tells us here that countries that have been most successful in promoting trade as an engine of growth have had to oscillate between these two extremes by choosing from a wide range of policies and trade schemes depending on the cases.

The question that such a reflection brings us to ask is not whether trade should be liberalised but rather when and how it should be done? With what policies? Over what period of time? With what partners? With what means? For what objectives in the short or medium term?

If we look at the lessons we learnt from Economic History, one can see that if the trajectory of development is always different from one country to another, it requires everywhere a number of conditions and prerequisites that are almost inevitable.

In the field of trade, this lesson shows that liberalization is not an end in itself but a step in a long process which, in the initial stages, cannot avoid creating an economic environment that protects, controls, supports and guides production structures be they industrial, agricultural or of services. What can also be learnt from the same lesson is that this process cannot be irreversible and that it should provide opportunities to withdraw from a liberalisation if it does not achieve the expected results or if it generates other constraints.

Until relatively recently, many developing countries which have used, among other things, trade to rise out of the throes of poverty had the same constraints than the States of West Africa. Those countries, some of which are called emerging today were able to establish suitable trade policies, linked with a clear vision of development, driven by responsible leadership which was able

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to come up with the right strategies to move forward in an international context is not always favourable.

West Africa has not had that opportunity yet, despite its enormous potential. Its commitment in regional economic efforts for integration and trade promotion for more than 30 years now has not yet produced the expected results. Progress achieved to date, particularly in the development of intra-regional trade and the integration of the region in world trade, neither reflect the ambitious objectives stated at the outset, nor the intentions of the leaders in the region, or even daily efforts made in the field by a significant portion of the region’s population. Economies in the region have not experienced the expected growth and trade relations between ECOWAS Member States have evolved in a very marginal way.

Many reasons are given to explain that trend. One of them is the fact that the trade structure of all the countries in the sub-region is strongly determined by dependence on exports of no more than one or two commodities to generate foreign exchange. Those countries are very vulnerable to the fluctuation of exogenous factors such as fluctuations in the cost of raw materials, climatic hazards and constraints related to market access in industrialised countries. Despite their changing macroeconomic components in recent years, countries in the region have failed to diversify their production and trading base in foreign markets, and flows in intra-community trade have not significantly increased either.

Despite a reduction in tariffs, following unilateral, regional and multilateral trade liberalisation initiatives, a few non-tariff barriers such as political instability, internal social and political constraints and the low level of trade facilitation constitute major barriers to intra-regional in West Africa.

All over the region constraints seem to be the same and are mainly result in failure to implement the commitments that States have freely entered. To the absence or poor quality of infrastructure is added the relatively high tariffs and the limited number of products and services, the marginalisation of the formal and informal regional private sector, red tape hassle of all kinds and the lack of reliable information systems on opportunities and regional markets. For example, lack of information on surplus and deficit areas for a particular product of the region is a problem. But even where information is not a constraint, problems related to infrastructures that encourage states to negotiate with countries outside the region rather than with a neighbouring country. This is one of the main factors which is responsible for the low level of intra-regional trade observed in Africa.
One cannot deny that there has been an increase in trade within ECOWAS and UEMOA, but that did not happen on a sustainable basis, compared with their respective trade with the rest of the world except for UEMOA, whose intra-regional trade has risen in recent years, due perhaps to the improved performance of the customs union. Indeed, intra-UEMOA trade increased from 9% in 1980 to 11% in 1990 and approximately 12% in the early 2000s. Today, according to some analyses, this trade accounts for a percentage between 15 and 20%.

But even if it is obvious that the volume of intra-regional trade remains low, unstable, poorly diversified and highly vulnerable to external factors, yet its potential for growth and the need to promote it to create the conditions for endogenous and sustainable development in West Africa are recognised by all.

Therefore, it would perhaps be making unfounded accusations against actors in West Africa to believe that they are not aware of the importance of having good trade policies. If that were the case, they would not simultaneously commit themselves in a series of negotiation processes which are all aimed at trade liberalisation.

**A region torn between several bilateral and multilateral regional processes**

For over two decades now, governing bodies in West Africa have chosen to speed up the regional integration process through the development and implementation of common regional policies in a wide number of areas namely trade, industry, agriculture, currency, investment and competition, standards, facilitation of trade and free movement of goods and people, regional development, etc.

The development of these policies has been the subject of long and deep negotiations between countries in the region to find a balance between the interests of states still vulnerable, poorly industrialised and still heavily dependent on foreign countries and those of a region under construction whose interests do not always correspond to those of the countries that compose it.

Yet, along these initiatives for regional integration which are already complex, the countries of West Africa have committed themselves, individually or collectively, but simultaneously, in a wide range of trade negotiations going from bilateral trade arrangements in the context of their relations with Europe, to multilateral trade agreements being negotiated under the auspices of the World Trade Organization (WTO).
Because of their simultaneity and overlapping, negotiations related to these trade arrangements pose for States of the region many problems which are not easy to overcome.

Those include issues linked:

- To their ability to develop and carry out sustainable development policies and to draw from those strategies and elements for their positioning in various negotiating fora;

- Overlapping problems and the duplication of obligations in terms of implementation and compliance with obligations that those trading arrangements will impose on countries in West Africa;

- To issues of coherence, complementarity and compatibility between the objectives, modalities, and development strategies included in these negotiations on the one hand, and objectives and national and regional development strategies for West Africa’s countries, on the other.

- To those initiatives are now added the region’s opening up to trading partners who are not traditionally linked with West Africa, namely China, India, Brazil and other emerging countries with a keen interest in West Africa’s resources and market and with whom states in West Africa should have the best strategy and the most effective skills when it comes to negotiating.

**A future to build**

West Africa is clearly at a crossroads. It is undoubtedly faced with many challenges that could negatively impact on its march towards economic progress and development. But at the same time it has the assets needed to achieve its integration and development project. Its future is combined with the immense possibilities and opportunities in hand. These opportunities are the positive result of the combination between the natural, human and spiritual resources in which it abounds and the ambitions, efforts, the will and daily tireless work of millions of men and women dwelling in its cities and villages.

West Africa represents a market of nearly 300 million consumers. Its young population is asking for no more than jobs and its land and subsoil provide it with almost all the resources it needs to produce, process, live and sell. That is why poverty in West Africa is not justified, or can no longer be justified. If we agree with Adam Smith that nations derive their wealth from labour, the land and capital, it is difficult to understand why this region’s present situation
is not in conformity with its possibilities.

Although the constraints West Africa are faced with are, for a large part, determined by external conditions, its poverty, just like the little influence it has on the functioning of world economy, can mainly be explained by the lack of organization of States, the collective failure to effectively and sustainably federate initiatives and to streamline and pool resources to achieve commonly defined objectives.

Coming out of a past on which it had little control and living a present it painfully tries to shape West Africa has certainly all the means to *invent its future*.

In that regard, for trade liberalisation to be beneficial to people, which is ultimately its sole calling, it must mainly focus on building a strong, diversified, competitive and supportive regional market that removes all barriers to free movement goods and people and supplies populations with quality products in sufficient quantity. In that respect, any trade agreement, at any level it may be negotiated, should be aimed at strengthening integration, intra-regional trade and development and none of its provisions shall be likely to slow down, halt or be an obstacle to reaching the regional goal.

This book is the fruit of a bet on the future of integration and intra-regional trade in West Africa. But betting on a brighter future for integration and intra-regional trade in West Africa may seem a little excessive in view of internal and external constraints that still hinder their development.

Yet this bet yet translates the commitment of *Enda Tiers Monde* and its partners to arouse and keep reflection and action to expand the existing regional *possibilities* and create new ones.

Seven authors, renowned experts in their fields, have contributed to this work. Their crossed analyses and careful reading of the issues in the region have shed new light on the integration process and the strengthening of intra-community trade.

The following pages will offer an insightful analysis of regional trade policies, customs union (CET) and the strengthening of regional market in the text of Epiphane ADJOVI, an economist and researcher from Benin.

His study is strengthened by that of Bio Goura SOULE from Benin, an acknowledged specialist in agricultural and economic issues, on a topic that has been extensively covered but on which he brings quite a sharp analysis, that of cross-border informal trade in West Africa.
The third topic of the book focuses on industrial policy in West Africa and the conditions for the emergence of a vibrant private sector. The topic is dealt with by Guillaume GNAMIEN NDRI, an economist and researcher from Ivory Coast with a proven experience in the process of regional economic integration. He shows that despite the failures that mark the industrialisation process in West Africa, there is an important potential in resources as well as in terms of expertise that predicts a bright future.

But analysing regional economic and trade policies without addressing the currency issue in a context where it is recognized that monetary policy is an invaluable tool for trade promotion, may seem somewhat simplistic. That is that important contribution that Kako NUBUKO, Associate professor of Economics makes by dealing with the issue of the relationship between monetary policy and the development of the regional market.

Beyond issues related to various aspects of trade in goods within the region, this book also opens a window which we hope to expand, of reflection on trade in services, intellectual property and coherence of regional policies.

On trade in services, the analysis focused on financial services and particularly the insurance sub-sector. The task which was aptly assigned to Amar Kebe, an executive at AXA Assurances Senegal and a professional of the sector, has resulted in the production of a detailed study showing the benefits and challenges of regional regulation of trade in services. Through the case of the CIMA Code, this study shows both the benefits of a regional regulation designed to create and retain wealth within the region and the challenges posed by current international obligations as well as practices used by multinationals.

Intellectual property is one of the non-commercial issues, though still strongly linked to trade, discussed in this book. The issue is dealt with by Amadou TANKOANO, Professor at the University of Niamey. He is one of the best specialists in Francophone Africa on Intellectual Property Rights. His analysis highlighted the need to harmonise existing national laws to move towards a community intellectual property law.

The book ends with a cross-sectional study on the issue of policy coherence in West Africa. The fact that the region and its Member States are simultaneously committed in a wide range of trade agreements already concluded or in process of being concluded creates inconsistencies and contradictions that could delay West Africa progress towards economic integration. This subject is dealt with by El Hadji Abdourahmane Diouf, a lawyer and specialist in international trade. He shows that this particular
alignment of regional, bilateral and international commitments as part of a common regional policy is necessary to give West Africa, at least, enough political space for the development of autonomous trade policy tools, led by its own authorities and taking into account its economic and commercial needs.

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Trade policy, customs union and strengthening the regional market in West Africa

Epiphane ADJOVI
Economist Statistician

Introduction

Created by the Treaty of May 28, 1975 between sixteen (16) countries of West Africa, the Economic Community of West African States (ECOWAS), among others, aims to promote integration of the region in view of forming an economic union among its members. In this context, it is planned to create a common market based on:

- free movement of persons and goods - removal of Non Tariff Barriers (NTBs);
- the establishment of a customs union built around a trade liberalization scheme and the establishment of a Common External Tariff (CET);
- the establishment of common trade policies.

Reviews conducted over thirty years after the creation of this regional economic community show, in general, that the latter has had very mixed results. Indeed, more or less significant progresses have been noticed in terms of development of infrastructures (including telecommunications and transport) and also and especially in terms of resolving conflicts between states. But we must recognize that the impact of mechanisms established by ECOWAS on strengthening intra-community trade can be broadly described as unsatisfactory and even negative according to some studies. This statement is justified by the low share of the region’s intra-community trade despite the various mechanisms set up.

1 Following Mauritania’s withdrawal, there are currently 15 ECOWAS Member States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.
In this context, to gather elements for deeper study of the ECOWAS business component, it is necessary to reflect on the causes of this situation. This document, which is a contribution to the debate on strengthening regional trade in West Africa, is in the same line as it is an endeavour to have an analysis of trade among ECOWAS states and relate it to the evolution of trade policies implemented by states in the West African region and ECOWAS bodies.

This contribution is structured into three main parts. In the first part, a critical study of the evolution of intra-community trade, regional and national trade policies and their interrelationships is proposed. The second part features an analysis of the compatibility of trade measures and trade agreements currently being implemented in the region with the intra-region trade growth and development objectives. Finally, elements that may be taken into account in developing effective regional trade policies are addressed in the third part.

**Evolution of Community trade in the context of trade liberalization**

The structure of ECOWAS Member States’ foreign trade is characterized by a low diversification of the exportable basis which is limited, to a large extent, to a few primary products (between one and three products) such as oil, cotton, coffee, cocoa and fish products. This concentration of trade that is inherited from colonization has been reinforced by some trade agreements that have a significant portion of the member countries’ foreign trade happen with Europe and other continents.

Under these conditions, is the development of intra-regional trade, which constitutes one of the objectives pursued by most integration processes in Africa, likely to happen? Can the current data be changed by trade policies implemented in the region and agreements between ECOWAS and its Member States and other regional cooperation organizations (including EU) or other countries? These issues are discussed in the study of the evolution of intra-regional trade and trade policies and their interactions.

**Evolution of intra-community trade**

Given the importance of informal trade and smuggling and also because of the diversity of calculation methods, there are several estimates of the intra-community trade share in region’s total trade.

According to various sources, this share is in a range of 10 - 15%. ECOWAS official statistics reveal that 10-15% of member countries’ trade is made within the ECOWAS area. Based on UNCTAD statistics, an expert from UN
Economic Commission for Africa\(^2\) provides an estimate of the intra-ECOWAS trade share changing from 3% at the beginning of the 70s to 10% in 2001. Volume 1 of the EPA Development Program, 25 December 2008 version states that “efforts in recent years have helped bring these exchanges from 7.8% in 1996 to 12.5% in 2005.”

This upward trend is shown in Figure 1 below (Lang, 2005). This chart shows an upward overall trend but with a jagged evolution reflecting some instability.

**Figure 1:** Evolution of the ECOWAS Trade in Africa (million dollars)

![Graph showing ECOWAS trade evolution](image)

**Source:** A partial equilibrium analysis of the Impact of ECOWAS-EU Economic Partnership Agreement, J Lang

According to the World Bank quoted by SANA in his end of training dissertation\(^3\), three quarters of intra-community exports are mainly from three (3) countries that are Cote d’Ivoire, Ghana and Nigeria. It’s mainly about primary products.

According to ECOWAP\(^4\), regional trade is characterized by:

- North-South trade in animal products, grains, fruits and vegetables based on regional comparative advantage;

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\(^2\) Rémi Lang dans A partial equilibrium analysis of the impact of ECOWAS-EU Economic Partnership Agreement

\(^3\) SANA, Les Entraves au Développement du Commerce entre les Etats Membres de la CEDEAO, Mémoire, Ecole Nationale des Régies Financières

\(^4\) WAEMU AGRICULTURAL POLICY
- re-export to countries such as Nigeria which are heavily protected;
- disparities in exchange rates and monetary policy;
- differences in purchasing power (higher in the coast, for example) and in consumer habits; and
- variations in the effectiveness of regional trade networks.

Whatever the data source used, the first observation made is that of its low level, despite the slight difference noted between the 3% of the beginning of the process and the current level. There is also an instability related to the contents of this intra-region trade.

- Several reasons are proposed to explain this remark: - low production;
- Non-complementary and sometimes competing productions among States;
- Political instability and poor governance within the community;
- Large volume of trade beyond the official statistics because they are informal or contraband.

Despite all this, the slow evolution may be considered as paradoxical if we take into account the implementation of a scheme to liberalize trade within the zone. But the explanation may lie in the poor implementation or simply the refusal to implement and in the delays by countries to implement the provisions of this community scheme. In addition, some states impose non-tariff barriers (challenges to the origin of goods, border closures, etc.) on community products entry in their territories.

**National and regional trade policies**

With the advent of independence, ECOWAS Member States, while still pursuing primary products export to their former colonial powers and other northern countries, have sought to give greater protection to the few processing units inherited from colonization or set up after independence (breweries, cement industries, textiles, flour mills, oil mills, etc.). The objective of the proponents of this import substitution policy was to guarantee at least the national market to production of processing industries and to avoid subjecting

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5 Recognizing the importance of informal smuggling and trafficking, WAEMU and ECOWAS initiated a programme to estimate the volume of unregistered trade.
them to competition from similar products from neighbouring countries. Thus, the tariff level on these product categories was relatively high. This tariff protection scheme was complemented by the introduction of non-tariff barriers and other administrative measures.

In the late 1970s, faced with severe economic and financial crisis that struck sub-Saharan African countries, the International Monetary Fund (IMF) and the World Bank forced them to implement Structural Adjustment Programs (SAP). SAPs follow a liberal agenda, which induces public expenditure funding cutback, through a reduction the public office size and an opening of industrial and agricultural productive sectors to international competition and the establishment of a privatization policy. Stabilization measures implemented in this framework aim at monetary policy (devaluation, rising interest rates ... ) and budgetary policy (reduction of public services, privatization). Almost all ECOWAS countries, with the remarkable exception of Nigeria experienced SAPs.

By engaging in structural adjustment programs, most of these countries were obliged to implement trade liberalization policies which generally consisted of 1) reducing the level of tariffs, 2) rationalizing them and 3) removing most non-tariff barriers (licenses, prohibition, etc.).

These unilateral trade liberalization measures have been accompanied with the participation of ECOWAS countries in the multilateral liberalization process with accession\textsuperscript{6} to the World Trade Organization (WTO) and participation in various rounds of trade negotiations. In this crucible, the twelve (12) LDCs benefit from a special and differential treatment in the implementation of agreements reached. It should nevertheless be noted that one of the major data of ECOWAS and other African countries’ participation is their weak bargaining power.

Regionally, the desire for integration has been shown very early. Thus in the region, several attempts at combination have emerged some of which had a commercial purpose. These include:

Regarding ECOWAS, the business component includes two main instruments: the trade liberalization scheme and the Common External Tariff (CET). In principle, under the ECOWAS trade liberalization scheme (TLS), local products and handmade items are in free circulation within the Community as

\textsuperscript{6} With the exception of Liberia which an observer status, all other ECOWAS members are also WTO members.
well as those which have undergone some work or been sufficiently processed, the latter having been, since 2006, fully accredited in their country of origin, and attested by a certificate of origin for a common format. The TLS was based on a calendar for dismantling tariff barriers on industrial products from member states, and a mechanism for compensating customs revenue loss. Technically, the dismantling of tariff barriers for industrial products should be on an asymmetric rhythm more quickly for countries with higher income than those with low income.

ECOWAS has also planned to adopt a common external tariff (CET). This is to extend the UEMOA CET coverage to all its members with the creation of a fifth tariff band at 35 percent, on which negotiations are going on. It should also be noted that ECOWAS provides for, like the UEMOA scheme, three new accompanying measures: a degressive protection tax (DPT) in a limited time to protect local West African manufacturing industries, an import safeguard tax (IST) to fight against import peaks, and a countervailing duty to fight against “unfair competition”.

The ECOWAS CET adoption process and its accompanying measures coincided with the development of accompanying measures for the implementation of ECOWAP, the ECOWAS common agricultural policy.

Finally, ECOWAS countries are engaged in trade agreements with other non-African partners; that’s the case with the European Union and the United States.

ECOWAS member states are part of ACP countries with which the EU has concluded the agreement signed June 23, 2000 in Cotonou (Benin), replacing the Lome Convention. The Cotonou agreement covers a time period up to 2020. The trade provisions constitute one of the cooperation mechanisms between the ACP and the EU. The latter had allowed in a duty-free regime non-agricultural products and most processed agricultural products from 78 ACP countries (excluding South Africa) on a non-reciprocal basis, until December 31, 2007. Development assistance is provided under the European

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7 Group I (Burkina Faso, Cape Verde, Gambia, Guinea Bissau, Mali and Niger) were given a 10-year period of, with a 10 percent reduction rate per year on approved products, Group II (Benin, Guinea, Liberia, Sierra Leone and Togo) had a period of 8 years, with a reduction rate of 12.5 percent per year on approved products, Group III (Côte d’Ivoire, Ghana, Nigeria and Senegal) had a period of six years, with a reduction rate of 16.6 percent per year on approved products.

8 WTO Members had granted a waiver from the EU obligations under Article I of GATT 1994 (on MFN treatment) for the period from 1 March 2000 to December 31, 2007 (WTO Document WT / MIN (01) / 15 dated 14 November 2001).
Development Fund (EDF), in addition to bilateral efforts of EU member countries.

The Cotonou Agreement provides for the negotiation of Economic Partnership Agreements (EPAs) to take over its trade provisions starting from 1 January 2008. Pending the comprehensive EPA signature, ECOWAS states are:

- Under an IEPA for Ghana and Cote d’Ivoire;
- Beneficiaries of the “Everything But Arms” Initiative from the EU for LDCs - under the Generalized System of Preferences for Nigeria.

The African Growth and Opportunity Act (AGOA) is a law initiated by the U.S. government in 2000 to encourage African states to continue efforts to open up their economies. AGOA allows more than 6,800 African products to enter the U.S. market duty free. Eligible countries under the AGOA benefit until 2015 from a quota tariff-free access to the U.S. market for various goods, including some agricultural and textile products (except clothing). With the exception of Côte d’Ivoire, which got out of the list in 2005, all ECOWAS Member States are allowed under AGOA.

Generally, these provisions are not used effectively by business operators in the area. Thus, according to the Report of the Niger and Senegal Trade Policy Review, the total value of exports under AGOA amounted to only U.S. $89,000 in 2007 (consisting mostly in jewellery) for Niger and U.S. $233,000 (mostly live birds, musical instruments, handicrafts and leather products) in the case of Senegal.

However, according to the latest report on AGOA submitted to the American Congress, the program has significantly helped boost trade between the U.S. and Sub-Saharan Africa. And U.S. exports to Africa totalled 14.4 billion U.S. dollars and the country imported over $67.4 billion from African countries.

**Analysis of the compatibility of regional trade measures with the development of intra-regional trade**

In terms of trade, ECOWAS is engaged in two very important processes that can significantly influence the results of regional states in terms of growth and trade within the Community. These are the implementation process of the Common External Tariff (CET) as part of the ECOWAS Customs Union and the negotiations of the WA-EU Economic Partnership Agreement. Drawing the appropriate lessons from past experiences, ECOWAS must face the challenge these two trade policy instruments put forward for the region.
In other words, the region’s negotiators must ensure that the implementation of the Common External Tariff and the Economic Partnership Agreement will not undermine the trade growth and development prospects within the region.

**ECOWAS’ CET**

The ECOWAS Common External Tariff is composed of a Tariff Nomenclature and Statistics (TNS), and a grid of taxes and duties, and safeguard measures. The ECOWAS TNS is a common customs nomenclature based on the Harmonized System (HS) adopted by the Community. The table of duties and taxes on imported products includes customs duty, the statistical charge and ECOWAS community levy as well as accompanying measures on certain products under defined conditions.

The products in the Tariff Nomenclature and Statistics (TNS) are divided into four categories as follows:

- **Category 0**: Essential social goods (medicines, books, etc.).
- **Category 1**: goods of primary necessity, basic raw materials, equipment goods, specific inputs.
- **Category 2**: Inputs and intermediate products.
- **Category 3**: Final consumption goods.

The customs duty rates included in the common external tariff are set out as follows, and the tax base for the CET is Ad Valorem:

<table>
<thead>
<tr>
<th>Category</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>5%</td>
<td>10%</td>
<td>20%</td>
</tr>
</tbody>
</table>

This progressive protection structure depending on the development level of goods reflects a willingness from ECOWAS countries to introduce additional protection for the processing industry. The CET structure thus promotes raw materials import and discourages imports of processed products.

To achieve the objective of promoting productive sectors through subsequent tariff protection, a fifth category is added to the first four from the WAEMU CET. That fifth category is taxed at 35%. This may be considered as a breakthrough since the WAEMU CET lacked this kind of instrument.
In addition to duties and taxes under the proposed Common External Tariff, the CET adoption decision has provided for three accompanying measures for the protection of agricultural, industrial and manufacturing sectors that are likely to face unfair competition from imports following the introduction of the CET. They include:

ECOWAS’ Degressive Protection Tax (DPT) which is a temporary safeguard measure applied to products where the protection level provided by the CET is not considered sufficient to protect local production against unfair competition from imported products. It will be applied to the import CIF value, in addition to customs duties and other fees provided;

ECOWAS Safeguard Tax (ST) which is a temporary surcharge applied to products from countries outside of ECOWAS. Its objective is to protect local production against price fluctuations on the international market and sharp increase in imports. The implementation of the ST will be generated by two main factors, namely the onset of import prices and import volumes.

What fundamentally differentiates ECOWAS and UEMOA CETs is the fifth category. Since this category rate has been set, two questions are to be asked. On the one hand, one may wonder if the 35% rate is sufficient to ensure adequate protection for products which are classified. One can also, on the other hand, wonder about the nature of products to be classified in this category so as not to get away from the protection objective and not to introduce distortions in this tariff.

On the fifth category rate, there is a current debate between proponents of two opposing options. On the one hand, there are those who think that a low tariff level guarantees opening up to the world market and improves productivity of production factors and lower production costs and therefore prices. It also avoids, in the case of free trade agreements, trade diversion that has adverse effects of such agreements. These proponents are also concerned about compatibility with multilateral negotiations and commitments by States to the WTO.

On the other hand, there are those who think that CET rates are very low compared to other countries or other regions and do not offer sufficient protection to products, including agricultural and agro-industrial products. Tables are provided to support this argument (see Appendix, p. 43).

This necessary debate can offer the opportunity to inform future adjustments to ECOWAS CET should the need arise after its assessment. Actually, the CET, as a central instrument of the regional trade policy, must be subject to rigorous
evaluation after its implementation. Many business operators in the region believe that if a rigorous evaluation of the WAEMU CET were available, the choice of the fifth category rate would have been better.

Moreover, in assessing the potential protection level offered to products by the CET, additional safeguard measures provided should not be ignored. These, in the case of UEMOA, have been very little used.

Regarding the list of products to be classified, the discussion is still going on at the regional level. The criteria to favour in this choice must take into account: i) consistency with sectoral policies (e.g. ECOWAP), ii) the regional dimension; iii) the need to maintain the progressiveness of rates. The regional dimension can be understood as a refusal to make demand for national lists.

**The Economic Partnership Agreement between WA and the EU**

The EPA is provided by the Agreement signed on June 23, 2000 in Cotonou (Benin), replacing the Lome Convention. The Cotonou agreement spans until 2020. Trade provisions constitute one of the cooperation mechanisms between ACP countries and the EU. The latter had allowed in a duty-free regime non-agricultural products and most processed agricultural products from 78 ACP countries (excluding South Africa) on a non-reciprocal basis, until December 31, 2007.

One of negotiators’ main concerns is the market access offer. This is particularly about issues such as the list of sensitive products to be excluded from the agreement, the dismantling pace, and the moratorium period and origin rules.

Generally, this is one of the points on which it seems to be the easiest to reach consensus in the region. Indeed, in developing this offer, in addition to compliance with multilateral commitments, it has been taken into account the difference in standard between EU states and those of West Africa which implies that a long enough period should be granted to West African countries to adapt their production apparatus (moratorium, dismantling pace etc.). The market access offer is under negotiation and should be stabilized at a rate that won’t affect the region. The one proposed by West Africa follows the pattern below:

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- Four categories of products classified according to their sensitivity level: A, B, C and D;

- A partial moratorium of 5 years that will be used to continue and strengthen the implementation of the competitiveness reinforcement program that would be launched upon the signing of the agreement;

- A liberalization rate of about 70%\(^\text{10}\) of West African imports from the EU over a period of 25 years.

However, some voices have been raised to point out that the option chosen for the region may reduce the positive outcomes expected from the EPA. For them, the risk is that the positive effects of the shock therapy resulting from the EPA become diluted because of the region’s low ambition, regarding both the liberalization level and the transitional period length.

**Components of an effective regional trade policy**

ECOWAS Trade Policy, in addition to the need to facilitate the area integration into the world market, must promote trade between Member States and support economic growth and poverty reduction. This is justified by the fact that ECOWAS is composed mainly of developing countries and eleven LDCs in their efforts to create the conditions for growth and poverty reduction.

ECOWAS accompanies this desire of Member States through a Community Development Program (CDP) being currently developed and sectoral programs such as ECOWAP that, among others, help member states remove production constraints. In this regard, the first condition to be met by regional trade policies must be to seek consistency with these sectoral policies. This does not seem to be entirely the case since farmers and civil society organizations believe that there are inconsistencies between the CET being adopted and ECOWAP. The conclusion drawn by these organizations is that, as it is currently conceived, the CET does not sufficiently protect the agricultural sector and is even a threat to its development.

The excerpt below, from a study conducted on behalf of the Network of Peasant Organizations and Agricultural Producers (ROPPA) gives an overview of their concerns: “The weakness of the current TEC leaves little alternative to the choice of forgoing the establishment of a free trade area. It should

\(^{10}\) This opening rate is being negotiated and may slightly vary depending on mutual concessions from both parties.
instead be suitable to rely on the EU and the WTO to enforce within ECOWAS, the need for sustainable development based on food sovereignty and reinforcing instruments of this policy\textsuperscript{11}.

In addition to ECOWAS, there are in the region, other regional economic integration associations such as UEMOA that are ahead in terms of setting up some mechanisms. To prevent states belonging to two different organizations from being in a situation where they have to choose between two conflicting mechanisms, it would be advisable to be in a logic of harmonizing policies and measures. This harmonization effort which is a reality between UEMOA and ECOWAS should be continued.

Moreover, the main ECOWAS trade policy instruments are the Common External Tariff, trade protection and safeguard measures, the Trade Liberalization Scheme, preferential agreements and other trade agreements.

A CET that optimally protects productive sectors, a properly implemented trade liberalization scheme and a perfect dismantling of non-tariff barriers in the region must create a community preference in favour of community trade development. The effective implementation of these instruments is a prerequisite for achieving this goal. This cannot be done without the proposal of realistic timelines.

Similarly, ECOWAS may establish preferential agreements or other business relationships with other countries or areas. The EPA being negotiated with the main trading partner in the region, the EU falls into this logic. It is important to ensure that these agreements do not undermine the objectives of strengthening regional trade and growth targeted by the community. This risk which exists for the EPA West Africa – European Union is perceived by negotiators who are trying to take it into account in the market access offer and the EPA Development Program (EPADP).

The bargaining power that is growing stronger with the WA-EU talks can be used to consider trade agreements with other areas (China, Latin America, etc.).

\textsuperscript{11} GALLEZOT J, Les Enjeux et les Marges de Manœuvre de la CEDEAO face aux Défis des Négociations agricoles
Conclusion

ECOWAS is engaged in a process of establishing its CET and negotiating an EPA with the EU for the benefit of West Africa. In view of the stakes these two trade policy instruments are to the economies of the region, the finalization work must take into account the need to ensure economic growth and enhance regional trade.

This paper is a contribution to the reflection on the implementation conditions of these instruments. It provides lines of analysis that can be explored in depth.

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## ANNEX

### Table: Rate of the TEC on agricultural products for ECOWAS, Morocco and the EU

<table>
<thead>
<tr>
<th>WAEMU-ECOWAS Common External Tariff</th>
<th>ECOWAS in 2003</th>
<th>EU Average MFN EAV Duties (2)</th>
<th>ECOWAS-EU Gap in % (2)–(1)</th>
<th>EU Average MFN EAV Duties (2)</th>
<th>ECOWAS-Morocco Gap in % (3)–(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food products</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Live animals</td>
<td>17</td>
<td>14</td>
<td>27</td>
<td>13</td>
<td>62</td>
</tr>
<tr>
<td>2. Meat and edible offal</td>
<td>52</td>
<td>20</td>
<td>36</td>
<td>16</td>
<td>156</td>
</tr>
<tr>
<td>3. Milk and dairy products</td>
<td>27</td>
<td>17</td>
<td>67</td>
<td>50</td>
<td>71</td>
</tr>
<tr>
<td>4. Other products of animal origin</td>
<td>16</td>
<td>5</td>
<td>0</td>
<td>-5</td>
<td>33</td>
</tr>
<tr>
<td>5. Plants and products</td>
<td>11</td>
<td>12</td>
<td>7</td>
<td>-5</td>
<td>35</td>
</tr>
<tr>
<td>7. Vegetables, plants, roots and tub</td>
<td>54</td>
<td>19</td>
<td>14</td>
<td>-5</td>
<td>46</td>
</tr>
<tr>
<td>8. Edible fruit and bark tree</td>
<td>55</td>
<td>19</td>
<td>16</td>
<td>-3</td>
<td>51</td>
</tr>
<tr>
<td>10. Cereals</td>
<td>16</td>
<td>6</td>
<td>38</td>
<td>32</td>
<td>19</td>
</tr>
<tr>
<td>11. Milling products, Malt</td>
<td>34</td>
<td>12</td>
<td>37</td>
<td>25</td>
<td>48</td>
</tr>
<tr>
<td>12. Seeds and nuts</td>
<td>44</td>
<td>5</td>
<td>4</td>
<td>-1</td>
<td>25</td>
</tr>
<tr>
<td>15. Animal oils and fats</td>
<td>43</td>
<td>13</td>
<td>11</td>
<td>-2</td>
<td>23</td>
</tr>
<tr>
<td>16. Meat preparations</td>
<td>11</td>
<td>20</td>
<td>24</td>
<td>4</td>
<td>50</td>
</tr>
<tr>
<td>17. Sugars and sweets</td>
<td>16</td>
<td>11</td>
<td>42</td>
<td>31</td>
<td>35</td>
</tr>
<tr>
<td>19. Cereal-based preparations</td>
<td>17</td>
<td>18</td>
<td>22</td>
<td>4</td>
<td>49</td>
</tr>
<tr>
<td>20. Vegetable preparations</td>
<td>44</td>
<td>20</td>
<td>26</td>
<td>6</td>
<td>50</td>
</tr>
<tr>
<td>21. Various food preparations</td>
<td>16</td>
<td>15</td>
<td>13</td>
<td>-2</td>
<td>47</td>
</tr>
<tr>
<td>22. Alcoholic beverages</td>
<td>22</td>
<td>20</td>
<td>8</td>
<td>-12</td>
<td>50</td>
</tr>
<tr>
<td>Tarif Extérieur Commun UEMOA-CEDEAO</td>
<td>ECOWAS in 2003</td>
<td>EU Average MFN EAV Duties (2)</td>
<td>ECOWAS-EU Gap in % (2)–(1)</td>
<td>EU Average MFN EAV Duties (2)</td>
<td>ECOWAS-Morocco Gap in % (3)–(1)</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>----------------</td>
<td>--------------------------------</td>
<td>-----------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>23. Industry residue and waste</td>
<td>25</td>
<td>10</td>
<td>23</td>
<td>13</td>
<td>24</td>
</tr>
<tr>
<td>24. Tobacco and tobacco substitutes</td>
<td>9</td>
<td>12</td>
<td>0</td>
<td>-12</td>
<td>23</td>
</tr>
<tr>
<td>34. Essential oils and resinoids</td>
<td>15</td>
<td>10</td>
<td>3</td>
<td>-7</td>
<td>41</td>
</tr>
<tr>
<td>35. Produced albuminous materials</td>
<td>10</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>29</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>554</strong></td>
<td><strong>15</strong></td>
<td><strong>22</strong></td>
<td><strong>7</strong></td>
<td><strong>50</strong></td>
</tr>
</tbody>
</table>

**Source:** BIO-GOURA (2006), The ECOWAS CET and their Implications for Regional Integration and EPA negotiations.
Informal cross border trade in West Africa: potential barriers and lines of evolution

Soule Bio Goura
PhD in Agricultural Economics

Introduction

More than the official, formal or registered one, informal trade is an activity as old as the informal economy which is the main source of employment in Africa: between 20% and 70-75% of employment in most countries except South Africa where the figure is estimated at 12% of assets (McLachlan G., 2005; RAFAO, 2008).

In West Africa where the informal sector covers most of the national economy with 20% to 90% (G. McLachlan, 2005; INSAE, 2002), informal trade is an important part of the informal economy.

Informal Cross-Border Trade is an essential component of this West African economic phenomenon with multiple unsuspected tentacles. Clearly, we owe the appearance of informal cross-border trade to the numerous divisions the region has undergone since the 20th century: monetary, trade and fiscal fragmentations induced by the emergence of colonial blocs and later by accession to independence of new states.

If the existence of the phenomenon is not subject to doubt, we know little about its importance, which certainly varies from one country to another, but especially the way it structures the economy and social life of the region.

For many analysts, through its operation and its foundations, informal cross border trade is a destabilizing activity for states’ economic structures and hence for the region. For others, occupying an important sphere of national economy, Informal Cross-Border Trade undoubtedly contributes to the resolution of a number of problems that current economic systems are unable to solve.

This ambivalence of the functions of informal cross border trade raises the issue of its future in national economies, at a time when the region is engaged
in multiple structural reforms to bring out an integrated regional market, remove many distortions.

**Purpose**

The present document aims to:

- Assess and make a critical analysis of informal cross-border trade in West Africa;
- Highlight its economic, social and financial scope and show how it fits into the regional economic and social system;
- Analyze the approaches and strategies implemented, particularly at ECOWAS level, to organize the sector, strengthen its potential and beyond this, intra-regional trade;
- Draw lines of possible evolution in the context of enhancing economic integration and removing barriers to trade among ECOWAS states;
- Analyze this trade in the EPA context and show if needs be, how and in what way it might influence it.

**Characteristics and determinants of Informal Cross-Border Trade in West Africa**

**Characteristics**

Informal trade is a complex phenomenon, both in its nature and its operation. Its characterization is not easy because of the lack of a clear delineation between the official and the parallel or unofficial. The word ‘informal’ sometimes lends itself to tendentious interpretations that do not support an objective analysis of its operation. It is often described as parallel, underground, clandestine, in short, anything that refers to a phenomenon not mastered by governments, including policy makers at all levels.

For the sake of understanding, the national statistic service is trying to focus on the nature of the flows that characterize informal trade in general and cross-border trade in particular, which is considered as a component of informal, unregistered economy. It highlights three distinctions:

Underground activities: that are productive and legal activities but are deliberately concealed from authorities to avoid tax or evade registration statistics and regulations;
Illegal activities that are productive activities which generate goods or services prohibited by law or are exercised by producers who do not have permission to do so,

Informal activities, which are productive activities carried out by unincorporated family businesses that are not registered and / or are below a certain size in terms of number of workers or production.

To a large extent cross-border trade flows result on the one hand from underground economy and, on the other hand from informal activity:

- Underground flows are those resulting from the activity of companies that are most often registered, but bypass a statutory scheme to escape control (registration, taxes, health etc.). It is essentially about products from food industry or local processing structures, some of which are not yet eligible in the region’s trade liberalization scheme.

Informal flows are essentially those resulting from local shops at the borders. They supply capillary transactions. This is essentially about families selling beyond the border products they themselves purchased or generated. From an accounting perspective, the result of the activity is thus a household production for the family’s own use. This traffic involves local animal or plant and craft products.

Illegal flows corresponding to illegal cross-border trafficking of products under transaction prohibition or subject to strict regulation (public monopoly or embargo). These flows involve products such as narcotics, particularly drugs, weapons, pesticides and oil products and sometimes food crops like rice or wheat flour in Nigeria over the 80s and 90s. Trafficking in these products has grown in recent years.

All these forms of transactions fuel informal cross-border trade, that is to say flows that are beyond control and which ultimately are often not subject to registration. However, in many cases one of the parties to transactions may proceed to registration. This applies, for example, in the case of re-exportation cross-border trade, when a country imports, in a domestic consumption regime, products that are beyond the domestic demand. The surplus is exported to neighbouring countries (Benin, Togo and Niger have long specialized in this kind of traffic to Nigeria; the Gambia has carried out this type of transaction to Senegal in the 90s, about rice).

The process of informal cross-border transactions generally takes two forms of contraband, active or passive. In the case of active contraband, officials in
charge of the control are accomplices in the fraud by means of corruption in kind or in cash. This dimension is highly developed in cross-border commercial transactions.

In the second case, operators exploit the flaws of economic and trade policies and the environmental context that is often characterized by control staff shortage and multiple itineraries, and the presence at both sides of borders of the same socio-cultural groups that facilitate complicity links. In the latter case, informal trade is akin to an economy where “social, family and religious structures function as production relations”

Informal Cross-Border Trade is thus a complex phenomenon the foundations of which are generally dependent on several strongly intertwined factors.

Determining factors of informal trade

Several factors such as socio-historical, geographical and economic ones are often put forward by different experts to explain the omnipresence and recurrence of informal cross-border commercial transactions in Africa. The weight of each factor depends on the socio-cultural reality and the nature of the states involved in the transactions, and the current economic conditions.

Clearly differences in economic, monetary, trade and fiscal policies between states are important in the operation of this trade. West Africa is characterized by many divisions that represent obstacles to the development of formal business transactions. These obstacles are the nest of informal trade. They include:

- Currency fragmentation. Subsequent to the balkanization of the continent and the creation in the sub region of two zones to issue currency (the franc zone, regimented by Banque de France) and West African Currency Board established in 1912 by the British Empire. There are currently nine currency areas in West Africa: the CFA zone that includes eight of the sixteen states of the region, the Naira Zone in Nigeria (over 50% of regional GDP), the Cedi Zone for Ghana, the Dalasi Zone for the Gambia, the Leone Zone for Sierra Leone, the Guinean Franc zone in Guinea, the Ouguiya Zone for Mauritania, the Peso Zone for Cape Verde. The impossibility to move between different zones beyond the central banks has brought about a

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1 Grégoire (E), 1986, les ALHAZAI de Maradi (Niger), histoire d’un groupe de riches marchands sahéliens-Paris–ORSTOM, Collection travaux et documents n°167, 208 pages

2 Clearing House originally installed in Freetown has been closed.
significant parallel change market that operates in major metropolitan areas in countries with non-convertible currencies. This market is the relay of informal exchanges in the region, the link, on the one hand, between the only convertible currency in the region, the CFA and the eight other non-convertible currencies; and on the other hand, between them and foreign currencies that are the basis of international transactions. It facilitates the acquisition of all kinds of currencies by informal trade stakeholders. The new settlement means set up by Ecobank, Ecotrade still cannot stop the difficulty faced by economic operators in regulating formal cross-border trade.

- Fragmentation of trade and fiscal policies. Pending the completion of the regional market construction, with the entry into force of the ECOWAS Common External Tariff, probably by the end of 2010, the states’ trade policies are still marked by strong disparities regarding protection. The gap appears quite wide between UEMOA countries and other countries in the region such as Nigeria, which show a much more protectionist trade policy. These differences in protection levels are a source of expediency, or even opportunistic transactions: contraband trade or re-exportation. They limit, in a particular way, the movement of goods and even food and other local products that are supposed to circulate freely in accordance with the provisions of UEMOA and ECOWAS Free Trade Areas. The table below shows the situation of some food products chosen for their strong commercial potential in the regional market and which, to a large extent, are fuelling Informal Cross-Border Trade.
These two forms of fragmentation, plus sometimes subsidy policies, induce differences in price levels from both sides of the borders, which constitute the primary basis of the orientation of the flows of products that are objects of transactions. For example, the policy of subsidizing consumer prices of oil products in Nigeria led to disparities in price levels that explain the recurrence of gasoline smuggling between the Federation and its neighbors (Niger, Cameroon, Benin, and Chad). In February 2010, the price of gasoline at the pump was 235 F CFA in Nigeria, against 455 CFA francs in Benin, 650 in Cameroon and Niger and 700 in Chad.

Moreover, this fragmentation is reflected in the persistence of many other non-tariff barriers to official trade, and which underlie non-registered commercial transactions. These are not only poor infrastructure, periodic prohibition measures on imports or exports of certain products, including food, not to

### Table 1: Tariff on in the ECOWAS area + Mauritania for some food and agricultural products (%)

<table>
<thead>
<tr>
<th>Products</th>
<th>CET UEMOA</th>
<th>Cape Vert</th>
<th>Gambia</th>
<th>Ghana</th>
<th>Guinea</th>
<th>Mauritania</th>
<th>Nigeria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potato</td>
<td>20</td>
<td>35,45</td>
<td>18</td>
<td>39,29</td>
<td>17</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td>Fresh or chilled Tomatoes</td>
<td>20</td>
<td>12,00</td>
<td>18</td>
<td>20</td>
<td>17</td>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td>Onion</td>
<td>20</td>
<td>25,69</td>
<td>18</td>
<td>20</td>
<td>17</td>
<td>13</td>
<td>-</td>
</tr>
<tr>
<td>Canned tomato</td>
<td>10</td>
<td>10,00</td>
<td>-</td>
<td>20</td>
<td>17</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Canned tomato-based products</td>
<td>20</td>
<td>10,00</td>
<td>10-18</td>
<td>20</td>
<td>17</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Wheat</td>
<td>5</td>
<td>5,00</td>
<td>18</td>
<td>20</td>
<td>7</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>Wheat flour</td>
<td>20</td>
<td>15</td>
<td>18</td>
<td>40</td>
<td>-</td>
<td>5</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Beef</td>
<td>20</td>
<td>50</td>
<td>18</td>
<td>20</td>
<td>-</td>
<td>20</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Poultry</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meat</td>
<td>20</td>
<td>50</td>
<td>18</td>
<td>39,31</td>
<td>-</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Rice</td>
<td>10</td>
<td>-</td>
<td>0</td>
<td>20</td>
<td>15+taxes</td>
<td>20</td>
<td>50</td>
</tr>
<tr>
<td>Oil</td>
<td>10</td>
<td>10-18</td>
<td>20</td>
<td>-</td>
<td>20</td>
<td>Interdit</td>
<td></td>
</tr>
<tr>
<td>Milk</td>
<td>5</td>
<td>-</td>
<td>5-18</td>
<td>20</td>
<td>-</td>
<td>20</td>
<td>5</td>
</tr>
</tbody>
</table>

Source: Excerpt from Pwc and al, 2005 and Blein and al, 2004
forget the numerous checkpoints on the main corridors\(^3\). In 2000, a study commissioned by ECOWAS had revealed the presence of a multitude of checkpoints on some roads linking several countries in the region.

### Table 2: official checkpoints on some roads in West Africa, December 2000

<table>
<thead>
<tr>
<th>Highway</th>
<th>Distance in km</th>
<th>Number of checkpoints</th>
<th>Number of checkpoints per 100 km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lagos (Nigeria)-Abidjan (Côte-d’Ivoire)</td>
<td>992</td>
<td>69</td>
<td>7</td>
</tr>
<tr>
<td>Lomé (Togo)-Ouagadougou (Burkina-Faso)</td>
<td>989</td>
<td>34</td>
<td>4</td>
</tr>
<tr>
<td>Niamey (Niger)-Ouagadougou (Burkina-Faso)</td>
<td>529</td>
<td>20</td>
<td>4</td>
</tr>
<tr>
<td>Abidjan (Côte-d’Ivoire)-Ouagadougou (Burkina-Faso)</td>
<td>1122</td>
<td>37</td>
<td>3</td>
</tr>
<tr>
<td>Cotonou (Benin)-Niamey (Niger)</td>
<td>1036</td>
<td>34</td>
<td>3</td>
</tr>
<tr>
<td>Accra(Ghana)-Ouagadougou (Burkina-Faso)</td>
<td>972</td>
<td>15</td>
<td>2</td>
</tr>
</tbody>
</table>

**Source:** ECOWAS Secretariat 2001

In addition to these two factors that are key determinants of Informal Cross-Border Trade, there are four no less important other ones:

- **The porosity of borders inherited from colonization.** Most African borders are artificial and present no major obstacles to their passage, given the weakness of control forces in their ability to cover these borders. Where natural barriers exist such as rivers and other waterways, they are exploited as suitable backup to informal trade.

\(^3\) Traders call the costs entailed by these fake checkpoints PCG Taxes (P for Police, C for Customs and G for gendarmerie). These taxes can be quite important in some corridors.
- The existence on both sides of dividing lines of people sharing cultural and linguistic affinities is an important asset for the exercise of cross-border trade. It promotes the perpetuation of old relationships between the peoples. These links are used by these peoples to seize new trade opportunities created by colonial division and different economic and trade policies but also to adapt to the contingencies of this division and these policies.

- The relative disinterest of customs services, which are sometimes short of sufficiently trained staff, leads to a chronic under-recording of flows. Customs statistics of some countries hardly show regional flows of food products. Yet these volumes may be important in some cases about the traffic of live animals or food crops (Niger / Nigeria) for example. The seasonality of transactions, their change of direction according to climate conditions or the difference of level in prices, sometimes makes their regular monitoring difficult. Most information systems on the market are well aware of the nature, seasonality of transactions, but still cannot grasp the true scale of the phenomenon. Due to the non-collection of taxes on these local product imports, the customs rarely conduct their registration when they cross the borders.

- Finally we can mention government failures, which are sources of corruption and misappropriation of trade. The exploitation of populations’ under-information often leads to wild levy taxes. The imposition of VAT on imported agricultural products appears to be the most common practice. Incomprehension of a majority of exporters complaining about the payment of VAT when crossing internal ECOWAS boarders, for example, results from the inefficiency of compensation mechanisms between countries (Faivre-Dupaigre et al, 2007). Traders find it more interesting to operate in the informal sector, since the bribes they pay to public officials are less expensive than the accumulation of VAT and other taxes.

**An attempt at assessing the volume of trade**

Estimating the volume and value of Informal Cross-Border Trade is not easy given the nature of this form of transaction. Informal Cross-Border Trade stakeholders do not actually keep regular statistics to assess the importance of their transactions. There is a gap in the statistical evaluation of the informal economy weight in West African countries.

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4 In some border crossings, customs clearance systems sometimes involve the payment of a flat fare.
Assessment methods are varied and depend on both available sources and data. They most often resort to proportions inherited from very old sources; more or less recent surveys but not specific to informal sector, let alone informal trade; investigations sometimes specific to informal sector but on very small geographical and/or sectoral scope (Leenhardt, B., 2008). But to get an idea of the importance of the activities of this trade considered as unofficial, one could refer to the weight of the entire informal sector in national economies. In West Africa this weight varies between 20% in Nigeria and 75% in Benin of the GDP.

Almost all analysts believe the value and volume of Informal Cross-Border Trade are significant. There are some assessments that provide a more or less exact idea of the scope of informal cross-border commercial transactions.

According to calculations made by ADJOVI et al, 2008, based on BECEAO statistics, “unregistered trade is apparent to 11.3% over the period 1996-2000”. The same study notes that “the importance of this trade varies across countries. The share of unregistered trade in total exports varies between 1.7% (in Mali) and 92% (for Benin) as shown in the following table.

<table>
<thead>
<tr>
<th>Table 3: Assessment of the portion of unrecorded trade in UEMOA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
</tr>
<tr>
<td>Burkina</td>
</tr>
<tr>
<td>Côte d'Ivoire</td>
</tr>
<tr>
<td>Mali</td>
</tr>
<tr>
<td>Niger</td>
</tr>
<tr>
<td>Senegal</td>
</tr>
<tr>
<td>Togo</td>
</tr>
</tbody>
</table>

Source: Adapted from ADJOVI and al, 2008

Obviously the intensity and extent of Informal Cross-Border Trade seems to be inversely proportional to the harmonization degree of economic and fiscal...
policies of contiguous states. Thus countries with high economic potential, which share borders with states that are part of economic entities that have made significant progress in terms of policy harmonization, are subject to significant informal cross-border traffic. This is the case of Togo, of Burkina Faso vis-à-vis Ghana, but mostly vis-à-vis Benin, Niger vis-à-vis Nigeria.

In the case of Benin, the Laboratory for Regional Analysis and Social Expertise (LARES) concluded from a macroeconomic approach based on the premise that “the proportion of Nigerian products found on retailers’ shelves (compared to all the products thereon) indicates the proportion of expenditure incurred by households in Nigerian products (relating to their total expenditure)”, that the value of Nigerian product imports in Benin total between 89.2 billion francs CFA (low estimate) and 128.8 billion (upper case).

This estimate which takes into account unregistered flows provides a realistic amount of imports, placing Nigeria in a more credible role as the leading supplier of Benin, representing between 26 and 34% of the total value of imports. Similarly, considering the most modest result (89 billion), less than 1%5 of real Nigerian imports has been recorded when crossing the border in 1996.

Among the products that fuel informal imports from Nigeria are hydrocarbons. Based on the gaps in consumer prices charged by the two countries, Benin fraudulently imports oil, gasoline and diesel from its neighbour. From 10% in 1998, the national market share conquered by unregistered imports of Nigerian oil products rose to 73% in 2004. This share is still significant today and is close to 50%. In return for these illegal imports, Benin re-exports many other products it buys on the international market. These are mainly:

- Rice, whose re-exportation really started in 1987, as Nigeria had just declared a federal embargo on imports of this cereal. For national needs estimated at 60,000 tons, Benin imported 387,000 tons that year, helping to fuel a fraudulent traffic of about 327,000 tons to Nigeria. This traffic is still quite active despite the vicissitudes of economic conditions. In 2008, Benin imported 950,000 tons of rice for domestic consumption requirements estimated at 100,000 tons half of which is met by domestic production.

- Used vehicles of which the country imports between 175,000 and 250,000 units per year for a domestic demand that does not exceed 20,000 vehicles per year. The ban on import of vehicles older than 8 years in Nigeria is

5 In 1996, official statistics recorded 1.13 billion francs CFA in respect to imports from Nigeria in Benin
sensibly exploited by Benin traders to illegally re-export more than 100,000 used vehicles a year toward this country. One part of these vehicles feeds the transit towards Niger, Chad and Central African Republic.

Meat products that are subject to import ban in Nigeria are involved in this quasi-official contraband, euphemistically described as re-export trade.

Niger is also in West Africa, the second country where Informal Cross-Border Trade is highly developed with Nigeria. Playing on the same determinants as Benin, Niger has developed very intense informal exchanges with its powerful neighbour Nigeria. According to the results of the most comprehensive study conducted in 1999 on the phenomenon by the Ministry of Finance, “Nigeria appears to be the largest trading partner of Niger with 36.64% of exports and 38.39 % of imports in 1993 and 1998. Similarly, the trade balance proves to be in deficit for Niger;

- The flows are mainly composed of agro-pastoral products: 73% of exports and 32% of imports;
- This trade is experiencing a high level of fraud:
- 15% in exports - 79% in imports - 123% in transit.

Indeed one of the hallmarks of this traffic is the quasi-absence of official gas stations in major urban centres in eastern Niger: Dogondoutchi, Birnikoni, Maradi, Zinder and Diffa in particular. The cross-border contraband of oil products from Nigeria has completely eaten away the official distribution network.

Regarding other countries, there is no reliable data to assess the extent of informal trade. However, the traffic between Senegal and the Gambia on the one hand, and Mauritania on the other hand takes informal channels. Re-export of Maghreb countries’ fruit juice from Mauritania to Senegal and Mali through cross-border commercial transactions is often informal.

The current low volume of intra-regional trade be it within UEMOA where it is estimated at some 14% of total trade volume of this community or within ECOWAS, derives from not only an extroversion of the economies of the region but also the existence of flows that are not registered.

**Limits and scope of informal trade in West Africa**

The role of the informal sector in general and cross-border trade in particular in the region’s development is very controversial. It is difficult to assess
because of the lack of a clear delineation between formal and informal traffic. In many cases, all informal transactions include a segment that seamlessly integrates the official sphere. Thus, it is important to be cautious about positive or negative effects of informal trade, of unregistered trade.

**A trade destabilizing national economies**

For many analysts, informal cross border trade is an activity that destabilizes economic structures of countries that are involved. Informal cross border exchanges prevent readability on the operation of national economies, on how they make best use of the potentials and strengths. The lack of statistical data does not favour a substantial planning of activities and therefore doesn’t offer the possibility to make reliable long term projections and anticipate on truly desired choices.

Opportunistic in nature, informal trade is an activity that diverts policies from their initial objectives, including a better protection of the local market to boost production in other sectors. Thus, it is considered as a counter-productive activity for many countries.

Generally speaking, Informal Cross-Border Trade generates very little local value added, and is part of an opportunistic speculative activity. Better, in its operation, it unfairly competes with companies legally installed that comply with existing regulations and regularly pay their taxes.

By integrating multiple fraud related aspects including counterfeiting which it coveys, Informal Cross-Border Trade contributes significantly to the suffocation of local businesses. According to Ivorian Employers, fraud in 2006 and 2007 represent nearly 95% of the Ivorian textiles and have caused the loss of 3,500 jobs, the loss of 40% of SITAB volume and proceeds, 100 jobs lost and a 10 billion income loss for the country, 20 to 30% of the milling sector returns, 17 billion income loss for the State regarding the oilseed sector.
In the case of Benin, assessments of income losses from oil product traffic alone are as follows:

Table 5: Estimated tax revenue losses incurred by the informal sale of gasoline from 1998 to 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Official sales of gasoline (liters)</th>
<th>Informal gasoline sales (liters)</th>
<th>Taxes collected by the State per liter of gasoline (F CFA)</th>
<th>Total of taxes collected by the State (F CFA)</th>
<th>Losses in taxes (F CFA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>208 129 300</td>
<td>23 185 606</td>
<td>51,32</td>
<td>10 681 195 676</td>
<td>1 189 885 278</td>
</tr>
<tr>
<td>1999</td>
<td>210 084 600</td>
<td>29 213 341</td>
<td>51,32</td>
<td>10 781 541 672</td>
<td>1 499 228 685</td>
</tr>
<tr>
<td>2000</td>
<td>130 239 100</td>
<td>137 367 904</td>
<td>86,94</td>
<td>11 323 530 017</td>
<td>11 943 337 908</td>
</tr>
<tr>
<td>2001</td>
<td>50 474 000</td>
<td>245 828 658</td>
<td>98,34</td>
<td>4 963 486 975</td>
<td>24 174 175 643</td>
</tr>
<tr>
<td>2002</td>
<td>51 312 800</td>
<td>258 623 381</td>
<td>79,21</td>
<td>4 066 156 643</td>
<td>20 485 989 019</td>
</tr>
<tr>
<td>2003</td>
<td>88 682 790</td>
<td>232 186 650</td>
<td>79,84</td>
<td>7 080 064 442</td>
<td>18 536 814 699</td>
</tr>
<tr>
<td>2004</td>
<td>91 104 581</td>
<td>244 984 926</td>
<td>89,40</td>
<td>8 144 749 541</td>
<td>21 901 652 371</td>
</tr>
</tbody>
</table>

Source: Morillon Virginie and Afouda Servais, 2005: Smuggling of petroleum products between Nigeria and Benin (vice or virtue for Benin’s economy)

Analysed from this angle Informal Cross-Border Trade can be considered as a gravedigger for national economies. This explains quite well why authorities at all levels fight the traffic or seek to formalize informal activities.

**An activity at the origin of many social problems**

Informal cross border trade is also a carrier of social destabilization germs in border areas where it is well developed at many levels, two of which are worth mentioning:

Insecurity due to small arms and drugs trafficking. As it can be guessed, West Africa, in favor of tension hotbeds in the area, is essentially a circulation zone for small arms and ammunition of all kinds. Such is also the case for drugs. The development of informal cross-border trafficking of these two products is a source of danger to the region’s populations: proliferation of tension hotbeds, increase in raids on main roads, armed robberies, etc.

Informal Cross-Border Trade also brings up another crucial issue, that of public health. The strong involvement of women in this trade and the high mobility and absence from their homes of main stakeholders are a concern
about the spread of certain pandemics. Informal Cross-Border Trade raises the question of how to reconcile the exercise of an income-generating activity outside the household with women’s dignity. Indeed, public opinion has a negative perception of the strong involvement of women in Informal Cross Border Trade because of their exposure to promiscuous practices. Certain types of relationships women have with their interlocutors are considered as prostitution, disguised debauchery. Women are sexually harassed and sometimes have to minimize transaction costs with sexual favours they grant to their multiple interlocutors. In southern Africa, where better investigations on the issue are available, over 45% of women engaged in informal cross border trade admit resorting to this practice to lessen the burden of transaction costs in their operations. This is a reality which is not unique to Southern Africa, but found throughout Africa.

Such a situation has a major implication: it raises a more comprehensive public health issue, especially since border areas where cross-border informal trade is highly developed are today areas where HIV prevalence is the highest. This is attested by epidemiological studies conducted in many countries. This is particularly true of the coastal corridor linking the cities of Nigeria to those of Côte d’Ivoire going through Benin, Togo and Ghana.

However, some analysts refuse to endorse this very dark vision of informal cross-border trade for several reasons.

In the West African context, marked by the distribution of socio-cultural groups into several states, informal cross-border trade is a kind of reminiscence of old secular traditions uniting peoples separated by colonial partition lines. It constitutes a form of continuation of trade relations and thus strengthening solidarity between peoples divided by political boundaries.

Similarly, in the context of West African countries where development gains are not evenly distributed, where prevail monopolies that most often consist of pension situation in favour of governments, the informal sector constitutes a self-defence activity for populations.

Finally the great formalization of national economies, high illiteracy rates, low training suitability to real labour market needs, low qualifications of many active population members, contribute to the marginalization of a significant proportion of the population. These people find in the informal sector a shelter that, in one way or another, has eventually emerged as an essential component of the countries’ economies.
Viewed in this light, and given the results of available studies, Informal Cross Border Trade plays a number of significant functions, contributing to the dynamism of the different countries’ economies. Among the most cited functions, three occur most frequently: regional planning, improving the stakeholders’ lives, enhancing trading networks, all this contributing to ensuring a peaceful social climate in many countries.

**Informal Cross Border Trade: a regional planning instrument**

This function comes under the more comprehensive polarization function carried by trade in general. Informal or rather non-registered Cross-Border Trade is considered as a key factor in structuring space and territorial differentiation. Indeed flows (origin and destination of traded goods) determine influence and polarization areas of physical markets that operate in border areas. Professor IGUE, 1985, shows that in the case of Nigeria and its neighbors, sale points, trans-loading points, warehouses related to their size, their geographical location, polarize spaces, given territories, by the impact of their activities.

Cross-border trade has always been a source of creation of transition cities: caravanserais during the pre-colonial period and now a kind of twin markets located on both sides of the border. For the symmetrical arrangement of twin markets located on both sides of the border, cross border trade is a powerful factor of space structuring. The intensity of activities, transaction modes can lead to a kind of “atypical territories” that IGUE, 1985 calls “national peripheries” structured by exchanges. These areas sometimes work as No Man’s Lands (non-distinctive use of the two counties’ currencies, smuggling of all kinds, intense pendular migration of populations, but also omnipresence of a high criminality etc.).

These national peripheries are today areas conveying another equally important phenomenon: rapid urbanization and intense personal relationships embodied by an impressive pendular migratory movement and the establishment of all kinds of services. Apart from warehouses, these communities are home of many other support services to trade such as banks and communications. Thus Informal Cross-Border Trade has become a powerful urbanization factor. This is testified by the rapid development of the towns of Malanville and Gaya at the Benin-Niger border, of Aflao at the Togo-Ghana border, and of Bittou and Cinkansé between Burkina Faso and Togo. Through the intensity of personal relationships they underlie, they contribute to bringing together populations from twin towns.
In the West African context (balkanization of socio-cultural groups, fragmentation of monetary and trade policies, recurring challenge of borders inherited from colonization), national peripheries can be considered as *Shared Development Spaces*, which certainly are not well internalized by governments.

Trade intensity which is often inversely proportional to the degree of harmonization of economic policies, makes (IGUE J. and EGG J), say that informal cross-border trade has something of the nature of integration from the bottom or by the people, in opposition to integration processes led by governments which are struggling to produce results that meet people’s expectations. It is true that some analysts deny border trade of this function. Daniel Bach, 1993, noted that “in the Eastern subspace (Nigeria, Niger, Benin, Cameroon and Chad), the asymmetric polarization effects conveyed by trans-state regionalism take the form of a progressive integration of its border peripheries by Nigeria. Nevertheless accounting for this process in terms of integration by the market comes from a misuse of the usual meaning of the expression that generates a semantic confusion” 6.

**Informal Cross-Border Trade as a factor of sociability**

The second category of function played by informal cross border trade is its ability and capacity to structure social relationships between the different stakeholders. This function is widely discussed by anthropologists, sociologists and historians (Meillassoux, C, 1971; Polanyi, 1972). These authors make the anatomy of social relations in the process of cross border trade. They see cross-border exchanges as “sets of social relations around the exchange structured by classes and institutions.” They thus emphasize the market stakeholders’ organizational forms. To them, cross-border exchanges are characterized by the prevalence of multiple forms of strongly socialized coordinations (Agier, M, 1983, Gregory, 1986) based on the fact of belonging to the same religion (Islam) or the same ethnic group (Agier, M, 1983, GREGOIRE, E, 1986 and IGUE J. 1985).

Informal cross-border business transactions thus benefit from trust-based contracts that make it possible to form sometimes trans-state networks (Bach. D, 1986) and constitute the base of the market. The networks’ density, their

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6 Bach (D) 1993, regional institutions dealing with the effects of regionalism destructuring trans-state, communication at the regional meeting in Cotonou on “Challenges of economic cooperation between Nigeria, Benin, Niger, Cameroon and Chad, organized by the unit CINERGIE and the Club du Sahel, May 6 - 9
organization level and the role they play in exchanges, have led some authors (EGG and IGUE, 1990) to assimilate the coordination forms that result from their actions to “integration from the bottom”, i.e. the one that is driven by populations.

In West Africa networks are led by a half-dozen socio-cultural groups more or less specialized around transactions of specific products. The Peuhl network operates in the West, around the Senegambia while the Centre is the chosen field of Dioula (cola) and Mandingue networks and in the East, cross border transactions are mostly led by the Hausa and Yoruba networks. The Ibo network has been booming since the early seventies, which mark the spin of a large Diaspora of this socio-cultural group in West Africa. The common feature of most traditional networks is the strong islamization of their members. Belonging to the same ethnic group and to the same religion constitutes guarantees of mutual trust and even barriers to entry into the network for non-natives.

Elsewhere, and particularly among the Hausas from Niger and Nigeria, the marriage of the Islamic religion and trade has helped shape the society into different social groups, castes, from the chief to the slave. (GREGOIRE, E, 1986, Malam, 2008). Among the Yoruba, it ‘gave birth’ to a business elite in Benin, the “Male” (IGUE 1985). In Nigeria and elsewhere, it has mostly given rise to associations of citizens from different cities.

**Informal trade: a way of securing social peace**

In West Africa where the phenomenon of poverty affects sometimes more than half the population of certain countries, Informal Cross-Border Trade works as a safety valve. Actually one of the major functions of Informal Cross-Border Trade is its contribution to resolving two major problems faced by vulnerable groups, especially women and unemployed youth, and even the disabled: poverty and unemployment.

Indeed, if not a real development instrument, informal cross border trade is undoubtedly an important source of wealth and employment creation, thereby contributing to minimizing social tensions.

The ability to create jobs is the most visible one. In all countries the activity attracts a large number of active people in search of stable employment. In addition to the traders themselves including in all countries a significant portion of women and youth, cross-border trade also mobilizes many sustaining service workers in transport, packaging and intermediation.
(Soulé, 1994) and (Afouda et al 2007), were able to show that oil products smuggling between Nigeria and Benin occupies over 10,000 people7 essentially composed of youths, women and disabled people. A portion of oil products is transported by disabled people on tricycles designed for this purpose. They rely on their disability to minimize repression of this activity from control staff (customs, police and gendarmerie) and go past them every day and at their full knowledge.

There is no possible comparison between incomes derived by actors and the guaranteed minimum wage. They were in 2005, the equivalent of three times the guaranteed minimum wage for dealers and the double for retailers composed in large part by women.

A survey conducted in 2008 by UNIFEM on women’s informal cross-border trade in Liberia has shown that “the average weekly earnings generated by these transactions is 972 dollars for Liberian women against 834 dollars for men. Companies are usually small, and as a result, they generate low or modest incomes much of which is used in family expenses.”

**Future challenges for informal trade in West Africa**

Informal Cross-Border Trade thrives from incompleteness and failures of public policies, both in countries and Regional Economic Communities (ECOWAS and WAEMU) that are responsible for building regional integration.

At the state level, the informal sector in general and cross-border trade derive their strength from multiple factors including the nature of economic systems in place. These essentially liberal economic systems convey elitist shackles (strong regulation and centralized decision-making) that contribute to the marginalization of a very important fringe of the population that takes refuge in hybrid sectors (mixture of traditional and modern), i.e. the informal sector.

The directions taken by current policies, even the ones that display seemingly noble ambitions such as those presented by growth Strategies for poverty reduction do not seem to offer guarantees of inclusive policies for all the marginalized.

The private income economic policies of certain states, the resources of which are indirectly supplied by informal trade appear as formal endorsements of informal cross-border trade continuation.

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7 This number represents over 20% of Civil Servants in Benin in 2007
So the future of informal cross-border trade is played at the level of structural reforms undertaken at the regional level, and new forms of economic relations the region is negotiating with its traditional and new partners.

**Convergence of macroeconomic policies and the future of Informal Cross-Border Trade**

Following WAEMU, ECOWAS is engaged in reforms that will lead in medium term to the creation of a common currency and in short-term to the establishment of the common market.

The creation of a common market the first step of which will be the establishment of the Customs Union, accompanied by a harmonization of domestic fiscal policies and subsidy policies should help reduce the influence scope of informal cross-border trade.

The establishment of the common external tariff should help ruin some whole sectors of informal cross-border trade, including re-export trade which currently covers a wide range of products. This trade is booming between the countries with significant disparities in trade policies.

Obviously the harmonization of macroeconomic policies and the improvement of transport and communication infrastructures will reduce informal cross-border trade prevalence scope and extent.

Actually, like any customs union, the ECOWAS CET under construction is expected to contribute in strengthening commercial relations among member countries of the community in two ways: trade creation or expansion, reorientation of trade flows.

In the case of trade creation or expansion, countries will have to fully implement the principle of comparative advantages. They will stop producing items for which they cannot offer better prices at the regional level, to import them from more competitive countries.

In the case of reorientation of trade flows, a member ceases to import a product from “outside”, i.e. a third country, not member of the community, to purchase it exclusively within the community.

The CET should help eliminate private income situations that ultimately power informal cross-border trade.
**Informal trade versus free trade agreements**

The West African region is currently negotiating an economic partnership agreement with a very strong commercial connotation with the European Union within the framework of the Cotonou Agreement implementation. This agreement is unlikely to have a direct impact on informal cross-border trade. Indeed the conclusion of this agreement must be preceded by the implementation of the customs union whose common external tariff will already have helped eliminate the distortions and disparities in tax policy, real causes of informal cross-border trade.

However, the situation is still unclear with the region’s new trading partners, including China and India, South East Asian countries in general. The development of trade with these new partners brings new abnormal practices that fuel informal cross-border trade. Regional stakeholders use these partners’ manufacturing units to copy many products stamped with the seal of companies in the region. These products are landed in several harbours and then “re-exported” to the neighbouring countries as products originating in the region.

Regional traffic in counterfeit goods is blooming in the region and there is no certainty that current efforts to build the regional market can really help eradicate it completely.
Conclusion

Overall, informal trade still represents a significant part of the West African market. Its share of intra-community trade exceeds 50% of the volume and value of intra-community commercial transactions of certain countries in the region.

Having long been confined to local product transactions, Informal Cross-Border Trade has recently experienced some sophistication with the development of fraud and smuggling of products that are often not generated by local or regional production units.

Beyond its being non-registered, it’s the perverse effects of this type of trade on the economies of states and its impact on the emergence of an integrated regional market, which are surveyed here. Actually, informal cross-border business transactions are a negation of efforts in building modern economies, strengthening the regional integration process, even though they still are of significant help to involved stakeholders.

Its future depends less on repressive measures deployed by government systems, than on the implementation of major reforms of economic systems to adapt it to the environment context and the culmination of convergence efforts of current ECOWAS macroeconomic policies.


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Regional industrial policy and private sector development in West Africa

Guillaume GNAMIE-N’DRI
Economist, Statistician

Introduction

After independence, most of the states of West Africa embarked, like other developing countries, in import-substitution strategies to lay the basis for their industrial development. But after several decades of implementation, industrial policies implemented by states in the region have not produced the desired results.

These failures should not make us forget that industries can and should play an important role in eliminating poverty. Indeed, industries create jobs, boost incomes, increase the value of agricultural products, promote technological progress, opening up economic opportunities for women and generate revenues that allow governments to reduce and eliminate poverty.

The fierce competition at the international level and in particular the advent of the EPA calls for a densification of West Africa’s industrial base for fear it should disappear.

However, as the UN Secretary General, Ban Ki-Moon, said in November 2009:

“Armed conflict, inadequate infrastructure, weak governance, limited financing and technological abilities, and policies that stifle entrepreneurship, limit competition and raise the cost of doing business are hindering the industrialization that Africa needs to fully join the global economy.”

It is therefore necessary that vigorous actions aimed at eliminating all obstacles to industrialization be undertaken within in order to speed up in West Africa.

It is for all those reasons that ENDA Third World along with its partners in the West African Platform of Regional Civil Society Organizations on the Economic Partnership Agreement (EPA) wants to revive the debate on the
issue of industrialization and the development of regional private sector. West Africa has failed to produce captains of industry as those found in the developed world and emerging countries for various and numerous reasons.

The current context, marked by the need to speed up regional economic integration to cope with both internal and external constraints, is favourable to think about the best approaches to build an effective industrial policy. That is the purpose of this analysis, which aims at assessing what has been done so far so as to draw lessons and suggest solutions.

Current Status of the evolution of industrial sector in West Africa

West Africa has had a long tradition of industrial activities. Its industrialization dates back to colonial times. But one has to confess that results have not always been successful. The industrialization process can be split into 3 main phases, namely:

- The colonial period;
- From independence to the 1970s;
- From the 1980s up to now;

Before independence: the colonial period

During the colonial period, the industry in West Africa was in its infancy and was mainly made of manufacturing factories specialized in:

- The processing of raw products for export;
- The bulk production of consumer goods with low value (in areas where there was a high concentration of settlers);
- The manufacturing of small equipment for the mines.

Indeed, history books on the region give numerous examples of traditional activities, manufacturing and medium-sized agro-industrial companies, especially in milling, extraction and refining of edible oil, brewing, tanning, soap factories, metal carpentry, spinning and weaving of cotton as well as the production or assembly of various goods (ranging from the manufacture of matches, cooking utensils and clothing to the assembly of agricultural machinery and cars).
Market fragmentation resulting from decolonization has undermined the financial viability of many activities that were undertaken during the colonial period to meet the demand of the colonial market as a whole. Thus, several investments made in Senegal in the 1950s, have lost their competitiveness in the wake of the dismantling of the colonial customs union that French West Africa constituted. Indeed, this new situation drastically reduced the possibilities for the Senegalese industrial production to be sold in the sub-regional market.

From independence to the 1970s

If it is true that some countries have benefited from the colonial period with the establishment of basic infrastructure (Côte d’Ivoire, Senegal, Ghana, Nigeria), in other countries such as Mali, Burkina Faso and Niger, “modern industry” was virtually nonexistent before independence.

Thus, in the wake of independence which occurred for most countries of West Africa in 1960, states will try different models of industrial development.

With very high protection schemes and a consequent increase in direct investment from the state, international trading companies were encouraged to produce locally.

Medium and large-sized companies have been set up by various governments in the second half of the 1960s and in the early 1970s. Those were in companies especially in processing local products for domestic consumption (cigarettes, canned tomatoes and fruit, matches), but also for export (textiles, peanut oil, leather). Other industries established in the region during the 1960s and 1970s, were specialized in processing imported intermediate goods.

The implementation of this model showed promising results. Indeed, an 8% increase in the value added of all the countries of West Africa was recorded during this period.

However, after independence and following the emergence in the region of similar manufacturing activities, local businesses had to roll back on domestic markets except for traditional export products and that resulted in a production overcapacity. In Côte d’Ivoire, they have grown faster than industries based on local raw materials until the early 70s, when this trend was reversed due to the saturation of the small local markets.

The 1970s showed it was not enough to replace imported consumer goods by local products to secure economic independence and technical
efficiency. Indeed, these industries were heavily dependent on imported inputs, spare parts and equipment. They were vulnerable to shortages in foreign currency due to declining prices of export commodities and rising oil prices.

In African countries with low incomes, the growth of value added in manufacturing industries fell to 2% per year during the first half of the 70s, to become negative in the second half. In medium income oil-importing countries, it went from 8 to 4% a year for the same period. Only oil-exporting African countries were able to sustain the growth of their manufacturing industries during the 70s at a rate of 9% per year.

Thus, we witnessed a “deindustrialization” process, that is to say a decline in manufacturing output in some countries during the 70s and early 80s. The worst affected countries included Benin, Ghana, Liberia, Togo and in a few countries, the utilization capacity fell below 30%.

Some policies (high protection, regulation and directed investment) have contributed to those difficulties and to other more serious problems such links with domestic economy, high costs of inputs, lack of incentives to improve productivity.)

Thus, in the mid-1980s, there was a slowdown in the industrial sector accompanied with a low growth in a context of economic crisis.

It is in that very difficult context for African states that structural adjustment policies imposed by the Bretton Woods institutions were implemented.

**Since the 1980s**

Structural adjustment programs which were then developed were aimed at restoring the financial viability of countries through:

- The implementation of stabilization measures aimed at reducing government deficits (reduction of operating expenses, wages, etc.).

- The withdrawal of state funding from productive sectors;

Those programs have led to the dismantling of protective measures and the wide liberalisation of economies (liberalisation of prices and activities, introduction of competition, etc.). But these measures seem to have come too quickly to enable industries to adapt.
Unable to cope with the highly global competitiveness, at a time when investments in Africa were also low, many new industries in Africa have had to reduce their ambitions or close down.

African exports of manufactured goods have fallen dramatically. In some countries such as Ghana, which in the late 1980s had experienced a significant increase in industrial production, global competition has led to a steady slowdown of industrial growth.

The situation of the industrial sector in West Africa is characterized by:

- A manufacturing sector dominated by agro-industries whose 3/4 of the value added comes from four (4) countries: Cote d’Ivoire (26%), Nigeria (24%), Senegal (14%) and Ghana (12%).

- A low diversification: 2 sectors (food and textiles) account for two thirds of manufacturing value added;

- A small internal market and strong competition from similar industries in different countries;

- A weakening of local industries because of competing imports at very low prices, mainly from Asian countries;

- A small proportion of domestic capital is invested in the capital of these companies, showing the weak managerial capacity of the local people;

- A small development of support industries such as packaging and agricultural machinery.

On the whole, the industrialization of West Africa was made based on industries specialised on natural resources and import substitution industries. Resources were encouraged to benefit from comparative advantages in terms of primary exports, especially in mining, agriculture, forestry and tourism. through tariff protection, which allowed it to compete with a foreign industrial production which was relatively more efficient. To date, little progress has been made with regard to extroverted industrialisation, that is to say open on the world market, although embryos of such companies are starting to take shape.

Just like elsewhere, this industrialization has resulted in a combination of often very expensive measures based on high protection costs, a very uneven incentive structure which does not meet any specific strategic imperative in the long-term and very low awareness on the negative effects of import substitution on other sectors.
Analysis of industries’ contribution to the creation of wealth in West Africa

The driving activities of the ECOWAS economy are those from the primary sector (36.5% of GDP) and the tertiary sector (33.6% of GDP) compared to the secondary sector (29.9% of GDP). As a result, the economy of the sub-region is heavily dependent on changing climatic conditions in the Sahelian countries.

Economies of the West African region are also affected by:

- Subsidies to farmers in Europe and North America;
- The global decline in the prices of raw materials;
- The rules of global trade, which are used by some countries to reduce African exports.

West Africa’s secondary sector (manufacturing, mining, energy and construction industries) employs between 2 and 10% of the workforce across countries. On average, it contributes for 30% of GDP in the region. Nigeria, with a contribution of 41.4% is the country where the contribution of the industrial sector is highest. The lowest contribution is from Guinea Bissau with 12.9%. The contribution of the manufacturing industry to the sub-region’s GDP is only 7.6%. This low contribution from the manufacturing industry shows that the natural resources of the sub-region, especially agricultural production, are not valued enough.

For comparison, it is worth noting that the contribution of the secondary sector to the GDP in South Africa, Malaysia, Mauritius and Tunisia varies between 34% and 47% of the GDP in those countries. There is also a strong contribution of manufacturing to the GDP with a rate of 20 to 33%. Those countries highly value the industrial exploitation of primary commodities, mainly those from agriculture and the development of the High Tech sub-sectors (biotechnology, ICT, etc.).

Moreover, the secondary sector in some of these countries is backed up by commercial exports of semi-finished and finished products and the services sector is being modernised (contrary to ECOWAS where the informal sector is predominant in the services sector). In Malaysia, the secondary and tertiary sectors are almost at the same level (47% and 43% respectively) and represent the best performing sectors of the economy of this emerging country.
The contribution of the mining sector accounts for 7.5% of the GDP. It is marked by a gradually increasing production with very weak processing at the local level unfortunately. The energy sub-sector contributes for 11% to the GDP owing to the regional oil production in Nigeria (10% of the GDP of West Africa), while the construction sector represents 3.8% of the regional GDP.

**Graph 1: Breakdown of regional GDP by sector**

The disparity thus observed in the contribution of the secondary sector to the formation of the region’s wealth hides different realities as indicated in the table below.
Table 1: Share of industry in regional GDP

<table>
<thead>
<tr>
<th>ECOWAS Countries</th>
<th>Industry Value added (in millions $)</th>
<th>Share of Industry in GDP (%)</th>
<th>GDP (in millions $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>575,20</td>
<td>13,40%</td>
<td>4 292,54</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>1 272,00</td>
<td>22,40%</td>
<td>5 678,57</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>288,50</td>
<td>16,70%</td>
<td>1 727,54</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>5 920,40</td>
<td>25,30%</td>
<td>23 400,79</td>
</tr>
<tr>
<td>Gambia</td>
<td>101,80</td>
<td>15,10%</td>
<td>674,17</td>
</tr>
<tr>
<td>Ghana</td>
<td>4 201,20</td>
<td>26,10%</td>
<td>16 096,55</td>
</tr>
<tr>
<td>Guinea</td>
<td>1 405,80</td>
<td>34,50%</td>
<td>4 074,78</td>
</tr>
<tr>
<td>Guinea Bissau</td>
<td>51,50</td>
<td>12,90%</td>
<td>399,22</td>
</tr>
<tr>
<td>Libéria</td>
<td>136,50</td>
<td>18,60%</td>
<td>733,87</td>
</tr>
<tr>
<td>Mali</td>
<td>1 515,70</td>
<td>24,20%</td>
<td>6 263,22</td>
</tr>
<tr>
<td>Niger</td>
<td>467,70</td>
<td>17,30%</td>
<td>2 703,47</td>
</tr>
<tr>
<td>Nigéria</td>
<td>91 334,60</td>
<td>41,40%</td>
<td>220 614,98</td>
</tr>
<tr>
<td>Senegal</td>
<td>2 764,70</td>
<td>22,90%</td>
<td>12 072,93</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>444,90</td>
<td>23,80%</td>
<td>1 869,33</td>
</tr>
<tr>
<td>Togo</td>
<td>505,40</td>
<td>24%</td>
<td>2 105,83</td>
</tr>
<tr>
<td><strong>Total ECOWAS</strong></td>
<td><strong>110 985,90</strong></td>
<td><strong>36,66%</strong></td>
<td><strong>302 707,80</strong></td>
</tr>
<tr>
<td><strong>Total Nigéria excluded</strong></td>
<td><strong>19 651,30</strong></td>
<td><strong>23,94%</strong></td>
<td><strong>82 092,82</strong></td>
</tr>
<tr>
<td><strong>Total UEMOA</strong></td>
<td><strong>13 072,60</strong></td>
<td><strong>22,97%</strong></td>
<td><strong>56 916,57</strong></td>
</tr>
</tbody>
</table>

Source: World Bank, our calculations

ECOWAS countries are treated differently in terms of industrial development. Three groups can be distinguished:

- The first group composed of Benin, Cape Verde, Gambia, Guinea Bissau, Liberia, Niger has a very weak industrial base (less than 20% of GDP);

- The second group which consists of Burkina Faso, Côte d’Ivoire, Ghana, Mali, Senegal, Sierra Leone, have an industrial sector whose contribution to the GDP varies between 20 and 30%;

- The third group made up of Guinea and Nigeria has an industry that contributes over 35% of the GDP. The last category represents countries
which mainly depend on extractive industries (oil for Nigeria and bauxite for Guinea).

**Constraints to industrial development in West Africa**

Despite continued efforts to improve the business environment industrial development in West Africa’s countries the States of West Africa is still faced with objective constraints which explain the little interest shown by investors, particularly those from abroad.

Apart from socio-political instability in the countries of the region, constraints linked to industrial development in West Africa are both internal and external to companies.

**External constraints to enterprises:** they are of various types. These include:

- A failing legal and judicial environment. This results in corruption, fraud and political uncertainty (permanent threat of riots during elections), which undermines existing businesses and make countries not conducive to investment. This results in weak levels of both domestic investment and foreign direct investment;

- An unfavourable taxation environment and oppressive and burdensome taxation for formal businesses and not adapted for certain sectors. The tax and administrative mechanisms that regulate the establishment and operation of enterprises are exceedingly complex and affect their functioning. Although the normal tax regime is not very restrictive in theory, its implementation is extremely complex because of the existence of numerous additional taxes. It also notes that the high indebtedness of the States is not conducive to investment because of the fear of a service funding through additional taxes;

- Difficulties in having access to funding. Industries (like the whole West African economy in general) meet huge difficulties in accessing financing from banks. And where it is available, its cost is high, which hampers the competitiveness of businesses. According to studies carried out by the Central Bank of West African States (BCEAO), banks indicate that the high cost of credit is mainly due to the difficulty of assessing risk. Despite progress made in recent years in financing the private sector (stock exchanges, increase in the number of financial institutions, financial sector restructuring, etc.), what is noted is the continuing shortage of financial resources in the long term, the excessive warranty requirements, the limited
range of financial instruments available and prohibitively high interest rates charged by financial institutions (WACIP Introductory Report).

Strong intra-community competition because of the great similarity in the region’s industries (same sectors, same transformation segments, etc.). Thus, instead of being complementary those industries are competing which weakens their expansion.

- The low competitiveness of existing industrial units and the strong competition of products from emerging countries (India, China, Brazil). We have been witnessing in the past few years an influx of Asian products on the markets of ECOWAS states. The same is valid for products from Brazil and India. These products are sold much cheaper than locally manufactured items (BNETD, 2009). Conversely, costs of production factors have become higher in all ECOWAS states. They make the price of products more expensive and affect competitiveness. Thus, some local production units are slowly but surely disappearing.

**Inadequacy and poor quality of ECOWAS economic infrastructure:**

Despite some progress, West Africa, is suffering from a lack of development infrastructure development at all levels: in terms of quantity, quality, precarious cost and access conditions. These relatively poor infrastructure in the fields of telecommunications, energy, transport, water, sanitation lead to high costs and risks for investors. Moreover, the unreliability of infrastructure services also affects the competitiveness because of interruptions in production, delivery schedules that are not respected and the general inability to communicate in a reliable way. Such shortcomings limit the development of industrial products with high value added that need to be delivered promptly.

Poor infrastructure hampers the potential for industrial development and marketing of states and particularly those that are landlocked. The consequences of this situation are many and include high transport costs, lengthy delivery times for goods and precarious security conditions.

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1 These countries benefit from effects of scale due to the relocation of production systems from developed countries to least developed countries (LDCs).

2 African countries with a coastline spent an average of 7% of their export earnings on transport while landlocked countries spend up to 15% for a global average of 4%.
Inadequacy between the school system and the needs of manufacturing industries.

In most countries, there is a shortage of human resources trained for industries. The school system is totally disconnected from business realities. Indeed, what has been found when it comes to training is that most schools offer trainings in a limited number of specialties (accounting, finance, computing management, communication, marketing) which do not offer a diversity that enables to meet needs in terms of highly qualified human resources for manufacturing companies;

The low ownership of powerful technologies (acquisition, maintenance) due mainly to lack of information technology.

That can also be explained by the managerial capacity of business leaders in the region. Indeed, we note that inter-company imitation of innovation is imperfect because of differences in managerial skills.  

National markets are too small and the trade volume at the regional level is too low. Intra-regional trade is highly affected by red tape, customs hassle and the proliferation of roadblocks.

Those road harassments are an impediment to intra-community trade. According to the Activity Report of the Observatory on Abnormal Practices (OPA), in the second quarter of 2009, road governance was at its worst. The three indicators are all in red with occasional unacceptable unprecedented leaps.

Indeed, practices harmful to interstate smooth traffic were amplified because of the “high cost of living” caused by the global energy and financial crises. Everyday life for truckers on interstate roads was very difficult. Indeed, the levels of illegal levies have increased by over 20% from 92,400 FCFA francs in the first quarter of 2009 to 110,605 FCFA francs in the second quarter of the same year, that is to say a raise 18,205 FCFA in absolute value. Fake incidental expenses inherent in the implementation of the control of axle load represented 38% of the total amount collected on the Tema-Ouagadougou corridor and 30% on the Ouagadougou-Bamako corridor. In terms of barriers, the total number of check-points on all the traditional corridors increased by

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3 See The Firm Theory (Holmstrom, 1999; Rajan and Zingales, 2000).

4 Number of checkpoints (1), Unlawful levies (2) and checking time (3)

5 Théma (Ghana) - Ouagadougou (Burkina Faso), Ouagadougou - Bamako (Mali) and Lome (Togo) - Ouagadougou
9% rising from a total of 76 %, in the first quarter of 2009 to 83 % in the second quarter of 2009.

Some policies: strong protection, regulation and directed investment, wage controls and regulations. The low competitiveness of intra-community industries involve having to resort to strong protection to help them survive. Effective protection rates remain high for some products in West Africa. The EPT fell from 50 to 30% on average but still remains very high.

Internal constraints

Internal constraints are those that are related to the internal environment of industries. Many factors can explain industries performing poorly:

- The structure of corporate governance in Africa is generating value destruction (Sekou Sangare, 2002): The strong connection between politics and business executives\(^6\) translates into a lack of real competition in the leaders’ market. This situation leads to the introduction of personal pension schemes to the detriment of other stakeholders of the company and prevents the company from creating value over the long term;

- Most of the time, absence of quality management in companies which results in the poor quality of manufactured goods which are produced.

Technical standards and regulations, which play a major role in trade, are today the only way of guaranteeing that products will have access to the international market. The development of industrial production is linked to companies’ ability to sell their products. We note that the access of companies from ECOWAS states to markets in developed countries is limited by their inability to comply with required standards\(^7\).

The high cost of building code compliance and, in some cases, ignorance of regulations on quality and standards contribute to marginalising them. Standardization mechanisms in ECOWAS states are generally faulty with laboratories lacking financial, material and technical means. Meanwhile, there are still many jurisdictional disputes between these mechanisms.

\(^6\) Thus, so many conflicts and a great instability of business leaders at the discretion of cabinet reshuffles are noted.

\(^7\) BNETD Survey, 2009
Another factor that hampers exports of companies in the UEMOA zone to developed countries is packaging. The problem is at two levels. On the one hand, are the mandatory quality standards applied to them and on the other hand, packages are not attractive enough to promote products. The lack of equipment, such as packing stations and fragmentation of the production does not enable to have products which comply with the high standards of importing countries.

Production equipment is most of the time old and poorly maintained.

Poor maintenance is linked to the unavailability of spare parts which have to be imported. When a failure occurs manufacturers have to order the spare parts and wait for months before they are delivered. This results in the complete degradation of certain facilities. That combined with a battered local market and difficult access to external markets (both at the ECOWAS and international levels) lead to the underutilization of existing industries. Thus, two thirds (2/3) of industries are operating at less than 50% of their capacity in aggravated situations in some countries.

- High costs of acquiring inputs for industries, as well as those produced in the ECOWAS as those which are imported;

- Owing to the many constraints, states have implemented various solutions to boost but they often ended up being in competition with one another:

  - Creation of agencies for the promotion of investment and exports;
  - Development of the investment code;
  - Adoption of structural and sectoral development programmes for the private sector, competitiveness, the financial sector, etc. (Structural Adjustment Programme for Private Sector Competitiveness, Financial Sector Adjustment Programme,...);
  - Drafting of an industrial development steering scheme and of a development programme for the private sector;
  - Withdrawal of the state from productive sectors (privatisation, liberalisation of monopolistic sectors, etc.).

At the regional level, common industrial development policies have been drafted. One of them is the Common Industrial Policy (CIP) for UEMOA and the West African Common Industrial Policy (WACIP).
**West Africa Common Industrial Policy (WACIP): Strengths and Weaknesses**

Beyond national initiatives aimed at developing the industrial production base, ECOWAS has inspired a community action. A common industrial policy (WACIP) has been set up within the framework of West African integration. The policy’s objectives are to:

- Broaden the region’s industrial production and export base;
- Increase the productivity and competitiveness of intra-community industries;
- Progressively increase the development of local resources;
- The integration of local, national and international value and supply chains;
- Job creation;
- Participation in poverty reduction;
- Industrial development that is environment-friendly.

The policy is still in its improvement stage in member states. Several meetings are still being held with the view to finalising it. But, though it is still subject to improvement, a few observations can be made on the strengths and weaknesses of this policy.

**Strengths**

The main strength of the WACIP is that it has the merit to exist. Its aim is to bring together all stakeholders towards the common goal of industrial development.

The vision of ECOWAS common industrial policy of is to **“maintain a solid industrial structure which is globally competitive, environment-friendly and capable of significantly improving the living standards of the people”**. “The various axes into which it is broken down are all relevant.

The WACIP puts emphasis on SMEs as a key component to be strengthened within the framework of industrial development. The same is valid for the informal sector for which the implementation of a strong mentoring programme should enable to accompany them in a formalization process.

Finally, the industrial policy document highlights the need to integrate industrial policy and trade policy. That orientation is all the more important as
companies in the region are faced with huge difficulties in selling their products including at the regional level.

**Weaknesses**

Beyond the strengths presented above, the following weaknesses can be pinpointed in the WACIP document:

- The coexistence of two industrial policies in the region (the CIP and the WACIP). This raises the problem of consistency and of the logic followed by the UEMOA countries. How could these countries undertake action by following multiple guidelines? In more general terms, the main problem is that of the coexistence of both institutions and hence the consistency of actions undertaken in UEMOA and ECOWAS which hinders the harmonization process and creates a two-tier phenomenon.

- The WACIP does not clearly and precisely put an emphasis on the regional issue. What industrial guideline at the regional level (what specialization for different countries and how can the WACIP be defined?)? The document, while stressing that the industrialisation policy need to be based on the principle of subsidiarity does not indicate how this principle will be implemented (What actions will be undertaken by the region and what actions will be undertaken by the states?)

- Industrialization priorities are not defined. There is a multiplicity of objectives, which does not ensure their visibility and an efficient use of available resources. The same applies to specific strategies. Resources in the region being limited, it would be wise to set priorities at the regional level and the actions to be undertaken at the regional level would focus on those priorities. Each country shall be free to develop complementary priorities; but they would have to find the means necessary for their implementation;

- The problem of consistency between WACIP and other sectoral policies (agriculture, trade, energy, etc.). The WACIP should stand as the definition of a more comprehensive policy (the common economic policy: WACEP/PECAO). But the problem of consistency of actions to be undertaken in different sectors arises.

- Lack of harmonization of sectoral industrial policies at national and regional levels. Indeed, common industrialization policies should not be a compilation addition of national industrialization policies, but should be result of a vision of industrialization for the whole region. These policies overlap one another without being complementary.
- WACIP in its current version seems to be a document of intentions. The operational variations are not clearly expressed. For example, it does not indicate how the industrial policy will be funded.

**Proposals for the development of the regional private sector**

West Africa’s industrial development requires a strong involvement of political and administrative authorities in the various countries. A set of priorities should be implemented to provide the private sector with a platform for the development industrial activities. These are:

- Investment in the production of good quality energy and at a competitive cost. Energy is a key factor in the competitiveness of industrial enterprises. In that respect, the ECOWAS Commission should play an important role because of the huge financial resources necessary. For that purpose, the interconnection of electricity and road networks in West Africa is essential;

- The implementation of the common market to expand the marketing area for the region’s products. People should move from declarations of intentions to an active phase. ECOWAS should develop a working trade promotion programme. That programme should define all the tools and concrete actions to be implemented to promote the products to be listed as priority level within WACIP;

To the common market in West Africa to be functional, it is important that the density of communication networks be increased and support infrastructure and services, including information and communication technology (ICT) be developed. The development of trans-regional infrastructure development (roads, railways, energy, maritime transport, telecommunications, etc..) will be at the core of actions undertaken in collaboration with NEPAD in order to reduce the cost of some production factors, promote the development of intra-community trade and provide national economies greater access to African and global markets.

- The establishment of the ECOWAS Common External Tariff which will enable to enhance intra-community trade.

- The mobilization of domestic savings to finance investments: savings should not be a surplus, but an expense in itself. Intensive efforts should be undertaken by monetary authorities so as to encourage banks to cut down interest rates on loans. These actions would include among others the
setting up of a database identifying citizens from the various countries;

- Promoting the creation of regional banking networks and setting up bank branches all over the region. It is about bringing banks closer to the people and making sure that the inland country has the infrastructure needed to set up development spaces. The existing financial system within the region needs to be strengthened (BOAD, BDIC, BRS, BRVM etc.) through:
  - The mobilization of credit lines at subsidized rates;
  - The creation of a fund to support industrial development within ECOWAS and whose eligibility requirements defined by the stakeholders.

- The establishment of very favourable taxation for SMEs/SMIs and of a fiscal partnership between the taxation authorities and the private sector. The profitability of an SME is very precarious particularly during the first 3 years. Furthermore, the ability of SMEs to cope with all the paperwork required for tax returns is very low. Therefore, taxation for SMEs/SMIs should be simplified by combining such taxes in a limited number of declarations. In addition, tax administrations should include in their activities coaching for enterprises in difficulty;

- Develop microenterprises, SMEs and SMIs and promote subcontracting and partnerships;

- Promote quality and compliance with standards: ECOWAS should have a proactive approach and strengthen agencies in charge of quality control (standardisation, certification and metrology) in ensuring that they are certified by international organisations (ISO, etc.).

- Develop a strategy to promote and support success stories. It is about benefiting from role models all the more so as success models are more often than not political in West Africa.

- Valuing human capital and technology. Human capital is a driving lever to speed up industrial competitiveness. A skilled workforce is part of the environment without which the private sector cannot operate efficiently. The ability to take in new technologies and new organisational practises is a prerequisite for industrial adjustment. Therefore it is necessary to promote:

  - Better adequacy between the needs of industry and what the school system provides;
- The development of vocational and technical training, through programmes at the regional level if need be;
- Increased exchange of expertise and technology among member states;
- In site training for officials and executives working in industrial development agencies and institutions. It is important that industry representatives be fully consulted when the training programmes are being defined.

**Conclusion**

This study has shown that West Africa has real assets in terms of industrialization, despite the many constraints, both internal and exogenous.

Indeed, the promotion of domestic private sector and foreign investment should be a priority for the states of West Africa if they want to reduce their marginalization. They must show their willingness to see the emergence of successful industries in the region.

Moreover, the permanent and systematic seeking of opportunities for the creation and development of industrial production to meet changes in demand at the national and international levels, the implementation of new instruments for industrial development especially free trade areas (FTAs), export offices and export insurance, the permanent and systematic exploration of opportunities and facilities for the establishment of industrial production units are all necessary actions but they are not sufficient.

Beyond national initiatives aimed at developing the industrial base, there is a community action that has been inspired by ECOWAS. In that respect, a community industrial policy (WACIP) was implemented within the framework of West African integration. Its objective is to see the emergence of efficient companies, including at the community level, able to meet the local demand under competitive conditions, stand up to international competition, the harmonisation of regulatory frameworks for industrial and mining activities including the development of a community investment code, integration of cross-sectoral trade flows etc..

The private sector is therefore the main focus of economic expansion, it should be taken with and given all the importance it requires and provided with the means to fully play its role.
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Monetary policy and regional market development in West Africa: Challenges for the CFA franc and stakes of a single currency in the ECOWAS zone

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Introduction

The development of the regional market is one of the greatest challenges of regional integration in West Africa. Indeed, the free movement of goods and services is what best reflects economic integration, far more than community legislation. In West Africa, the plurality of integration institutions does by no means entirely cover the issue of the reality of economic integration. In particular, the two major community entities, namely the pair West African Monetary Union and West African Economic and Monetary Union (WAMU/WAEMU) on the one hand and the Economic Community of West African States (ECOWAS) on the other hand, make the existence of an effective regional market, the spearhead of progress in regional integration.

In the case of the pair “WAMU/WAEMU”, the existence of a single currency, the CFA is, a priori, an asset for the implementation of a regional market in the eight countries that make up the Union since costs for economic and commercial transactions are at once reduced because there are no risks in currency change. However, when these eight countries, which are all ECOWAS members join the latter, the advantage of the single and unique currency will disappear because there will be several national currencies belonging to ECOWAS countries which are non WAMU/WAEMU members. This raises issues related to:

- the existing links between membership in a common currency zone and the level of development of a regional market;
- the compatibility between WAMU/WAEMU member countries of the other ECOWAS countries with regard to the implementation pace of an integrated regional market;
- the role of currency in the regional integration system, with a view to introducing a single currency in the ECOWAS zone.

This paper is aimed at clarifying the currency related issues in the construction of an integrated regional market, in terms of the institutional duality which exists the West African space (WAMU/WAEMU vs. ECOWAS).

The first part will present a short background of regional integration in West Africa with a focus on currency. The issue of optimality of the WAMU/WAEMU zone will play a central role given the originality of the construction of monetary integration in that area which has in common where the Franc of the African Financial Community (CFA). The second part, which is more prospective, will lay emphasis on the monetary dimension of regional integration so as to assess the links between the development of a regional market and the existence of a monetary zone, with a view to the planned introduction of a single ECOWAS currency.

Management of the CFA franc and regional market development in West Africa: from suffered to chosen extroversion

Historical background

The history of monetary relations between France and Africa highlights the fact that political rationality has always dominated economic rationality in the strict sense: before the creation of WAMU in 1962, it suggests the perfect congruence between the imperative to export raw materials at low prices from the colonies to the mainland and the gradual construction of the monopoly of the CFA franc (the currency of French colonies in Africa) on endogenous African currencies. However, as soon as WAMU was created, the objective was to keep the ties between France and its newly independent colonies. As a proof, one of the ways for the most nationalist leaders to assert their independence from African leaders was not to join those entities (that was the case of Guinea under the leadership of Sekou Touré and Togo’s Olympio) or leave rapidly (such as Modibo Keita’s Mali, which withdrew from WAMU in July 1962).

Failure to define economic convergence criteria and in the absence of a reflection on the Optimum Currency Area - which, let us recall, are usually

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1 See “History of WAMU” published in three volumes in, the BCEAO, 2000.
prerequisites for an economic and monetary union to be established – is a confirmation of the highly political nature of the WAMU/WAEMU\(^2\) from its inception. Subsequently, in the 1980s when WAMU countries were compelled to implement structural adjustment programmes, a clash which, if not formal was nonetheless tacit, was established between France, anxious to display her independence vis-à-vis Bretton Woods institutions and governments of African countries in the Franc area to reject any idea of devaluation of the CFA franc and opt for “real adjustment”. WAMU countries, because of disastrous economic fundamentals were forced to manage as best as they could painful reforms with no possibility of enjoying the degree of freedom that a monetary flexibility offers and face tough competition with English-speaking and Portuguese-speaking countries in West Africa with which economic trade are part of a deep historical trajectory.

The “monetary adjustment” or devaluation of the CFA franc which occurred in January 1994 was apparently the first act of the French renunciation, forced to accept the dictates of the Bretton Woods institutions, according to the so-called “Abidjan doctrine” (Hibou, 1995)\(^3\). Actually, France is still keeping her interests which henceforth coincide with a more or less assumed neoliberalism since the independence of the Bank of France was decided in 1992 and the Maastricht Treaty, the forerunner of the European Central Bank and the Euro, in a reorientation trend in official development assistance to countries in Central and Eastern Europe (CEEC).

Similarly, monetary authorities and West African heads of states in the WAEMU zone also benefit from the double “shield” of the IMF and the French Treasury preferring to take the posture of shareholders, good students of monetary orthodoxy “- it is the ultimate extraversion of African elites - rather than taking the risk of an independence of spirit and the responsibility that

\(^2\) The Treaty Establishing the West African Monetary Union (UMOA) date of May 1962, so that establishing the WAEMU only since January 1994. Contrary to popular belief, the Treaty of WAEMU has not replaced the WAMU. The two coexist and that of treated WAMU is still the legal basis for the strictly monetary. However, in this article we have chosen, except on rare occasions, not to mention for the period post 1994, the WAEMU for easy reading, the use of the UEMOA treaty allowing us to refer to both aspects real and monetary and financial aspects. Moreover, it is expected eventually unify the two treaties.

\(^3\) The doctrine of Abidjan, “also called” Balladur doctrine “, was theorized and applied especially in the early 90s when it was admitted that no country African Franc Zone in trouble with the conditionalities of the IMF and / or the World Bank cannot claim any financial support whatsoever from France.
goes with it, by opting for an endogenous reflection on ways for suitable monetary management in West Africa. As a case in point, one can point to the gap between the announcement effect on the creation of a single currency for West Africa (Francophone, Lusophone, Anglophone) by the year 2005 under the auspices of ECOWAS\(^4\) and the total immobility of West African governments on this issue for 10 years. WAEMU current monetary authorities are trying to implement a policy aimed at fighting inflation caused by non-monetary exogenous shocks (inflation imported from France, weather hazards, rising oil prices), with tools tailored to highly monetised economies. Similarly, the gradual liberalization process of the banking sector in the WAEMU zone in a context of excess liquidity and of extraversion of primary banks contributes in weakening the effectiveness of monetary policy. Finally, the rigid pegging of the CFA to the Euro has an obvious cost in terms of growth which we cannot do without. The experience of monetary integration in the WAEMU / WAEMU is atypical, in the sense that the introduction of a common currency in May 1962 preceded the establishment of the economic conditions of its durability, especially the effectiveness of rules laid down in terms of convergence and good macroeconomic management.

**The low efficiency of the monetary policy conducted by the BCEAO**

Monetary cooperation between WAEMU and France is illustrated by the existence of a mechanism called the “operations account”\(^5\), which helps to guarantee a fixed parity between the CFA franc and the Euro. In this context, seeking price stability is presented as an objective likely to ensure long-term sustainability of the exchange rate and the competitiveness of WAEMU economies. Moreover, this area has had to face various asymmetric fluctuations to which the common monetary policy had to respond owing to its heavy dependence on exogenous supply shocks.

A study\(^6\) focused on describing and assessing the impact of movements in the BCEAO interest rates on growth and inflation between 1989 and 1999 (Nubukpo 2002). Because of the low impact that the BCEAO monetary policy

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\(^4\) Economic Community of West African States, founded in 1975 and incorporates all of the 16 West African countries with the exception of Mauritania.

\(^5\) To understand the ins and outs of running of the “operations account” refer to the works of Hugo (1999, p. 19) and Claveranne (2005, p. 50).

\(^6\) The results of this study were validated by the monetary authorities of the area and published in the “Annual Report” of the BCEAO, 2002 b, pp. 20-21.
has on growth and inflation in the WAEMU, its main findings argue for a better understanding of transmission mechanisms of monetary policy to the real sector through WAEMU and especially for an assessment of the implications of the institutional framework for the exercise of BCEAO’s monetary policy, as well as highlighting the paradoxes implied by the context.

The lack of growth target in the missions of the BCEAO

The BCEAO has opted for an inflation target of 2% as the primary objective of WAEMU’s monetary policy. Such a choice is justified by the fact that the CFA franc is pegged to the Euro and the 2% target is what has been adopted by the European Central Bank (ECB). But in a system of fixed exchange rates with free movement of capital, it is impossible for the BCEAO to have a different monetary policy permanently different from the anchor area, that is to say the Euro zone, according to the teachings of Mundell’s “triangle of incompatibilities”. This institutional link, inherited from cooperation agreements between France and WAMU/WAEMU, is therefore a constraint for the BCEAO in its ability to choose its monetary policy objective. Indeed, in a fixed exchange rate system, inflation, owing to the loss of competitiveness it causes, contributes to the gradual deterioration of external accounts and an overvalued exchange rate, thus undermining parity between currencies.

In fact, the 2% inflation target retained by the BCEAO, which is identical to that of the European Central Bank, seems an imperative in light of the constraints induced by the existence of a fixed exchange rate between the two zones. It may not be problematic if one accepts the principle that “what is good for the Euro zone is good for the CFA zone”. However that cannot be taken for granted, with regard to the relevance of the inflation target for the Euro zone, which has been criticized by Keynesian economists, but especially here in terms of relevance for the WAEMU zone: challenges these developing countries are faced with are far more complex and the potential contribution of the currency in achieving economic growth should be the object of a broad discussion. The adoption of such an inflation target may indeed seem overly

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7 The BCEAO seeks to be more virtuous than the UEMOA, which has adopted a target of 3% inflation in the context of macroeconomic convergence criteria. One may wonder why the central bank, the BCEAO has an inflation target different from that adopted by the Council of Ministers of WAEMU / UEMOA, officially in charge of setting monetary policy in the area.

8 See Report No. 59, Conseil d’Analyse Economique (CAE, 2006)
restrictive for economies that would need a 7% GDP growth to achieve the Millennium Development Goals (MDGs) particularly that of cutting the poverty rate by half by 2015.

It is surprising that the Central Bank of the WAEMU zone (the BCEAO) is not doing more than trying to control the inflation rate, and has concern for neither growth nor economic development. Yet, empirical literature on the subject is rather prolix. For instance, one can recall that the simultaneous pursuit of these objectives has fuelled the debate on the Phillips curve\(^9\), that is on the need for arbitration between inflation and economic growth. Various empirical studies carried out particularly in transition economies (Calvo and Coricelli 1993, Coricelli 1998, Ould-Ahmed 1999) have also shown that restrictive monetary policies had a recessive macroeconomic impact\(^10\) while neo-structuralist models (Van Wijnbergen 1983, a and b) emphasize the adverse effects associated with the adoption of restrictive monetary policies in developing economies.

Thus, the BCEAO seems to favour the exchange rate target at the expense of economic growth. In that regard it is more a currency board rather than a true central bank since it has no longer control over its monetary policy. The question then to ask is why have WAEMU authorities made such a choice? The answer is twofold. On the one hand, the absence of a genuine currency and exchange rate management allows for intellectual laziness and the dominance of routine, which are bureaucratic attitudes by excellence, which have been proven by Nguessan (1996) in the case of WAEMU. On the other hand, WAEMU monetary authorities seem to have largely opted for a logic of extraversion\(^11\), by developing an almost visceral attachment to the idea of a

\(^9\) The Phillips curve captures the arbitrage between inflation and unemployment: indeed, it suggests that it is possible to obtain an additional economic growth to translate into lower unemployment through a expansionary monetary policy. Rising inflation, a consequence of expansionary monetary policy, would be the price to pay for growth. Such a sequence of mechanisms has been challenged by Phelps and Friedman, and Sargent and Wallace, who showed with the introduction of so-called adaptive expectations and rational in Keynesian models, there is no tradeoff between inflation and unemployment. The New Keynesian response was to rehabilitate the Phillips curve through the assumption of imperfect price flexibility.

\(^10\) In particular, Ould-Ahmed (1999) illustrates this finding from the analysis of two waves of restrictive monetary policies in Russia from 1993 to 1999

\(^11\) Bayart (1999) has a stimulating reflection on extraversion “dependent” of Africa and its implications for development.
“strong” CFA franc, which would mean good health for West African economies and their compliance with the international imperative of macroeconomic discipline. Thus, when WAMU came into existence in 1962, after independence, the choice that was made or imposed to have a fixed exchange rate between the French franc and the CFA franc has never been questioned. The conclusion that can drawn is that the desire to get attached to a strong currency that can be interpreted as a persistence of the empire was symbolized and openly claimed through a monetary link formalised with the ancient colonial power namely France.

Extraversion results here in a very concrete way, in the fact that the external monetary relations is ultimately more important than internal relations, as indicated by the priority given to the objective of exchange rate on growth. More precisely, the primacy of “good” international integration, symbolized by this very specific monetary relationship, enables to deal with internal relations without jeopardizing the stability and fixity of the exchange rate. De facto, this choice perpetuates the dominance of consumption over production, the implied premium in favour of consumption, which what’s more of imported consumption, another form of preference for an extroverted management of economic relations. This is of great importance in the prospect of strengthening a dynamic West African regional market dynamics. The current modalities used by the BCEAO to manage the CFA franc are antinomic to a vision of endogenous development, based on the promotion of trade between the various West African economies within the framework of an integrated regional market.

Excessive foreign exchange reserves

Successive reports of the Area Franc\textsuperscript{12} highlight the record amount of more than 6000 billion CFA francs in reserves that central banks of the Franc zone hold with the French Treasury. For the BCEAO alone, reserves represent more than 3000 billion CFA francs, or a coverage rate of monetary emission higher than 110%! It should be noted that the clauses of the “operations account” that bind the BCEAO and the French Treasury only require a coverage rate of monetary emission of 20%. It follows from this that the BCEAO is voluntarily depriving itself of substantial financial resources that could be used to boost growth within WAEMU and favours holding excessive foreign exchange

\textsuperscript{12} For a review of this report, under section entitled “Zone Franc is awash in money,” S.Gharbi, Jeune Afrique No. 2384, from 17 to 23 September 2006, P.69.
reserves whose most visible interest would be the improvement in its finances thanks to the remuneration of its deposits. Economists like Nguessan (1996) used the bureaucracy theory to try and explain the rationality of such behaviour, the fact that WAEMU monetary authorities are more interested in maintaining their personal privileges than the maximization of collective wellbeing in a context where there is no effective monitoring on how BCEAO is managed.

Yet, one has to go further and mobilize the analytical framework of political economy in an attempt to provide a plausible additional explanation for this paradox (Hibou, 1996, 1997). What is at stake in the inertia found in the answers to the “excesses” in the functioning of the operations do not primarily seem to be a support of France to developing countries with which it considers to have a particular responsibility with regard to colonial history, or a deliberate attempt to maintain a “backyard” whose poor performance paradoxically requires the establishment of large foreign exchange reserves for the sake of precaution.

We believe that it is rather the logical consequence of an extroverted management of WAEMU economies. The only fear that monetary authorities of the zone seem to have is the devaluation of the CFA franc. That of 1994 was seen as an attack on their image of “modern” central bankers, obsessed as they are, like their European counterparts, by the imperative of a “strong” currency, tracking inflation and refusing any countercyclical character of the monetary policy and also taking advantage of import facilities offered by an overvalued and stable currency. Otherwise we cannot understand why the current exchange rate between the CFA franc and the Euro remains the same, even though all serious analysts of the Franc zone, like the “Letter of the Economists of French Development Agency” of July 2006, have admitted for a few years now that the current exchange rate sharply affects the competitiveness of agricultural industries, including West African cotton industries which are suffering from a global market which has taken a long-lasting downward trend (Nubukpo and Keita 2006). Because of the depreciation of U.S. dollar vis-à-vis the Euro, the CFA franc is today an overly strong currency for the WAEMU countries, especially in view of their weakness and the challenges they have to meet.

The illusion of the “final victory” against a non-monetary inflation fuelled by WAEMU monetary authorities and the holding of excessive foreign exchange reserves by the BCEAO with the French Treasury, reflect a similar logic,
which at the beginning was imposed but is becoming more and more voluntary. The objective is to have WAEMU public institutions completely submit both to the IMF on the one hand, and to France on the other, disregarding the interests of their people. It is difficult otherwise to explain the “conspiracy of silence” prevailing at the moment, given the ineffectiveness of internal and external monetary policy carried out within WAEMU and the aberrant nature of the relationship between the CFA franc and the French Treasury (budgetary agreements), even though the French franc no longer exists and that France’s monetary policy is now decided in Frankfurt (where the headquarters of the ECB are located).

**Introducing a single currency in the ECOWAS and development of an integrated regional market in West Africa: what linkages?**

Since 1960 when most African countries south of the Sahara got their independence, the issue of monetary integration is often raised during debates like a perennial missed opportunity. Active cooperation began in West Africa in 1975 with the establishment of the Clearing House of West Africa, whose encouraging results gave rise in May 1983 to the idea of a common currency for the region. On April 20, 2000 in Accra (Ghana), six West African countries (Gambia, Ghana, Guinea, Liberia, Nigeria, Sierra Leone) announced their intention of creating a monetary union in West Africa along with the WAEMU. The project provided for a subsequent merger of the second monetary union with WAEMU, so as to match the boundaries of monetary union with those of ECOWAS. This scenario would lead WAEMU to give up the CFA franc and adopt the ECO, a new regional currency whose exchange rate system vis-à-vis the Euro and the Dollar is not yet clear.

The Accra Declaration was accompanied by convergence criteria on inflation, public finance and foreign exchange reserves. To organize multilateral monitoring of the convergence process and prepare the Monetary Union, a central bank, the WAMI (the West African Monetary Institute) was established in Accra. In April 2002, the West African Monetary Zone (WAMZ) was established, and each country pledged to maintain its exchange rate against the dollar within a fluctuation band of 15%. However at the end of 2002, after the countries noted the lack of convergence, the Monetary Union was postponed to 1 July, 2005 and convergence criteria were updated: major macroeconomic criteria and secondary criteria became more structural. Since then, not much has been done with regard to the implementation of ECOWAS single currency. Why is it so? Is the deficit problem of nominal convergence
of economies the only reason? What about the political will of ECOWAS States? Wouldn’t the creation of ECOWAS single currency promote the convergence of economies in the region instead? Finally, what causal links maintain the development of intra-regional trade and the existence of a single currency at the regional level?

**ECOWAS, an optimum currency area (OCA)?**

On a theoretical level, most research shows that if the benefits of a single currency are potentially important among West African countries (particularly in terms of regional trade and macroeconomic performance), costs are no less important (Masson and Pattillo, 2001, 2002, Benassy-Quere and Coupet 2005, Houssa 2008, Tapsoba 2009). Indeed, analysis shows that the divergence of shocks between West African economies is so important that the costs of a monetary union within ECOWAS might be more important than the expected benefits. In particular, the fact that WAEMU countries are net importers of oil, while Nigeria, the real economic giant of the zone, is rather a net exporter of oil, makes it *a priori* difficult to establish a common monetary policy within ECOWAS space, in that WAEMU countries and Nigeria are almost never in the same phase of the economic cycle when a supply shock occurs (rise or fall in oil prices).

A common monetary policy for countries with opposite phases in the economic cycle cannot be optimal/an optimum and would sooner or later lead some countries to be tempted to recover their monetary sovereignty in order to cope with the specific challenges of their respective economies. Let’s recall that the original theory of optimum currency areas (OCA) developed by Mundell (1961) considers the loss of monetary policy at the national level as the main cost for a country to join a currency union. Among expected benefits, it is worth mentioning in particular the reduction of trade related transaction costs. In addition, two conditions are necessary for the gains of a monetary union to outweigh the costs: the symmetrical nature of the shocks that affect the various economies and the existence of alternative mechanisms cover adjustments in exchange rates should asymmetric shocks occur (such as a high flexibility of markets).

However, other arguments plead for the establishment of an ECOWAS single currency. Indeed, the very existence of such a monetary union might be at the origin of the development of regional trade and thus an intra-regional way of smoothing down shocks affecting ECOWAS economies. In addition, this can
develop the concept of risk-sharing, illustrated by the increased mobility of production factors, the establishment of institutions like the compensation funds, and the development of regional financial markets.

Ouedraogo (2003), in particular, develops a stimulating analysis of ECOWAS as a potential Optimum Currency Area, based on the analyses of the “second Mundell” (Mundell 1973, 2001), who takes a different view from his 1961 article, by opting for a “relative” appreciation of the concept of optimality. Indeed, for Ouedraogo, the principle of risk-sharing, illustrated by the centralization of foreign reserves on the one hand and differentiation of the national productive apparatus which, instead of being a source of divergence in interests as to the use or not of the exchange rate as an adjustment instrument, becomes a stabilizing factor in the currency area on the other hand, contribute in pleading for a voluntary scheme in the implementation of ECOWAS single currency.

Thus, for Ouedraogo (2003, op.cit. p.135) “This comprehensive theory of optimum currency areas also enables to see the key elements of cooperation between member states of a monetary union, a cooperation aimed at strengthening or alleviating “natural” adjustment mechanisms which are the mobility of production factors and wage flexibility.” In the same line, Tapsoba (2009, op.cit.p.4) starts from the idea that the launching of a single currency reduces the incidence of asymmetric shocks and promotes the development of alternative adjustment mechanisms to monetary and exchange policies. He analyses the mechanisms that countries in West Africa can implement to reduce adjustment costs once the single currency is established. Among these mechanisms, he shows “on the one hand that trade integration significantly increases the symmetry of shocks, and on the other that the main channel of heterogeneous risk sharing is savings.”

*The development of regional market in West Africa: a prerequisite or a subsequent condition to the establishment of a single currency for ECOWAS?*

*Lessons from the WAEMU zone*

Based on the criteria underlying the optimality of a currency area, there is little doubt that the WAEMU is not one. Indeed, empirical studies show that there has been no increase in the symmetry of shocks (low correlation of shocks linked to the terms of trade). This is mainly due to the high specialization of
countries in the production and especially the export of a few raw materials, which excludes complementarity between them. In addition, there is a strong heterogeneity of economic structures in an area where three types of economies coexist: Sahelian economies heavily dependent on climatic factors (Burkina, Mali, Niger), relatively industrialized economies with a high dominance of service activities (Côte d’Ivoire, Senegal) and finally coastal economies whose dynamics is clearly driven by the import-export trade (Benin, Togo).

As regards the criterion on labour force mobility, it has remained very low despite the existence of the WAEMU Treaty which provides in Article 4 free movement of persons and the right of establishment of self-employed persons or employees. Migration seems to be more related to historical and cultural determinants than to economic adjustments. Moreover, problems in Côte d’Ivoire, the largest country in the Union economically speaking, did not facilitate the migration of workers to that country in a context of renewed nationalist illustrated by controversies around the concept of “being Ivoirian”.

Finally, the low flexibility of relative prices in structurally oligopolistic economies, the low level of savings combined with the shallowness of the regional financial market, which reduces intra-community transfers at the microeconomic level and the weakness of structural funds preventing the development of convergence macroeconomic and sectoral policies for regional hubs, have maintained the status quo in terms of transforming WAEMU into an optimum currency area. Besides, intra-regional trade has remained low, mainly because of the extroverted structure of economies (priority is given for export of agricultural and non-agricultural commodities to countries of the North), the small size of markets, high transportation costs, low productivity of capital and many tariff and nontariff barriers to trade.

In this context, why would ECOWAS, which for the most part, copies the economic structural configurations of WAEMU, succeed in becoming an optimum currency area, where WAEMU has failed?

* A single currency for ECOWAS?

Several arguments plead in favour of ECOWAS capacity to become an OCA. First, the liberal argument of market size allows to suggest that any shock to an ECOWAS economy could be buffered more quickly endogenously in the ECOWAS region than in WAEMU, owing to the large size of the ECOWAS
regional market, following in that/according to the “law of large numbers”. Then, the work of CILSS on sub-regional areas within ECOWAS show that there are historically and culturally based trade flows which are much more durable than those prevailing within WAEMU. By way of illustration, exchanges between Togo and Ghana, or between Benin and Nigeria, or between Niger and Nigeria, Senegal and Gambia, in which close ethnic, cultural and historical ties play a key role, are by far larger in volume than those that can be noted between most WAEMU member states.

Moreover, unlike WAEMU, ECOWAS has a leading country, Nigeria, potentially capable of playing the role of “lender in last resort” in the first stages of the single currency, by bearing the costs for regional coordination. Conversely, WAEMU could bring its extensive experience of managing a monetary union, including the challenges faced daily by the WAEMU Commission charged with strengthening the economic base of CFA common currency and hence the institutional innovations implemented (for example, the principle of multilateral surveillance).

Here we get to the limits of the purely economic project of creating a single currency for ECOWAS. The duality between “WAEMU country” and “non-WAEMU country” implicitly overlaps the duality “Francophone versus Anglophone countries”, the Lusophone not weighing heavily at a geostrategic level. Language differences conceal differences in perception and functional differences which are very marked. By way of illustration, one should refer to historical differences related to the creation in the early twentieth century of the Sterling Zone (Monetary Arrangement Zone in West Africa in 1913, and in East Africa in 1919) and of the Franc Zone (1939).

The autonomy granted by the British to the various colonial territories in monetary management and the responsibility that goes with it (the creation of currency boards), significantly differs with French rule on the monetary management of its colonies (establishment of operations accounts in the 1920s, and maintaining the BCEAO headquarters in Paris until 1973). In fact, one should not overlook the ulterior motives that may exist around the real or imagined stakes of creating a single currency for ECOWAS, stakes which are related to the logic of “backyards” and spheres of influence of both countries in the North (France vs. Great Britain) and countries in the South (French speaking countries vs. Nigeria).

Thus, from a political standpoint, the establishment of an ECOWAS single currency is a challenge that should be meet for several reasons: the existence
of such a currency would help to give a guarantee of free mind to Heads of in the region and of economic foundation for a regional space whose feats are mainly political (conflict resolution), contrary to its original missions (Economic Community). It would also cut the umbilical cord with France on a symbolic level, a recurring criticism levelled at the CFA franc and at WAMU/WAEMU, with a special connotation on the occasion of the fiftieth year of independence. It would also make West African leaders, through flawless governance, be accountable for all counterparties of political independence and test “in real size” their regularly displayed willingness to work towards regional integration.

From a strictly pragmatic point of view, the idea of an ECOWAS single currency pegged to a series of currencies (Dollar, Pound Sterling, Euro)\(^\text{13}\), rather than to a single currency seems to be the best option. Indeed, such an election would restore greater leeway to the region’s macroeconomic and sectoral policies, which would no longer have to follow the movement of interest rates from the European Central Bank just like what is happening now with the BCEAO, whose main objective is to defend the exchange rate between the Euro and the CFA. In fact, the issue of the “inflation/growth” arbitration in West Africa would be based on the actual characteristics of region’s economies and transmission channels between the real sector and the monetary sector, and not on seeking for a hypothetical anti-inflationary credibility whose justification is all the more weaker as the origin of inflation is not monetary within WAEMU.

In addition, the choice of being linked to a series of currencies would be a strong incentive for the geographical diversity of trade between ECOWAS countries and the rest of the world. At present, even within WAEMU, France is no longer the first trading partner of countries in the region, Asian countries now occupying the first rank. A fortiori, for a country like Nigeria, its four largest suppliers are the United Kingdom, the United States, China and Germany. In the same way, Ghana’s main suppliers are China, Nigeria, the United States and South Africa.

\(^{13}\) The Chinese Yuan is pegged to the US Dollar.
Conclusion and Recommendations

The announced creation of an ECOWAS single currency is a highly political decision, like the creation of the Franc Zone in 1939. From a theoretical perspective and an empirical one in the case of WAEMU, these two are not optimum currency areas. The same causes leading to the same effects, one may fear that the non-monetary optimality of the WAEMU zone may simply lead to the non-monetary optimality of the ECOWAS zone, with regard to the way the future ECOWAS currency is being implemented and particularly given the structural characteristics of economies in West Africa the region. It is here however, that we could learn from history to avoid falling into the same pitfalls, namely the sustainability of the extroversion of WAEMU economies, inserted in a primary way within international trade, disconnected from the reality of penalties that their low macroeconomic performance would imply, protected by a CFA currency driven from the outside and strongly encourage shareholders attitudes.

Moreover, there are major differences between WAMU/WAEMU and ECOWAS in terms of marketing channels, political and economic governance, and especially the symbolic of representations. Indeed, the CFA franc is perceived, rightly or wrongly as a persistence of the Empire, one of the last avatars of French colonialism, which persists both because of the willingness of Paris to maintain its sphere of influence in Sub-Saharan Africa, and mainly because of the voluntary servitude of BCEAO officials who are unable to design a monetary policy on the basis of WAEMU’s real economies. The question to ask is as follows: the convergence of economies it is a prerequisite or a consequence of the implementation of a single currency? Under the WAEMU zone, the answer is “neither a prerequisite nor a consequence”. For the ECOWAS single currency, the ideal would be that it be a prerequisite, if it could not be a consequence. This is crucial because, unlike the CFA franc, whose credibility is ultimately granted by the markets depending on the strength of the guarantee provided by the French Treasury, the future ECOWAS currency will a priori have no institutional base outside the ECOWAS zone. In other words, the credibility of this new currency will be that the political and economic governance of the area. The success of this jump into the unknown with no safety net, supposes that a number of factors be effective:

- An intensification of trade within ECOWAS, which favours the synchronization of business cycles in the area. In this regard, Tapsoba
(2009, op.cit. p.25) has shown that “trade integration significantly reduces the occurrence of heterogeneous shocks. As an illustration, a doubling of the average level of trade intensity would imply about a tripling of the average synchronization level within WAEMU and a fourfold increase within ECOWAS. Because of the importance of informal trade which is not included in official sources, the estimated Endogeneity phenomenon in West Africa is probably more important”;

- **An increase in risk-sharing mechanisms**, in response to asymmetric shocks. The instruments which are usually mobilized for this purpose are the pooling of foreign reserves, the mobility of production factors (capital and labour), fiscal federalism and national savings. For now, national savings, especially public savings seem to be the only risk sharing channel which is functional (Tapsoba, 2009, op.cit), which involves the need to lay special emphasis on the development of regional financial markets on which various state treasuries could issue bonds or otherwise increase their asset portfolio;

- **A deep and shared conviction of a common destiny** based on the inevitability of monetary, economic and trade integration within ECOWAS as the only possible course for endogenous development in West Africa. This is crucial to overcome the turbulences of the transitional phase, necessarily marked by temptation periods for some countries to withdraw from the Union, and for new entries and even refusal to participate for some countries, at least in the short term. These hesitations are “normal” in any process aimed at creating a monetary union when it is not imposed from outside. The European Union has taken thirty years to move from the *Werner Report* to the effective implementation of the Euro. Similarly, the success of the Scandinavian Monetary Union (1873-1924) required half a century of preparation.
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Introduction

Today the real wealth is not concrete, it is abstract. It is not material, it is immaterial. Gold said that intangible intellectual property said: “Intellectual property is central to the economy of the immaterial. Indeed, in an economy where ideas are paramount, where it is innovation that creates value, it is normal for actors seeking to protect those ideas, or at least, the economic benefit that can be derived from it.”

Indeed, nowadays, we must recognize that the wealth of states is based more on knowledge and knowledge in the possession of natural resources and physical labour.

Pat is at the heart of this policy innovation because it can create wealth from knowledge. Inventions and innovations that are small or large can improve the living standards of people in the subregion of West Africa (WA). In addition, the protection of innovations and inventions can create conditions favourable and attractive investment to contribute to economic development in the subregion. Finally, protection of innovations and inventions can also improve the competitiveness of industries and companies in the AO in order to promote intra-regional and exports of the subregion.

First, this study will present the current state of IP in the region of West Africa (WA) (I). Secondly, it will expose the issues of intellectual property issues (II).


Thirdly, it will analyze some constraints, pitfalls and risks in the international regulations governing intellectual property impeding the development of AO (III). Fourth, it will expose the issue of inclusion of IP in the Economic Partnership Agreement (EPA) between the AO and the EU (IV). Finally, it will exhibit some ideas about the prospects for West African regional policy on intellectual property (V).

**Current Status of Legislation on Intellectual Property in West Africa**

We proceed successively to the inventory of legislation in the Member States of the African Intellectual Property Organization (OAPI), the Member States of the African Regional Intellectual Property Organization (ARIPO) and the states of the AO that are not members of the latter two institutions.

**The African Intellectual Property Organization (OAPI), a tool of legal integration**

After attaining independence, most former French colonies in Africa did not have an Office of Industrial Property. To access the World Intellectual Property Organization (WIPO), it was essential for these new states to create an agency that protects intellectual property. But these individual countries did not have enough human and financial resources to create a separate office. Based on Article 19 of the Paris Union Convention authorizing its members to make special arrangements, fourteen African Franc Zone signed an agreement September 13, 1962. This instrument has established the African and Malagasy IP (OAMPI) known as the agreement in Libreville.

After the withdrawal of Madagascar, the other States have signed in Bangui March 2, 1977 a new agreement establishing the African Intellectual Property Organization (OAPI). This treaty is known as the Bangui Agreement. Currently, OAPI has sixteen member states³. Of these, Guinea Bissau is a Portuguese-speaking country Equatorial Guinea is a Spanish-speaking country. The main mission of OAPI is to promote and protect intellectual property.

³ They are: Benin, Burkina Faso, Cameroon, Central African Republic, Congo (Brazzaville), Côte d’Ivoire, Gabon, Guinea Bissau, Guinea (Conakry), Guinea Equatorial, the Mali, Mauritania, Niger, Senegal, Chad and Togo. It should be noted that the sixteen member states of the AO, ten are members of OAPI.
OAPI is a tool of legal integration. In all sixteen member states, potential holders of intellectual property rights (IPR) follow common procedures to benefit from exclusive rights. In the field of industrial property, the uniqueness of law prevails in the sixteen member states. The Bangui Agreement devotes uniform legislation protecting industrial property. The ten appendices\(^4\) that constitute the code of intellectual property are directly applicable in each of the sixteen member states.

The legal integration is reflected twice. First, the title granted by OAPI has the same legal effect in all Member States. For example, a patent granted by OAPI is effective legal protection and ownership in the sixteen member states. Secondly, under Article 18 of the Revised Bangui Agreement, the final judgments rendered in one Member State under the provisions of Annexes I to X are authorities in other Member States, except those based on public order and morals. Thus, a patent definitively annulled by the Supreme Court or the Court of Cassation of the Republic of Mauritania is also invalidated in the other fifteen OAPI member states.


The Bangui Agreement was revised to comply with the provisions of the TRIPS Agreement. He had the following main changes:

- Protection of computer programs and data compilations as literary works;
- The right to lease;
- Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- Elimination of proof of use or exploitation for continued protection;
- The protection of well-known marks - Protection of New Varieties of Plants;

\(^4\) These Annexes cover: patents (Annex I), utility models (Annex II), brands of products and services (Annex III), industrial designs (Annex IV), trade names (Annex V), geographical indications (Annex VI), the literary and artistic property (VII), protection against unfair competition (VIII), layout designs (topographies) of integrated circuits (Annex IX) and the Plant Variety Protection (Annex X).
- The protection of layout designs (topographies) of integrated circuits;
- The removal of the disqualification of office for non-working titles;
- Protection against unfair competition - the border measures.

As for the means of enforcing intellectual property rights, the regime of repression of the rights set meets the requirements of TRIPS. Indeed, it defines a large number of offenses. At these offenses are attached a variety of sanctions.

With regard to civil and administrative proceedings, arrangements have been made to make this process fair, efficient, fair and fast. These include, in chambers, orders on motions and seizures of counterfeit products. These procedures involve all bailiffs or public or ministerial officials, including customs. The new Accord has brought innovations to give effect to the standards of the Agreement on ADIPC regarding the existence, scope and exercise of intellectual property rights.

It should be noted that OAPI is the single office of Industrial Property of its member countries. It is the only body authorized to grant industrial property rights on behalf of its member states. But the management of human literary and artistic responsibility of national administrations which OAPI is invited to bring their assistance.

In contrast to the OAPI, the African Regional Intellectual Property Organization (ARIPO) is a cooperating agency.

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5 They include, counterfeiting and recidivism; unlawful use of a trade name; the unlawful use of a geographical indication, the creation of confusion with another’s enterprise or its activities; achievement the image or reputation of others; deception with regard to the public disclosure of confidential information and theft.

6 It is the imprisonment of damages, to the fine, confiscation or destruction of infringing articles recognized, the destruction of tools and implements used to commit counterfeiting, advertising judgment, the disqualification of eligibility and quantum of fines has increased tenfold at least.
The African Regional Intellectual Property Organization (ARIPO), an organization for cooperation

ARIPO\(^7\) was established to develop, harmonize and promote the industrial property system in Africa. It has also been formed to pool the resources of member countries in industrial property, to avoid duplication of financial and human resources.

It was established by the Lusaka Agreement, adopted by the Diplomatic Conference held in the Zambian capital Dec. 9, 1976, under the name of “Regional Organization for English-speaking African countries for Industrial Property (ESARIPO). In December 1985, the Lusaka Agreement was revised to open the organization to all African states members of the United Nations Economic Commission for Africa (ECA) and African Union.

ARIPO manages intellectual property in the context of two major protocols, one in Harare and Banjul Protocol. Thus, the latter instrument governs the protection of trademarks. It does not address substantive issues, as these are the prerogative of the signatory states. It provides a procedure in which a plaintiff, by filing a single application can obtain trademark protection in several designated States. The ARIPO Office shall then act as the main office for receipt of applications applicable to the designated states. It is for each State, in turn, consider the applications in depth, in accordance with their laws. Then, the ARIPO shall register.

As the Harare Protocol adopted in 1982, it allows applicants to submit their applications for patents, utility models and industrial designs at any State signatory of the Protocol and enable as many signatories as possible which they would get the patent, or where they would register the design and industrial design. The Harare Protocol empowers the ARIPO Office to grant patents and utility models and to register industrial designs on behalf of its Members.

For patents, ARIPO reviews applications on the merits and decides whether to issue the patent. Based on the provisions of their domestic legislation, Member

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\(^7\) It includes the following states: These are the following countries: Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Mozambique, Malawi, Namibia, Sierra Leone, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. Liberia acceded to ARIPO December 24, 2009.
States have however the right to refuse the assignment of the patent and utility model and the registration of industrial designs on their territory.

The protocols are complemented by regulations that assume the administrative and other necessary elements, such as distribution fees paid and the forms used in registration procedures.

The continuing evolution of globalization indicates that it will be necessary for ARIPO to strengthen its cooperation with other international and regional organizations and with other organizations dealing with IP.

The Lusaka Agreement, in Article V, mandates ARIPO establish and maintain ongoing working relationships and reconcile with the Unions Nations Economic Commission for Africa, WIPO and the African Union. Article VI left to the discretion of ARIPO’s decision to cooperate with non-member states of ARIPO and with organizations, institutions and structures (States and organizations in cooperative relationship), which would support the achievement ARIPO its objectives.

To date, ARIPO has established close working relations with WIPO, in particular in the framework of the Quadripartite Agreement ARIPO-OAPI-ARCT-WIPO. She had close relationships with several IPOs in the world. Outside the Quadripartite Agreement, ARIPO had signed a cooperation agreement with the OAPI in December 1996. Thus, these two organizations have cooperated to develop and adopt a harmonized legislation to protect, in their respective space, genetic resources, traditional knowledge and TCEs and finally, ARIPO’s efforts to establish cooperation relations with subregional groupings such as ECOWAS, COMESA, East African Community and SADC. ARIPO’s mandate is now extended to cover the protection of copyright and related rights and the protection of genetic resources, traditional knowledge and folklore. Pursuant to this development, the organization changed its name by substituting “the African Regional Intellectual Property” to “Regional Organization of Industrial Property.”

Two states of OA, namely Cape Verde and Nigeria are not members of ARIPO or OAPI.

**Other States**

Nigeria operates a national law. He is a member of WIPO and the WTO. It has observer status at ARIPO. The laws governing the protection of intellectual
property rights covering copyright and related rights, trademarks, patents and utility models, etc.

Regarding the Cape Verde has recently joined the WTO, it has drafted legislation to comply with the provisions of the TRIPS Agreement.

In total, in West Africa, it appears the coexistence of a plurality of regional and national legislation governing the protection and enforcement of intellectual property rights.

In the areas of copyright and related rights, industrial designs and geographical indications, the AO has comparative advantages to enhance its products and promote intra-regional trade.

**Stakes related to intellectual property issues in West Africa**

One of the objectives assigned to the protection of intellectual property is to reward the efforts of creators and inventors.

Thus, in the field of copyright and neighbouring rights, the establishment of national offices of copyright in several countries of the subregion with the support of WIPO had helped to collect funds works from users. With this system, lump-sum payments are awarded to artists and performers who receive a monetary reward and who are thus encouraged to create and export their works.

With regard to industrial designs, domestic and foreign investors are discouraged by the considerable development of counterfeiting. Thus, the protection of industrial designs of African designers will help combat counterfeiting and piracy of ornamental designs and may also promote the growth of the textile industry on the continent. It appears that the protection of industrial designs could not only promote the development of handicrafts and textile industry in particular, but also the intra-regional trade in these areas and economic development in general.

It is regrettable that because of the importance of agriculture and handicraft, which can serve as a fulcrum to industrialization adapted to the traditional environment, the registration of geographical indications from the OAPI is still quasi- nonexistent\(^8\). Promoting products that may be protected by

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\(^8\) For example, to date in the OAPI, only a foreign geographical indication was protected. This is Champagne.
geographical indications could encourage further investment in agriculture and crafts. Indeed, the states of West Africa, could promote the quality of their products, combining their efforts through investments or any form of cooperation to make their products more competitive. Indeed, the protection of various agricultural products and handicrafts of the region can contribute to their development and thus promote increased production and marketing in the region to benefit farmers and artisans. This strategy of value of agricultural products and handicrafts could also contribute to the fight against poverty which constitutes a major challenge for African populations.

For example, violet Galmi is a variety of onion that is popular in West Africa. Its protection as a geographical indication requiring producers to comply with a specification could help to increase production and improve quality. In addition, the protection of violet Galmi may also contribute to its development and increase its export in both AO and elsewhere.

It follows from the foregoing that IP may contribute to the increase and enhancement of agricultural products and handicrafts and industrial development in the region which can contribute in promoting intra-regional trade.

However, in some conventional instruments, it can take on obligations that can impede technological and industrial development of West Africa.

**Constraints, risks and pitfalls in international intellectual property impeding the development of West Africa**

Among the constraints, pitfalls and risks in the international regulation of intellectual property, we can select two that hinder the development of OA. This is the cancellation of the obligation of the local operation of the invention and the strict conditions set for granting compulsory licenses.

**The cancellation of the obligation to exploit the invention, an obstacle to technological and industrial development of West Africa**

To comply with Article 27.1 of the TRIPS Agreement, which now treats the importation of patented products to local exploitation of the invention, several countries in the region have cancelled the local operating conditions. However the requirement of a local industrial operation has the unfortunate drawback to curb industrial and technological development of States of West Africa.
To promote industrial and technological development, Annex I of the Bangui Agreement of 1977 had imposed the patent holder the obligation to use his invention in the OAPI.

Indeed, before the entry into force of the revised Bangui Agreement, OAPI patent granting the title for a period of ten years from the filing of the application. However, OAPI could extend twice the duration of protection, but on two conditions. In the first extension, the patentee must prove that he had been an industrial operation in a member of OAPI or advance to lack valid reasons for such exploitation. A second extension request, the patentee was required to prove that the invention was protected well be an industrial operation on the territory of one Member States of OAPI. Article 6 of the Bangui Agreement of 1977, added that imports do not constitute a lawful excuse.

Despite this explicit requirement of a local operation of the patented invention, it is regrettable that, in practice, most patents were used by their owners to maintain a monopoly rather import their patented products in Member countries of OAPI.

The new revised Bangui Agreement has removed the requirement of a local industrial operation to maintain the protection granted to the patentee to comply with the TRIPS agreement which no longer holds this obligation. In other words, the exploitation of the invention can now be satisfied by the importation of patented products manufactured outside the space in an OAPI Member State of the WTO. Thus, if the domestic market is adequately supplied by imports, the lack of exploitation of the patented invention is no longer a condition for granting a compulsory license. Indeed, the introduction of patented products in sufficient quantity for marketing in the OAPI to meet the needs of Member States of this organization is now sufficient to exclude the application of non-voluntary license, because the import is now considered exploitation of the patented invention.

We must recognize that the countries of the AO, the absence of industrial exploitation of patents that are issued does not promote technological and industrial development.

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9 Article 6 of Annex I relating to patents of the Bangui Agreement of 1977 OAPI.

Thus, despite the obligation to exploit the invention provided locally by the Bangui Agreement of 1977 in the case of a request to extend the period of patent protection, it is important to note that the number of patent holders honouring their commitment was insignificant.

Indeed, with regard to OAPI, from 1971 to 1990, 6004 patents were issued. However, during this period, it is regrettable that only 41\textsuperscript{11} were operating in member countries of that organization. As mentioned above, foreign companies are issuing patents, not to exploit, but to acquire a monopoly of importation. Thus, as both authors point out, “the non-exploitation of rights” proprietary “by their owners was seen as the first risk of abuse: these rights should serve the cause of technological development and not become sterile” dams “competition\textsuperscript{12}”.

Now, with the cancellation of the local operating conditions of the patent, the effectiveness of technology transfer is even more difficult to achieve than before.

In addition, the removal of this requirement appears to constitute an additional obstacle to the promotion of industrial development of African countries. It must be recognized that the substitution of imports to local exploitation of the invention cannot achieve the legitimate objective of promoting industrial development\textsuperscript{13}. Indeed, the cancellation of the local operating conditions is not conducive to encouraging the transfer of technology needed to develop viable industries in the region, particularly in the pharmaceutical field. It can actually heighten the dependence of member countries of OAPI that will have to import more drugs from Western countries. As written, rightly, Professor Burst, “the exploitation of the patent contributes to the industrialization of the country where it operates\textsuperscript{14}.”


\textsuperscript{13} V. in this direction, REMICHE Bernard (2003), “Patenting and contemporary innovation: Some reflections on current trends in patent law” Protecting inventions in the future, biotechnology, software and business methods (Study under the direction of Professor Michel living), Paris, La documentation French, P. 212.

The cancellation of the local operating conditions is not the only factor blocking the industrial and technological development of African states. There are also strict conditions set for the use of compulsory licenses. Relying on Articles 8 and 31 of the TRIPS Agreement, Title IV of Annex I of OAPI provides for the grant of compulsory licenses\(^\text{15}\) to meet the public interest in the exploitation of patented inventions, including patent medicines.

However, the use of compulsory licenses is not necessarily a panacea. As regards the Member States of OAPI, its realization is hampered by significant limitations. Indeed, the strict conditions set for the grant of compulsory licenses hinder access to medicines for the people of WA.

**The strict conditions set for compulsory licensing**

Title IV of Annex I of the Bangui Agreement governing voluntary licenses is based on the relevant provisions of the Paris\(^\text{16}\) Union Convention and Article 31\(^\text{17}\) of the TRIPS Agreement. Reading this title to distinguish on the one hand, compulsory and legal licensing, on the other hand, official licenses granted by public authority.

With regard to non-voluntary licensing judicially created, they are granted at the request of any interested person by the competent civil court patent. They punish the one hand, the unjustified failure to exploit the patent and, secondly, the refusal to license said patent dependency.

Under Article 46 of Annex I relating to patents relating to the granting of license for failure to work, any person may, after expiry of a period of four years from the date of filing the patent application or three years from the patent, whichever period expires later to be applied to obtain a compulsory license if one or more of the following conditions are met:

\(^{15}\) Contrary to several international and national laws prevailing Title IV of the Bangui Agreement in 1999 uses the term non-voluntary license. However, we can consider the two terms “compulsory license” and “compulsory licensing” as synonyms despite their difference in terminology, since these two licenses are imposed on the owner of the patent without his consent or authorization.

\(^{16}\) The second paragraph of section 5A of the Convention of 20 March 1883 states: “Each country of the Union has the right to take legislative measures providing for the grant of compulsory licenses to prevent abuses which might result from the exercising the exclusive right conferred by the patent, for example, failure to work.”
- The patented invention is not exploited on the territory of a Member State of OAPI, when the application is made;

- Operating on the territory aforesaid, of the patented invention satisfies not on reasonable terms at the request of the protected product;

- Due to the refusal of the patentee to grant licenses on reasonable commercial terms and conditions, the establishment or expansion of business activities in the territory aforesaid, is unfairly and substantially prejudiced.

However, the holder of a patent that legitimate reasons\(^{18}\) to non-exploitation is not obliged to grant a compulsory license.

It is important to recall that the new revised Bangui Agreement has removed the requirement of a local industrial operation to maintain the protection granted to the patentee to comply with the TRIPS Agreement does not accept this obligation. In other words, if the market is adequately supplied by imports, the lack of exploitation of the patented invention is no longer a condition for granting a compulsory license, limiting, if not destroying, the ability of African States grant compulsory licenses for failure to work.

As for the patent license for dependence\(^{19}\), it is intended to prevent the unjustified refusal of the dominant patent holder or base prevents the patent holder to exploit the dependence of development it has achieved by improving the creation of inventor primitive. It is an invention protected by a patent of improvement which can be exploited without having violated the rights attached to a prior patent. If the proprietor thereof refuses permission to operating conditions and reasonable commercial terms, the patent owner may later obtain a court non-voluntary license to exploit his own invention. For this purpose, it must meet the conditions laid down by Article 46 already displayed above and also meet additional requirements described below\(^{20}\).

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\(^{17}\) This provision deals with other use without authorization of the right holder, including compulsory licenses.

\(^{18}\) For example, failure to obtain administrative authorization for the placing on the market (AMM) of the patented product can be a legitimate excuse.

\(^{19}\) See (V.) Article 47 of Annex I of the OAPI on patents.

\(^{20}\) V. In this sense, Article 31 L) of the TRIPS Agreement.
First, it is necessary that the invention claimed in the later patent is an important technical advance of considerable economic interest compared to the invention claimed in the earlier patent.

Then, the holder of the earlier patent has the right to cross-license on reasonable terms to use the invention claimed in the patent’s length.

Finally, the use authorized in respect of the earlier patent is not assignable unless the later patent is also assigned.

The license for failure to exploit the license and dependency are not exclusive. In view of the foregoing, it is no exaggeration to argue that efforts to obtain voluntary licenses to judicial nature are hampered by strict conditions laid down by the OAPI, including legal proceedings fairly lengthy and costly that can be treated as a real obstacle course, which may discourage potential or possible African candidates to apply for the grant of compulsory licenses.

The license for failure to exploit the license and dependency are not the only non-voluntary licenses. The legislature has also provided licenses for Office.

They are three in number. They are intended to satisfy the interest of public health, that of economic development and that of national defence.

Under Article 56 of Annex I of OAPI, when certain patents are of vital interest to the country’s economy, public health or national defence or the lack of exploitation jeopardizes seriously the needs of the country, they can be submitted by administrative act of the competent Minister of the Member State concerned the regime of non-voluntary license. This act determines the beneficiary administration or organization, terms of duration and scope of the compulsory license and the amount of royalties.

In the absence of agreement between the patentee and the administration concerned on the conditions above, they are set by the civil court.

As regards the rights and obligations of the beneficiary of a compulsory license, the granting of a compulsory license allows its holder to exploit the patented invention in accordance with the conditions established in the civil court’s decision or the decision taken on appeal. The beneficiary of a

21 V. Article 50 of Annex I of the OAPI on patents
compulsory license must pay the patent holder compensation determined in the above decisions.

In addition, Title IV of Annex I of the Bangui Agreement also conditions the granting of a compulsory license to other conditions favourable to patent holders, including the granting of non-voluntary license No. not affect either license contracts in force and does not preclude the conclusion of other license agreements.

It follows from the foregoing that the legislature of OAPI brought restrictions on the rights conferred to patent holders to grant compulsory licenses in the interest of public health. Nevertheless, the statement of licensing provisions involuntary calls for two comments.

First, he emphasized the complexity of the provisions on compulsory licensing. Second, Title IV of Annex I for the granting of compulsory licenses lays down strict conditions for using such non-voluntary licenses. These two reasons may partially explain why no Member State of OAPI, from 1962 to today, has been able to implement the provisions on compulsory licenses despite the fact that almost all of the patents were not Operating in the OAPI.

Despite all these provisions under Title IV of Annex I of the Bangui Agreement for using non-voluntary licenses, it must be acknowledged that the practical implementation of these provisions encounter considerable difficulties.

The Challenge of including Intellectual Property in the Economic Partnership Agreement between the European Union (EU) and West Africa (WA)

In 2000, the Heads of State assigned to the European Union (EU) strategic objective. It is becoming in 2010 the most competitive and dynamic economy in the world based on knowledge. Under the Lisbon Agenda, innovation is recognized as the key to success of this strategy. In this context, IP is considered a powerful stimulus for innovation. A major concern of the EU Commission to achieve the objectives of the Lisbon strategy is to build open and competitive markets. To this end, the EU Commission noted the need to respect and ensure better enforcement of intellectual property rights (IPR).

By entering this logic, the EU is no longer seeking just its trading partners of the African, Caribbean and Pacific (ACP) with which it concludes EPA access
to multilateral treaties governing intellectual property but now, especially to subscribe to the substantive obligations in this area\textsuperscript{22} go significantly beyond those of the TRIPS Agreement (TRIPS-plus)\textsuperscript{23}.

Thus, in the draft text of the Economic Partnership Agreement (EPA) proposed by the EU, intellectual property rights include, among others, patents on plant species. If WA accepts this proposal, it will grant patents to protect plant varieties. However, patent law does not impose restrictions on the rights conferred on patentees, as the farmer’s privilege. This exception is enshrined in legislation rather sui generis protection of plant varieties. It should be noted that this exception allows the farmer to save seed from a protected variety for replanting his own fields for crops without any further obligation in respect of the breeder. The consecration of the farmer’s privilege in sui generis laws protecting plant varieties in WA is appropriate and relevant because many countries in this region are facing serious food crises arising, in particular a shortage of food production caused by recurring droughts leading to malnutrition and hunger among their peoples which remain the poorest in the world. In this context, except the farmer’s privilege is to contribute to the ongoing search for food security is a legitimate objective and priority of African countries. In view of the foregoing, the issuance of patents to protect plant varieties is a serious risk that may impede the achievement of food security in WA states.

Other IPR provisions proposed by the EU if they are accepted by WA will erode or even negate the flexibilities for WA states in the TRIPS Agreement.

With regard to geographical indications (GIs), Article 6.1 of the draft EPA text on the table by the EU states:

- “Nothing in this agreement requires the European Community and the States of West Africa to protect their territory of geographical indications that are not protected in their country of origin.”


By requiring that protection should be limited only to GIs are protected in their country of origin, the exception provided by Article 24.9\textsuperscript{24} of the TRIPS Agreement becomes imperative. In addition, by requiring protect GIs that are only protected in their country of origin, the purpose of the EU is to encourage registration systems at the expense of systems that protect GIs from trademarks and unfair competition. This may be the case for English-speaking states in WA.

In the area of IPR enforcement, the very detailed text proposed by the EU largely reproduces the provisions of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of IPR. Several provisions of the whole directive containing standards more stringent than the TRIPS Agreement were sometimes downright reproduced in the text proposed by the EU. The purpose of this is that WA be aligned with the provisions of the Directive requiring higher standards than those of the TRIPS Agreement to restrict the flexibilities granted to developing countries.

In contrast to the TRIPS Agreement which requires only border measures on imports of counterfeit marks and “pirated”, article 21 proposed by the EU imposes detailed procedures against the import, export and re-export of goods infringing IPRs. In other words, this provision proposed by the EU extends the application of border measures on all goods exported and re-export any type that infringes on IPR.

It is important to remember that this EU proposal was the subject of debate within the TRIPS Council. Despite the support of some developed countries, it was rejected by many states based on two main arguments. The first is the lack of mandate in the Doha Ministerial Declaration to conduct negotiations in the field of IPR enforcement. The second is the fact that accepting the EU proposal would upset the balance of the TRIPS Agreement to the detriment of those who use the IPR\textsuperscript{25}.

Certainly, the means of enforcing IPR should protect the legitimate interests of IPR holders, but must also include protection against abuses of IPR

\textsuperscript{24} This provision states “There shall be no obligation under this Agreement to protect geographical indications which are not protected in their country of origin or cease to be, or have fallen into disuse in that country .

\textsuperscript{25} Maximiliano Santa Cruz S., Intellectual property provisions in European Union trade agreements, op. cit., p. 9.
enforcement procedures and ensure fulfilment of obligations of IPR holders and that the application of limitations and exceptions to rights conferred to them. However, the text proposed by the EU favours mainly the interests of IPR holders.

Before the start of negotiations, the EU was categorically opposed to include the protection of traditional knowledge (TK) and traditional cultural expressions in the text of the EPA. In a joint statement\textsuperscript{26} from several WTO member states\textsuperscript{27}, European Communities, the African group and the ACP States submitted to the Trade Negotiations Committee of the WTO dated July 24, 2008, they have agreed to amend the TRIPS Agreement to include a mandatory requirement to disclose the country providing the source of genetic resources and / or associated TK.

In this context, to provide defensive protection of TK, the AO proposed to include a provision in the EPA requires the disclosure of the supplier country or source of genetic resources and / or associated TK. Despite his agreement noted in the aforementioned communication to the WTO, the EU objected to the proposal of WA. In addition, the EU has not accepted the proposal of WA that the holding by the EU and its Member States of genetic resources and TK from WA will be subject to prior informed consent knowingly to ensure local communities holding such genetic resources and TK equitable remuneration arising from such use.

Given the inordinate demands of the EU’s intellectual property and its refusal to protect TK and CETs, WA did not wish for the moment; include the issue of intellectual property in EPA Acting Regional.

In view of the foregoing, it would be desirable in the field of IP, that WA avoid making binding commitments eroding and removing flexibilities obtained by African countries in multilateral agreements universally applicable, as the agreement TRIPS, the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture concluded under the auspices of FAO. It should rather develop cooperation between WA and the EU within the framework of technical assistance to enable the first to take advantage of flexibilities in multilateral conventions.

\textsuperscript{26} WTO, Draft modalities for TRIPS-related issues, TN/CW/52/Add. 1 of 24 July 2008, p. 3.

\textsuperscript{27} This is from Albania, Brazil, China, Colombia, Ecuador, the former Yugoslav Republic of Macedonia –, India, Indonesia, Iceland, Liechtenstein, Pakistan, Peru, the Kyrgyz Republic, Sri Lanka, Switzerland, Thailand and Turkey.
mentioned above. In this context, it should work towards the adoption of an appropriate intellectual property regime promoting scientific and technological development in the region to ensure the economic well-being and social development of populations of WA.

We will complete this study by examining the prospects for West African regional policy on intellectual property.

Prospects of the regional policy on intellectual property in West Africa

Because of the difference between the systems of protection of intellectual property in countries of WA, the commitments undertaken by States within the framework of agreements on TRIPS and WIPO, could provide a basis realistic for harmonization, to be undertaken for the establishment of a common regional framework for intellectual property protection in West Africa. The essential elements of developing this regulatory framework are, among others:

- Communication and awareness on intellectual property system;
- Strengthening cooperation ties between ARIPO and OAPI;
- Updating and improvement of national legislation to ensure their conformity with international best practices;
- Strengthening the capacity of agencies and offices responsible for national and regional intellectual property issues;
- Training in administration, technical management and implementation of intellectual property rights for the benefit of stakeholders;
- Protection of agricultural products and handicrafts through, including GI;
- Use of IP system in our economic development programs and social example, agricultural development projects include a component to gain “protected geographical indications”;
- Building capacity to fight effectively against piracy, bio-piracy and counterfeiting;
- Development and capacity building in science and technology to promote regional industrial development;
- The implementation of public health policies, including taking advantage of flexibilities in international agreements to allow people to access pharmaceutical products at highly discounted prices;
- Diversification of sources of drug supply and the establishment of production units of drugs with a sub-regional.

In addition, within a logic of economic integration to create within the ECOWAS common market in which goods circulate freely, people, services and capital, it is reasonable to think that national laws will increasingly lose interest in favour of the rights of EU origin.

In this context, harmonization and standardization of the laws are sound:

- Adoption of EU policies to promote scientific research, creativity and innovation;
- Development and adoption of laws and regulations to protect copyright and related rights;
- Development and adoption of laws and regulation to protect and enforce intellectual property rights;
- Adoption of EU legislation to prevent abuse of the holders of intellectual property rights, control and fight against restrictive business practices and anticompetitive;
- The implementation of accompanying measures to enable a real incentive to transfer technology to provide WA with a viable technological base;
- The adoption of a sui generis legislation for the Community adequate and effective protection of TK and TCEs and sustainable use of biological diversity and promote better utilization of genetic resources, traditional knowledge with involvement and approval of holders of such knowledge, innovations and practices and encourage equitable sharing of benefits arising from the use of such knowledge, innovations and practices.

It should be noted that the adoption of regional legislation to protect traditional knowledge and traditional cultural expressions is not enough to effectively fight against bio-piracy. African states should work together with other allied states in the international community to continue the fight to adopt a legally binding international instrument to reach World adequate and effective protection of genetic resources, traditional knowledge and expressions of folklore.

Finally, in the medium or long term, it is desirable to adopt a uniform system of IPR protection on a continental scale by merging ARIPO and OAPI.
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Books

Articles
The challenges of regional regulation of financial services: The CIMA code challenge of multilateral rules and practices of multinationals in the insurance sector

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Introduction

It is unquestionable that today, the international environment is characterized by a trend in the direction of creating vast integrated economic and commercial bodies.

The African continent, given its adverse economic conditions and job insecurity that characterizes most of its states cannot escape this reality.

While it is true that over the last twenty years, Africa has made real progress in creating sub-regional economic integration organizations, it must be recognized that in most cases, daily and practical implementation is far from reflecting the theoretical content of texts.

It is even permissible to conclude that contrary to expectations, many integration policies initiated at the regional level have not significantly increased commercial exchanges, investment flows and people’s mobility between African countries.

That’s why the African market is by far the most fragmented regional market and yet, being part of a broader and well thought out development strategy, regional integration could strengthen productive capacities, increase economic diversification and improve competitiveness. The pooling of resources and economies of scale would enable African countries to participate more effectively in the global economy, particularly in certain strategic areas such as services.
In fact, the supply and trade of services should be considered as important as production and trade of goods since this sector represents a very important economic issue for West Africa (between 30 and 65% of GDP in most countries of the sub-region and occupies about one third of the workforce).

In addition, many services such as telecommunications, banking, insurance, specialized services or transportation services, constitute inputs for other economic activities, so they can either facilitate or impede trade and production of other economic sectors, both for goods and for services, depending on the efficiency of their delivery to users.

However, despite its strategic role, the trade of services is characterized by a lack of reliable data and information and those that are available “are still insufficient, fragmented, disparate and are contained in various studies and monographs carried out either by the region’s integration institutions or by individual countries. This scattering of information does not allow an objective reading of the situation of services in the region that could allow the definition of a coherent strategy for negotiations.”

If this is true for some sectors of service trade, the fact remains that in other sectors, like insurance, tremendous progress has been made thus far in towards regional integration and economic preservation of the economic interests of States in the region.

At the level of the franc zone, regional integration in the insurance sector is represented by the Inter-African Conference on Insurance Markets (CIMA), which gathers 14 countries in West and Central Africa, and was created on 10 July 1992 in Yaounde (Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Ivory Coast, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo).

It’s necessary to just specify at this level that CIMA was born from the ashes of CICA which was established at the Paris Conference in 1962, and already at that time, the beginnings of an integrated insurance business among countries in the franc zone (and Madagascar) were posed.

CIMA now weighs 485 billion CFA francs for 115 insurance companies. It was born from the will of the Heads of States and governments to create a
framework that can contribute effectively to the development of domestic insurance markets through a policy of harmonization and unification of Member States’ laws and regulations, involving both a single legislation (CIMA Code) and a single control structure.

In this study, and in accordance with the objectives that have been set, we’re going, through the examination of the organization especially its legislation, to attempt an analysis under the following three points:

- Show how the Treaty has helped preserve the economic interests of the Region;
- Identify and analyze policies and regulation, highlighting actions in the direction of economic integration;
- Using concrete examples identify cases of conflict between objectives of the CIMA Treaty and international rules or practices of multinationals.

By cross-reading the various objectives of the CIMA Treaty as well as institutions it has established, it is permissible to distinguish that this organization aims primarily at three things:

- Protect the economies of the region;
- Maintain capitals within the Community;
- Facilitate the free movement of people and goods.

We will try to analyze each of these goals by using specific examples to illustrate advantages and disadvantages, but also highlight the numerous obstacles related to incompatibilities between some of these rules and contemporary economic realities that promote free competition.

To do so, we will use a protectionist regulation (compulsory marine insurance for imports) in force in all our states and which, in itself, embodies the whole issue and the balance to be struck between the desire to protect economies of the area and contemporary realities that dictate a wider opening of regional markets.

On another side, and all predictions are converging on this point, a lucid and objective analysis of the situation enables us to say without too much risk that the liberalization of services is becoming more and more inevitable.
By being isolated, it is clear that regional markets of West and Central Africa will be extremely vulnerable facing major economic powers. Therefore, regional integration remains a solution, and the only one in our opinion, to boost trade in services and make it mature at the wake of this new economic order.

On this point, the 2009 UNCTAD annual report is quite well informed when it states that “We are more and more aware of the fact that regional integration may be a crucial element to take into consideration when developing new lines of action to develop services.”

CIMA is currently following the same line with a gradual process in two steps: the establishment of Community co-insurance and the final stage of regional integration in the insurance sector, i.e. the single market.

The outline of our study will then be parallel to the chronological development of the regional integration process of the insurance sector which mainly follows three stages, each with a specific purpose:

1) Maintain capitals in member states (compulsory marine insurance, for example)
2) Maintain capitals in the CIMA Community area (Community co-insurance)
3) Establish a Single Market.

**Maintaining capitals within CIMA member states: Example of the Compulsory Marine Insurance**

Regional integration under the CIMA treaty was made gradually with the ultimate objective of establishing a single market.

To achieve this objective it is imperative that national markets that were previously immersed in a slump may experience some improvement both in terms of financial stability and brand image among insurance consumers.

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Since its entry into force on February 15, 1995, CIMA has been working on this task and today, even though there is still much to be done, it can be said that in terms of rehabilitation of the sector, real progress have been recorded.

But to keep on course and be sustainable in this era of globalization and free competition, it is extremely important that the markets of the zone which are still vulnerable to the Western powers could benefit from mechanisms that favor retention of capitals in the Member States, and on this point, CIMA is a “shield” for these markets.

Through an example, which has become an institution for being so common to all sub-Saharan countries, we will attempt to illustrate the Community legislator’s desire to maintain capitals at the national level: namely compulsory marine insurance for Imports and local domiciliation.

If we have decided to refer to this legislation, that’s because at the moment, it embodies by itself the whole issue between a protectionist legislation aiming at preserving the weak economies of the CIMA area and an increasingly displayed will of international financial institutions to access these markets through a may be untimely liberalization.

**Problem**

Insurance on imported or exported goods is one of the fundamental features that characterize international trade nowadays. The need to insure these goods and commodities against the economic consequences of possible loss and damages they may suffer during their transportation appeared from the early days of marine trade in particular, and has increased with the high value of transported goods, resulting mainly from the intensification of international trade.

Precisely on this point, everybody knows the situation of most developing countries whose economies are based on production and exportation of a limited number of raw materials and importation of all other consumer and equipment products. This situation is the main feature distinctive of economies of Developing Countries, hence the nature of their trade balance deficit.

Under these conditions, insurance of imported goods and commodities represents a major expense and should be considered by local markets like those of West and Central Africa, among others, as a branch with promising prospects. However, despite these opportunities, the practice in developing
countries was to underwrite marine insurance contracts in insurance companies of developed countries.

This practice was common and justified by various factors that led traders, logically concerned about the warranty and swiftness in services, to insure directly from Western insurance companies that have the competence and appropriate means to carry out their missions. This would result in considerable losses for local insurance industries.

Given this particular situation, UNCTAD was to make a set of recommendations in the direction of insuring imports from developing countries in their own market. Through Resolution 42, it stated that “developing countries should take measures for their insurance markets to be able, taking into account national interests as well as the interests of policyholders, to cover required insurance operations for their economic activities, including their foreign trade, insofar as it is technically feasible.”

In this context, all countries of the subregion will adopt regulations with a double objective:
- Make insurance of imported goods compulsory
- Require that these goods be insured in an insurance company of the host country.

The purpose of this regulation is thus to reduce the net currency outflows, i.e. capital shifts resulting from insurance costs incurred in foreign countries, and at the same time, to guarantee protection to local companies against international competition. At its creation, the CIMA Code went in the same direction even if it leaves some prerogatives to national provisions: “Insurance on cargo imports is compulsory insofar as national laws provide for it. It is then governed by the specific provisions of those laws3.

With the introduction of these measures, there should be in principle a blow of fresh air for the shipping industry insurance branch which has been very affected by the crisis. But in practice and after several years of implementation, what can be noticed is that mutations in global economy are challenging the assets, and on grounds of economic liberalization, WTO plans to remove these measures considered as discriminatory and detrimental to international trade.

3 Article 278 of the CIMA Code.
Moreover, we notice more and more the emergence of unorthodox practices that enable exporters as well as insurers in developed countries to circumvent this regulation.

The picture is well drawn: on the one hand we have a protectionist and restrictive regulation established to instil a new dynamic to local insurance industries; on the other hand, we have new economic realities, contingencies that characterize contemporary global economy.

**Current Situation of Compulsory Marine Insurance**

Before the adoption of compulsory marine insurance in the countries of the CIMA zone, economic operators in the context of international trade, concerned about a certain security in their transactions and some swiftness in services, would naturally turn to insurance companies with adequate means to meet their expectations.

The absence of protectionist measures helping, insurers in developed countries would exercise a monopoly on marine insurance and this, in practice, meant two things:

- First, imports in underdeveloped countries were made under FCA conditions, i.e. including insurance that had been subscribed by the exporter in his/her own market or that of another developed country;
- Secondly, exports were sold FOB which meant that marine insurance was still placed on the market of a developed country.

Today, the WTO’s objective is to go back to this past situation by removing this regulation considered as protectionist and anti-competitive, or at least the second part of the measure aiming at local domiciliation. Thus, even if the principle of marine insurance is still compulsory, local domiciliation, i.e. the fact of subscribing for insurance at a local insurance company, will no longer be an obligation.

The regulation of compulsory marine insurance is now being challenged and at two levels: on the one hand, pressures from the WTO are very strong and are visible at all levels and on the other hand, even though the measure still exists in our various positive rights, it is bypassed everyday with the complicity of certain national operators.
Pressures exerted by specialized international institutions

The role of trade in services in national economies and in international trade is growing more and more significant. However, despite their importance and also all the capital flows they generate, services still elude, at a large scale, from trade liberalization. This is due, inter alia, to the very nature of service activities. Indeed, many international service transactions require a shift of production factors. So it’s no coincidence that international negotiations relating to services are most often on the issue of freedom of establishment.

However, despite this obstacle, and many others, with the trend of global economy towards the tertiary sector, free trade is bound to expand to the field of services⁴.

For this purpose, and under the leadership of the United States, Western countries seek to liberalize services, including insurance. The chronological study of the various GATT resolutions shows the desire of Westerners to shift to liberalization of this sector to gain maximum benefit.

With the advent of the WTO, it’s the consecration of a whole policy aiming at the liberalization of services. Indeed, the WTO, under the General Agreement on Trade in Services (GATS Uruguay Round), felt that regulations relating to compulsory marine insurance were discriminatory.

According to the WTO, “These financial services fall within the trade of other products and services, therefore, the adoption of multilateral rules and the improvement of market access conditions promote international integration as well as global efficiency by means of trade.”

In close collaboration with UNCTAD and the Bretton-Woods international financial institutions, the WTO continues to exert pressure on developing member countries for their integrating the global market in the field of marine insurance. Thus, all obstacles to liberalization should disappear, including regulations relating to compulsory marine insurance.

But notwithstanding all this policy set in motion by the WTO to liberalize services, some underdeveloped countries feared and still fear such

liberalization. They fear, in fact, and not without reason, that rich countries massively export their financial services for which they enjoy comparative largest advantage.

However, despite this understandable reluctance, the services are actually present in multilateral negotiations. Underdeveloped countries have eventually accepted this compromise covered by the Uruguay Round and consisting, for rich countries, in liberalizing their agriculture and textiles mainly for the benefit of third world countries, and for these third world countries, in opening their markets to services and investments from developed countries.5

Faced with all these pressures, the effects were not long in coming and one of the major illustrations came from Cote d’Ivoire which had been forced to revise certain provisions of its regulations on compulsory local insurance. Thus the Ordinance amending Act No. 86-485 of 1 July 1986 on compulsory insurance of goods and commodities of any kind on importation stated explicitly that the obligation of local domiciliation in Côte d’Ivoire “ultimately became an obstacle to free choice of insurance (...)

The symbol is strong because the Ivorian market is the locomotive of CIMA. By blowing up the local domiciliation obligation, Côte d’Ivoire had thus prevented local insurers from getting potential insurance premiums while encouraging capital flight that the national market could not continue to bear. That is why Ivorian authorities have been obliged to reconsider their decision by establishing again the local domiciliation obligation through Ordinance No. 2007-478 of 16 May 2007.

Today, CIMA authorities are fully aware of this strong pressure and of the “uncomfortable” situation to which it subjects member countries; so they suggest two things:
- “To undertake, where appropriate, steps with development partners in order to obtain a transition period before reaching a possible repeal of national legislation establishing a domiciliation of insurance of cargo on imports.
- Ensure strict compliance with the Insurance Code provisions prohibiting the underwriting abroad of a direct insurance of risks located on the territory

of a Member State and in general, outlawing any technique of direct or indirect outsourcing from the insurance of such risks.”

In theory, the Community legislator’s will to safeguard regional markets is obvious through this whole policy aiming at local preservation of benefits, but what about in reality?

**Circumvention of Measures in the Compulsory Marine Insurance**

Some economic operators show a complete misunderstanding of the law mandating insurance on imports, and in some cases they take it as a tax to be paid at the port prior to withdrawal of goods or cargo. This shows that legislation is not enough to bring about change in certain habits. Thus, many importers would await the arrival of cargo or goods to purchase a minimum insurance FAP-Except necessary to obtain documents required by Customs.

It should be noted at that this level that in cargo insurance, two guarantees are generally offered by insurers:

- FAP-Except that is the minimum coverage required to comply with insurance obligation;
- The All Risks which is a much more complete guarantee and whose premium is naturally higher.

For example, with a cargo of 6,000 metric tons of rice valued at 1,279,116,150 CFA F, the FAP-Except premium will be 2,015,658 CFA francs and that of All Risks will amount to 13,431,770 FCFA. It is easy to notice through this example, the considerable loss undergone by the local insurance companies.

This attitude is related to a lack of information from local authorities and the insurance business in the concerned countries and led to an anarchic situation. It consists of a double insurance because the exporter, not being notified and still continuing to sell CIF, would purchase insurance at the departure. As for the importer, he/she was obliged by law to comply at the arrival with the new legislation relating to compulsory marine insurance.

This phenomenon of double insurance adversely affecting the cost price of goods, the trader was obliged raise his/her selling price on the market.

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6 Recommendation No. 0012/CMA/CE/CIMA
However, the double insurance is not the only method used by offenders to circumvent the regulations on compulsory local insurance. In fact, not happy with services offered on the local market, some economic operators purchase insurance abroad, and merely manage to be issued in Senegal certificates of convenience. These are issued by certain insurance companies and approved intermediaries in Senegal, or by underwriting agents based abroad. The process consists, for the insured, in negotiating insurance at a very low rate, with a commitment from him/her not to make any claim against the insurer for loss or damage.

As we can see, given the slow compensation and insolvency procedures of most local companies, economic operators, for more safety, continue to insure their cargo and goods in Western companies which are more reassuring for their businesses.

Ultimately, despite all the measures provided by compulsory local insurance, there are constantly growing alternative practices, which are doing nothing but annihilate all policies so far implemented by governments of CIMA member countries. These practices are also named:

- The insurance subsidiary to the one purchased from local companies;
- The difference in condition insurance, with a minimum warranty underwritten on arrival and a very extensive guarantee initially underwritten in developed countries, by the supplier on behalf of the recipient;
- Reinsurance in the form of 100% fronting. In this case, local companies retrocede the entire business and just receive a commission.

Moreover, with these various practices, operators not only bypass the compulsory local insurance, but at the same time, they also elude Internal Revenue services. Finally, the damage is felt also by the national economy.

**A few Recommendations for the Survival of Compulsory Marine Insurance**

In this globalization era we are experiencing, “dark and narrow nationalism” is no longer a philosophy to encourage or adopt. Borders have no more than a theoretical and symbolic value. Given this state of things, time is no longer for market restrictions.

Yet, the primary characteristic of compulsory marine insurance is its captive and restrictive aspect which limits both competitors and the markets where
they operate. Markets that wish to be competitive will have to open up to the rest of the world as that is what socio-political and economic realities of the moment require.

Given these new realities of the moment, local markets are forced to extend their borders at the risk of becoming obsolete and outdated. Compulsory marine insurance is no exception to these vicissitudes and would gain in expanding its scope to other horizons to adapt to contemporary economic realities.

This extension could be done at several levels including mainly the two below.

First of all, compulsory marine insurance should extend its scope to exports which occupy an increasingly prominent place in the international trade of developing countries.

Second, it must be projected into the community framework which is an area with many opportunities for those who will know how to exploit them.

**The Need to Expand the Scope of Compulsory Marine Insurance to Exports**

The new importance and the increasing prominent role exports play now in the trade balance equilibrium of most developing countries, have led UNCTAD experts to draw the attention of authorities of MOWCA member states and insurers of these states, on the need to turn to insurance on cargo exports.

It is true that imports now constitute the vast majority of marine risks insured in the subregion. Yet, with the globalization wind that is blowing on national economies, other sectors of the marine portfolio are now ready to be really integrated into the scope of compulsory marine insurance. Among them, is especially, insurance on exports.

However, if there is undoubtedly room for expansion for this sector of the marine portfolio, it still requires prior research and considerable preparation. In fact, in the field of insurance on exports, the situation is quite different from that of insurance on imports where the insurer can take advantage of his/her local presence to facilitate the settlement of claims. In addition, a number of problems specific to insurance on exports may occur within the CIMA zone markets.
The first challenge relates to the establishment of an important international network of qualified agents. Most markets in the region do not have the means to establish and maintain such a network. To this end, cooperation between insurers in the subregion in order to establish their own networks of local accredited agents would be, in many respects, very profitable. This cooperation could be facilitated by existing organizations within the framework of Community bodies already existing in the Region (CIMA, WAEMU, ECOWAS).

Once established, the monitoring and management of the networks can be centralized in terms of results and impartiality. National federations formed by insurers would coordinate information from each insurer and when necessary, take appropriate action. Federations would thus play a role for exerting reverse pressure when agents complain about dilatory responses made by some insurers that would prevent them from normally conducting claims management. And it is at this level that lays the second difficulty that could arise from the implementation of a policy aiming at insuring exports.

In fact, claims settlement being the showcase of the insurance business, it is necessary to pay great attention to fast and fair treatment of each claim if insurance on exports is to be implemented efficiently. It is essential that the foreign recipient be certain that his/her insurance certificates will enable him/her to obtain compensation in time, when and where needed.

In any case, any action for the purchase of insurance on export in the region’s local markets must be accompanied with the establishment of an effective mechanism for settling claims and that implies first that funds are available for an immediate settlement of claims once they have been accepted.

For funds to be immediately available, it is necessary that insurers maintain reserves in at least one of the major foreign financial centres and that they refuel it as and when they are used; or they sign an agreement with their local change control services allowing them immediate transfer of funds subject to a number of precautions taken in common agreement. This however, would require a quite strong integration between financial services of the different States in the subregion. In principle, this should not be a problem with the new community space which has in many ways opportunities for compulsory marine insurance.
The Community Framework: A New Space for Compulsory Marine Insurance

Integration appears today as a political, economic and social necessity and the African continent is no exception to this process. It is condemned to unite if it does not want to aggravate its already alarming situation.

Integration within the marine insurance framework could compensate for most of the difficulties faced by local markets in this globalization era.

First of all, because of the narrowness of African countries’ insurance markets, it is advisable to create co-insurance and reinsurance pools within the framework of African economic integration and cooperation, and within existing regional and subregional cooperation structures. However, co-insurance requiring a joint underwriting by several insurance companies, it can only be done within the framework of organizations whose texts provide for the free movement of goods, persons and capitals.

As can be seen, the community space can really be considered only if states are willing to relinquish some of their sovereignty by agreeing to open up to others through principles of freedom of establishment and freedom to provide services that should go beyond lip wishes and be achieved in real practice.

This requires political will that unfortunately, we find hard to perceive at the moment.

Within the framework of the West African sub-region, some treaties like WAEMU offer this possibility. Under Title I of the explanatory memorandum, it is clearly stated the desire of signatories “to create among member states a common market based on the free movement of persons, goods, services, capital and the right to establishment for persons engaged in trade or employment, as well as a common external tariff and a common commercial policy. “

Apart from WAEMU, another community framework is offered to the marine insurance business with the ECOWAS Treaty which also sets out the principle of freedom of establishment. But in this case, Member States shall in no way benefit from the common currency asset.
Maintaining Capitals within the CIMA Community Area: Community Co-insurance

The single license issue in franc zone countries was highly ranked among the terms of reference for the preliminary work that lead to the emergence of the CIMA. Indeed, the establishment of a single insurance market was regarded by some experts as one of the solutions leading to the rehabilitation and revitalization of the insurance sector in the franc zone. This approach of immediate opening of markets had been abandoned by the states in favor of a phased approach based on consolidation of national markets and on a standardized licensing procedure. As part of this phased approach, the CIMA General Secretariat has had to conduct several studies on the issue of single license and one of the conclusions was that the construction had to go through intermediate steps including the continuation of the harmonization of regulatory and fiscal procedures, reinforcing national markets and increasing business exchanges between insurance companies through reciprocity or reinsurance treaties.

The latest study on the matter by the CIMA General Secretariat was put under consideration of the Council of Ministers in September 2003. This study highlighted several schemes the adoption of which should be the first step in the long march towards a single market. Among these schemes, we can note freedom to provide services, community co-insurance and freedom of establishment.

From a practical and historical point of view, total freedom to provide services is the final step in building a single market. As part of a process that was just at its beginnings, the Secretariat had proposed as a first step towards freedom to provide services, community co-insurance within CIMA member states for some high peak risks.

The concept of Community Co-insurance

Among the objectives of the CIMA, there is prominently that of encouraging the establishment of facilities to enable insurance organizations to conduct business by exchanging appropriate techniques, including underwriting and management of high risks exceeding the storage capacity of a market. This was to encourage and stimulate adoption of practices aiming at increasing premium retentions at both national and regional levels to limit currency transfers abroad in the form of optional reinsurance premium.
In keeping up with this logic, the CIMA Council of Ministers, at its session held in Paris in September 2004, adopted Regulation No. 004/CIMA/PCMA/PCE/SG/04 for establishment of a Community co-insurance in the CIMA zone. This text was replaced and repealed by Regulation No. 0002/CIMA/PCMA/PCE/SG/06 adopted on September 11, 2006 in Paris.

Co-insurance is an operation by which many insurance companies guarantee the same risk through a single contract. Each company takes a share (expressed in percentage) based on which it receives its share of the total premium and contributes to the compensation, in case of loss/damage, in the same proportion. In general, this technique is used domestically and is for insurance companies of a same market.

In practice, some quite sophisticated risks may exceed the capacities of a national market and in this case, the objective of CIMA trough community co-insurance is to have other markets in the zone benefit from it.

To this end, the Regulation defines in Article 1; risks may be covered by Community co-insurance. When the risk is eligible for Community co-insurance, it must be insured by the local market up to a certain share based on the underwriting capacity of this market. The objective is to go through all national underwriting possibilities before subjecting it to Community co-insurance. And it’s at this level that arise all difficulties related to actual implementation of Community co-insurance, and which today, tend to give this concept a purely theoretical value.

**Limits of the Implementation of the Community Co-insurance**

Article 1 of the Code stipulates that “risks can be subject to a Community co-insurance only after having sufficiently interested insurance companies licensed to practice in the risk localization country. To this end, local markets and the National Insurance Directions should define objective criteria for assessing the adequacy of local stakeholders. “

By sending back to local level the task of determining the standard underwriting capacity per market, CIMA has only transposed a problem which, to date, has been the subject of no proposed of solution. Indeed, how can we claim to be in a dynamic of regional integration, of single legislation, and want to let domestic markets individually set the standard capacity criteria?
However, this concept of exhaustion of domestic risk underwriting capacity is very important because this constraint helps prevent the Community co-insurance from being an opportunity for some insurance companies, subsidiaries of large international groups, to build into “co-insurance pools” for the underwriting of risks eligible for community co-insurance, and this, at the expense of domestic companies not belonging to groups.

Such practices can only hinder the development of small markets since big deals are systematically placed in the form of community co-insurance in the subregion, thus depriving local companies of some substantial food they could have underwritten within the limit of their underwriting capacities.

On another level, community co-insurance is hard to be put into practice because of the non-binding nature of Regulations. Indeed, there is no requirement for an insurer to use community co-insurance where the risk is eligible and that its individual capacity is exceeded or that of its market is exhausted.

Thus, the Regulation appears as an option that allows insurance companies in the CIMA zone to carry out business exchanges on large risks in order to increase premium retention at national and regional levels. However the Regulation does not oblige them to do so. Therefore, the provisions relating to Community co-insurance will apply only for an insurer willing to use this practice.

In these circumstances, the legislator thus leaves a possibility of arbitration between optional reinsurance and community co-insurance. This ambiguity could be an impediment to premium retention at the regional level. Indeed, for an insurer who does not wish to submit to the obligation of sharing in the local market for a given risk, it would be enough to just look for the best conditions for reinsurance investments in place of community co-insurance. He/she will not be in breach vis-à-vis the legislation if the limits of Article 308 of the CIMA Code are met. For all that, the risk would be lost, for the most part, for the local and regional markets.

And this is where it is permissible to point out the lack of political will. Indeed, in other fields where the CIMA Treaty wanted to make certain provisions mandatory, it managed to do so without much difficulty; given especially the nature of its regulatory corpus composed mainly of public policy provisions.
Establishment of a Single Market: Final Step of the Integration Process

The CIMA market must evolve towards the establishment of the single license as it is one of the solutions that will lead to sustainable rehabilitation and revitalization of the insurance sector in the franc zone. The approach involves difficult steps that we will discuss later but it is the only way forward and has already formally begun with the introduction of community co-insurance.

The terms of the debate are clear because we are witnessing today, and increasingly, to the strengthening and multiplication of regional economic communities. This trend makes particularly high the risk of marginalization of isolated states in the current exacerbation of economic and commercial competition.

The African continent cannot afford to be outdone, that’s why we can say that despite the obstacles, the single license in the CIMA zone remains an unavoidable and irreversible process especially since the CIMA space has for this purpose quite significant assets.

The Single Market: an Irreversible Process

If it is true that the region’s markets are still fragile before Western powers and an early liberalization of services could be detrimental to us today, it should be also acknowledged that the requirements of the moment and current economic changes are incompatible with certain isolationist practices. That’s why it is permissible to say that this process is irreversible for several reasons, including two that seem of paramount importance:

A Requirement of UEMOA and CEMAC

CIMA Member States belong to economic and monetary spaces that have adopted principles of free movement of capitals, people, goods as well as freedom of service delivery. These principles will undoubtedly impact the insurance business. Moreover, the issue had been referred to the CIMA Secretary General by the CEMAC Permanent General Secretariat which was intending to establish the single license in its space, including for the insurance sector.

In the UEMOA zone, one of the key links in the financial system, namely the banking sector, has already incorporated this aspect in making the single license a reality.
Globalization and the Economic Partnership Agreements

The globalization of trade has certainly an impact on the development of insurance premiums in the CIMA zone. Indeed, despite national laws concerning the obligation of local insurance on cargo imports that we analyzed in the sections above, an increasing number of economic operators prefer, for the sake of convenience, competitiveness and security, to purchase their insurance from foreign companies known worldwide.

Moreover, by protecting their markets through domestic laws, CIMA countries expose themselves to fund providers’ discontent. It is not excluded that these fund providers require the removal of restrictions imposed by section 308 of the Insurance Code. This provision of the CIMA Code explicitly prohibits the assignment abroad (out of CIMA zone) of over 75% of a risk (with the exception of certain sectors such as transport and aviation). Therefore, whatever the level of transfer, there are always 25% of the risk that must remain in the region.

In this regard, it should be noted that the new Economic Partnership Agreements, commonly referred to as EPAs are designed to open up African markets, to liberalize them and submit them to international competition. Even though for now these agreements do not concern the field of services, it is clear that the process has started and inevitably, this sector will one day be liberalized.

In such a context, it will be difficult for insurance companies of the CIMA zone to fight on equal terms with large insurance groups if they don’t find at the regional level an open and integrated environment capable of providing them with even greater capital base through the combined effect of company associations and increased community co-insurance facilities. And on this point, CIMA already has significant assets.

Strengths of the CIMA in the Context of the Single Market

Even if it includes countries from West Africa and Central Africa, it should be noted that these different countries have common links that facilitate the establishment of the Single Market:

A single regulation both at the levels of insurance law and business law

One of the main characteristics of the single market is the existence of a single regulation that applies to all insurance companies regardless of the location of their headquarters.
At the level of the CIMA zone, that legislation already exists with the CIMA Treaty and the single insurance code appended thereto. It is the same for general business law governed by the OHADA Uniform Acts in all CIMA countries. This is an important step towards the single market already taken by CIMA countries.

**A single supranational control body**

The control and supervision of insurance companies is a significant activity for the rehabilitation of the sector and it is carried out at the CIMA level by the Regional Commission for Insurance Supervision.

This is a unique supranational control body to which States signatories of the CIMA Treaty have transferred part of their sovereignty prerogatives in the field of insurance supervision in their territory. This avoids a plurality of decision circles in terms of regulating the sector.

The CRCA is a key asset in the march towards the single license in so far as through the CIMA General Secretariat; it has information and experience in terms of organization of national markets, reliability of insurance companies and a thorough knowledge of the major problems that plague the insurance business in the CIMA zone.

**A Common Currency**

CIMA Member countries belong to franc zone and that facilitates the comparability of balance sheets of insurance companies and eliminates all risks of change losses. It is therefore a major asset in the consolidation of accounts and in the process of establishing a single market.

However, it must be recognized that despite these assets predisposing CIMA markets to the advent of the single license, it should be noted that several obstacles still stand in the path leading to a single market. These difficulties exist in real practice and are related to several factors such as fiscal disparities, control of intermediaries, insurance company liquidations, degradation of local service, disparate organization of national markets, currency transfer difficulties between member countries, etc.
**Conclusion**

The economic situation of Africa and the underdevelopment level of the countries require a rethinking of approach methods and mechanisms that have been implemented so far to get out of this ongoing situation.

One factor is important, even indispensable in this bundle of solutions, it is regional integration as a means of addressing structural weaknesses that have been, for a long time, undermining most African countries’ growth, increasing their economic vulnerability and compromising measures to fight against poverty.

So far, many theories have been developed and countless texts on integration have been adopted. But in practice, it must be recognized that we have difficulty to take action in most cases. Several factors explain this inertia, but they could all be summarized in the lack of real political will noted here and there at the levels of both national and regional institutions.

However, despite this bleak picture, there can be real hope given the progress and efforts that have been noticed, even if they remain insufficient and slow.

Within the framework of the insurance sector on which we carried out our study, regional integration has always been placed at the heart of the action of legislators and that since the accession of African countries to independence.

Today, if the insurance business in the franc zone is experiencing some rehabilitation and a real improvement (despite the economic crisis) it is largely due to a supranational integrated organization, endowed with coercive powers in a position to impose a single legislation and a common control system to national markets.

After 18 years of existence, the CIMA Treaty is now at a crossroads after having overcome many obstacles and laid the groundwork for a real regional integration of the insurance business.

On a financial level that is extremely important in terms of insurance, CIMA managed to rehabilitate companies by establishing upstream drastic conditions for setting up insurance companies and downstream, a quite strict control system.
These efforts have resulted in stabilizing the situation in most markets of member states and should make it possible to pass the final step in regional integration, namely the establishment of a single market.

And it is at this level that the Treaty should demonstrate its maturity and ability to think outside the traditional patterns that we often encounter in the African continent, too often characterized by an obvious failure and a real difference between theory and actual practice.

Based on the work on co-insurance going on, we tend to harbour some concerns given the little enthusiasm generated by this new procedure which, once normally implemented, should make way to greater participation in the effort to retain capital within the Region.

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Consistency and Inconsistency of Trade Policy in West Africa. International trade commitments and Regional Integration

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Introduction
Regional integration is more and more seen as the panacea for economic development. This has been well understood by the West Africa region which has initiated various processes that should lead to the implementation of a common economic policy. Of all targeted areas, trade is well ranked. Trade integration is therefore a whole section of a more global economic integration. In that regard, West Africa has undertaken a number of initiatives both through WAEMU and ECOWAS. But these regional economic institutions are not WTO members and have just started trade negotiations on the same front. As full members of the WTO used to taking part in trade negotiations, countries of the region are each striving as hard as they can on several fronts. When time comes to put together their efforts for a common regional policy, it is not sure that the sum of their individual experiences could be capitalized by the community. One moves from an individual logic of apprehension on interests to a regional approach that involves mutual concessions and trade-offs. The region should develop trade policies to adapt itself to existing international rules, make differentiated trade offers depending on trade partners and give itself a chance for self-centred trade integration. But presently it is faced with significant situational disadvantages. The countries of the region and the region itself as a negotiating entity are at the heart of highly entangled trade commitments whose consistency is not always guaranteed. These commitments are mainly at five different levels: Multilateral (WTO), interregional (EPA), regional (ECOWAS / WAEMU), bilateral (preferential agreements) and national (local trade policies).

Most of the difficulties are at the national level. Experience has shown that the decision-making process is not always consistent. If at the end of the chain, there are usually the ministries of trade and permanent delegations in Geneva
who define and defend them negotiating positions, the transmission chains do not always run smoothly. A negotiating position in trade is the synthesis of various sectoral interests at the national level. It involves dialogue, arbitration and leadership. It may have to do with agriculture, industry, economy, as well as finance and environment. There, some balancing must be done before the national position is communicated. But experience has shown that these sectoral interests are not well aggregated owing to a lack of coordination between different ministries. Moreover, the administrative decision-making process does not give much importance to the needs expressed by the private sector and civil society. A trade negotiation proposal drafted under such conditions has little chance of succeeding. At best, it is partial and does not crystallize the essence of the country’s interests. At worst, it does not exist and will never be defended in Geneva or in other trade negotiations fora.

According to current trends in international trade, the region destined to be the pulse point of trade policies. But the regional institutional structure is not yet fully rational. The overlapping between WAEMU and ECOWAS is due to other reasons than economic or they are not strictly commercial, though we can consider that WAEMU’s monetary jurisdiction may be one of the explanations. The institutional overlapping has a logical consequence which is that of the overlapping of sectoral policies it leads to. These trade policies can build on one another, but they remain inevitably competitive. That situation is at the origin of the entanglement of trade commitments for individual member countries. WAEMU current trade policy is supposed to aggregate different national policies. But it does not follow the geographical contours of West Africa. ECOWAS has not yet completed the Common External Tariff which would materialize its common trade policy. It is on the last stage of the process. It follows the regional geographical contours and involves countries that are not part of the trade policy enacted by WAEMU. Ultimately, the majority of countries in the region which aspire to regional trade integration should take trade obligations which are binding upon all countries of the region, but rights which are only biding upon half of them. They are conceding trade sovereignty with no guarantee that their concerns will be given due consideration at the regional level.

Yet, the region though hardly prepared to implement its own trade policy is getting ready to conquer the world. A new trade partnership is being negotiated with a well-prepared partner, organized in a customs union, well integrated in terms of trade with an aggressive agenda intended to open new markets. This new partnership will be the liberalization area in the region and involves commitments that go beyond what it has experienced so far. That supposes
perfect compatibility with commitments that had been made at the WTO, both at the institutional and substantial and requires the reciprocity principle between the two partners. However, the highlight of this new partnership is the principle of regional integration. West Africa is seen as an institutional counterpart to the EU. It should complete its integration process by establishing a single trade policy. This partnership will only be viable if West Africa’s trade offer is sufficiently inclusive, which is not the case for the time being. The vicissitudes of negotiation and the lack of regional policies that integrate the particularities have led to an unprecedented situation. The region which normally should integrate is operating with three different trade regimes vis-à-vis Europe: the LDCs under the Everything But Arms (EBA) Initiative, Côte d’Ivoire and Ghana under their individual EPA and Nigeria under the General System of Preferences (GSP). And here we are drifting in discord!

At the multilateral level, countries in the region have also made individual commitments. They are subject to fundamental principles of the system such as single commitments, which does not give them enough leeway in negotiations. They are provided with standard spaces for trade policies where they negotiate access to other markets while trying to strengthen their trade protection measures. The participation of countries in the region trade regime has followed two trends. First, most trade commitments they have undertaken are not the result of voluntary trade strategies. This is an opportunity subscription dictated by the trend for globalization of the economy. They did not join out of conviction but rather to avoid being left out. Reflection and assessment on the potential effects of these trade commitments came afterwards. This is the beginning of a countdown for negotiation. Second, the economic vulnerability of the countries in the region ranks them in the categories of LDCs and developing countries. They therefore benefit from a differentiated regime of rights and obligations which complements the common law system. That, however is not always what is best for them.

The bilateral level suggests a priori less strategic convulsions with regard to trade policy. Most of the time, it is a contract of adhesion, in the form of a unilateral trade preferences offer, subject to non-trade conditionalities. Taken at the regional level, these preferences may cause divisions between LDCs and developing countries that are subject to differentiated offers that do not take into account the geographical criterion and the need for integration stated.

It thus appears that each level of trade negotiations contains requirements that may be different even though it involves the same stakeholders. The task is all the harder for negotiators as the proliferation of different fora adds the extra requirement of consistency because of their legal entangling. Each level is a
part of a coherent set whose differentiated rules adjust to the macro and micro
economic contexts. Hierarchically, the WTO is the supreme ground of trade
commitments. It governs regional trade agreements through Article XXIV of
GATT, Article V of GATS and the Enabling Clause. Regional economic
groupings - ECOWAS and WAEMU - are in that register and are governed by
the Enabling Clause. The region is the place where we find a digest or even a
compromise of national commitments made by states, on WTO rules and
regional trade policies. These various rules should be linked so as to make
sure that the rights derived from some do not block the others. Inter-regional
rules such as those which result from the EPAs are also governed by the WTO
under Article XXIV of GATT. Trade preferences granted to countries in the
region draw their legitimacy from the Enabling Clause and the General System
of Preferences. All these rules which are interconnected are boosted from the
different ministries at national level. Concessions on sovereignty will follow
later on.

Daily practice unfortunately shows the permanence of procrastination. The
drafting of trade policies at the regional level is therefore a perpetual quest for
consistency to make sure that the block continues to hold, not only for the
sustainability of sectoral policies, but also to make sure that they lead to
development. Building regional integration in West Africa opens up many
projects. The region should create, build, explore. If one considers that the
quest for coherence at national level can be reduced to the ambition of a
common regional trade policy and that the bilateral preferential agreements
only require passive consents which are not sufficiently proactive to initiate
a trade policy, we see that there are three major projects left for the region to
work on. They come in a triple quest for consistency for a viable trade policy:
(I) Consistency with the multilateral trading system to restore a balance
proportionate to the economic situation of vulnerable areas; (II) Consistency
with the European partner for the advent of a structuring EPA that reflects the
needs of the region through the introduction of ethics, (III) the Region’s
consistency with itself so as to harmonise its own interests and proposals, in
line with its trade needs. The quest for coherence discussed here will not be
exhaustive. It will rely on a few symbolic cases which may have an immediate
impact on trade commitments about to be negotiated.
**West Africa’s attempt to be consistent with the multilateral trading system**

West Africa is making commitments with itself in the regional context and is making commitments with its European partner in the EPAs. The bulk of these commitments find legal impetus in multilateral commitments at the WTO. They adjust the rights and obligations of members, allowing them the possibility to change some rules in light of their economic constraints. For the countries of West Africa, the establishment of an efficient regional trade environment should begin with the clarification or adaptation of multilateral rules that do not seem to be in their interest. For historical reasons related weak influence on the negotiations, to power relations in trade or “the vagueness” of a number of provisions, West Africa clearly appears to be at a disadvantage when it comes to implementing its common trade policy In its search for endogenous development, it must make corrections / clarifications at two levels. First, the CET which is being finalised, may be in contradiction with the multilateral commitments of most members of ECOWAS (1). Second, the flexibilities potentially available for the region and which are needed to take into account the asymmetries in regional arrangements are not sufficiently clarified to the point of leading to litigation (2).

**Adjusting multilateral commitments to the new regional CET**

The imminent introduction of a CET for ECOWAS is an element which will make the relation between the multilateral commitments of individual countries in the region and their regional commitments more complicated. ECOWAS will be a Customs Union under WTO law and will pose compatibility problems between the two regimes. These legal problems (1), accompanied by practical solutions will be better understood through the assessment of the commitments of individual countries, both at the agricultural and industrial levels (2).
**Nomenclature/tariff profiles and commitments at the WTO: State of play**

**Table 1: Consolidation of agricultural products**

<table>
<thead>
<tr>
<th>Country</th>
<th>Consolidation Rate (%)</th>
<th>Application Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CI</td>
<td>14.9</td>
<td>150</td>
</tr>
<tr>
<td>GHA</td>
<td>97.1</td>
<td>150</td>
</tr>
<tr>
<td>NIGA</td>
<td>115</td>
<td>150</td>
</tr>
<tr>
<td>BEN</td>
<td>61.8</td>
<td>150</td>
</tr>
<tr>
<td>BUR</td>
<td>98.1</td>
<td>150</td>
</tr>
<tr>
<td>K</td>
<td>103.5</td>
<td>150</td>
</tr>
<tr>
<td>GAM</td>
<td>39.7</td>
<td>150</td>
</tr>
<tr>
<td>GK</td>
<td>40</td>
<td>150</td>
</tr>
<tr>
<td>GB</td>
<td>83.1</td>
<td>150</td>
</tr>
<tr>
<td>NIG</td>
<td>59.1</td>
<td>150</td>
</tr>
<tr>
<td>MAL</td>
<td>29.8</td>
<td>150</td>
</tr>
<tr>
<td>SNG</td>
<td>40.3</td>
<td>150</td>
</tr>
<tr>
<td>SL</td>
<td>80</td>
<td>150</td>
</tr>
<tr>
<td>TOG</td>
<td>37.7</td>
<td>150</td>
</tr>
<tr>
<td>MAU</td>
<td>12.4</td>
<td>150</td>
</tr>
</tbody>
</table>

With regard to agriculture (Table 1), all countries in the region have applied rate (ACR) that are lower than bound rates (BCR). A country like Nigeria has consolidated its agricultural products at 150% while their application rate is only 33.6%. The Gambia has consolidated 104%, Burkina Faso at 98.1% and at 97.1% in Ghana. These figures reflect very high individual protection margins. They should be able to cope with massive increases in imports by raising tariffs and in full compliance with their commitments at the WTO. Countries in the region that are less “protected” are at “reasonable” consolidation levels given the level of their tariffs. Senegal and Guinea Bissau, with consolidation rates respectively at 29.8% and 40%, belong to the category which benefit from a reduced adjusting margin of their tariffs in the event of sudden changes in trade flows. The situation in Côte d’Ivoire is the most outstanding. The rate of consolidation of its agricultural products (14.9%) and duties actually applied (14.8%) are almost identical and remain at a relatively low level. This leaves it no leeway in the case of the signing an individual EPA as is the case now, and raises important issues of consistency of a regional trade/agricultural policy in the prospect of the signing of a regional EPA.
The industrial situation (Table 2) is less homogeneous. “Protection” margins are dwindling. Unlike agricultural products whose peak bound rates (CCR) has reached 150%, bound tariffs on industrial products capped at 80% (Togo) with a repeated wish from Nigeria to protect its economy with a consolidation rate of 66 %.

Conversely, four countries in the region are already in a red zone, with applied tariff rates (ATR) that are above the bound rates. Apart from the lack of leeway, such a situation clearly raises the issue of compliance with obligations under the WTO both at the individual level as well as in the context of a regional EPA, as is the case with Côte d’Ivoire, Guinea Conakry, Benin and Mauritania.

Table 2: Consolidation of industrial products

<table>
<thead>
<tr>
<th>Country</th>
<th>DDC</th>
<th>DDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>CI</td>
<td>9</td>
<td>11.6</td>
</tr>
<tr>
<td>GHA</td>
<td>34.7</td>
<td>0</td>
</tr>
<tr>
<td>NIGA</td>
<td>66</td>
<td>25</td>
</tr>
<tr>
<td>BEN</td>
<td>11.4</td>
<td>11.6</td>
</tr>
<tr>
<td>BURK</td>
<td>13.1</td>
<td>0</td>
</tr>
<tr>
<td>GAM</td>
<td>56.1</td>
<td>11.5</td>
</tr>
<tr>
<td>GK</td>
<td>10</td>
<td>11.5</td>
</tr>
<tr>
<td>GB</td>
<td>50</td>
<td>11.6</td>
</tr>
<tr>
<td>NIG</td>
<td>38.1</td>
<td>11.6</td>
</tr>
<tr>
<td>MAL</td>
<td>15.5</td>
<td>10.5</td>
</tr>
<tr>
<td>SNG</td>
<td>30</td>
<td>11.6</td>
</tr>
<tr>
<td>SL</td>
<td>48.5</td>
<td>13.1</td>
</tr>
<tr>
<td>TOG</td>
<td>80</td>
<td>11.6</td>
</tr>
<tr>
<td>MAU</td>
<td>10.5</td>
<td>12.4</td>
</tr>
</tbody>
</table>

Source: Data on WTO members combined with “World Tariff Profiles” (UNCTAD, WTO and ITC) - 2007
The total consolidation rate (TDC) for agricultural and industrial products (Table 3) is interesting in that it gives precise information on the actual legal ability of any country in the region to adjust their trade policies according to their economic interests. In addition to the volume of sensitive products excluded from liberalization under the EPAs and determined by the final interpretation that will be made of Article XXIV of GATT, those countries may have an extra margin of “protection” depending on the scope of their commitments at WTO. A country like Mauritania has the lowest overall consolidation rate in the region at 12.4%. Other countries are on the same scale: Togo with 14%, the Gambia with 13.7% and Ghana, with 14.3%. Should the bound rates be changed out of trade necessity and following a legal procedure accepted by the WTO, these low consolidation rates would provide for the region real room for manoeuvre in negotiations in the context of a regional EPA. They will mainly serve to compensate for lost margins through the maximum rate of consolidation for other countries in the sub-region. Indeed, it is understood that the 100% total consolidation rate of Senegal and Sierra Leone, that for the Gambia at 96.5% and for Nigeria at 96.5% leave no room for trade policy reform in the prospect of a regional EPA. All in all, these heterogeneous and countervailing rates may be an opportunity for the region in its quest for consistency with the various trade commitments countries have made at the WTO and the need for harmonious regional trade policy.
Legal problems posed by the new CET:

Bound tariffs, applied tariffs and impact on third countries

The new CET will change the nomenclature of rights and obligations of countries in the region, and potentially those of third party members in their trade relations with ECOWAS. This poses two problems: the fact that the CET is higher than the bound commitments at the WTO for most ECOWAS countries and the eventual negative impact of higher tariffs for ECOWAS member countries.

*If the CET is higher than bound tariffs*

|Ci| GHA| NIG| BEN| BUR| GAM| GK| GB| NIG| MAL| SNG| SL| TOG| MAU |
|---|---|----|----|----|----|---|---|----|---|---|---|---|----|---|
|14,9| 97,1| 150| 61,8| 98,1| 103,5| 39,7| 40| 83,1| 59,1| 29,8| 40,3| 80| 37,7|
|9| 34,7| 66| 11,4| 13,1| 56,1| 10| 50| 38,1| 15,5| 30| 48,5| 80| 10,5|
|35| 35| 35| 35| 35| 35| 35| 35| 35| 35| 35| 35| 35| 35|

Sources: Data on WTO members combined with “World Tariff Profiles” (UNCTAD, WTO and ITC) - 2007

To understand better into the compatibility problems between WTO commitments and those at the regional/national level (Table 4), one should keep in mind the two following premises. First, the fifth band of 35% only applies to agricultural products, which is consistent with the will displayed in the region. Second, and consequently, the maximum CET applicable to industrial products will be 20% according to the WAEMU gains and the ECOWAS draft on the advanced CET.
For agricultural products (DDCAG), the planned application of the 35% rate will bring about legal problems of compatibility with the WTO to all countries that have consolidated below. The argument of applied rates will not be of much help here. The legal issue is more related to the dropping out between this firm legal commitment made in the multilateral framework and frustrations born of the desire to establish a trade regional/agricultural policy. It is worth recalling that the Regional Trade Agreement (RTA) does not offer opportunities for discrimination at all levels and that one of the basic principles of the relationship between multilateralism and bilateralism is the hierarchy of rules. Unless otherwise specified, the countries of the sub-region could not go beyond their bound rates under the guise of a new regional policy. The bound rates for countries in the region are relatively high and most of them are higher than the 35% projected rate for agricultural products. However, the unique situation of two countries is problematic. Senegal, for example, with a consolidation rate of 29.8% will not a priori automatically apply the new TEC unless it has been reviewed beforehand. With a bound rate at 14.9%, it is not only in the same situation as Senegal, but its rate is so low that even a regional CET capped at 20% would not be applicable. This means that the nomenclature of the WAEMU CET that is already in force is not applicable by Côte d’Ivoire unless it fails to comply with its international commitments. The only problem is that the rate applied by Côte d’Ivoire (14.8%) is still below the CET maximum limit, but it is gradually erodes on the protection margin and does not guarantee a smooth and strategic implementation of regional agricultural policies.

With industrial products (DDCPI), the same reasoning, mutatis mutandis, leads to the same result. On the one hand, there is a majority group of countries with bound rates which are beyond the ceiling of 20% for industrial products. On the other hand, there is a group of “problem” countries whose rate of consolidation does not allow to automatically apply the regional CET. They are Côte d’Ivoire, which has consolidated at 9%, Benin at 11.4%, Burkina Faso at 13.1%, Guinea at 10%, Mali at 15.5% and 10.5% for Mauritania.

It appears therefore that both for agricultural products as well as for industrial products, the implementation of the new ECOWAS CET will pose legal problems related to the various individual commitments at the WTO. This problem posed by the level of bound rates can be solved in two ways at the WTO.

**First solution suggested:** The countries of the region can choose the status quo. They will implement their customs union with a new TEC and choose not
to touch their bound rates notified to the WTO. They will then be in contradiction with their multilateral commitments with regard to the notified concession lists. But that opportunity is widely open to them with regard to WTO law. Failure to comply with bound rates is not something that is totally unacceptable. It involves only the payment of compensation. The region may therefore opt for the payment of compensation that may include other products (GATT Article XXVIII.2) and keep the freedom not to change its consensual CET. Better even, the interest of this solution is highlighted by another express provision in the WTO which could both ensure the maintenance of the CET and the non-payment of compensation. Indeed, paragraph 6 of Article XXIV of GATT provides that in determining compensation, “the compensation already made reductions to the corresponding right of the other constituents of the Union” will be duly taken into account. Yet both for agricultural products and industrial products, bound tariffs are on average well above the ceiling rates of the CET, it follows that through a system of internal compensation to the customs union, the asset is higher than liabilities. The overall situation in the region, under the above provision, may not affect the contents of the concessions lists for individual countries. Otherwise, the region should not have to deal with compensation even if some marginal bound tariffs are below the CET.

**Second solution suggested:** The problem with a TEC higher than bound tariffs results from the violation of individual concession lists. The solution may come naturally from the amendment of this list. Not only does the WTO give that possibility through the procedure of Article XXVIII of GATT, but it is a solution which has the advantage of having already been experienced by an African country, namely Gabon. The modification or withdrawal of a concession must be made after negotiation and agreement with any party involved in the initial concessions granted and any other having a “primary” and “substantial” interest in this concession. In 2007, the authorities of Gabon came to realise that their industrial products were bound at 15% at the WTO, but their duties actually applied under the CEMAC CET was at 18%. Faced with the legal problem of incompatibility posed by the situation, they made a request at the WTO for their lists of concessions to be modified in line with the procedure mentioned above on lists amendments. On 18 July, 2008, the WTO Market Access Group ruled on the request and gave a positive response to Gabon, allowing it to raise its bound tariff from 15 to 18% at the same rate as the CET to be in compliance with the latter. It is worth pointing out that to maximize its chances, Gabon, which is a developing country, had to invoke a status of “small and vulnerable economy” highlighting a few criteria indexes that have been taken into account by the WTO authorities. In the latest news,
Gabon introduced a new request to raise its bound tariff from 18 to 28%. Countries in West Africa should emulate it. The only difficulty *a priori* identified in the implementation of this procedure is the lack of a group solution. Each country will then have to initiate its own request.

But beyond these limited effects on the countries of the region as initiators, the tariff increase under the new regional policy vis-à-vis third parties is another problem to solve.

**Negative impact of raising the CET on third parties**

To date, ECOWAS is a free trade area, notified to the WTO on 6 July, 2005 under the Enabling Clause. Once it adopts a TEC as long planned, it will become a Customs Union. Article XXIV.4 of GATT provides that if the purpose of a customs Union is to facilitate trade between the constituent members, it should not be used to “raise barriers to the trade to other contracting parties with such territories”. Article XXIV.5. which is in the same line provides that in the case of the formation of the new customs union, “*the duties imposed shall not on the whole... be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union.*” Clearly, this is aimed at avoiding causing harm to third parties through the simple act of forming a new RTA that confers additional trade benefits to its members. Yet, by hypothesis fixing the maximum rate of the ECOWAS CET to 35% for agricultural products and 20% for industrial products would create additional tariff obligations to third parties insofar as some countries have consolidated below those rates. But beyond the problem of bound rates, the possibility of raising the rates actually applied by the countries of the region so as to implement the CET is an element of annoyance in relation to commitments made at the WTO. Indeed, insofar as Article XXIV does not clearly mention how “*the general incidence of the duties... and regulations of commerce ...*” which should not be higher are evaluated; the solution is to be sought in the Memorandum of Understanding on the interpretation of Article XXIV of GATT which is more recent. The interpretation of the paragraph provides a more explicit answer: “*the assessment of the general incidence of duties and other regulations of commerce applicable before and after the establishment of a customs union will respect the customs duties and charges based on an overall assessment of weighted average tariff rates and customs duties. To this end, tariffs and charges to be taken into consideration shall be applied tariff
rates. "Therefore, the fact that the duties in application are lower than the bound ones is not only not understood as the existence of a modulation margin for trade policies, but rather as an implied waiving of rights, a "shameful" act that is offered to WTO members. All in all, raising duties through the establishment of a CET may increase their incidence vis-à-vis third parties. Faced with this difficulty, a global solution can be envisaged, through two mechanisms aimed at circumventing the requirements of Article XXIV.5 of GATT.

First suggested solution: An evaluation of the general incidence of duties and other regulations of commerce on the basis of the duties actually applied is done in the case of the formation of a customs Union. A WTO member, taken individually, retains its freedom of trade policy resulting from the gap between its bound and applied tariffs. Therefore, if the countries of West Africa leave the situation as it is and implement their customs union, they will fall within the scope of Article XXI.5 of GATT since the increase in duties applicable to third parties will be a direct result of the formation of the new customs Union. That will be the consequence and should be sanctioned as such through the negotiation of compensation. However, nothing prevents countries in the region to individually raise their tariffs to benefit from legal margins before the customs union is implemented. In doing so, increased duties applicable to third parties will not be the result of the formation of the customs union. Neither will it be a consequence. It will simply be the action of a WTO member in the lawful exercise of the rights granted by the system. Needless to say that this will require extensive negotiations within the region.

Second suggested solution: It is easier to implement It consists in a legal base substitution at the WTO. All requirements related to the protection of third parties with regard to increase in tariffs are contained in Article XXIV of GATT. However, ECOWAS, as a free trade area, is already registered with the WTO as a regional trade agreement among developing countries under the Enabling Clause of 1979. If with the introduction of the CET, the new customs union is notified using the same procedure under the Enabling Clause and not under Article XXIV of GATT, the impact of the increase in duties resulting from the formation of the customs Union will no longer be valid. Wisdom commands that we move in that direction. In its quest for consistency with the WTO system, a second undertaking which is particularly challenging is to be launched. It is that of clearly defining the rates and deadlines for liberalization within regional agreements.
Clarification of rates and liberalisation deadlines in the joint Regional Agreements

The least that can be said is that the drafting of Article XXIV of GATT needs to be contextualized. It does not take into account important new elements such as the existence of recent regional agreements between countries of the North and the South. As a case in point, one can mention the situation in the EPA negotiations between the EU and countries in West Africa. For the sake of consistency and predictability, the region should launch an awareness and clarification process on the WTO data, in order to establish legal bases on how to analyse development issues in their various trade agreements.

It is no secret that trade preferences are based on an exception to one of the pillars of the WTO namely the most favoured nation treatment (MFN Clause). But this clause is subject to two exceptions: the preferences granted to developing countries (GSP) and Regional Trade Agreements (RTAs). All RTAs in the WTO are governed by three main provisions: Article XXIV of GATT, the Enabling Clause and Article V of the General Agreement on Trade in Services (GATS). The EPAs between the EU and ECOWAS fall in that category. They take the form of a Free Trade Area. But they will have a completely new form. The EPAs will be a mixed RTA concluded between developed and developing countries. As such, it is an economic reality that is taken into account by WTO law by default. Because Article XXIV of GATT, which governs the RTA has no provisions for this type of mixed RTA. This raises the problem of the legal regime that needs to be applied.

Two important issues should however necessarily be resolved to achieve a balanced EPA, which takes into account the interests of the West Africa party. First, it is the definition of the concept of the substantial part of trade that will enable determine the level of liberalization. Second, it is the definition of the concept of reasonable length of time which will determine the deadline for the implementation of future EPAs. WTO law remains silent on these issues, even if a Memorandum of Understanding on the interpretation of Article XXIV of GATT was adopted in 1994. It provides some clarifications regarding timeline computation on the implementation of RTAs, but does not solve the problem on the liberalization level. Article V of the GATS, adopted more recently, just introduced the concept of major sector in determining the level of liberalization, but gives no indication on the implementation deadline. WTO case law does not provide any indication either. It only says that the substantial part of trade to be liberalized in a RTA is not the whole trade, but ... it is more than part of the trade. All methods of interpretation used do not give any
figures either. However, there seems to be a consensus around an 80% market liberalisation for a RTA not to run the risk of being rejected at the WTO. The question was to know whether this rate is an average of liberalization efforts from both sides, or the maximum for each of them. Based on the mixed nature of the EPA and the implicit recognition of a possible asymmetry by the EC which proposes a 100% liberalisation, we can conclude that the rate of 80% is a weighted average that allows countries of West Africa to propose the opening of their markets up to 60%. Such a rate could not be challenged as incompatible with WTO law.

On the issue of implementation deadline for the EPA, Article XXIV of GATT provides for period of 10 years which may be extended in *exceptional circumstances*. But no criterion on how to define these *exceptional circumstances* is given. Ultimately, it is the practice of member countries which could lead African countries to a solution. One may conclude that the latter could benefit from an implementation period of 25 years with the EC. Nothing in WTO law and in the practice of members are opposed to it.

One can see that a very clear consensus on the interpretation of these provisions will strengthen the overall consistency of regional agreements and of the trade regime itself. It is also an opportunity to participate in the development or the amendment of standards through the ongoing negotiation process within the WTO, through the implementation of a pro-development offensive agenda.

For the countries of West Africa, it is necessary that accounts be settled at the multilateral level, but it is also imperative to work for a fair and balanced trade relationship with the European partner. The forthcoming EPA between the EU and ECOWAS will provide a normative structuring trading bloc for decades to come. There is therefore a need for consistency to which the region shall comply.

**West Africa in search for consistency with its European partner**

The European Union remains one of West Africa’s main trading partners. Thus, suffice it to say that its trade commitments vis-à-vis the region are important elements in structuring its trade policy. Its commitments obey to strict requirements such as the need to remain consistent with the higher commitments made at the WTO. But most importantly, they should provide the region with enough leeway for the development of autonomous trade policies under the leadership of its own authorities and while taking into account the
economic and commercial needs of the region. Some European ambitions tend to restrict this freedom to contract. They rely on old paradigms that do not reflect the new trade order. Therefore, any search for coherence in the region should go through the acquisition or maintenance of a business framework favourable for its autonomy (1). The establishment of such a framework should also lead to obtaining effective commitments from the trading partner which are not undermined by subsequent “evasions” which hollow out their market access which in theory is available (2).

Maintaining a “systemic trading framework” in favour of the region autonomy

For the region to have trade relations with the outside, first there needs to be a viable and autonomous regional business environment. The development of internal trade policy should remain the exclusive prerogative of authorities in the region. To do so, trade relations with Europe should be reviewed at two levels, at least. First by dissociating trade from development aid (1), and second, by giving up the principle of planned mutuality in the regional EPA (2).

Dissociating trade from development aid

If there is still a misunderstanding in trade relations between Europe and Africa, it is the nature of vertical or horizontal linkages between trade and development aid. The evolution of trade negotiations has given rise to new paradigms on which the two partners have not reached consensus. In the present context, it is crucial that trade issues be dissociated from those related to aid. Indeed, as long as African countries were swallowing down trade agreements without checking if their interests were taken into consideration or not, Europe saw development aid as a compensatory gesture of good conscience. Now that African countries are more aware of issues at stake in international trade negotiations the situation has taken a new turn. These negotiations are so strongly interlinked at the regional and multilateral levels that they can no longer give to Europe the guarantee of automatic trade concessions. Therefore, compensation aid has become a subtle negotiating argument secretly wielded every time that African countries have been slow in adopting the positions expected of them, thus encouraging that development cooperation be withheld through trade. This fact is indicative of an inconsistency. Aid and trade do not obey the same logic of partnership. Aid is unilateral, voluntary and situational. Trade is more contractual and more normative and is part of a systemic plan articulated around the WTO principles. For these reasons and also for ethical considerations, it should not
interfere in efforts aimed at reducing poverty in ways and for reasons other than commercial. It would, therefore, not be an exaggeration to make of such interference, which is a proven element of coercion, a factor which disturbs the normal order of international trade, and which is justiciable at the WTO.

It is by disregarding these new paradigms that the EU has introduced in the EPA negotiations with West Africa, a clause that perpetuates the conditional relationship between development aid and trade. It is the non-execution clause. It results from a concept from lawyers which describes the possibility for a negotiating party to suspend its trade commitments, if the other party does not respect peripheral commitments that are not directly related to the subject of the original contract. This clause is present in the Cotonou Agreement which serves as a bedrock for the EPA, in its Articles 96 and 97 in particular.

Article 96 has to with human rights, democratic principles and democracy, while Article 97 deals with corruption cases. The themes are clearly non-commercial, but are considered as important elements of the overall partnership framework between Europe and ACP countries. It is true that the Cotonou Agreement, as the Lomé Conventions which are older and go beyond the commercial framework and include a major component of development cooperation. Trade preferences granted by the EU are unilateral, and that makes it consider itself as a backer entitled to ask for explanations. It is in this logic that fit these conditionalities in areas where African countries are not always free from blame. Development assistance is used as a lever to promote human rights, democracy and the fight against corruption. These provisions have also been used twice recently. The first time in Zimbabwe in 2001 and the second time was in Fiji in 2007. Both times it is for reasons related to a military coup or interruption of the electoral process. But in both cases, it is development aid and not trade preferences that have been withdrawn.

The EU position is to maintain the non-execution clause in the EPA with West Africa. It considers that technical assistance continues to cohabit with commercial aspects in the future EPAs and that Articles 96 and 97 were still applicable and that issues related to human rights, democracy and corruption are still topical. The countries of the region through positions taken at the ACP Secretariat and elsewhere, do not endorse such a position. They argue that trade issues should be negotiated outside development cooperation unilaterally provided by the EU and that this aid should not also justify interference in their internal affairs. Therefore, even if we should consider the Cotonou Agreement as the basis for the EPAs, the problem can be solved with an express provision in the EPAs excluding the application of Articles 96 and 97.
The position of countries in the region is not devoid of logic. The non-execution could be justified in a unilateral grant of aid or of trade preferences. But placing a premium on democracy should not be a conditionality in the context of contractual trade relations as is the case in the EPAs. The concessions are reciprocal and negotiated hard. This is the moment to specify that the development component contained in the EPAs is not statutorily comparable to development aid. Development issues in the EPAs are accompanying measures required to meet specific conditions which have been commonly agreed on between the two parties. They are part and parcel of the agreements and there is no possibility for a unilateral suspension. There, they cannot be removed at the risk of calling into question the whole Agreement. Conditionalities such as the non-execution clause cannot be applied in a contractual relationship with approximate trigger conditions are, and in areas as sensitive as that of human rights, democracy and corruption. Tackling this problem through the dissociation of aid from trade will be an important measurement of what will be the capacity to formulate autonomous trade policies in the region in the coming years.

A second misunderstanding in developing the trade framework should be lifted, for consistency. It has to do with whether or not it is appropriate to introduce the MFN clause, which is essentially a pooling principle in the regional EPA.

**Extirpation of the pooling principle from the regional EPA**

RTAs are an exception to the MFN clause. *A fortiori*, a mixed RTA involving developing countries and developed countries should not plan for a pooling of all trading benefits obtained by developing countries in other partnerships. Yet it is the strategy of the EU, which in the interim agreement with Côte d’Ivoire in this case, included a MFN clause stipulating that the Ivorian party will grant to the EU any more favourable treatment that could result from the Ivorian party becoming a party to a bilateral free trade agreement with a major trading partner. The EU agrees to grant the same benefit to the Ivorian party. This seems unjustified since it is already offering, a 100% quota tariff-free access as part of the EPA. Technically, this offer cannot be lower than the future trade deals that Côte d’Ivoire will benefit from. The European MFN clause is well targeted. It will affect any “major trading partner” which may mean any developed country or any country a world trade volume higher than 1% in the year preceding the entry into force of the EPA between the two parties, or any group of countries acting individually, collectively or through a free trade agreement with a share of world trade higher than 1.5% in the year preceding the entry into force of the EPA.
If the principle of non-discrimination is one of the cornerstones of the WTO, it is logically arranged to encourage a multiplicity of legal systems based on three categories of development recognized by the system: developed countries, developing countries developing and Least Developed Countries. The application of one of the two essential components of the principle of non-discrimination – the MFN Clause in this case - confirms the recognition of a possible discrimination, but always in favour of lower categories. This means that developing countries can be discriminated against in favour of LDCs and developed countries can be discriminated against in favour of developing countries. In contrast, developed countries which are members can, by definition, “only be discriminated against” if that discrimination is extended to all other developed countries. By introducing the MFN clause in the EPAs, the EU implicitly calls into question the possibility of discrimination in favour of LDCs and developing countries. These possibilities legally enshrined in the GSP of 1971, the Enabling Clause of 1979 and the 1999 decision in favour of LDCs offer exceptional trade benefits which cannot be pooled. In truth, developed countries are in a legal position to suffer discrimination in trade, which are actually not real, following the theory of compensatory inequality which is the basis of the Special and Differential Treatment (SDT) at the WTO. For better or worse, by not suffering from discrimination bilaterally (MFN in the EPAs), the EU is making sure that is benefiting from a more favourable position in multilateral negotiations. It starts with the guarantee of benefiting from MFN clauses at all levels, with a principle of systemic non-discrimination at the multilateral level with all eventual exceptions being annihilated at the bilateral level. Consequently, it renders meaningless all the mechanisms put in place for developing countries and offers itself an exceptional SDT. This position is mainly explained by the European desire to deal with its competition with major trading partners who massively arrive on the African continent. But this aspect is not yet legally taken into account by the WTO system where the heterogeneity of members within the generic category of developing countries does not allow for differentiation in their legal status. Most often, it is the developing countries in Africa that suffer through an erosion of preferences, developed countries being reluctant to confer the same trade benefits to other developing countries which are seen as potential competitors.

Once consistency is gained in the definition of systemic framework conducive to regional the region’s autonomy, one should strive to introduce more fair play in trade relations with the EU by mitigating the protectionist effects of non-tariff barriers.
Mitigation of the protectionist effects of non-tariff barriers

For the countries of West Africa, the access granted to the European market is often theoretical. They face obstructionist trade policies whose automatic renewal in the EPA may neutralise the gains in trade that should be expected. These are mainly subsidies that distort trade (1), Sanitary and Phytosanitary measures (2) and the rules of origin (3).

Elimination of subsidies that distort trade

In the WTO Agreement on Agriculture, imbalances have emerged in the very structure of the agreement between on the one hand countries may use domestic supports and export subsidies because they had notified them and the others, especially African countries. While most African countries lack the financial means to support their agriculture or are not allowed to do it because of structural adjustment programmes, developed countries have for their part, negotiated provisions that protect their agricultural policies, and allow them to play on the colour of the three boxes. If price supports placed in the orange box fell, they were replaced by aid placed in the blue box (subsidies related to programs that limit production) and the green box. That is why the total support to agriculture remains very high in rich countries.

For a coherent trade policy at the regional level, it is out of the question that this policy of subsidies be transferred in the EPAs for at least two reasons. The first is that Europe is benefiting from unjustified flexibilities in agriculture. It is keeping prerogatives that allow it not only to protect its agriculture, but also to distort international trade in significant proportions. The case of the Sectoral Initiative on Cotton raised by three countries in West Africa, among others, is a perfect illustration that the system is not properly working. For once that the African countries were demanding strict enforcement of the rules of liberal trade, being aware of the competitiveness of their cotton, the system has never really came to punish the illegal U.S. subsidies and to find compensation mechanisms for the countries affected. It is true that the fact that African countries did not chose the face to face dispute settlement method does NOT favour a mandatory solution. But the lesson they have learned is that the subsidy policies of the North could have an adverse impact on their agriculture without the system not coming to their rescue. The second reason is that the role of agriculture in the African socio-economic structures is such that it cannot be seen as any other commodity. This has also been understood by the WTO which has started to put in place protection mechanisms of with the special products and a special safeguard mechanism for the benefit of African countries. One can add to that an important part of the lists of sensitive
products which are excluded from liberalisation under the EPA is composed of agricultural products. Therefore, it is not conceivable that all these protection mechanisms should be put in danger by European subsidies policies.

But the problem persists. And, nowhere in the interim EPA texts, is there a mention of what on the fate of subsidies. The Minister for Integration of Côte d’Ivoire, who is in charge of the EPAs, repeatedly said that the issue was discussed with the EU who has given verbal assurances to abandon export subsidies, which will have a distorting effect on trade in African countries, should an EPA be signed. But no document confirms its commitment of principle. Better, it even appeared that the EU refused to talk about the fundamental problem of agricultural subsidies in negotiations and EPA texts. Yet, EU agricultural products continue to be exported with a strong dumping – mainly to West Africa, wheat and flour, dairy products, poultry meat, tomato paste, etc. For example, EU agricultural exports benefited from about 7 billion Euros in domestic subsidies in 2007 and more than 2.5 billion Euros in export refunds (Oxfam 2009). And yet, the term “subsidy” does not appear in interim EPAs signed by Côte d’Ivoire and Ghana, although it is implicitly referred to in Articles 23 to 25 on anti-dumping and safeguard measures.

**Waiving sanitary measures without scientific justification**

The regulation that poses the most problems accessing the European market for African countries is that relating to sanitary and phytosanitary measures (SPS). Do these standards refer to a justified consumer consideration in terms of public health, or are they a new form of protectionism to prevent imports from competing with Europe’s domestic products? Two opposing requirements which are difficult to reconcile are opposed to one another and it is not easy to distinguish between the legitimate need to protect consumers’ health and the use of SPS standards for protectionist purposes. In order establish fair SPS standards, the WTO uses as reference the international standards of the Codex Alimentarius of the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). Most developed countries WTO Members, including the EU, under pressure from consumer groups, argue that the requirements of these international standards are well below the minimum required to ensure the health of people, animals and plants. They believe therefore that these references lead to a levelling down of standards and that harmonization attempts led by the WTO are irrelevant.

However, what is perceived in the North as a *minimum safeguard measure* for human health, is seen by commercial partners in the South as an illegal practice mainly aimed at preventing imports from entering the target market. Actually,
the EU continues to ban imports from African countries through more stringent rules than those of the WTO, and \textit{without providing scientific evidence of health risk}. This is the result of a scabrous triangular relationship between the WTO, the EU and West African countries in. The scientific evidence given to justify import bans is a necessary condition. The EU tends to ignore it in its relations with developing countries, by putting forth another problem which is certainly relevant, but insufficient, and especially unfit to handle the legal problem raised. For the EU, aid and technical assistance provided or promised to scale up the production structures of the South are the best answer. Most African leaders put up with it and seem to adhere to that view. The issue of technical and health upgrading has to be raised for the EU to remain exempted from providing the necessary scientific evidence to justify import bans. The situation is all the more regrettable as in the same circumstances, the EU had to pay a high price for a prohibition of importation of American hormone-treated beef, citing the existence of a risk that has never been proven by scientific evidence. The WTO Dispute Settlement Body that was seized was in favour of the United States. And because they failed to withdraw the incriminated measure, the United States were able to cross-retaliate and one of the most visible elements was the surcharge on French Roquefort cheese. Would that mean that trade justice is the exclusive international big powers? Would African countries exclude themselves from legal trade repair mechanisms available to them through the system?

This “impunity” of Europe vis-à-vis African countries continues to pose serious problems to small and medium-sized African enterprises whose economic survival depends on access to their main export market which is the EU. Suggested help solutions for upgrading are useful and necessary in the medium and long term, but do not solve the loss caused by sudden and unjustified import prohibitions. The damage is enormous and there has been no compensation. It is therefore legitimate to ask whether an automatic transfer of WTO rules into the EPAs, without taking the time to analyse the reality of European trade policy would not be a legal validation of the difficulties that African countries have to get access to the European market. One may even fear that European practices which are not sanctioned within the multilateral framework will be implemented and validated within the EPAs.

On analysis, it became clear that to minimize the use of SPS for protectionism in the EPA, a more stringent application of international rules is needed. Prohibitions on imports of African products to Europe must be based on \textit{a strong presumption health risk}. Subsequently, this risk must be confirmed by the existence of scientific evidence that validates the presumption.
Alternatively, new compensation mechanisms for Small and Medium-sized Enterprises (SMEs) which have suffered losses, should be considered. This seems to be a fair way of finding a balance between the need to protect consumer health and freedom of trade. The regional EPA soon to be concluded may serve as a field of application for this proposal.

**Rules of origin for effective market access**

Just like other non-tariff barriers, EU trade policy on the rules of origin has an impact which lowers the possible trade effects expected from the opening up of markets by the countries of West Africa. Even before the EPA process, the preferential rules of origin were offering limited benefits because of their rigidity and complexity. It is difficult not to make a connection between the low utilization of those preferences and their costliness, which reduces the opportunities offered for market access. It is not uncommon that these rules discourage regional cooperation which could be developed through a combination of complementary expertise. They do not favour technological development, networks and joint manufacturing either and unduly restrict supplies in third countries. In this sense, they are obstacles to trade facilitation by increasing customs administrative complexity. Traders often prefer to give up asking for trade preferences as a result of an individual arbitration between the benefit to expect and the costs associated with obtaining it.

The problem remains intact under the EPAs, with even the possibility of stepping back, if we take into account the new configurations of the EPAs with Europe. As a reminder, all EU/ACP agreements were organized on the basis of broad cumulation for the ACP, this vast area being able give a single origin for all products exported to Europe. During this period, the major difficulties African countries were faced with had to do with the complexity of rules of origin which needed to be simplified and clarified to be effective. The rules of origin contained in the Cotonou Agreement retain the same complexity. They are also present in the same form in the Everything But Arms Initiative which gives quota tariff-free access to LDCs. That has even been used to justify their signing an EPA. Their choice could have been made on the basis of a promise for more flexible rules of origin in the future EPAs than in the various existing schemes. But beyond their complexity, it is the fact that regional or full cumulation is challenged that may be a problem. Insofar as the future EPAs will be signed by individual states or regional groupings, the rule of applicable cumulation of origin could be bilateral cumulation between the state or subregion and the EU. A cumulation is said to be bilateral, when its scope is limited to preferential trade between the preference donor and a single partner country, or in the case of reciprocal circumscribed preferences as is the case...
in the EPAs. With *bilateral cumulation*, products originating from one of the parties, which are transformed in the other party, are considered as products originating from the other party. In other words, the processing of raw materials originating from partner countries need not be *sufficient* as it understood in the basic rules. The effect of bilateral cumulation is to increase economic integration between the two partners.

But for regional integration needs as defined in the Cotonou Agreement, more elaborate and extensive systems of origin cumulation allow trade partners whose relationships most often date back before the granting of preferences, to use the materials used in the manufacture of a product indiscriminately. This would be an exception to the strict *original* criterion governing the rules of origin. The solution would thus lie in the choice of a cumulation of origin with forms best suited to the economic realities of benefiting countries. Cumulation can determine the extent to which countries can use trade preferences available to them under a Free Trade Agreement or a system of unilateral preferences. According to Eckart Naumann (Naumann 2005), “Cumulation refers to the extent to which production may be aggregated with other countries without losing originating status for the purposes of the applicable RoOs. In effect, cumulation is a derogation from one of the core concepts of origin, i.e. that of a product having to be ‘wholly obtained’ in the exporting country.” For African countries to benefit from better rules of origin in the EPAs, two possibilities can be explored. First, there is diagonal cumulation. This is a bilateral cumulation extended to several countries linked similar by preferential systems. The framework of the partial multilateral (or diagonal) cumulation is particularly suited to a production process, in which some partners act as subcontractors on behalf of a “driving” partner, in charge of making the finished product. Its objective is to increase economic integration within the same area, prompting the manufacturing country to diversify its supply sources from the various partners in the area. This would enable, in the case of an individual EPA, that the inputs from its EPA region, to be considered as parts of the national product and there would be no problems of origin. In the case of a regional EPA, the origin would be extended to all other African regions, to keep some of the benefits of the ACP full cumulation. But even more ambitious, and perhaps fairer, is the multilateral cumulation or broad cumulation. This is recognized when the zone of countries participating in the cumulation make up a single territory in terms of origin. The rule on origin is satisfied if all the cumulated openings which have been successively performed in several countries in the region constitute sufficient transformation. It takes into account the fact that these countries, taken individually, do not generally have enough diversified industrial resources
which are efficient enough to ensure a whole manufacturing process. The objective of cumulation is to increase trade multilateralization by optimizing the complementary of industrial specializations. This type of cumulation, which keeps all the benefits of previous EU/ACP Conventions, could lay the groundwork for an adjustment of requirements in terms of origin to development and market access needs. Concepts and methods should be simplified and cumulation facilities should be extended in the framework of the EPAs.

Postulated consistencies with the multilateral trading system and with the European partner are not ends in themselves. The region remains the leading actor of its integration and development. Whatever the tools granted by the various regulatory systems may be, they should be optimised by regional trade policies. The region should adopt an institutional stance that allows it to align the interests of its members and be in a position to express itself outside in a single voice. That is seeking consistency with itself.

**West Africa in search of consistency with itself**

Even if the region succeeds in bringing order to the overall logic of its commitments with its partners and the multilateral trading system, it should work to remain consistent with itself. It is this requirement to itself which will give it the right to be demanding with others. On a number of themes, this is not really the case. Two emblematic examples can be highlighted. First, the one on the contradictions between multilateral commitments and the position adopted at the regional level in dealing with the Singapore issues. There is a need for synchronization (1). Then, without being involved at the institutional level in West Africa, countries in the region should seek more regulatory consistency to have greater access to essential medicines for their vulnerable populations (2). Added to that is the fact that all these trade policies which are strongly entangled would be more coherent if ECOWAS had an active right of legation by joining the WTO (3).

**Synchronizing negotiating positions on the Singapore issues**

Strongly rejected by African countries under the WTO negotiations, the Singapore issues (investment, government procurement, competition and trade facilitation) have ultimately been partially removed from the Doha Round of negotiations. The only issue remaining is that on trade facilitation. It is a major stumbling block on the EPA agenda and an annoying element in the
development of regional trade policies. The refusal of African countries to discuss it at the WTO was not only related to the substance or terms of competition and investment, it focused on whether or not it was appropriate to discuss it. The economic reasons mentioned are still applicable under the EPA and do not justify any derogation. Yet Europe continues to make efforts in order to include these issues in future EPAs, in defiance of the convergence between the WTO level and its approach in the EPAs. In January 2005, African trade ministers reiterated in Dar es Salaam, in Tanzania to Mr Karl Falkenberg, Director for the Directorate General for Trade of the European Commission, their opposition to the inclusion of the Singapore issues in the EPA negotiations. That did prevent them from crossing out the issues of investment and competition on the road map for West Africa. Faced with the obvious discomfort, the Ministerial Monitoring Committee convened for the adoption of the roadmap for Phase II of the negotiations, declared that the Singapore issues would be negotiated at the appropriate time, that is to say as soon as a consensus would be reached at the WTO. Thus, extending the scope of liberalization entails for ACP countries the risk of a Doha Plus whose bilateral field is more favourable to deployment. Currently, these three themes are included in the Rendezvous Clauses for further discussion. They present major challenges, both on the opportunity to discuss them and on potential consequences on the regional economy.

**Investments**

It is important to note that negotiations on investment provisions are carried out in the context of the limited mandate of the EU on investment. Foreign direct investment (FDI) does not depend on the common commercial policy of the European Commission which has therefore a non-exclusive jurisdiction on investment. Moreover, the EU Member States negotiate their own bilateral investment treaties. And in the spirit of the EU, the EPAs will be limited to the inclusion of provisions on investment for market access (a business concept) and to the objective of investment liberalisation. Investment protection and promotion will be excluded from EU competence and therefore from the EPAs. They remain within the field of Member States bilateral investment treaties. The CARIFORUM EPA also gives us other important information on what the EU wants to do. We learn that the field of investment in the EPA focuses on the fundamental principles of national treatment, most-favoured-nation (MFN) and a key provision in liberalisation, namely market access. The parties could only agree on limited protection to investors against expropriation of their investments by the host government. There are no provisions relating to dispute settlement either, let alone possibilities available
to investors to resort to international arbitration for violation of a treaty. The free movement of capital relating to investment is not guaranteed. This is on the whole what comes out of the CARIFORUM EPA which has already been signed and which can used as an indicator for the countries of West Africa.

**Procurement**

As the WTO points it out, the acquisition of goods and services by governmental agencies for their own needs is a central element of the functioning of the State that ensures that it has the necessary inputs to carry out its duties. It, therefore, has major implications for the main social partners. Public procurement is an important aspect of international trade given the enormity of those markets. As public resources are scarce, the efficiency of the procurement process is a major consideration in any procurement system. Procurement procedures which are open and non-discriminatory are generally seen as the best tool to optimize the use of resources by encouraging the greatest possible competition among suppliers. But is that relevant in the case of the countries in West Africa? Besides, many WTO members are still using their public procurement to achieve domestic policy goals, such as the promotion of industrial or social groups.

The European Union is making significant efforts to negotiate access to public markets through free trade agreements, including the EPAs. Two authors (Iwanow and Kirkpatrick, 2008) note that the inclusion of government procurement in trade negotiations is in line with the European strategy “Global Europe: Competing in the World” from the EU, which considers public procurement as a key element which should enable European companies to compete internationally. It is in that regard that the European Commission is inevitably trying to have public procurement included in the EPAs so as to improve Europe’s access to procurement in West Africa.

At the insistence of the EU for public procurement to be an integral part of the negotiations it was suggested, inter alia, that access to public procurement be made conditional – like with joint ventures-to allow technology transfer and promote access to knowledge. This would help the countries of West Africa to move up in the value chain, to build their capacities and develop. This is certainly the best side of it. In the short and medium term, it is not clear that making national or regional SMEs compete with foreign multinationals in the provision of state services will lead to development. In the current African context, national preference in public procurement is a matter of survival. Domestic policy should promote the creation of national wealth, hatch small and medium industries in their infancy, so as to make of them strong structures,
which are competitive and able to go to conquer the world market with consolidated assets.

**Competition**

Regional trade agreements include more and more chapters and provisions relating to competition issues. Despite the reluctance of many WTO members to negotiate an agreement relating to competition under the auspices of the WTO, some countries have not hesitated to include it in their agreement. This is the case in the CARIFORUM EPA where the Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and generally undermine the benefits of trade liberalisation (Article 126).

Provisions on competition included in regional trade agreements can promote the development of the national competition authority, but constraints on domestic political economy - such as low competition culture, the weakness of competition related provisions which have been negotiated and relative immaturity of national competition institutions - hinder these positive driving effects between the regional and national levels. This is exactly the situation in West Africa, where one of the most successful trade policies is the competition policy. WAEMU has this view an asset which is easily transferable to the whole of West Africa. But like any experience in its infancy, it needs to be refocused on the area, before considering a less controllable opening through an EPA.

The way the Singapore issues are dealt with by the region is the subject of procrastination that is bad for trade policies, especially the consistency of positions in different levels of negotiations. It is urgent to draft an argument that reinforces the positions defended at the WTO or that contradict them by putting on the table new arguments. Without getting into an endless ideological debate, the region should, for each of the issues raised, identify its priority interests and defend them. To do so, two key elements should be taken into account. First, the Singapore issues are outside the Doha Round, except trade facilitation. So there is no negotiation commitment to be implemented. The consensus that led to this decision has not challenged by contrary economic arguments. Moreover, the Singapore issues are “extra WTO” and do not therefore, for the moment, included in the management of multilateral trade. There is no risk of criminal protectionism not to get engaged in them; moreover within the framework of regional agreements.
Lifting the “regional mortgage” on access to essential medicines

Access to medicines through negotiations on the TRIPS Agreement is one of the major breakthroughs that African countries have benefited from. In the desire to find a solution to certain global scourges, one of the first problems to be raised is that of distribution rights for the facilitation of access to medicines, between the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Bangui Agreement, which is specifically meant for African consumers. The TRIPS Agreement, although granting flexibilities for developing countries in terms of implementation deadlines in particular, does not settle the problem of hierarchy between the protection of technological innovations and that of public health. This shortcoming, which is at the origin of misunderstanding, explains the progress made by the Doha Round which establishes the primacy of public health over intellectual property, at least with regard to the urgency of eradicating scourges such as AIDS. But the Doha Declaration is not legally binding. It is a standard of behaviour with a moral value but its violation does not lead legal sanctions. So, the progress invoked loses its effectiveness. Even so, Doha provides a solid foundation for negotiations fuelled by strong moral commitment, an achievement of the WTO which soon could take the form of a legal rule.

But the WTO Agreement on Trade-Related Aspects of Intellectual Property dating from 1994 which establishes rules for access to medicines has been a positive shift. In August 2003 the WTO General Council adopted a Decision on the implementation of paragraph 6 of the Doha Declaration of 2001 on the TRIPS Agreement and Public Health. Paragraph 6 instructs to solve the problem of countries which lack the means to produce pharmaceuticals and who need to have access to affordable medicines through compulsory licensing. This 2003 decision created an exception to the WTO rule that specifies that products made under compulsory licensing must be primarily used to supply the domestic market. They may also be imported by other developing countries that lack the pharmaceutical capacity to manufacture patents. It is the possibilities of parallel imports which do not have regional restrictions on the part of the WTO. Nothing prevents African countries from importing generics from Asia or Latin America.

But it soon became clear that this asset obtained at the multilateral level seems to be seriously compromised at the regional level. For most observers, the revised Bangui Agreement, under the auspices of the African Intellectual Property Organization (OAPI), cancels the benefits conferred by the Doha Round with regard to access to affordable medicines: deadlines are tight and
importation of generics outside the OAPI zone (which is exclusively Africa) is prohibited. In theory, therefore, no member of this zone has the right to import generic drugs outside of it. This can be seen as an inconsistency which limits room for manoeuvre for the countries of the region. The argument put forward is that import restrictions will enable the region to build and strengthen its own capacities and thus avoid increased and sustained drug dependence on the outside. The argument is rather noble. It would even be acceptable if the situation of patients waiting for treatment did not require emergency measures.

But the Bangui Convention holds within itself the solution to the problem. Articles 3 and 17 authorize that it be waived in favour of provisions of international conventions which are more favourable. This would either lead to the implementation of the Doha Declaration with its non-binding provisions, but more favourable, or the implementation of the TRIPS Agreement, which offers greater access to drugs than the revised Bangui Agreement. Ultimately, the decision of 30 August 2003 mentioned above establishes the legal force of the possibility of compulsory licensing and parallel imports and relegates the revised Bangui Agreement to residual law. The advantage that the revised Bangui Agreement could offer lies in the fact that the OAPI system leads to the formation of a single legal space, a “single territory” between the 16 member countries. Thus, any regime of exhaustion of intellectual property rights could logically be founded on a regional basis. This scheme would have the advantage of introducing a preference by making the principle of national treatment or most-favoured-nation treatment in the field of intellectual property optional. In addition, it would promote the strengthening of the pharmaceutical capacity of countries in the OAPI zone in the long term and by the same token that of West Africa. Taking into account the urgency is also part of the search for consistency in the implementation of trade policies. Unfortunately, since 2003, only one developing country has used the process mentioned in paragraph 6. It is Rwanda, who in September 2008, requested that Canada implement the mechanism. No country in West Africa has used it. Health advocates have repeatedly asserted that the exemption was not formulated well enough to be useful and effective. In all cases, it is somewhat unfortunate that such considerable assets obtained at the multilateral level are not valued at the regional level. Especially considered that in any future health policy from Africa, access to essential medicines will play an important part. Under the EPAs, we need to make sure that the arrangements made with the EU are not less favourable than those at the WTO.
Formalization of an active legation right at the multilateral level: Is ECOWAS a WTO member?

It is remarkable that all the recent trade negotiation proposals from African countries are still highly topical in the Doha Development Round as well as in the EPAs. The explanation is simple and is the cumulative result of several facts: the absence of a collective negotiating strategy, lack of an internal process to identify national interests that include all stakeholders, limited knowledge of the intricacies of GATT and WTO law and strong tendencies of countries of the North to win market shares in new issues without conceding any in the old areas. That is how African countries had come to sign the Marrakesh Agreements without really mastering the ins and outs. It is well after they had signed and ratified them that their implementation revealed dysfunctions that only the opening of a new cycle of negotiations could help correct. Thus, African countries have mostly negotiated backwards by aligning the implementation of the agreements to their systematic questioning, and often under pressure from civil society. It is therefore not surprising that the Doha Round is a Uruguay Round Plus for Africa. This situation may raise questions on the right for active legation of African countries through the African Union. Why wouldn’t Africa seek institutional recognition, which would give it a unique and harmonious way in international trade negotiations?

Upon observation, the situation is the same in West Africa. But the EPA process under negotiation has the merit of revealing better awareness of trade issues. Lessons learnt from the Uruguay and Doha Rounds, the experience acquired with the sensitive issue of African cotton at the WTO, the enhanced capacity of regional economic organizations, the watchdog role of civil society and the involvement of renown political figures are all elements that have helped prevent that agreements be signed in haste, on the basis of serious negotiation strategies and technical arguments that take into account the interests of the region.

One of the lessons we can draw is that the overall consistency regained in the process should serve as an impetus to a right for active legation at the regional level. Even if the African Union should have an international recognition that would give legal personality at the WTO, two things should be kept in mind. First, that would be the last step in a process that will take several more years. Second, the ECA process is based on existing regional economic institutions in the deployment of its liberalisation program. ECOWAS is one of them, and could apply for membership at the WTO. Without going into details that the objective and space for this would not allow, it is useful to briefly address some possible implications of ECOWAS accession to the WTO.
- ECOWAS membership does not call into question the legal status of its various members at the WTO. That would be an extra more vote, combined with various existing individual votes. This is the present situation of the EU at the WTO.

- ECOWAS was notified at the WTO as a Free Trade Area under the Enabling Clause on 6 July 2005. Once its TEC has been finalised, it will have to make a new notification, as a customs union, still under the Enabling Clause. This status of customs union with a common external trade policy will be a positive element for membership application to the WTO.

- ECOWAS as a WTO member will not only have to implement sectoral policies in all areas, but also make them effective. The Trade Policy Review Mechanism of the WTO is from this point of view incentive enough. The region will have to be accountable for its trade commitments. This is an opportunity for increased trade integration that speeds up all regional policies currently under construction.

- ECOWAS will present harmonized negotiating positions in all areas. Through arbitration, various national interests could be balanced and negotiation skills could be used depending on the level of interest in specific sectors. In addition, the region will have a greater impact in defining the agenda of negotiations. It will obviously position itself as a vulnerable area, but also as a rising power that offers a market of more than 200 million people which is coveted and courted.

- One of the technical difficulties to solve should the region join the WTO is what category it should be attached to. Will it be recognized as a LDC or a developing country? The flexibilities offered by the system depend on the categorization. A priori, any entity with more than 75 million people cannot qualify for LDC status. The only exception is Bangladesh. Could ECOWAS benefit from the same status by claiming that the LDCS make up the majority of its members? The question remains open and calls for consideration of economic criteria to be defined or adjusted.
Table 5 below shows the WTO accession process. It can be lengthy and complex and ECOWAS will have to comply with it.

| 1 | D’abord, “parlez-nous de vous”. |
|   | - Le gouvernement : description de tous les aspects de ses politiques commerciale et économique ayant une incidence sur les accords de l’OMC. |
|   | - Présentation à l’OMC un aide-mémoire qui est examiné par le groupe de travail chargé de traiter sa demande. |
|   | - Tous les membres de l’OMC peuvent faire partie de ces groupes de travail. |

| 2 | Ensuite, “voyez avec chacun dentre nous ce que vous avez à offrir |
|   | - Négociations bilatérales parallèles |
|   | - Portant sur les taux de droits, les engagements spécifiques en matière d’accès aux marchés et d’autres mesures concernant les marchandises et les services. |
|   | - Les engagements sont NPF |

| 3 | Et maintenant, “rédigeons un projet de modalité d’accession”. |
|   | - Finalisation des modalités d’accession. |
|   | - Modalités énoncées dans un rapport, un projet de traité d’accession (“protocole d’accession”) et des “listes” indiquant les engagements du futur membre. |

| 4 | Enfin, “la décision”. |
|   | - L’ensemble de texte final, constitué du rapport, du protocole et des listes d’engagements, est présenté au Conseil général ou à la Conférence ministérielle. |
|   | - Si les deux tiers des membres de l’OMC votent pour, le gouvernement candidat peut signer le protocole et accéder à l’Organisation. |
|   | - Dans certains cas, il faut que le Parlement ou l’organe législatif national ratifie l’accord pour que la procédure d’accession soit terminée. |

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