

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

## CONTENTS

<i>List of figures</i>	page xv
<i>List of tables</i>	xvi
<i>Acknowledgements</i>	xvii
<i>List of abbreviations</i>	xix
<i>Table of cases</i>	xxv
<i>Introduction</i>	xxvii

<b>I</b>	<b>African Regional Trade Agreements as flexible legal regimes</b>	<b>1</b>
	A Introduction	1
	B Flexibility as enmeshment in the ‘African’ context	8
	1 Adaptations of the Vinerian model	8
	2 Flexibility as enmeshment in the African context	15
	3 African RTAs as forums of integrated development and functionally specific projects	19
	4 Multiplicity of objectives: The merits and de-merits of nestling non-trade objectives in African RTAs	24
	5 African RTAs as bulwarks of self-reliance and economic independence	27
<b>II</b>	<b>Variable geometry: A defining aspect of African RTAs</b>	<b>34</b>
	A Introduction	34
	B Reasons for the adoption of variable geometry	36
	C Variable geometry as a solution of adjusting the costs and benefits of integration	41
	D The East African Court of Justice’s Variable Geometry Advisory Opinion	49

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

vi

## CONTENTS

1	The arguments of the partner states and the East African Law Society as <i>amici</i>	52
2	The decision of the Court	56
E	Conclusion	62
<b>III</b>	<b>Multiple memberships in African RTAs</b>	<b>65</b>
A	Introduction	65
B	Why countries have multiple memberships in RTAs	67
1	Multiple memberships reflect Africa's diversity	73
C	Criticisms of multiple memberships	76
1	Spaghetti bowl: Are RTAs building or stumbling blocks?	76
2	High transaction and administrative costs	79
3	Implications for African RTAs	82
D	Conclusions	84
<b>IV</b>	<b>African RTAs in the context of Article XXIV of the GATT</b>	<b>86</b>
A	Introduction	86
B	Article XXIV of the GATT: Requirements for the formation of RTAs	87
C	Economic rationales of Article XXIV of the GATT	90
D	The GATT and WTO as a constitution	93
E	Problems encountered in the examination process	99
F	The 'substantially all the trade' issue in Article XXIV (8) of the GATT	99
G	Interim agreements under Article XXIV (5)(c) of the GATT	106
H	'Other regulations of commerce' and 'other restrictive regulations of commerce' in Article XXIV of the GATT	109
I	Rules of origin	112
J	Additional issues in Article XXIV of the GATT	117
K	The Enabling Clause	120

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

## CONTENTS

vii

1	Events leading to the adoption of the Enabling Clause	120
2	The 1979 decision	123
3	Discussion	125
<b>L</b>	<b>European Communities: Conditions for the granting of tariff preferences to developing countries</b>	<b>128</b>
<b>M</b>	<b>EU–ACP Economic Partnership Agreement</b>	<b>132</b>
<b>N</b>	<b>Compatibility with the WTO</b>	<b>133</b>
1	The Enabling Clause to justify EU–ACP preferences	134
2	GATT Article XXIV to justify EU–ACP preferences	136
3	Internal requirement of GATT Article XXIV (8)(b)	136
4	Rules of origin	139
5	Transition periods	140
6	Developing countries and EPAs	141
<b>V</b>	<b>Trade liberalization commitments and realization time frames</b>	<b>143</b>
<b>A</b>	<b>Introduction</b>	<b>143</b>
<b>B</b>	<b>The Economic Community of West African States</b>	<b>144</b>
1	Overview	144
2	Sequencing	145
3	Common market	146
4	Customs union	148
5	ECOWAS Trade Liberalization Scheme	150
6	Economic and monetary union	153
7	Progress	154
<b>C</b>	<b>Intergovernmental Authority on Development (IGAD)</b>	<b>156</b>
1	Overview	156
2	Sequencing	158
3	The IGAD Treaty and strategy	159
4	The importance of livestock to the IGAD Community	160
5	Progress	163
<b>D</b>	<b>The Common Market for Eastern and Southern Africa</b>	<b>165</b>
1	Overview	165
2	Sequencing	167

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

viii

## CONTENTS

3	Free trade area	167
4	Customs union	169
5	Monetary union	170
6	Rules of origin	171
7	Areas of cooperation	172
8	Progress	174
<b>E</b>	<b>East African Community</b>	<b>181</b>
1	Overview	181
2	Sequencing	182
3	Customs union	182
4	Common market	187
5	Monetary union	195
6	Political federation	195
7	Progress	196
<b>F</b>	<b>Arab Maghreb Union</b>	<b>202</b>
1	Overview	202
2	Organizational structure	204
3	Economic achievements	205
<b>G</b>	<b>The Southern African Development Community</b>	<b>211</b>
1	Overview	211
2	Sequencing	212
3	The SADC Treaty	212
4	Progress	217
<b>H</b>	<b>Southern African Customs Union</b>	<b>223</b>
1	Overview	223
2	Trade Liberalization Scheme	224
3	Progress	228
<b>I</b>	<b>Community of Sahel-Saharan States</b>	<b>232</b>
1	Overview	232
2	Treaty establishing the Community	233
<b>J</b>	<b>Economic Community of Central African States</b>	<b>237</b>
1	Overview	237
2	Treaty establishing the Community	238
<b>VI</b>	<b>Financing African RTAs</b>	<b>243</b>
<b>A</b>	<b>Introduction</b>	<b>243</b>

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

## CONTENTS

ix

B	Financing the AEC	245	
1	AEC's budgetary process	249	
2	Problems encountered in raising revenue	251	
3	Financing the AMU	254	
4	Financing CEN-SAD	254	
5	Financing COMESA	255	
6	Financing the EAC budget	257	
7	Financing ECCAS	258	
8	Financing ECOWAS	259	
9	Financing IGAD	260	
10	Financing SADC	261	
C	Conclusion	262	
VII	African RTA Judiciaries	264	
A	Introduction	264	
B	The COMESA Court of Justice	265	
1	Jurisdiction	266	
C	The East African Court of Justice	268	
1	The EACJ's jurisprudence	274	
D	The ECOWAS Community Court of Justice	279	
E	The SADC Tribunal	284	
1	The SADC Tribunal's jurisprudence	288	
2	South Africa–Zimbabwe Bilateral Investment Promotion and Protection Agreement and <i>Fick</i>	293	
F	Conclusions	297	
VIII	Trade remedy regimes	298	
A	Introduction	298	
B	COMESA's institutional mechanisms for overseeing and reviewing trade remedies	298	
C	Trade remedies provided for by COMESA	300	
1	Safeguards	302	
2	Anti-dumping actions	305	
3	Subsidies and countervailing measures	309	
4	COMESA safeguards for Kenyan sugar and wheat industries	312	

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

x

## CONTENTS

D	Trade remedies available under the Protocol on the Establishment of the East African Customs Union	313
1	The EAC Committee on Trade Remedies	313
E	Trade remedies available to EAC Customs Union partners	314
1	Safeguards	315
2	Anti-dumping measures	319
3	Subsidies and countervailing measures	331
4	Investigations of dumping, subsidies and application of safeguard measures	336
F	Southern African Development Community (SADC) trade remedies	336
1	Anti-dumping measures	337
2	Subsidies and countervailing measures	337
3	Safeguard measures	338
4	Protection of infant industries	338
G	Trade remedies under the Southern African Customs Union (SACU) Agreement	339
H	Conclusion	340
<b>IX</b>	<b>Monetary unions in Africa</b>	<b>342</b>
A	Introduction	342
B	The Economic and Monetary Community of Central Africa	342
1	Legal framework establishing CEMAC	344
2	The Bank of Central Africa	347
C	The West African Economic and Monetary Union	350
1	Objectives of the UEMOA	350
2	Organizational structure of the UEMOA	350
3	The BCEAO and the payment system	351
4	Legal framework governing the payment system	352
D	The West African Monetary Zone	352
1	Organizational structure of the WAMZ	353
2	The role of the WAMI	354
E	The successes and challenges of the African monetary unions	355

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

## CONTENTS

xi

1	WAMZ and WAEMU success and challenges	357
2	Challenges for the CFA franc zone	358
3	Success of the 1994 devaluation	359
4	The euro crisis and Africa	359
F	Conclusions	360
<b>X</b>	<b>Intra-African regional trade integration</b>	<b>361</b>
A	Introduction	361
B	The relationship between the African Economic Community and Regional Economic Communities	362
C	Sources of support for intra-regional trade cooperation	364
1	Africa Development Bank	364
2	Foreign aid	365
D	The importance of linkages between RECs in agriculture	366
1	The AEC and NEPAD	368
2	Agricultural programmes in East and Southern Africa	370
3	Regional Agricultural Trade Expansion Support (RATES) Programme	371
4	Competitiveness and Trade Expansion Programme	372
5	Africa Agricultural Market Programme	372
6	Alliance for Commodity Trade in Eastern and Southern Africa	373
E	Agricultural programmes in West Africa	373
F	Agricultural programmes in North Africa	374
G	Challenges in agricultural integration and some solutions	374
H	The importance of linkages between RECs in transport and communications	376
I	Information and Communication Technology (ICT)	378
1	ICT in North Africa	378
2	ICT in West Africa	378
3	ICT in East and Southern Africa	379

Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

xii

## CONTENTS

4	Regional Information and Communication Technology Support Programme	380
J	Air transport	382
1	The need for air transport liberalization and the Yamoussoukro Decision	382
2	Air transport policy in West Africa	382
3	Air transport policy in East and Southern Africa	383
K	Surface transport – road, rail, ports and maritime	384
1	Road and rail transport	384
2	Ports and maritime transport	386
L	Other areas of regional integration	386
1	COMESA-EAC-SADC Free Trade Area	386
2	The East Africa Migration Route Programme	388
M	Conclusions	389
<b>XI</b>	<b>African RTA relations with non-African RTAs</b>	<b>390</b>
A	Introduction	390
B	Trade Agreements between African RTAs and Europe	391
1	EU FTAg: The Cotonou Agreement and the dawn of Economic Partnership Agreements	391
(a)	EPA negotiations	392
(b)	How is development incorporated in the EPAs?	397
(c)	The interim ESA–EC EPA	398
(d)	Status of EPA negotiations	399
2	European Free Trade Area (EFTA)–Southern African Customs Union (SACU) FTA	401
C	Trade Agreements between African RTAs and the United States	403
1	African Growth and Opportunities Act 2000	403
D	Free Trade Agreements	406
1	US–Morocco FTAg	406
2	TRIPS v. US FTAs – effect of stringent IPR standards	407
3	IPR provisions: EPAs v. US FTAs	410
E	Trade and Investment Framework Agreements between the United States and African states	411



Cambridge University Press

978-0-521-76983-9 - African Regional Trade Agreements as Legal Regimes

James Thuo Gathii

Table of Contents

[More information](#)

## CONTENTS

xiii

1 US–SACU Trade, Investment and Development Cooperative Agreement	411
F Bilateral Investment Treaties between the United States and African states	413
G South–South trade – A survival strategy of trade between developing states?	414
1 Indo-African trade	415
2 India–Africa Forum Summit	416
3 India–SACU Preferential Trade Agreement	417
4 Sino–African trade	418
5 Forum on China–Africa Cooperation	419
6 China–SACU FTA negotiations	419
7 MERCOSUR–Africa trade	420
8 Legal regimes on counterfeit goods	422
H Conclusions	423
<i>Bibliography</i>	424
<i>Index</i>	471