Book Review Symposium IV: The African Continental Free Trade Area Agreement: Legal and Policy Frameworks (Routledge, 2024)

By:

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This book is a timely addition to emerging studies on the world's largest Free Trade Area represented by the African Continental Free Trade Agreement (AfCFTA). Its introduction to the subject of economic integration in Africa under the AfCFTA marks a very crucial intervention as African countries begin to implement the phases of the AfCFTA as envisaged in the agreement. The AfCFTA represents the latest attempt at continent-wide economic integration to bring economic prosperity to the 55 economies that form the African regional market which is inclusive of smaller economies, albeit with great human and economic potential. When fully implemented, the AfCFTA is expected to propel Africa's current income by as much as 7% by generating an additional income of USD 450 billion. This projection is side-by-side with expectation of an increase in foreign direct investment flows between 111% and 159% as foreign

firms stand to benefit from an integrated African market. The expected outcome of this market integration include job creation, increase in the capacity of African firms and their effective participation in regional and global value chains. Along this vein, incomes are expected to increase, with wages for women rising by 11.2% and by 9.8% for men. This would contribute to ongoing efforts by African governments to alleviate poverty and enhance the living standards for their people. It is estimated that the AfCFTA would lift 30 million people out of absolute poverty and 68 million people from moderate poverty.

On the backdrop of these lofty expectations, this book provides a clear and concise analytical context on the legal and policy frameworks undergirding this historical attempt to actualize a regional economic integration regime that delivers on the long-planned developmental objectives of African states as a collective under the global trading system that views the continent as a resource base. This book painstakingly provides a chapter to chapter analysis of the legal and economic layers of the AfCFTA covering trade in goods, trade in services, investment, competition policy, intellectual property, general and security exceptions and dispute settlement. The book contributes centrally to the discourse of the AfCFTA by offering critical insights into practical interventions that must be made by contracting state parties to ensure purposeful implementation of the burgeoning regime.

Chapter one of the book opens up the analysis by examining the legal justification for the AfCFTA. The chapter commences by providing definitional context to the African perspective on integration, the nature of Regional Trade Agreements (RTAs) and the nexus with multilateralism. In this vein, the chapter highlights the treaty foundation to regional trade agreements as provided by Article 52 of the UN Charter, Article XXIV of the GATT 1994, Article V of the GATTS concerning trade in services, and the Enabling Clause. Consequently, the AfCFTA constitutes an exception under Article XXIV of the GATT and Article V of the GATS as a free trade area. The AfCFTA falls clearly within the purview of the World Trade Organisation (WTO). Therefore, the AfCFTA’s protocols on trade in goods (PTG), protocol on trade in services (PTS), protocols on investment, intellectual property, competition policy and digital trade and gender, annexes and appendices are justified under the WTO law. The chapter further examines the AfCFTA’s compatibility with the various stages of regionalism as contained in the transitional plan of the AU articulated in the

1991 Abuja Treaty Establishing the African Economic Community (AEC). It is found that AfCFTA mirrors the third stage of integration which is underpinned by the establishment of a free trade area, building on the level of each REC and through the observance of a timetable for the gradual removal of tariff barriers and non-tariff barriers (NTBs) to intra-community trade. The chapter also identifies Pan-Africanism as the ideological base for the AfCFTA. It concludes by identifying the challenges and opportunities to African integration.

Chapter 2 discusses the low development dynamics that characterizes the structures of the AfCFTA. The chapter identifies the unique features that qualify the AfCFTA such as the preservation of acquis and the “building block” approach that rely on the extant Regional Economic Communities (RECs) as the building blocks of African economic integration. Furthermore, the institutional structures of the AfCFTA are exemplified by the (1) Assembly; (2) Council of Ministers; (3) Committee of Senior Trade Officials and (4) Secretariat, which are mandated with ensuring successful implementation. The chapter outlines in detail the objectives and principles of the AfCFTA. Articles 3 and 4 outline the general and specific objectives of the AfCFTA respectively. In addition to objectives, AfCFTA is governed by principles largely influenced by the WTO regime, RTA practices and the peculiarity of African regional integration. Like the WTO and RTA practices, the AfCFTA is underpinned by (1) variable geometry; (2) flexibility and special and differential treatment; (3) transparency and disclosure of information; (4) non-discrimination principle (most-favoured-nation [MFN] and national treatment); (5) reciprocity; (6) substantial liberalisation; and (7) consensus in decision-making. The AfCFTA is also governed by enforceable commitment and safety valves (e.g. general and specific exceptions). These principles in addition to the provisions emphasising preservation of the acquis, RECs as the building blocks for the AfCFTA and best practices in RECs reflect the uniqueness of the AfCFTA and African regional integration. Overall, this chapter advances the thesis that the success of the operational frameworks, the protocols of the AfCFTA and the underlying implementation would be defined by low development dynamics. Low development dynamics in this context means the challenges, impediments and factors which undermine African development and economic competitiveness. These factors cover institutional, institutional-related and non-institutional factors such as NTBs, socio-political and governance constraints, power

asymmetry, enablers of fragile and conflict-affected situations, weak institutions and other development stultifying indicators. In conclusion, the author recommends development of action plans to tackle institutional, semi-institutional and non-institutional factors that affect every aspect of the AfCFTA, ranging from market access to overall implementation of all the protocols to forestall adverse outcomes of low development dynamics.

Chapter 3 examines non-discrimination standards and market access within the context of low development dynamics. The chapter finds that basic market access rules covering non-discrimination, tariff bindings and the prohibition against border quotas concretise liberalisation commitments, bringing them into functionality. It concludes that while the AfCFTA incorporates reciprocal and conditional MFN as part of the non-discrimination standards, it is imperative that the underlying interpretation is not overcome by the low development dynamics. Subsequently, chapters 4, 5 and 6, analyse the impact of other exceptions and quantitative restrictions on market access principles. The analyses in these chapters underscore the need for a careful consideration of the policy frameworks in member states that limit market access and the need for adroit implementation of the rules and standards established under the protocols of the AfCFTA.

Chapters 7 to 15 cover the field as they breakdown the full spectrum of critical aspects of the economic and trade dimensions of the AfCFTA as an RTA. Chapter seven focuses on customs, trade facilitation and NTBs. Chapter 8 unpacks the Technical Barriers to Trade (TBT), and Sanitary and Phytosanitary Measures (SPS) regimes in the area. Chapter 9 discusses rules of origin (ROOs), while chapters 10 and 11 explore trade remedies and trade in services within the AfCFTA regime respectively. Chapter 12 analyses the potentials of the Dispute Settlement frameworks, while chapter 13 looks forward to investment protocols under the AfCFTA. Chapter 14 explores the Intellectual Property (IP) aspect under the AfCFTA, and chapter 15 examines competition policy framework under the AfCFTA.

The final chapter reflects on the potentials that exist with the AfCFTA as the new Leviathan in Africa’s economic integration journey while outlining internal and external institutional, political and social questions that need to be answered to ensure that the AfCFTA does not go the way of past economic

integration attempts on the continent. To conclude, the author argues that painful reforms must be undertaken at the municipal level to ensure the alignment of national policies. The need for trade facilitation measures to improve cross-border trade and investment flows is also highlighted, as well as the need to fix the continent's creaking infrastructure to meet the developmental needs of the teeming population of Africa. Providing critical infrastructure such as roads, rail networks and deep inland ports would enhance interconnectivity among the State Parties and facilitate their participation in regional and global value chains. This is alongside urgent development of the energy sector, ICT and logistics to enhance trade in goods and services within the area. More importantly, the author emphasizes the centrality of transparency and political accountability as indispensable variables in creating a conducive environment for trade and investment.

This book is timely and apposite. It provides a much needed intervention for practitioners, policy-makers, and students of regional integration in Africa. It is a highly recommended one-stop text on the emerging corpus of AfCFTA law.

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