

The Legal Principles Governing the African Continental Free Trade Area and Their Role in Achieving African Economic Integration

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Abstract :

The article examines the legal principles governing the African Continental Free Trade Area and their role in achieving African economic integration. It explains that the AfCFTA seeks to liberalize intra-African trade, remove tariff and non-tariff barriers, and create a unified continental market. The article highlights key principles such as trade liberalization, non-discrimination, preferential treatment for least developed countries, sustainable development, transparency, legislative harmonization, respect for national sovereignty, and dispute settlement. It argues that these principles are essential for creating legal certainty, attracting investment, strengthening cooperation among African states, and supporting sustainable development. However, the article also points out several challenges, including economic disparities, weak institutional capacities, conflicting national laws, protectionist policies, and limited enforcement mechanisms. It concludes that the success of the AfCFTA depends not only on the existence of legal principles, but also on their effective implementation through strong institutions, political will, legal reform, and cooperation among member states.

Keywords: African economic integration; trade liberalization; non-discrimination; legal principles; preferential treatment

Introduction

For many years, African countries have suffered from high rates of poverty and unemployment, weak intra-African trade, fragmented national markets, and excessive dependence on the export of primary commodities, which has limited their competitiveness. They have also faced the fragmentation of national trade rules and conflicting obligations among the regional blocs within the continent. Consequently, a continental will emerged to strengthen African unity and reinforce the collective negotiating position within the international trading system, in line with a shared development vision. Accordingly, during the eighteenth session of the African Union, it was decided to establish the African Continental Free Trade Area (AfCFTA) as a means of overcoming these crises by laying down a continental legal framework aimed at gradually liberalizing trade, promoting legislative convergence, stimulating investment, and establishing a unified African market capable of supporting sustainable development and strengthening integration into the global economy.

The legal framework of the African Continental Free Trade Area constitutes the backbone of the process of economic integration on the continent. It is not merely a set of binding obligations, but rather an integrated system founded on basic principles that guide member states in implementing these obligations. It thus forms a comprehensive network that seeks to maintain a balance between legal obligations and guiding principles. These principles include, in particular, the principle of trade liberalization, which aims at the gradual elimination of customs duties and non-tariff barriers; the principle of non-discrimination, embodied in the rules of most-favoured-nation treatment and national treatment; as well as the principle of preferential treatment for least developed countries, the principle of transparency, the principle of legislative convergence and harmonization, and the principle of dispute settlement through legal and institutional means. These principles are not merely ethical guidelines, but practical tools for enhancing legal certainty and sustainable economic integration, thereby fostering trust among member states and strengthening the effectiveness of the continental trading system.

Despite the clarity of these principles, member states still face major challenges that hinder their implementation. Developmental disparities among member states, conflicting national legislations, weak institutional and financial capacities, in addition to certain protectionist policies characterized by weak monitoring, enforcement, and dispute-settlement mechanisms, all reduce the effectiveness of the continental legal framework and make the achievement of economic integration a continuing practical challenge, due to the lack of optimal implementation of the obligations set out in the Agreement.

Based on the above, the research paper raises the following problem:

How can the legal principles of the African Continental Free Trade Area be translated into actual practice in a way that achieves genuine economic integration? And does this require the development of institutional mechanisms to ensure the effective application of these principles?

1- The Foundational Legal Principles of the African Continental Free Trade Area

Examining the foundational legal principles of the African Continental Free Trade Area (AfCFTA) constitutes an essential entry point for understanding the nature of the legal system governing this continental project, as these principles form the reference framework that guides its rules and provisions. They play a central role in defining the philosophy and objectives of the Agreement, as well as in determining the scope of obligations imposed on member states and the limits of their rights in the field of trade liberalization. Furthermore, these principles represent the legal basis upon which the various protocols and implementation mechanisms of the Free Trade Area are built.

1.1- The Principle of Trade Liberalization and Non-Discrimination

The principle of trade liberalization and non-discrimination constitutes one of the fundamental pillars of the legal system of the African Continental Free Trade Area, given its central role in facilitating the smooth flow of trade among member states and in removing barriers that hinder its development. These two principles embody the legal essence of the Free Trade Area, which is based on the gradual opening of African markets and the guarantee of equal treatment among member states within intra-African trade relations.

Moreover, they aim to establish unified legal rules that ensure fair competition and enhance confidence in continental trade transactions, thereby contributing to the achievement of the objectives of economic integration.

1.1.1- Principle of Trade Liberalization

The principle of trade liberalization is one of the most important principles of the international trading system. It requires Member States to liberalize or reduce restrictions on international trade, but within the framework of multilateral negotiations founded on reciprocity; that is, any reduction of tariff or non-tariff barriers by one State must be matched by an equivalent reduction by the other party so that the benefits accruing to each State are balanced. Outcomes reached in this context become binding on all States, and no subsequent amendment may be made except through fresh negotiations¹.

International trade liberalization is no longer merely a declaratory objective or an attempt to conclude gradual agreements; it has become more comprehensive. The World Trade Organization (which succeeded the GATT) now serves as the forum through which international agreements for trade liberalization are concluded².

The legal basis of the principle of trade liberalization rests on the idea of strengthening the multilateral trading system, which is grounded in rules that uphold openness, transparency, and the achievement of sustainable development, as well as the activation of developmental strategies of States, especially developing countries³.

The principle of trade liberalization aims to unify the global market through equitable liberalization of trade in order to foster worldwide economic growth that raises standards of living in both developing and developed countries⁴, achieves full employment, sustains a significant increase in real income, boosts continuous production, and promotes trade in goods and services that allows for optimal use of the world's resources in accordance with developmental objectives while preserving and protecting the environment. It also necessitates taking into account the specific circumstances of certain States, notably developing and least-developed countries⁵.

This principle has been clearly enshrined by the World Trade Organization through the establishment of a global trading system based on market economy principles. The WTO obliges its Members to pursue continuous and gradual efforts to eliminate barriers to trade in goods and services, notably through the progressive reduction of customs duties⁶.

¹ . Al-Saadi, W. N. I. (n.d.). A Conceptual Introduction to the Principles of the World Trade Organization, p. 4.

² Muftau, I. (2023). Overview of the African Continental Free Trade Area (AfCFTA) and Challenges of Implementation: Nigeria and South Africa's Implementation as Case Studies (LL.M. thesis). University of British Columbia, Vancouver. University of British Columbia Library

³ Al-Zahra Abdellawi. (2023). Trade Policies and Their Impact on the Volume and Direction of Foreign Trade in Light of Trade Liberalization: Case Study — Algeria 2009–2019 (PhD thesis, Finance & International Trade). Faculty of Economic and Commercial Sciences and Management, Zian Ashour University (Djelfa), p. 64.

⁴ Qadri, Alaa Eddine & Filali, Boumediene. "Assessment of Certain Global Trade Liberalization Agreements and Their Effects on Developing Countries," Al-Baheth al-Iqtisadi (The Economic Researcher Journal), p. 346. Accessed via <https://asjp.cerist.dz>.

⁵ Imran, Jaber Fahmy. The World Trade Organization: Its Legal System and Its Role in Implementing Global Trade Agreements. Dar Al-Jam'ah Al-Jadida, Alexandria, 2009, p. 239.

⁶ Al-Zahra Abdellawi, op. cit., p. 67.

It is well established that trade liberalization is among the principal economic effects of regional integration. Accordingly, if the practice of forming regional blocs spreads and States become accustomed to liberalizing trade among themselves within such blocs, the ultimate outcome will tend to favour broader international trade liberalization⁷.

At the regional level, the principle of trade liberalization constitutes the legal foundation of various experiences of economic integration, whether in the European Union or other regional economic communities, where it is regarded as a first and necessary stage in the transition from mere economic cooperation to advanced economic integration. In the African context, the conclusion of the Agreement establishing the African Continental Free Trade Area (AfCFTA) represents the culmination of a long course of integration efforts. It has established a binding legal framework that makes the principle of trade liberalization one of its core tenets, aiming at the progressive removal of trade barriers and the enhancement of the free movement of goods, services, and investment within the continent, increasing intra-African trade, and strengthening the competitiveness of African economies both within the continent and in the global market. This reflects a collective African determination to establish a single market capable of achieving deep economic integration and sustainable, inclusive socio-economic development⁸.

1.1.2- Principle of Non-Discrimination

The principle of non-discrimination constitutes a cornerstone of contemporary international trade law. It requires equal treatment of trading partners and their goods, services, and investors, prohibiting arbitrary or unjustifiable distinctions that would advantage one State or economic actor over another⁹. In practice, non-discrimination is operationalised through two interrelated legal rules: the most-favoured-nation (MFN) obligation and the national-treatment obligation. The MFN rule mandates that any concession, privilege, or advantage granted by a Member to the products or services of one country must be accorded immediately and unconditionally to like products or services of all other Members, unless a valid exception applies; the national-treatment rule requires that imported products and foreign-supplied services and investments be treated no less favourably than like domestic products, services, or investments once they have entered the market.

Legally, these rules perform different but complementary functions. MFN prevents discrimination among foreign suppliers, thereby stabilising the multilateral level playing field and discouraging preferential arrangements that could fragment global commerce¹⁰. National treatment, by contrast, protects the competitive environment within a Member's domestic market and guards against covert protectionism enacted through internal measures—taxation, regulation, or subsidies—that would nullify the benefits promised by tariff concessions¹¹.

⁷ Khalifa, Ibrahim Ahmed. *The Legal Regime of the World Trade Organization: A Critical Study*. Dar Al-Jam'ah Al-Jadida, Alexandria, 2008, p. 21.

⁸ Khawas, Mustafa. "The African Continental Free Trade Area — Opportunities for Success and Probabilities of Failure," *Diplomatica Journal*, June 2021, p. 30.

⁹ Wissam Nimat Ibrahim Al-Saadi, *A Conceptual Introduction to the Principles of the World Trade Organization*, 4.

¹⁰ Jaber Fahmy Imran, *The World Trade Organization: Its Legal System and Its Role in Implementing Global Trade Agreements* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2009), 239; Ibrahim Ahmed Khalifa, *The Legal Regime of the World Trade Organization: A Critical Study* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2008), 21.

¹¹ Al-Saadi, *A Conceptual Introduction*, 2; Mustafa Salama, *The World Trade Organization: The International System of International Trade* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2008), 11.

Together, they aim to ensure that comparative advantage and competitive merit, rather than arbitrary regulatory distinction or political favour, determine market outcomes¹².

At the regional level, the principle of non-discrimination plays a distinctive role within processes of economic integration. In customs unions and free-trade areas, members often accept reciprocal preferential treatment among themselves; such preferences are permitted under public international law provided they are the product of a genuine customs union or free-trade area and are accompanied by appropriate rules to preserve the integrity of external relations¹³. Even so, the underlying objective remains the same: to harmonise treatment and reduce discriminatory barriers so as to facilitate the free movement of goods, services, and capital, and thereby expand intra-regional trade¹⁴.

The Agreement establishing the African Continental Free Trade Area (AfCFTA) expressly embeds the non-discrimination obligation as a central pillar of the continental legal framework. Under the AfCFTA and its Protocol on Trade in Goods, Member States undertake to apply MFN and national-treatment principles in ways that progressively eliminate tariffs and non-tariff barriers, while allowing for narrowly-defined, time-limited exceptions for sensitive sectors during agreed transitional periods¹⁵. Those transitional exceptions are conceived as temporary safeguards intended to give less prepared economies time to adjust, thereby striking a balance between the objectives of rapid liberalisation and the legitimate need to protect nascent economic activities¹⁶.

To ensure that the commitment to non-discrimination is more than declaratory, the AfCFTA establishes monitoring and dispute-settlement mechanisms. Periodic reporting, peer review, and a structured dispute-resolution process enable the Union and Member States both to detect violations and to seek remedies through institutional channels. In theory, these instruments help build mutual confidence and legal predictability—conditions that are indispensable for cross-border investment and for the deepening of intra-African trade¹⁷. Yet the effectiveness of such mechanisms depends on Member States' institutional capacity to implement commitments, on the transparency of domestic measures, and on the political will to submit disputes to legal adjudication rather than resorting to unilateral protectionist measures¹⁸.

A practical legal observation is relevant here. Non-discrimination is not an absolute or frozen norm: it interacts with other legitimate policy objectives (developmental policy, public health,

¹² Jaber Fahmy Imran, *The World Trade Organization (W.T.O): What It Has...and What It Lacks* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2016), 43.

¹³ Jamal Qasimiya, *The International Trade Organization: An Analytical Study of Its Objectives, Structure and Effects* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2019), 24.

¹⁴ Karima Laissawi, "The International Trade System: From GATT to the World Trade Organization," *Algerian Journal of Political Science & International Relations*, Univ. of Algiers 3, vol. 10, no. 2 (2017): 25.

¹⁵ Mustafa Khawas, "The African Continental Free Trade Area — Opportunities for Success and Probabilities of Failure," *Diplomatica*, June 2021, 30.

¹⁶ I. Muftau, *Overview of the African Continental Free Trade Area (AfCFTA) and Challenges of Implementation: Nigeria and South Africa's Implementation as Case Studies* (LL.M. thesis, University of British Columbia, 2023).

¹⁷ Hakim Miftah, "Special and Differential Treatment for Developing Countries in the World Trade Organization: One of the Stakes of the Doha Round," *Journal of Law and Human Sciences — Economic Studies*, accessed February 18, 2026, [65-53](#).

¹⁸ Walid Haffaf, "The Future of the African Continental Free Trade Area: Advantages and Challenges," *Journal of Economic Sciences, Management and Commercial Sciences*, Univ. Mohamed Boudiaf, M'sila, vol. 13, no. 3 (2020): 602.

environment, and industrialisation), and modern trade agreements—including the AfCFTA—recognise limited, rule-bound exceptions¹⁹. The legal task for policymakers and adjudicators is therefore to apply non-discrimination doctrine in a manner that preserves the rule's integrity while permitting calibrated, transparent policy space for legitimate national objectives. Where exceptions are invoked, they should be narrowly construed, time-bounded, and subject to review, so that exception clauses do not become de-facto instruments of indefinite protectionism²⁰.

In conclusion, the principle of non-discrimination—embodied in MFN and national treatment—serves as a legal instrument for equalising competitive conditions among States and market participants. Within the AfCFTA framework it provides the legal scaffolding for a continental market by rendering cross-border transactions predictable and by limiting arbitrary domestic measures that could impede trade. Its full realisation, however, requires robust implementing legislation, administrative capacity, transparency measures, and effective recourse to the Agreement's monitoring and dispute-settlement processes so that non-discrimination functions not only as a normative ideal but as an enforceable rule of practical effect²¹.

1.2- Principles of Justice and Equity in the Legal Framework of the Free Trade Area

The principles of justice and equity constitute an essential component of the legal framework of the African Continental Free Trade Area (AfCFTA), as they serve as safeguards for protecting the interests of member states, particularly the least developed countries, within the process of trade liberalization and the implementation of unified market rules. These principles operate to ensure a balance between the freedom of trade and the requirements of economic and social development, while limiting bias and preferential treatment among trading partners.

Moreover, they contribute to guiding the implementation mechanisms of the Agreement in a manner that takes into account the economic and legislative disparities among member states, thereby promoting equal opportunities and strengthening legal confidence in intra-African trade relations. Accordingly, the study of these principles provides a deeper understanding of how justice and equity are integrated into the legal system of the Free Trade Area, in a way that supports the achievement of African economic integration objectives in a balanced and sustainable manner.

1.2.1- Principle of Preferential Treatment for Least-Developed Countries

The principle of preferential treatment for least-developed countries constitutes a central equity device within contemporary international trade law. It recognises that the benefits and burdens of trade liberalisation are not distributed evenly and that structural economic disparities between States necessitate differentiated legal responses to ensure that liberalisation advances, rather

¹⁹ Al-Zahra Abdellawi, *Trade Policies and Their Impact on the Volume and Direction of Foreign Trade in Light of Trade Liberalization: Case Study — Algeria 2009–2019* (PhD thesis, Zian Ashour University, 2023), 64–67.

²⁰ Ibrahim Ahmed Khalifa, *The Legal Regime of the World Trade Organization*, 21; Jaber Fahmy Imran, *The WTO: Its Legal System and Role*, 85.

²¹ For discussion of implementation challenges and the need for institutional capacity to make treaty principles effective, see Muftau (2023); Walid Haffaf (2020),602 ; Mustafa Khawas (2021),30

than impairs, the developmental prospects of disadvantaged economies²². Accordingly, preferential treatment operates not as a derogation from the rule of nondiscrimination but as a calibrated exception designed to reconcile liberalisation with the objectives of fairness and sustainable development.

Legally, this principle is institutionalised through the special and differential treatment (SDT) provisions that permeate multilateral trade law. SDT permits greater flexibility for developing and least-developed countries in the timing, sequencing, and depth of their liberalising commitments: extended phase-in periods for tariff reductions, exemptions for particularly sensitive sectors, and technical and financial assistance to support the necessary institutional and regulatory adjustments²³. Such modalities are conceived to enable gradual adaptation to competitive pressures while preserving policy space for domestic industrial development and poverty-reduction programmes.

In the African context, the AfCFTA expressly embeds the ethos of preferential treatment for less-advanced economies. The Agreement and its Protocols incorporate rules that permit the allocation of longer tariff-reduction timetables and transitional safeguard measures to Member States assessed as less prepared for immediate liberalisation²⁴. The Protocol on Trade in Goods, for instance, contemplates differentiated schedules of concessions whereby certain Member States may adopt slower rates of tariff reduction or phase sensitive lines over extended periods, thereby operationalising preferential treatment in a manner that is both rule-bound and time-limited²⁵.

The normative rationale for these accommodations is twofold. First, they attenuate the short-term adjustment costs that rapid liberalisation can impose on vulnerable economies—such as sudden loss of tariff revenue, exposure of nascent industries to superior external competitors, and destabilising balance-of-payments effects. Second, they provide breathing space for the construction of domestic capacities—customs modernisation, regulatory reform, industrial policy instruments, and social safety nets—that are prerequisites for converting access to a larger market into durable developmental gains²⁶.

Nevertheless, the legal design of preferential treatment must respect firm constraints if it is not to ossify into indefinite protectionism. International practice and the AfCFTA's own architecture require that derogations be narrowly tailored, transparently notified, and subject to clear temporal limits and review procedures²⁷. Protective measures should therefore be the

²² Al-Zahra Abdellawi, *Trade Policies and Their Impact on the Volume and Direction of Foreign Trade in Light of Trade Liberalization: Case Study — Algeria 2009–2019* (PhD diss., Zian Ashour University, 2023), 64.

²³ I. Muftau, *Overview of the African Continental Free Trade Area (AfCFTA) and Challenges of Implementation: Nigeria and South Africa's Implementation as Case Studies* (LL.M. thesis, University of British Columbia, 2023).

²⁴ Ibrahim Ahmed Khalifa, *The Legal Regime of the World Trade Organization: A Critical Study* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2008), 21; Jaber Fahmy Imran, *The World Trade Organization: Its Legal System and Its Role in Implementing Global Trade Agreements* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2009), 239.

²⁵ Muftau, *Overview of the AfCFTA* (2023); Mustafa Khawas, "The African Continental Free Trade Area — Opportunities for Success and Probabilities of Failure," *Diplomatica*, June 2021, 30.

²⁶ Protocol on Trade in Goods, Agreement Establishing the African Continental Free Trade Area; see also Muftau (2023) for discussion of differentiated tariff schedules and transition periods.

²⁷ Walid Haffaf, "The Future of the African Continental Free Trade Area: Advantages and Challenges," *Journal of Economic Sciences, Management and Commercial Sciences*, Univ. Mohamed Boudiaf, M'sila, vol. 13, no. 3 (2020): 602; Muftau (2023).

exception rather than the rule, applied only to clearly-identified sensitive sectors for a defined transition period and accompanied by programme-based commitments to policy reform and capacity building²⁸.

Practically speaking, the efficacy of preferential treatment under the AfCFTA hinges on two interdependent factors: the political will to implement differentiated arrangements in good faith, and the availability of institutional and technical capacity at the national and continental levels to monitor, assist, and, where necessary, enforce compliance with the conditions attached to such preferences. Without robust monitoring, targeted assistance, and time-bound review mechanisms, preferential clauses risk becoming instruments of rent-seeking and may undermine the integrity of the continental market they are designed to strengthen²⁹.

In sum, preferential treatment for least-developed and otherwise vulnerable Members is an indispensable legal tool for delivering inclusive continental integration. When properly constrained, transparent, and paired with meaningful institutional support, preferential treatment can reconcile the imperatives of liberalisation with the normative commitment to equity—thus enabling a more balanced and sustainable process of economic integration across Africa³⁰.

1.2.2- Principle of Sustainable Development

The principle of sustainable development occupies a central place in modern international and regional trade law. It recognises that trade liberalisation is not an end in itself but a means to achieve balanced and enduring economic and social progress. Trade rules and policies must therefore be designed and implemented so as to advance comprehensive development objectives — including economic growth, poverty reduction, environmental protection, and wider social welfare — without marginalising vulnerable groups or exhausting natural resources³¹.

In the multilateral legal context, scholarship has emphasised that trade liberalisation, in the absence of complementary social and environmental policies and robust institutional frameworks, will not by itself secure sustainable development. Sustainable development as a legal principle therefore demands policy coherence: trade commitments must be aligned with national development strategies, environmental regulations, and social-protection measures so that the gains from expanded market access are broadly shared and environmentally sustainable³².

The Agreement establishing the African Continental Free Trade Area expressly links continental economic integration to social progress and environmental stewardship. The AfCFTA's objectives and guiding principles envisage increased intra-African trade, support for

²⁸ Jaber Fahmy Imran, *The WTO: Its Legal System and Role*, 85; Ibrahim Ahmed Khalifa, *The Legal Regime of the WTO*, 21 (discussion of limits on protective measures and the need for minimal, reasonable safeguards).

²⁹ Muftau (2023); Walid Haffaf (2020) (analysis of institutional capacity as a prerequisite for effective differentiated implementation).

³⁰ For broader commentary on balancing liberalisation and development objectives under rule-based regimes see: Mustafa Khawas (2021) and Walid Haffaf (2020).

³¹ Al-Zahra Abdellawi, *Trade Policies and Their Impact on the Volume and Direction of Foreign Trade in Light of Trade Liberalization: Case Study — Algeria 2009–2019* (PhD diss., Zian Ashour University, 2023), 64-67 .

³² Jaber Fahmy Imran, *The World Trade Organization: Its Legal System and Its Role in Implementing Global Trade Agreements* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2009); Ibrahim Ahmed Khalifa, *The Legal Regime of the World Trade Organization: A Critical Study* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2008), 239.

domestic production and industrialisation, and job creation — all to be pursued in ways consistent with sustainable development goals. In practice, this requires Member States to harmonise national policies with continental objectives and to use the framework of the AfCFTA to promote inclusive growth that safeguards environmental resources³³.

Academic analyses of the AfCFTA underscore the potential of embedding sustainable development into the agreement's design and implementation. By mainstreaming sustainability considerations into tariff schedules, rules of origin, competition policy, and investment rules, the AfCFTA can help reduce developmental disparities, strengthen local productive capacities, and encourage the technological upgrading necessary for green and resilient growth. This approach also calls for targeted measures — technical assistance, finance for structural transformation, and capacity-building — to enable less-prepared Members to capture the developmental gains of liberalisation³⁴.

From a doctrinal standpoint, the inclusion of sustainable development as a guiding principle implies several concrete legal and institutional consequences. First, national and regional implementing measures should incorporate environmental and social impact assessments and establish regulatory standards that are trade-consistent yet protective of legitimate public interests. Second, monitoring, transparency and reporting mechanisms should be strengthened so that policy outcomes may be measured against sustainability criteria. Third, dispute-settlement and remedial procedures should be sensitised to sustainability concerns, allowing panels and adjudicators to take account of legitimate environmental and social objectives when assessing compliance³⁵.

Finally, the effectiveness of the principle depends on political will and operational capacity. If sustainable development is to move beyond rhetorical affirmation, Member States and continental institutions must mobilise domestic reform, concessional finance, and technical cooperation to reconcile short-term adjustment costs with long-term developmental returns. Only then will the AfCFTA function as a legal instrument that not only expands markets but also advances durable and equitable development across Africa

1.2.3- Principle of Respect for National Sovereignty

The principle of respect for national sovereignty constitutes a foundational rule governing relations among states within regional and international trade systems. It implies that states retain full authority over their internal affairs, including economic and legislative policies, provided that such authority is exercised in a manner consistent with their international obligations. In the context of trade integration, this principle ensures a balance between ³⁶

³³ Agreement Establishing the African Continental Free Trade Area (AfCFTA); see also I. Muftau, Overview of the African Continental Free Trade Area (AfCFTA) and Challenges of Implementation: Nigeria and South Africa's Implementation as Case Studies (LL.M. thesis, University of British Columbia, 2023).

³⁴ Walid Haffaf, "The Future of the African Continental Free Trade Area: Advantages and Challenges," *Journal of Economic Sciences, Management and Commercial Sciences*, Univ. Mohamed Boudiaf, M'sila, vol. 13, no. 3 (2020): 602; Mustafa Khawas, "The African Continental Free Trade Area — Opportunities for Success and Probabilities of Failure," *Diplomatica*, June 2021, 30.

³⁵ Muftau (2023); Jaber Fahmy Imran (2009) (discussion on reconciling regulatory space with trade obligations); Jamal Qasimiya, *The International Trade Organization: An Analytical Study of Its Objectives, Structure and Effects* (Alexandria: Dar Al-Jam'ah Al-Jadida, 2019).

³⁶ United Nations, Charter of the United Nations, 1945, Article 2

collective continental commitments and the sovereign right of each state to pursue policies aligned with its national development and social priorities.²³⁷

Legal doctrine consistently affirms that sovereignty, although fundamental, is not absolute in international relations. It remains a core principle of public international law, requiring that international trade agreements respect the limits of domestic legislative and executive authority. Consequently, states cannot be compelled to adopt legal or regulatory changes that contradict their constitutional frameworks or essential national interests, unless they have expressly and voluntarily consented to such obligations within treaty provisions.³⁸

Within the framework of the Agreement Establishing the African Continental Free Trade Area (AfCFTA), the principle of respect for national sovereignty is explicitly recognized among its guiding principles. The Agreement emphasizes that trade obligations must be implemented in accordance with national legal systems, thereby allowing member states to adopt temporary measures or exceptions where necessary to safeguard public interests or maintain economic stability. Such measures, however, must remain compatible with the objectives of continental integration and should not undermine the overall purpose of the Agreement.³⁹

Scholarly analyses of regional trade agreements highlight that respect for national sovereignty does not entail the suspension of treaty obligations; rather, it introduces flexibility mechanisms that enable states to reconcile international commitments with domestic policy needs. These include the regulation of sanitary and phytosanitary standards, environmental protection measures, and the provision of support to domestic industries during transitional phases of liberalization.⁴⁰

Furthermore, academic research indicates that the incorporation of the sovereignty principle within the AfCFTA enhances its acceptability among member states and reduces the likelihood of legal disputes. It provides states with interpretative space to apply rules in light of their national contexts, while also establishing structured mechanisms that prioritize negotiation and consultation before resorting to formal dispute settlement procedures.⁴¹

In this regard, the principle of respect for national sovereignty within the AfCFTA framework does not contradict the objectives of economic integration. Rather, it functions as a balancing mechanism between continental obligations and domestic legislative autonomy, thereby promoting legal certainty, political acceptance, and a sustainable implementation of fairness and equity within the African trade system.⁴²

2- Legal Principles Ensuring the Effective Implementation of the African Continental Free Trade Area

The legal principles ensuring the effective implementation of the African Continental Free Trade Area (AfCFTA) constitute a fundamental pillar for balancing the requirements of trade

³⁷ World Trade Organization, *Understanding the WTO: Principles of the Trading System*, 2015.

³⁸ Ian Brownlie, *Principles of Public International Law*, 7th ed., Oxford University Press, 2008.

³⁹ African Union, *Agreement Establishing the African Continental Free Trade Area (AfCFTA)*, 2018, Article 3 & 4.

⁴⁰ Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization*, Cambridge University Press, 2017.

⁴¹ United Nations Economic Commission for Africa, *Assessing Regional Integration in Africa*, various reports.

⁴² African Development Bank, *African Economic Outlook*, recent editions on regional integration

liberalization on the one hand, and considerations of national sovereignty, economic justice, and the protection of the developmental interests of member states on the other. These principles guide the conduct of states in fulfilling their obligations, regulate the legal relationships arising from the Agreement, and provide the necessary degree of legal certainty and stability required to attract investment and strengthen confidence among economic actors. Accordingly, this section seeks to highlight the most important legal principles underpinning the effective implementation of the AfCFTA, and to clarify their role in ensuring the proper application of the Agreement's provisions and the achievement of its strategic objectives, in a manner that supports African economic integration and enhances the continent's position within the international trading system.

2.1- The Principle of Transparency and Legislative Harmonization

The principle of transparency and legislative harmonization represents one of the core foundations of the legal framework of the African Continental Free Trade Area, given its central role in establishing a stable and predictable legal environment within the continental trading space. Transparency in trade-related laws and measures contributes to clarifying the rules governing trade exchanges and ensures the accessibility of relevant legal information to member states and economic operators, thereby fostering trust and reducing ambiguity or arbitrariness in implementation.

At the same time, legislative harmonization serves as a legal mechanism aimed at reducing disparities among national laws related to trade, without undermining the legislative sovereignty of states. This allows for a more coherent application of the Agreement's rules and enhances the effectiveness of the implementation of its obligations.

Thus, the combination of transparency and legislative harmonization reflects a broader orientation toward building a continental trading system based on clarity and legal coherence, which constitutes an essential condition for achieving fairness and equity, and for supporting the process of African economic integration.

2.1.1- The Principle of Transparency in Trade Legislation and Measures

The principle of transparency in trade legislation and measures is regarded as a fundamental cornerstone of both international and regional trade law. It refers to the obligation of states to ensure prior, clear, and accessible disclosure of legal rules and administrative procedures related to trade, thereby enabling economic operators and other states to become fully informed of their content and to assess their legal and economic implications. This principle primarily aims to enhance legal certainty and predictability in commercial transactions, while limiting arbitrary practices and ensuring the fair and non-discriminatory application of trade rules.⁴³

Legal scholarship has consistently emphasized that transparency constitutes an essential condition for procedural fairness in trade relations. It enables economic actors to anticipate their rights and obligations, while allowing member states to monitor each other's compliance with agreed rules. Furthermore, transparency serves as a preventive mechanism against trade

⁴³ World Trade Organization, *Understanding the WTO: Principles of the Trading System* (Geneva: WTO, 2015).

disputes, as the clarity of rules and procedures reduces the likelihood of divergent interpretations or selective enforcement of legislation⁴⁴.

Within the framework of international trade law, the scope of the transparency principle has evolved to encompass the obligation of states to publish trade-related legislation, customs procedures, and non-tariff measures, as well as to notify trading partners of substantial regulatory changes that may affect trade flows. As such, transparency has become a core standard of good trade governance, contributing to the strengthening of trust among states and the improvement of the investment climate.⁴⁵

In the context of the Agreement Establishing the African Continental Free Trade Area (AfCFTA), the principle of transparency is explicitly reflected in the provisions governing trade in goods and services. The Agreement requires member states to publish laws, regulations, and administrative procedures related to trade, and to make available relevant information concerning measures that may affect market access. This obligation seeks to ensure a consistent application of trade rules across the continental space, thereby promoting equal opportunities and facilitating the integration of national markets into a unified African market⁴⁶.

Academic studies further indicate that transparency under the AfCFTA extends beyond the formal publication of legal texts to include the development of institutional mechanisms for dialogue and information exchange. Such mechanisms facilitate the interpretation and coordinated updating of trade rules, helping to bridge the gap between legal provisions and practical implementation, and enhancing the capacity of member states to comply with their obligations in a manner consistent with principles of fairness and equity⁴⁷.

Accordingly, the principle of transparency constitutes one of the key pillars of the legal framework of the African Continental Free Trade Area, as it ensures clarity and stability within the trading environment and contributes to the achievement of continental economic integration through the establishment of a rules-based system characterized by openness and legal accountability.⁴⁸

2.1.2- The Principle of Legislative Harmonization

The principle of legislative harmonization is considered a fundamental mechanism for ensuring the effectiveness of regional and international trade agreements, particularly within integrated economic frameworks. It refers to the process of approximating and aligning national legal systems in areas related to trade, with the aim of reducing legal disparities that may hinder the smooth flow of goods, services, and investments. This principle does not require the unification of legal systems, but rather seeks to achieve a degree of convergence that facilitates the coherent application of common trade rules while preserving national legislative autonomy.⁴⁹

⁴⁴ Thomas Cottier and Petros C. Mavroidis, *Regulatory Barriers and the Principle of Transparency in WTO Law* (Ann Arbor: University of Michigan Press, 2000).

⁴⁵ Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization*, 3rd ed. (Cambridge: Cambridge University Press, 2017).

⁴⁶ African Union, *Agreement Establishing the African Continental Free Trade Area* (Kigali, 2018).

⁴⁷ United Nations Economic Commission for Africa, *Assessing Regional Integration in Africa* (Addis Ababa: UNECA, various editions).

⁴⁸ World Bank, *World Development Report: Trading for Development in the Age of Global Value Chains* (Washington, DC: World Bank, 2020).

⁴⁹ René David, *Major Legal Systems in the World Today* (London: Stevens & Sons, 1985).

Legal doctrine emphasizes that legislative harmonization plays a crucial role in enhancing legal certainty and predictability within integrated markets. By reducing inconsistencies among domestic laws, it enables economic operators to engage in cross-border activities under clearer and more uniform legal conditions. At the same time, it limits regulatory fragmentation, which may otherwise create barriers to trade and distort competition among member states.⁵⁰

In the context of international trade law, legislative harmonization has evolved as a flexible approach that allows states to gradually adapt their domestic legal frameworks to internationally agreed standards. This may occur through the adoption of model laws, mutual recognition mechanisms, or the incorporation of common principles into national legislation. Such flexibility ensures that harmonization respects the diversity of legal systems while promoting greater coherence in the implementation of trade obligations.⁵¹

Within the framework of the Agreement Establishing the African Continental Free Trade Area (AfCFTA), legislative harmonization occupies a central position as a means of facilitating continental economic integration. The Agreement encourages member states to align their trade-related laws, regulations, and administrative practices in areas such as customs procedures, technical standards, and trade facilitation measures. This alignment aims to ensure a more consistent application of the Agreement's provisions and to reduce legal and administrative obstacles to intra-African trade.⁵²

Scholarly studies further indicate that legislative harmonization within the AfCFTA is not imposed as a rigid obligation, but rather operates through progressive and cooperative mechanisms that take into account the varying levels of economic development and legal capacity among member states. This gradual approach allows states to implement reforms at a pace consistent with their domestic priorities, while still contributing to the broader objective of continental integration.⁵³

Moreover, legislative harmonization contributes to strengthening institutional cooperation among member states, as it often requires the exchange of best practices, technical assistance, and continuous legal dialogue. This process enhances mutual trust and supports the development of a common regulatory culture, thereby reinforcing the effectiveness and sustainability of the AfCFTA framework.⁵⁴

Accordingly, the principle of legislative harmonization represents a key pillar of the legal architecture of the African Continental Free Trade Area. It enables the reconciliation of national legal diversity with the requirements of economic integration, thereby fostering a more coherent, efficient, and predictable continental trading system, and contributing to the achievement of equitable and sustainable development objectives.⁵⁵

2.2- The Principle of Dispute Settlement and the Achievement of Legal Certainty

⁵⁰ Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization*, 3rd ed. (Cambridge: Cambridge University Press, 2017).

⁵¹ United Nations Commission on International Trade Law, *Harmonization and Modernization of Trade Law*, official documents.

⁵² African Union, *Agreement Establishing the African Continental Free Trade Area* (Kigali, 2018).

⁵³ United Nations Economic Commission for Africa, *Assessing Regional Integration in Africa* (Addis Ababa: UNECA, various editions).

⁵⁴ African Development Bank, *African Economic Outlook* (Abidjan: AfDB, recent editions).

⁵⁵ World Bank, *World Development Report* (Washington, DC: World Bank, 2020).

The principle of dispute settlement and the achievement of legal certainty constitutes a fundamental pillar of the legal framework of the African Continental Free Trade Area (AfCFTA), given its central role in ensuring the proper application of trade rules and the protection of the rights and obligations arising therefrom. The existence of effective legal mechanisms for dispute settlement contributes to addressing conflicts that may arise between member states regarding the interpretation or implementation of the Agreement, thereby preventing their escalation into political or economic disputes that could hinder the process of continental integration. Furthermore, this principle is closely linked to the realization of legal certainty, through the establishment of a stable and predictable legal environment based on clear rules, their consistent application, and access to predefined legal procedures. Accordingly, the combination of dispute settlement and legal certainty reflects a broader orientation toward the construction of a rules-based continental trading system that enhances trust among member states and economic actors, and supports the sustainability of the AfCFTA framework.

2.2.1- Dispute Settlement Mechanisms under the AfCFTA

Dispute settlement mechanisms within the framework of the AfCFTA represent an essential component for ensuring the effective and proper implementation of the Agreement's provisions. They are designed to address disputes arising between member states concerning the interpretation or application of trade obligations through legal and institutional means, rather than unilateral actions or power-based approaches. The establishment of a clear dispute settlement system contributes to strengthening mutual trust among member states and reinforces the principle of the rule of law within the continental trading system.⁵⁶

The AfCFTA Agreement provides for a dedicated Protocol on Rules and Procedures on the Settlement of Disputes, which is largely inspired by the dispute settlement system of the World Trade Organization, while taking into account African regional specificities. This system is based on several key principles, including the state-to-state nature of disputes, respect for due process, and the preference for amicable settlement prior to recourse to adjudicative mechanisms, reflecting an emphasis on consensual solutions as a first stage.⁵⁷

Dispute settlement procedures generally begin with consultations, aimed at enabling the parties to exchange views and reach a mutually agreed solution within a specified timeframe. This stage reflects the principle of good faith in the implementation of international obligations and contributes to reducing the number of disputes that proceed to adjudication, thereby preserving stable trade relations among member states.⁵⁸

In the event that consultations fail, the process moves to the establishment of a panel tasked with examining the dispute from both legal and technical perspectives and issuing a report containing its findings and recommendations regarding the consistency of the contested measures with the provisions of the Agreement. This stage is characterized by its quasi-judicial nature and by the application of clear procedural rules ensuring due process, equality of arms,

⁵⁶ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, 2nd ed. (Cambridge: MIT Press, 1997).

⁵⁷ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, 2nd ed. (Cambridge: MIT Press, 1997).

⁵⁸ Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization*, 3rd ed. (Cambridge: Cambridge University Press, 2017).

and the protection of the rights of the parties, thereby enhancing the credibility and effectiveness of the system.⁵⁹

The AfCFTA dispute settlement system also предусматривает the possibility of reviewing panel reports through an Appellate Body mechanism, which contributes to ensuring consistency in the interpretation of the Agreement's provisions and promotes coherence in dispute resolution. This mechanism enhances legal certainty by generating stable and predictable jurisprudence that assists member states in aligning their domestic laws and trade measures with the requirements of the Agreement.

Beyond its adjudicative function, the dispute settlement system performs a preventive role by discouraging member states from adopting trade measures inconsistent with the Agreement, due to the risk of legal accountability. This preventive effect fosters voluntary compliance with trade obligations and reinforces legal certainty as a key condition for the success of continental economic integration.

Accordingly, dispute settlement mechanisms under the AfCFTA constitute a central pillar of its legal system, providing legal guarantees for the effective implementation of obligations and contributing to the stability and clarity of trade relations among member states, thereby supporting the long-term objectives of the Agreement .

2.2.2- The Role of Dispute Settlement in Achieving Legal Certainty

Legal certainty represents a fundamental requirement for any effective trading system, as it is based on the clarity, stability, and predictability of legal rules and their application. In this regard, dispute settlement mechanisms play a crucial role in reinforcing legal certainty by ensuring respect for agreed rules and by addressing disputes arising from their interpretation or application within an institutionalized legal framework.⁶⁰

Within the AfCFTA framework, dispute settlement mechanisms contribute to legal certainty by providing a clear and predetermined legal avenue for resolving disputes, thereby reducing reliance on unilateral measures or politically driven solutions that could undermine the stability of trade relations. The existence of well-defined procedures and timeframes allows member states to better understand their rights and obligations, thereby strengthening confidence in the Agreement's legal system⁶¹ .

Legal certainty is also closely linked to the consistency in the interpretation of legal rules, which is achieved through the reports of panels and the Appellate Body. These reports contribute to the development of a coherent body of jurisprudence, serving as a practical reference for member states when drafting or amending their domestic trade-related legislation. This reduces discrepancies in the application of the Agreement and enhances predictability in legal outcomes⁶² .

Moreover, dispute settlement mechanisms play a preventive role in strengthening legal certainty by encouraging member states to comply voluntarily with their trade obligations, in

⁵⁹ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, 2nd ed. (Cambridge: MIT Press, 1997).

⁶⁰ United Nations Economic Commission for Africa, *Assessing Regional Integration in Africa* (Addis Ababa: UNECA, various editions).

⁶¹ World Bank, *World Development Report* (Washington, DC: World Bank, 2020).

⁶² Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization*, 3rd ed. (Cambridge: Cambridge University Press, 2017).

order to avoid legal challenges and their potential economic or reputational consequences. This preventive function limits the adoption of measures inconsistent with the Agreement and promotes a culture of legal compliance within the continental trading system.⁶³

In addition, access to dispute settlement mechanisms ensures the protection of acquired rights and prevents the impairment of legal positions arising under the Agreement, whether related to market access or agreed trade treatment. This contributes to the creation of a more stable legal environment that fosters investment, promotes trade flows, and supports the economic objectives of the AfCFTA.⁶⁴

Accordingly, the role of dispute settlement within the AfCFTA extends beyond the mere resolution of disputes, serving as a key instrument for achieving legal certainty and reinforcing the rule of law within the continental trading system, thereby ensuring the sustainability of African economic integration and strengthening confidence in its legal framework.⁶⁵

Conclusion

The African Continental Free Trade Area represents an important legal and economic framework for promoting African integration and strengthening intra-African trade. The study shows that the success of the AfCFTA depends not only on the principles stated in the Agreement, but also on their effective implementation by Member States.

Findings

- The AfCFTA is based on key legal principles such as trade liberalization, non-discrimination, preferential treatment, transparency, legislative harmonization, and dispute settlement.
- These principles aim to create a stable and predictable legal environment for trade and investment across Africa.
- The principle of preferential treatment is necessary to protect least developed countries and help them adapt gradually to trade liberalization.
- Transparency and legislative harmonization play an essential role in reducing legal uncertainty and facilitating intra-African trade.
- Dispute settlement mechanisms contribute to legal certainty and help prevent conflicts between Member States.
- The main challenge facing the AfCFTA is not the absence of legal principles, but the difficulty of implementing them effectively due to weak institutional capacity, legal differences, and economic disparities among Member States.

Recommendations

- Member States should align their national laws with the obligations and principles of the AfCFTA.
- African countries should strengthen their administrative, legal, and institutional capacities to ensure effective implementation.

⁶³ Joost Pauwelyn, *Conflict of Norms in Public International Law* (Cambridge: Cambridge University Press, 2003).

⁶⁴ Ernst-Ulrich Petersmann, *The GATT/WTO Dispute Settlement System* (The Hague: Kluwer Law International, 1997).

⁶⁵ Marc L. Busch and Eric Reinhardt, "Developing Countries and GATT/WTO Dispute Settlement," *Journal of World Trade* 37, no. 4 (2003).

-Transparency should be improved through the publication of trade laws, customs procedures, and regulatory measures.

-Legislative harmonization should be gradual and flexible, while respecting the sovereignty of Member States.

-Least developed countries should receive technical assistance, longer transition periods, and financial support.

-The dispute settlement system should be activated to ensure compliance with the Agreement and protect legal certainty.

-Trade liberalization should be linked to development objectives such as industrialization, job creation, investment promotion, and poverty reduction.

In conclusion, the AfCFTA can become a powerful instrument for African economic integration if its legal principles are applied effectively, supported by strong institutions, political will, and cooperation among Member States.