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

- I African Regional Trade Agreements as flexible legal regimes 1
 - A Introduction 1
 - B Flexibility as enmeshment in the 'African' context 8
 - 1 Adaptations of the Vinerian model
 - 2 Flexibility as enmeshment in the African context 15
 - 3 African RTAs as forums of integrated development and functionally specific projects 19

8

- 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
- II Variable geometry: A defining aspect of African RTAs 34
 - 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

v

	 The arguments of the partner states and the East African Law Society as <i>amici</i> 52 The decision of the Court 56
	E Conclusion 62
III	Multiple memberships in African RTAs 65
	A Introduction 65
	BWhy countries have multiple memberships in RTAs671Multiple memberships reflect Africa's diversity73
	 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
IV	African RTAs in the context of Article XXIV of the GATT 86
	A Introduction 86
	B Article XXIV of the GATT: Requirements for the formation of RTAs87
	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

		1Events leading to the adoption of the Enabling Clause1202The 1979 decision1233Discussion125
	L	European Communities: Conditions for the granting of tariff preferences to developing countries 128
	Μ	EU–ACP Economic Partnership Agreement 132
	Ν	Compatibility with the WTO1331The Enabling Clause to justify EU–ACP preferences1342GATT Article XXIV to justify EU–ACP preferences1363Internal requirement of GATT Article XXIV (8)(b)1364Rules of origin1395Transition periods1406Developing countries and EPAs141
V		ade liberalization commitments and realization ne frames 143
	А	Introduction 143
	В	The Economic Community of West African States1441Overview1442Sequencing1453Common market1464Customs union1485ECOWAS Trade Liberalization Scheme1506Economic and monetary union1537Progress154
	С	Intergovernmental Authority on Development(IGAD)1561Overview1562Sequencing1583The IGAD Treaty and strategy1594The importance of livestock to the IGAD Community1605Progress163
	D	The Common Market for Eastern and Southern Africa 165 1 Overview 165 2 Sequencing 167

vii

	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	
E	East African Community1811 Overview1812 Sequencing182	
	3 Customs union 182	
	4 Common market 187	
	5 Monetary union 195	
	6 Political federation 195	
	7 Progress 196	
F	Arab Maghreb Union2021 Overview2022 Organizational structure204	
	3 Economic achievements 205	
G	The Southern African Development Community1Overview2112Sequencing2123The SADC Treaty2124Progress217	211
Η	Southern African Customs Union2231Overview2232Trade Liberalization Scheme2243Progress228	
Ι	Community of Sahel-Saharan States2321Overview2322Treaty establishing the Community233	
J	 Economic Community of Central African States 1 Overview 237 2 Treaty establishing the Community 238 	237

VI Financing African RTAs 243

A Introduction 243

viii

	BFinancing the AEC2451AEC's budgetary process2492Problems encountered in raising revenue2513Financing the AMU2544Financing CEN-SAD2545Financing COMESA2556Financing the EAC budget2577Financing ECCAS2588Financing ECOWAS2599Financing IGAD26010Financing SADC261
VII	C Conclusion 262 African RTA Judiciaries 264
V 11	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

D	Trade remedies available under the Protocol on the Establishment of the East African Customs Union3131The EAC Committee on Trade Remedies313
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) traderemedies3361Anti-dumping measures3372Subsidies and countervailing measures3373Safeguard measures3384Protection of infant industries338
G	Trade remedies under the Southern African Customs Union(SACU) Agreement339
Η	Conclusion 340
M	onetary unions in Africa 342
А	Introduction 342
В	The Economic and Monetary Community of Central Africa 3421Legal framework establishing CEMAC 3442The Bank of Central Africa 347
С	The West African Economic and Monetary Union3501Objectives of the UEMOA3502Organizational structure of the UEMOA3503The BCEAO and the payment system3514Legal framework governing the payment system352
D	The West African Monetary Zone3521 Organizational structure of the WAMZ353

- 2 The role of the WAMI 354
- E The successes and challenges of the African monetary unions 355

IX

Х

F	 WAMZ and WAEMU success and challenges 357 Challenges for the CFA franc zone 358 Success of the 1994 devaluation 359 The euro crisis and Africa 359 Conclusions 360
Int	tra-African regional trade integration 361
	Introduction 361
В	The relationship between the African Economic Community and Regional Economic Communities 362
С	Sources of support for intra-regional tradecooperation3641Africa Development Bank3642Foreign aid365
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
Η	The importance of linkages between RECs in transport and communications 376
Ι	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

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
LOther areas of regional integration3861COMESA-EAC-SADC Free Trade Area3862The East Africa Migration Route Programme388
M Conclusions 389
African RTA relations with non-African RTAs 390
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 FTAgs - effect of stringent IPR standards 407 3 IPR provisions: EPAs v. US FTAgs 410

E Trade and Investment Framework Agreements between the United States and African states 411

xii

XI

- 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 FTAg negotiations 419
 - 7 MERCOSUR–Africa trade 420
 - 8 Legal regimes on counterfeit goods 422

H Conclusions 423

Bibliography 424 Index 471