


Analyzing the African Continental Free Trade Area (the AfCFTA) from an Informality Perspective: A Beautiful House in the Wrong Neighborhood

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The article critically explores the African Continental Free Trade Area (AfCFTA) from an informality perspective. The informality perspective sees unofficial rules, norms, practices, processes, actors, and decision-making structures as driving forces of the social world. They are ontologically prior to and building blocks of their formal counterparts. From this viewpoint, the failure to design the AfCFTA from the informal economy baseline makes it an unfit trade agreement for the African continent. Those who drafted the agreement, its supplementary protocols and annexes, and the decision-makers who signed as well as ratified them neglected the informal trading actors and unregistered enterprises in Africa. Rather than building the agreement around unregistered small-to-medium-scale enterprises, operated mostly by women and the youth, the AfCFTA and its legal instruments envisioned a utopian African trade market without them. The drafters and decision-makers of the AfCFTA seem to operate on the basic principle of no formalization and no gain from the free trade agreement. The result is a serious mismatch. The formally oriented AfCFTA is supposed to govern the largely informal African trading ecosystems. The failure to mainstream the informal economy in the AfCFTA makes the African free trade agreement look like, to use a house metaphor, a beautifully constructed house located in the wrong neighborhood. The article substantiates this claim and shows its implications for the Pan-African integration project and the study of international relations.

L'article aborde de manière critique la zone de libre-échange continentale africaine (ZLECAf) d'un point de vue informel. Ce point de vue considère les règles, les normes, les pratiques, les processus, les acteurs et les structures de prise de décision non officiels comme des forces motrices du monde social. Tous sont ontologiquement antérieurs à leurs homologues formels, et représentent leurs éléments constitutifs. Selon ce point de vue, l'incapacité à concevoir la ZLECAf en tenant compte de l'économie informelle en fait un accord commercial inadapté au continent africain. Les personnes ayant rédigé l'accord, ses protocoles additionnels, ses annexes, tout comme les décideurs qui les ont signés et ratifiés, ont négligé les acteurs du commerce informel et les entreprises non enregistrées du continent africain. Au lieu de créer cet accord en s'appuyant également sur les petites et moyennes entreprises (PME) non enregistrées, dirigées principalement par des femmes et des jeunes, la ZLECAf et ses instruments juridiques ont imaginé un marché commercial africain utopique, sans prendre en compte ces PME. Les rédacteurs et les décideurs de la ZLECAf semblent suivre le principe directeur suivant: pas de formalisation, pas de bénéfice de l'accord de libre-échange. Il en résulte une grave inadéquation. L'accord de libre-échange africain, largement formel, est supposé régir des écosystèmes commerciaux qui sont largement informels en Afrique. L'échec de l'intégration de l'économie informelle dans la ZLECAf fait que cet accord de libre-échange africain ressemble, selon une métaphore locale, à une belle maison dans un mauvais quartier. L'article justifie cette affirmation et montre ses implications dans l'intégration panafricaine et l'étude des relations internationales.

Este artículo estudia de forma crítica el Área Continental Africana de Libre Comercio (AfCFTA, por sus siglas en inglés) desde la perspectiva de la informalidad. Esta perspectiva de la informalidad ve las reglas, las normas, las prácticas, los procesos, los agentes y las estructuras de toma de decisiones no oficiales como fuerzas impulsoras del mundo social que son ontológicamente anteriores a sus contrapartes formales y que constituyen bloques de construcción de estas. Desde este punto de vista, podemos afirmar que el hecho de que el AfCFTA no tuviera en cuenta para su diseño las líneas de base de la economía informal lo convierte en un acuerdo comercial inadecuado para el continente africano. Las personas que redactaron el acuerdo, así como sus protocolos complementarios y los anexos, y los responsables de la toma de decisiones que los firmaron y ratificaron no tuvieron en cuenta ni a los actores comerciales informales ni a las empresas no registradas en África. En lugar de construir este acuerdo en torno a pequeñas y medianas empresas (PYMES) no registradas, operadas principalmente por mujeres y jóvenes, el AfCFTA y sus instrumentos legales imaginaron un mercado comercial a nivel africano utópico, sin estas. Los redactores del AfCFTA y los tomadores de decisiones en lo referido al AfCFTA parecen haber actuado bajo el principio básico de no formalización, es decir, que no se obtiene ganancia del acuerdo de libre comercio. El resultado de esto es un grave desajuste. Se supone, entonces, que el AfCFTA, de orientación formal, debería regir en los ecosistemas comerciales africanos, que son, en gran parte, informales. La falta de integración de la economía informal en el AfCFTA hace que el acuerdo de libre comercio africano parezca, comparándolo con una casa, una casa magníficamente construida pero ubicada en el vecindario equivocado. El artículo corrobora esta afirmación y muestra sus implicaciones para el proyecto de integración panafricana y para el estudio de las relaciones internacionales.

Introduction

This article contributes to the Special Forum on “Pan-Africanism and International (Dis)order” by critically examining the African Continental Free Trade Area (AfCFTA), a flagship agreement of the African Union (AU) and a concrete expression of the spirit of Pan-Africanism. It explores the AfCFTA from an informality perspective, defined as an approach to scholarship that treats unofficial rules, norms, practices, processes, actors, and decision-making structures as the analytical baseline.¹ As a flagship Pan-African project, the signing of the AfCFTA by fifty-four out of the fifty-five AU member states on March 21, 2018, marks an important milestone in the political maturity of Pan-Africanism. The AfCFTA is designed to bring together all states in Africa except Eritrea to create the largest free trade area since the creation of the World Trade Organization (WTO; [Erasmus 2022](#)). The AfCFTA has received ringing endorsements from mainstream trade communities of practice (CoPs)² such as the World Bank Group ([Fofack and Mold 2021](#)). The tremendous support of the AfCFTA from mainstream CoPs is telling. Unlike previous landmark Pan-African integration schemes such as the Lagos Plan of Action and even the more neo-liberal-oriented African Economic Community, mainstream trade experts have enthusiastically embraced the AfCFTA ([World Bank 2020](#)). In [Caroline Kende-Robb’s \(2021\)](#) words, it is “a game changer.” Mainstream CoPs think the AfCFTA contains some of the strongest provisions of any international trade legal instrument in the world ([Luke and MacLeod 2019](#); [Söderbaum and Stapel 2022](#)). A major trade epistemic community study noted that “the scope of AfCFTA is large. The agreement will reduce tariffs among member countries and cover policy areas such as trade facilitation and services, as well as regulatory measures such as sanitary standards and technical barriers to trade” ([World Bank 2020](#), 1). The Executive Secretary of the United Nations Economic Commission for Africa Vera Songwe thinks the transformative effect of the AfCFTA could match the impact that the Marshall Plan had on Europe ([Songwe 2020](#)).

Most of the materials published on the AfCFTA by CoPs suggest it offers one of the best ways for Africa to build back better from the COVID-19 pandemic ([Döring and Engel 2021](#); [Kende-Rob 2022](#); [Erasmus 2022](#)). The AfCFTA is seen in policy circles in Africa as one of the best avenues for African states to recover from the pandemic and to build resilience against future global shocks ([African Development Bank Group 2018](#); 2021). As a leading international trade expert pointed out, it is “fully recognized across the continent that AfCFTA presents a short-term opportunity for countries to ‘build back better’ and cushion the effects of the pandemic. In the longer term, the pact [the AfCFTA] will increase the continent’s resilience to future shocks” ([Kende-Rob 2022](#)). The strong backing of the AfCFTA by trade CoPs is a major reason why it enjoys strong political support among the African political class. The overwhelming support for the AfCFTA by African leaders can be seen in the speedy and high rate of ratification of the agreement by AU member states ([Muchanga 2022](#); [Tralac 2022](#)). As of August 2023, forty-four African states have signed and submitted the instrument of ratification for the AfCFTA treaty

([African Union 2023](#)). The signing, the deposit of the instruments of ratification, and the entry into force of the AfCFTA, marked one of the fastest ratification processes in the history of international treaties. But is the AfCFTA a good fit for the African trade context?

We argue that the failure to design the AfCFTA and its three supplementary protocols from the informal economy baseline makes it an unfit trade pact for the African continent. Those who drafted the agreement and its supplementary protocols, and the decision-makers who signed and ratified them, appeared to ignore the informal sector, especially its ubiquitous unregistered trading networks, enterprises, and operators in Africa. Rather than using the informal sector as the building blocks of the agreement, the AfCFTA and its legal instruments envisioned a utopian African trade market without them. The result is a serious mismatch between the AfCFTA objectives, its key provisions, and obligations—which mainly focus on the formal economy, and the African trading ecosystems, which are dominated by informal trading actors and unregistered enterprises.³ Reading the agreement and its protocols leaves a distinctive impression that formal enterprises, rather than informal trade, are the main drivers of intra-Africa trade. All key provisions are designed for or focus on formal traders. The main AfCFTA text and its supplementary protocols remain incredibly silent on informal trading actors and their unregistered small-scale enterprises. When the informal sector and its traders are mentioned in the agreement and its protocols, they appear in the context of encouraging those who operate such businesses to formalize them (i.e., wished them away), so that they can take advantage of the opportunities created by the AfCFTA. The drafters and decision-makers of the AfCFTA operated on the basic principle that without formalization, there would be no gain from the free trade agreement. Thus, although the AfCFTA is elegantly constructed and has been well received by the African political class and the international trade epistemic community, the failure to design it from the informal economy baseline makes it look like a beautifully constructed house located in the wrong neighborhood.

We demonstrate the above argument in four sections. The section following this introduction provides a theoretical basis for the argument, highlighting that informality offers a suitable analytical grounding for the argument. The next section gives a concise overview of the AfCFTA. The penultimate section shows that although the AfCFTA is a beautifully constructed conventional free trade agreement, it is unsuitable for the African continent. The priority it gives to the formal economy is at odds with the African trading system, which depends heavily on the informal sector and unregistered small businesses. The final part is a conclusion, where we provide a succinct summary of the main argument and draw attention to the implications of the findings for the study of international trade and relations.

Theoretical Framework: Informality Perspective

The informality perspective contends that the social world is fundamentally driven or shaped by unofficial rules, norms, practices, processes, actors, and decision-making structures ([Azari and Smith 2012](#); [Kamete 2017](#); [Tieku 2019a, 2021](#)).⁴

¹Treating informal rules, norms, practices, processes, actors, and decision-making structures as the analytical baseline means that the analyst sees them as foundations of the social world. They are ontologically prior to and building blocks of their formal counterparts.

²CoPs are organized groups of people who have common interest and expertise in a specific domain ([Wenger 1998](#); [Adler 2008](#); [Sondarjee 2021](#)).

³To be clear, the informal enterprises and trade actors that this article focuses on are legal but unregistered small–medium-scale businesses.

⁴Informal rules are unwritten guidelines that direct activities of actors in a given social setting. Informal norms are unwritten shared beliefs that tell people

The six dimensions of informality are analytically but not mutually exclusive. They have both international and domestic components. The domestic aspects of informality are well documented by scholars in fields such as development studies, anthropology, sociology, and comparative politics (Helmke and Levitsky 2004; Grzymala-Busse 2012; Azari & Smith 2012). Scholarship on the international dimensions lagged behind until the last decade when a number of International Relations (IR) scholars started to give them the serious attention they deserve (Christiansen and Neuhold 2012; Roger 2020). The initial IR scholarship on informality focused on informal governance (Christiansen and Neuhold 2012; Stone 2013; Kleine 2018). An increasing number of IR works, especially in the last 5 years are now directed toward other aspects of informality. These included studies looking at the origins of informality (Roger 2020), informal international rules (Tieku 2017, 2019b), informal norms (Hardt 2013), informal international practice (Tieku et al. 2020), and informality inside formal international organizations (Raineri 2019; Gifkins Jess 2021; Westerwinter et al. 2021).

These studies build on the long-standing social science scholarship on informal aspects of the social world (Rostow 1960; Hart 1973; North 1990; Lipson 1991; Allen 1998; Inglehart 2020). Often subsumed in discussions of institutions (North 1990) and modernization (Rostow 1960; Parsons 1972; Hart 1973; Inglehart 2020), social science scholarship showed that informality, defined as the large swath of the universe that governments have not established formal rules, norms, practices, processes, actors, and decision-making structures over it, dominates the universe. Even though states are trying to develop formal rules, norms, practices, processes, actors, and decision-making structures to replace many informal practices in different parts of the universe that humans operate, the universe is predominantly an informal world. The informality perspective does not in any way suggest that formal or official, or state-based rules, norms, practices, processes, actors, and decision-making structures are epiphenomenal. The formal, or official dimensions of the social world, depend heavily on the informal. The formal often acts as a camouflage, or cover-up, of informality. As a product of informality, the formal intersects with the informal in so many ways.⁵ Although the formal and the informal are analytically distinct, as shown by Tieku (2019a), they are not mutually exclusive. As discussed in the empirical section, informal trade is the baseline of intra-Africa trade, feeding, and shaping formal trade in many ways.

Analytically, the informality view first draws attention to the fact that the bulk of intra-Africa trade takes place through informal markets rather than formal trade channels (Rogerson 2016; Kamete 2017). From an informality perspective, the AfCFTA would be addressing the heart of the matter of intra-African trade if the agreement prioritized or mainstreamed informal trade and actors. As Benjamin et al. (2015, 381) noted, despite the focus on official trade in Africa, “informal cross-border trade (ICBT) is pervasive” as informal operators have mastered the art and craft of carry-

ing goods and providing services across African borders with ease.

Second, the informality perspective indicates that intra-Africa trade is governed more by informal rules. These rules may have been developed at the informal level or may have emerged due to incomplete contracting by governments (Koremenos, Lipson, and Snidal 2001; Oestreich 2012). The official trade rules that states have established may be necessary but not sufficient for effective trade. Addressing official trade rules without a corresponding attention to unofficial rules of the game of trade is a recipe for failure. Third, informal cross-border norms, which cannot be enforced through courts or official enforcement channels, are major drivers of intra-Africa trade.

Fourth, the informality analytical baseline directs attention to the ways and means by which invisible practices, such as transporting goods and services through routes designated by governments as unapproved paths, are essential aspects of intra-Africa trade. Several research studies show that due to many challenges that Africans encounter in formal international borders, including high costs of customs duties, immigration policies, and other bureaucratic bottlenecks, many cross-border traders in Africa prefer to use unapproved routes to transact intra-Africa businesses (Okunade 2017; Yendaw 2022). As Bewiadzi's (2022) studies of the Aflao-Lomé border region pointed out, unapproved routes or footpaths that link Ghana and Togo called “beats” by the locals experienced high traffic from traders and immigrants on a daily basis. These routes dominate the African trade ecosystems.

The invisible practices can also be seen in colonial representations, discourses, and neocolonial mindsets that continue to shape intra-Africa trade. An informal reading of the AfCFTA would expect these invisible practices to influence trade patterns and even negotiation of the AfCFTA. At the level of negotiation, an informal perspective would direct attention to invisible practices that could influence the AfCFTA agreement to mirror trade agreements and economic orthodoxy practiced by formal colonizers. Given that most of the signatory states are embedded in colonial social structures, as scholars like Edward Said (1978), Frantz Fanon (2008), and Olivia Rutazibwa and Robbie Shilliam (2018) work has shown, it is likely that the AfCFTA could follow trade agreements and economic orthodoxy favored by countries like the United Kingdom and France, and their major integration institutions such as the European Union.

Finally, informality perspective draws attention to the centrality of informal actors such as unregistered small-scale businesses, informal markets, and operators whose trade activities are not governed by state laws. The informality also directs attention to the unofficial actors, including epistemic communities, who worked behind the scenes during negotiations and drafting of trade agreements. These actors may include trained economists and trade lawyers working for think tanks such as the Trade Law Centre. These actors may even be part of official trade delegations during the negotiation and drafting of the AfCFTA. The informality perspective directs the analyst to pay close attention to the influence of these informal actors in intra-Africa trade and agreements that govern it.

More fundamentally, the informality perspective directs the attention of the analyst to look at the extent to which the AfCFTA prioritizes the informal sector and its actors. The agreement has a greater chance of success if it prioritizes the informal sector and its actors. Without the informal sector at its base, the AfCFTA is unlikely to be the African Marshall Plan that Vera Songwe (2020), the Executive Secre-

what they ought to do in social settings. Informal practices are unofficial routinized activities or actions that guide the day-to-day work of actors in a social setting. Informal processes are uncodified methods or procedures used by actors to guide their activities or actions in order to achieve a particular outcome. Informal actors are entities that do not hold official state office or title but whose actions have consequences in a given social setting. Informal decision-making structures are steering arrangements that actors use to make decisions in social settings.

⁵For a detailed discussion of the intersection between formality and informality in the international system, see Tieku (2019a).

tary of the United Nations Economic Commission for Africa, hopes it would become. The agreement could even join several African trade agreements gathering dust on shelves of many public institutions in Africa.

The AfCFTA

The decision to establish the AfCFTA was taken at the eighteenth Ordinary Session of the AU Assembly of Heads of State and Government in Addis Ababa, Ethiopia in 2012 (African Union 2022). The AfCFTA negotiation was launched during the twenty-fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from June 14–15, 2015. The agreement was brokered on March 21, 2018 at the end of the tenth Extraordinary Session of the Assembly of AU Heads of State and Government in Kigali, Rwanda, and entered into force on May 30, 2019 (Africa Union 2018; Cofelice 2018). Trading under the AfCFTA officially started on January 1, 2021, but the first consignment of goods traded under the agreement took place on September 23, 2022 when Kenya shipped goods, including locally produced tea and car batteries to Ghana (Hairsine 2022).

The central objectives of the AfCFTA are outlined in Articles 3–8 of the AfCFTA Agreement (African Union 2018). According to these articles, the AfCFTA seeks to provide a single market for goods, services, investment, intellectual property rights (IPRs), and competition policy. The goods, services, investment, IPRs, and competition policies covered by the agreement are those officially recognized by governments that have acceded to the agreement. There are no provisions in the objectives for goods, services, and investments in the informal sector. By focusing on formal trade in goods, services, investments, and IPRs, the signatories to the agreement hope to bring together fifty-four African countries with a combined gross domestic product (GDP) officially valued by the World Bank at US\$3.4 trillion (World Bank 2020). The integrated markets in Africa would be created through progressive elimination and reduction of tariffs imposed on goods and services at official international borders.

The AfCFTA provided that starting in 2020, tariffs on 90 percent of products of the thirty-three (Eritrea is yet to sign) of the least developed countries (LDCs) will be eliminated during a 10-year period, while tariffs on the twenty-one non-LDCs will be phased out within a 5-year period. And from 2025, tariffs on an additional 7 percent on goods and services will be eliminated within 5 years for non-LDCs and 8 years for LDCs. The remaining 3 percent of tariff lines, which will not be more than 10 percent of intra-Africa imports, would be excluded from liberalization by the end of 2030 for non-LDCs and 2033 for LDCs. By removing or reducing tariffs and non-tariff barriers on as much as 97 percent of goods and services by 2030 for non-LDCs and 2033 for LDCs, the continental free trade area is expected by CoPs to transform trade on the African continent, develop wide-ranging regional value chains, increase the level of competition, production, and investment, and to put the continent on the path of economic development envisioned in Agenda 2063 (Luke and MacLeod 2019; AU/UNDP 2020; Tsowou and Davis 2021; African Union 2022).

The AfCFTA negotiations were divided into three phases. Phase I negotiations focused on trade in goods and services, while Phase II was supposed to cover IPRs, investment, and competition policy. The outcome of Phase I negotiations included the AfCFTA Agreement, Protocol on Trade in Goods, Protocol on Trade in Services, and Protocol on

Rules and Procedures on the Settlement of Disputes and their annexes and appendices. Specifically, the AfCFTA parties agreed in Article 3 to: (i) create a single market for goods and services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of “An integrated, prosperous, and peaceful Africa” enshrined in Agenda 2063; (ii) create a liberalized market for goods and services through successive rounds of negotiations; (iii) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs; (iv) lay the foundation for the establishment of a Continental Customs Union at a later stage; (v) promote and attain sustainable and inclusive socio-economic development, gender equality, and structural transformation of the State Parties; (v) enhance the competitiveness of the economies of State Parties within the continent and the global market; (vi) promote industrial development through diversification and regional value chain development, agricultural development, and food security; and (vii) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

Neither the specific objectives outlined in Article 3 nor the rest of the provisions in the AfCFTA covered informal trade. Thus, although the goals agreed upon for the AfCFTA during the Phase I negotiations are very ambitious, as several studies have indicated, at the moment the agreement is just a free trade area for the formal part of the African economy (Chidede 2021). A comprehensive and modern single African market for goods, services, digital commerce, and intellectual property outlined in the Phase I negotiations remains “politics of aspiration” in the words of Martha Finnemore and Michelle Jurkovich (2020). In addition, there are several outstanding issues from Phase I that are unresolved. According to Chidede (2021), these include negotiations on rules of origin, schedules of tariff concessions, and schedules of specific commitments on the five priority service sectors (business services; communications; finance; tourism; and transport).

The outstanding issues were supposed to be resolved during Phase II negotiations, which were scheduled to conclude by December 2020, but the deadline was missed (Erasmus 2023). Several factors, including COVID-19 lockdowns, made it difficult for the State Parties to conclude Phase II by the December deadline. As a result of the missed deadline of Phase II, the AU Assembly combined Phase II and III negotiations,⁶ and set the deadline to conclude the talks at the end of December 2021 (Chidede 2021). The December 2021 deadline too has been missed. Keen observers of the negotiations expect the talks to go on for many years. As pointed out, because the AfCFTA is supposed to be a single undertaking, the “negotiations will continue till each and every AU Member State (including the Non-State Parties participating in these negotiations) agrees with the content of the outstanding texts.” This is unlikely to happen anytime soon, especially given that the agreement is supplemented by many AU protocols. Key among them is the protocol on free movement, in which participating countries are required to grant visa-free waivers, the right of residence, and the right to work and establish a business in other countries by Africans. In total, the parties expect to add to the AfCFTA agreement seven (eight) protocols covering trade in goods, trade in services, competition policy, dispute settle-

⁶Phase III negotiations are supposed to help the parties reach a deal on E-commerce.

ment, investment, intellectual property, digital trade, and a protocol on women and youth. The key issues that are likely to cause significant operational problems for the agreement include negotiations on IPRs, negotiations on arbitration measures, tariff schedules, rules of origin, and guidelines for trade remedies. Capon 2020 also indicated that the absence of consolidation of the existing regional economic communities (RECs) in the main text of the AfCFTA would likely pose a serious challenge to the creation of continental free trade in Africa.

Notwithstanding the serious challenges that lie ahead of the AfCFTA, it has received ringing endorsements of trade CoPs in both policy and academic circles. A study of the AfCFTA by the World Bank (2020) concluded that it has the potential to lift 30 million Africans out of extreme poverty, increase incomes of nearly 68 million others who live on less than \$5.50 a day, boost Africa's income by \$450 billion by 2035 (a gain of 7 percent), increase Africa's exports by \$560 billion, and improve wages for both skilled and unskilled workers by almost 10 percent. Several CoPs studies praise the AfCFTA, indicating that it has the potential to transform the economies of Africa (UNECA et al. 2017; Tsowou and Ajambo 2020; World Bank 2020; Tsowou and Davis 2021). The United Nations Conference on Trade and Development (UNCTAD) praised the agreement for putting Africa on the path to avoid the paradox of producing over 60 percent of the world's cocoa beans and being a net importer of chocolate (UNCTAD 2019, 108–109).

Beautiful House in the Wrong Neighborhood

This section shows that although the AfCFTA is a well-constructed traditional free trade agreement and has received widespread praise from mainstream trade CoPs, it does not suit the African trade ecosystem. It is unsuitable in large part because it neglects the informal trading actors and enterprises in Africa. Instead of mainstreaming unregistered enterprises, operated mostly by women, and the youth, in the agreement, the AfCFTA overlooked them. As indicated in the discussions of the nature and negotiation of the AfCFTA, the specific objectives outlined in Article 3 and the rest of the provisions in the main text do not cover the informal economy. When asked about the absence of any provisions in the objectives of the agreement for the informal trade, a senior trade expert who has been involved in the AfCFTA drafting and negotiation processes from the beginning until the time of writing, retorted “How do you do that? Let me know when you find a way to add informal economy into formal trade agreement” (Interview on July 17, 2023). A trade advisor to a major AfCFTA member government argued that the absence of a template of trade agreement with provisions on informal trade that complies with the rules of the WTO contributed to the lack of serious discussion of the informal economy at the negotiating table. The advisor indicated that the practice by some RECs in Africa of allowing goods and services valued at less than \$3,000 to pass through international borders of members without any duties came up, but it was not seriously discussed. Adopting a similar practice across the AfCFTA members would have been a major step toward mainstreaming informal intra-Africa trade into the Pan-African agreement. The main AfCFTA text embedded no such practice in the agreement.

In addition, the three AfCFTA protocols that have come into effect, i.e., the Protocol on Trade in Goods, Protocol on Trade in Services, and Protocol on Rules and Procedures on the Settlement of Disputes and their annexes and appendices, had no provisions on the informal sector and its un-

registered enterprises. The drafters of the AfCFTA and the parties that have acceded to it may have imagined an Africa without an informal sector and its unregistered small-scale enterprises. To wish these engines of intra-Africa trade away does not only fly in the face of the African reality, but it also disconnected the AfCFTA from many intra-Africa traders.

The focus of the agreement and the three operational protocols on the formal economic sector ensured that the AfCFTA follows traditional free trade models (.). Conventional free trade agreements are designed primarily for large-scale manufacturers and service providers to trade and to help registered small-scale enterprises scale up. There is very little space in these agreements for international trade patterns, powered largely by the informal sector and unregistered small-scale enterprises. The AfCFTA, just like conventional free trade regimes, does not have any meaningful provisions for the informal sector, especially unregistered small-scale enterprises. The AfCFTA neglects the informal sectors because the drafters of the agreement and its protocols assumed that trade takes place primarily at the formal level. The elimination of tariff lines and non-tariff barriers focuses almost exclusively on goods and services transported through official channels or the so-called approved routes in Africa, such as formal international borders.

However, the overwhelming evidence all indicates that most African trading activities take place at the informal level (Olafuyi 2019; Lusigi 2020; Mold and Chowdhury 2021). Most of the thorough and careful studies suggest that between 60 and 70 percent of total trading activities on the African continent are driven by the informal sector (Allen 1998; Lindell 2010; Afreximbank 2020; Mold and Chowdhury 2021). The share of economic activities of the informal sector is as high as 70 percent in some of the key regions in Africa. The informal sector dominates trade landscapes in East, West, and Central Africa. Even in southern and northern Africa, where the informal sector is relatively small, it is still a key player in the southern African economy landscape (Afreximbank 2020). ICBT is estimated to contribute between 30 and 40 percent with a projected value of US\$17.6 billion to total trade within the Southern African Development Community.

In addition to its dominant share in intra-Africa trade, ICBT is a major source of employment and income. The African Trade Report (2020) noted that ICBT “is critical for generating employment and incomes in Africa, [and accounts] for the employment of about 20–75 percent of the total active population in most African countries and serving as a source of income for about 43 percent of Africa's population” (18). The African Trade Report study showed that most of the people employed by ICBT are those without a higher level of formal education such as university degrees, the youth, women, and people generally considered as vulnerable in most economies. Many of the people employed in the informal sector would have been classified as living in extreme or abject poverty and/or depended heavily on welfare if they lived in a welfare-supporting economy. The income and employment that ICBT provides have contributed enormously to the reduction of poverty and unemployment in Africa. Indeed, it is estimated that the informal sector employs over 300 million people out of the estimated 526 million total African workforce as of June 2022 (Statista 2022).

The absence of binding provisions on informal sector in the AfCFTA agreement and its operational protocols means that there are no AfCFTA rules specifically designed to address key problems that informal traders encounter on a regular basis. These include poor understanding of inter-

state trade rules, lack of formal documents such as passports demanded by border agents, lack of market access information, difficulty in raising capital, access to trade information, harassment on the road, and travel insecurities, among others. In the words of Lusigi (2020), those who work as informal traders “often face harassment, violence, confiscation of goods and even imprisonment” (89). Of these informal traders, women, who are “the face of ICBT in Africa and account for up to 70 percent of ICBTrs,” are disproportionately affected by these challenges of the informal trade sector (88). The mismatch between the current AfCFTA provisions and these real-world challenges that individuals in the informal sector encounter daily makes the agreement irrelevant to many of the people who contribute between 60 and 70 percent intra-Africa trade.

The neglect of the informal sector in the AfCFTA may also have been driven by an assumption among leading trade CoPs that ICBT in Africa is a small portion of the economy yet to be integrated into the formal economy. The assumption failed to realize that the informal sector and its unregistered businesses often provide a foundation for formal businesses. Informal traders feed the formal economy. Take, for instance, agricultural products like tomatoes. Most manufacturers in Africa would not get access to raw tomatoes, turn them into bulk products, and transport them across borders without the services of unregistered farmers and informal middlewomen traders. The informal economy is fundamental to the existence of the formal economy. The informal is also shaped by the formal economy. For example, street hawkers in Africa are major sellers and consumers of goods and services produced by registered businesses. In other words, the informal sector and the economy have a symbiotic relationship yet the prevailing view among mainstream trade CoPs is that they can be ignored and neglected in free trade agreements.

The contributions of informal traders are often underestimated in intra-Africa trade accounting. The underestimation of intra-Africa trade is why most studies and estimates put intra-African trade in goods at between 15 and 18 percent of total trade on the continent (Luke and MacLeod 2019; World Bank 2020; Döring and Engel 2021). The 15–18 percent figure is based on systematic underreporting of intra-Africa trade. Official statistics on intra-African trade, Olafuyi (2019) observed, “do not present an accurate picture, as estimates show that ICBT, which is mostly unrecorded, constitutes ~60 percent of regional trade on the continent.” Most of the studies on intra-Africa trade that are based on these official figures fail to account accurately for informal trade in Africa, which Mold and Chowdhury’s (2021) study noted, are intra-African. As they put it, “all informal trade (in Africa) is intra-African.” Indeed, Harding’s (2019) summary of the available evidence and data showed systematic underreporting of intra-Africa trade by anything between 11 and 40 percent. She argues that the underreporting comes primarily from the neglect of the informal sector and trade in the accounting of intra-Africa trade.

The underestimation of the contributions of informal trade to the African economy may have contributed to its neglect in the AfCFTA agreement and its operational protocols. The neglect has ensured that women who are the dominant players in informal trade occupied a marginal space in the Pan-African trading regime. The word women appeared only once in the seventy-seven-page AfCFTA agreement, and gender equality was mentioned only in the aspirational part and in the general objectives. When women appeared in Article 27(d) of the agreement, it was in the context of those who needed technical assistance and ca-

capacity building to act as service supplies, presumably to the imaginary big businessmen. The treatment of women in the AfCFTA flies in the face of the fact that “over 70 percent of cross-border traders, especially those engaged in informal trade, are women” (Phiri-Hurungo 2020., 6). The academic consensus is that women, especially those operating in the informal sector, are the public face of African trade. Current research suggests that the value of women to cross-border trade is underestimated (AU and UNDP 2020). The agreement is oblivious to the fact that women in the informal sector occupy a strategic position in the African trading system and hold a major key to unlocking intra-Africa trade. The agreement failed to recognize that women in the informal sector are the main drivers of trading activities on the African continent.

Even the word gender appeared vaguely in the aspirational and non-binding parts of the agreement. The lack of attention to gender and issues of importance to women traders in the informal sector meant that there is no binding commitment in the agreement to removing key barriers to women’s trade. For instance, there are no specific provisions to deal with the fact that African women, especially those outside of urban centers, are not reached by projects designed to facilitate trade, improve productivity, and competitiveness in export sectors. There are virtually no binding provisions in the agreement to enable women in the informal sector to have access to information and training opportunities available through transnational trade networks. In the words of Lusigi (2020), “the voices and needs, particularly those of women in the informal sector, are absent in key AU flagship integration projects such as the AfCFTA negotiation, policymaking, and decision-making” (89). It is also difficult to find binding provisions that strengthen women’s enterprises through stronger value chains that enhance work creation and allow women entrepreneurs to expand their businesses and create the necessary multiplier effect. This is in spite of the fact that the evidence shows that removing barriers for women traders, especially non-tariff hurdles for female enterprises and businesses, particularly those in the informal sector, could lift millions of Africans out of poverty (AU/UNDP 2020).

The failure to see the informal sector and the women who drive it as the baseline for the AfCFTA made the drafters of the AfCFTA overlook the fact that female entrepreneurs, who tend to work in services, agriculture, and natural resource-based sectors, have the potential to increase productivity. As a result, there are no specific provisions in the AfCFTA agreement that would encourage the parties to increase investment and provide incentives for female-led enterprises. Yet, AU’s own study demonstrated that increasing support and enhancing incentives for women-led enterprises, especially those in the informal sector, would have enormous trade multiplier effects, including creating enduring resilience in trade and ensuring broad-based prosperity in Africa (). The evidence suggests that targeting female-led enterprises, especially those in the informal sector, for trade capacity building and trade facilitation can also contribute to addressing the current marginalization of women in trade decision-making (Lusigi 2020, 88–89). As Lusigi pointed out “women traders and their organizations are often excluded from current programs and decision-making on trade issues” (Lusigi 2020, 88–89). A focus on the informal sector would have encouraged the drafters of the AfCFTA to prioritize issues of utmost concern to women entrepreneurs, especially those in the informal sector. At the very least, a chapter would have been dedicated to removing barriers to women’s trade and enhancing the capacity of

women to take full advantage of intra-African trade opportunities if attention had been paid to the informal dimension of African trade patterns.

The lack of focus of the AfCFTA on the informal sector blinded the parties to the fact that African youths are major drivers of intra-African trade. Most fintech and e-commerce start-ups are products of the African youth, operating mostly and at least initially in the informal sector. Together with women, they control most of the trade in the informal sector. Yet, the agreement mentioned the word youth once and in the same context as women. Rather than treating them as capacity-less actors in the trade ecosystem, an agreement that is attentive to the realities of African informal economies would have recognized the youth as one of Africa's greatest intra-African trade assets. Indeed, the African continent is the most youthful continent in the world, with statistics indicating that the median age of the continent is under 20 years. According to the [African Development Bank \(2018\)](#), 12 million African youth join the workforce every year. Majority of them are employed in the informal sector. By 2040, these individuals will be both the public face of the continent and the heartbeat of African economies. An informal-oriented trade agreement would have had provisions that would address challenges African youth traders, who are mostly in the informal sector, encounter. The presence of many young people in Africa and the limited opportunities available to them in the formal sector have been described as a ". . . ticking time bomb" ([AU/UNDP 2020](#)). Studies suggest that the consequences of not fully developing and enhancing Africa's youth potential are very dire. These consequences, as [Gyimah-Brempong and Kimenyi \(2013\)](#) outlined, include, but are not limited to, being a significant economic burden on society, creating conflicts, generating political and social upheavals, fermenting trouble, committing crimes, and being vulnerable to greedy and opportunistic politicians who could exploit them to create massive political instability across the African continent.

A focus on the informal sector in the design of the AfCFTA would have drawn attention to the fact that young Africans are a massive source of labor, a major source of demand for export, and a critical constituency for developing a new class of producers and entrepreneurs. Being attentive to the informal sector, where most of the youth operate, would have revealed that African youths have higher levels of education than their older cohorts ([Yami et al. 2019](#)). They have some of the greatest assets for promoting intra-Africa trade. These include but are not limited to boundless energy, creativity, confidence, resilience, and savviness in digital spaces. The AfCFTA could have harnessed these resources to create a new generation of entrepreneurs, producers, exporters, and business owners. The priority that the agreement placed on the formal economy at the expense of the informal sector colored the view of the parties from realizing that African youth are "1.6 times more likely to become entrepreneurs and more likely to maintain a solid presence in the service sector such as heritage, culture, music design, and digital innovations" ([Yami et al. 2019](#), 19). The dominance of the youth and women in informal trade shows that they hold the key to enhancing intra-Africa trade. The formalistic approach to the AfCFTA does not create the necessary policy space to harness opportunities the twin engines of African trade offer. The informal spaces most youth and women traders occupy made them invisible to the AfCFTA parties.

The AfCFTA advantage is tailored more toward registered manufacturing/secondary and service providers than pri-

mary producers whose work is fundamentally shaped by informal practices. Yet, primary producers, located in the informal sector, are the heartbeat of the African economy. Led by farmers, primary producers dominate Africa's economic landscape with research showing that agriculture employs approximately 53 percent of the entire African workforce ([AU/UNDP 2020](#)). The African economy is not only agrarian economy, but agriculture has also been one of the fastest-growing sectors since the 1990s ([Signe 2020](#)). The research shows that it is neither a poverty license as it is commonly assumed nor is it a space for school drop-outs or illiterate as it is often portrayed in popular discourse. The evidence shows that it has the potential to be a multi-trillion-dollar industry ([AU/UNDP 2020](#), 50). The absence of strong manufacturing bases in many African countries means that the sale of agricultural products should have been at the heart of the AfCFTA. The agriculture sector provides an employment space for millions of unemployed or underemployed African youth, especially those in rural areas, where roughly 70 percent of African youth live. As [Signe's \(2020\)](#) study showed, agriculture has the potential to create new jobs, increase Africa's productivity level, increase income levels across the board—especially for women—reduce food import bills and food prices, create jobs, and is very good at creating a spillover in a variety of subsectors (52).

A trade agreement centered around the informal sector would have prioritized agriculture and its products. Studies indicated that the potential for boosting intra-African trade in agriculture is considerable ([UNCTAD 2013](#); [Abebe 2021](#)). As [Haile-Gabriel Abebe \(2021\)](#) of the Food and Agriculture Organization pointed out, agriculture would make or break free trade agreements in Africa. Agricultural production, processing of agricultural goods, and marketing of agricultural products hold the keys to improving the abysmal cross-border trade in Africa. The lack of preferential treatment of agriculturalists and their products in African free trade agreements is a major contributor to the small share of agricultural products in intra-Africa trade. A [UNCTAD \(2019, 39\)](#) study showed that intra-African trade in agriculture was 22 percent in 2017, compared with 52 percent in manufacturing, and down from 24 percent in 1995. [Fundira's \(2022\)](#) research put the figure for intra-Africa in agriculture products at just 13 percent between 2018 and 2020. This is minuscule compared to the share of agriculture in the total trade of other regions. In the European Union, agriculture constitutes 72.7 percent of intra-EU trade, 61 percent among Asian countries, and 47 percent in trade among countries in the Americas. As the [UNCTAD \(2019\)](#) study noted, the potential for large-scale agricultural exports within Africa and for converting agricultural materials into finished products within African regional value chains is yet to be fully tapped. An informal approach to the AfCFTA would have offered the legal and institutional basis for agriculturists to leverage opportunities in the sector to scale up agricultural exports within Africa.

Moreover, agriculture offers a great outlet for lifting millions of Africans out of poverty as it creates spaces for greater participation of the poor in the processing of goods. Agricultural growth is more pro-poor than industrial growth ([Signe 2020](#); [Haile-Gabriel 2021](#)). Even though the industrial sector and products have strong linkages to the wider global economy, the connections between African economies and their industries "are weaker and create fewer employment opportunities for poor workers" ([Diao, Hazell, and Thurlow 2010](#), 1382). More specifically, [Signe's \(2020, 51\)](#) research estimated that the agriculture sector in Africa has the capacity to provide around 1 trillion USD to the African con-

continent by the year 2040. Most of this money will be in the hands of those who are currently poor in Africa. This is perhaps why the research suggests that the agricultural sector is more effective at improving human development and prosperity than growth in other sectors of the economy. Because most people in the agricultural sector in Africa operate unregistered small-scale businesses, the AfCFTA failed to recognize agriculture as a vital avenue for rapid and inclusive intra-Africa trade.

If the drafters of the AfCFTA had built the agreement with the informal economy in mind, they would have had provisions to address the four areas that the UNCTAD study identified as key to improving intra-Africa trade in agricultural products. They include creating larger markets for small farmers through the removal of tariffs and non-tariff barriers; bringing farmers to markets through improved trade facilitation and trade connectivity (e.g., better roads, faster transport, and thinner borders); attracting domestic and foreign investment to the sector that can provide the necessary hard infrastructure (such as rural roads, rural energy, rural water, cold storage facilities, and warehousing); and allowing the exploitation of opportunities in agribusiness and agro-industry linked to developing national and regional agricultural value chains whose end products are exported regionally (UNCTAD 2019, 39–40). Without any preferential treatment for the agriculture sector in the AfCFTA, individual African governments have the unenviable task of addressing the myriad of challenges facing the agriculture sector alone. They would have to find ways to at least address low farm yields, increase value addition to products, increase technical expertise in agro-processing, and improve market access opportunities for the many small-holder farmers. Post-harvest losses because of limited market access alone are estimated to be between 30 and 50 percent of agricultural products (AU/UNDP 2020, 50). Most of these losses occurred among small-holder farmers who operate largely in the informal sector. An informal approach to the AfCFTA would have centered creation of a single African market as well as the enabling environment, including good rural infrastructure, for small-holder farmers to sell their products. As Haile-Gabriel observed, “one African market can create a more competitive commercial environment for agriculture, encourage more investment in a modern, dynamic, productive, inclusive, sustainable and sustainable agricultural sector that can lift millions of Africans out of poverty” (Haile-Gabriel 2021). An informal approach to the AfCFTA would have also positioned it as a vehicle for African states to invest heavily in the agriculture sector, to encourage the youth to take advantage of the opportunities provided by the agriculture sector, and as a conduit for making Africa a net exporter of agricultural products.

Finally, the AfCFTA is geared toward attracting big businesses and foreign direct investments rather than enhancing the capacity of unregistered businesses, which are mainly small–medium-sized enterprises (SMEs). Most SMEs in Africa are in the informal sector or are not in the governments registry of businesses. They are the bulk of SMEs that account for about 90 percent of businesses across the African continent, employing more than 60 percent of the workforce in the sector, and contributing about 50 percent to the GDP of African states (Muriithi 2017; Afreximbank 2019; Madichie, Gbadamosi, and Rwelamila 2021). The focus of the AfCFTA on foreign investments is surprising given that Africa has been struggling to attract foreign direct investment in the last decade. Prior to the COVID-19 pandemic, according to , foreign direct investment had remained stagnant. It declined by almost 16 percent in 2022

to about USD \$40 billion. Designing a free trade agreement for an African economy largely powered by locally financed SMEs with foreign investors as the main priority may not be the best formula for increasing production and building the manufacturing base of the continent.

The focus on foreign direct investment flies in the face of the cumulative body of research showing that most investment transactions in Africa are deeply rooted in indigenous patterns of trade (Muriithi 2017; Madichie, Gbadamosi, and Rwelamila 2021). These indigenous patterns of trade and investment, which are informal in character, are not even mentioned in the AfCFTA agreement or its operating protocols. Aside from the value they provide on their own, including serving as the primary income providers for most households in Africa, research suggests that they complement formal trade channels (Muriithi 2017). They are also major sources of new markets, inventions, new trade ideas, and investments (Madichie, Gbadamosi, and Rwelamila 2021). Informal SMEs in Africa are the breadwinners of the African economy. As Koroma et al. (2017) indicated, SMEs are not just an important source of family income and hold important economic and government revenue implications; they are the backbone of African trade. Thus, SMEs, more than large enterprises, have the greatest impact on intra-African trade.

The neglect of informal SMEs in the AfCFTA means that there are no meaningful binding provisions in the agreement that address the peculiar challenges they face. Most African SMEs involve traders that travel with large sums of money and are often targets of local criminals and dubious state officials. They pay high fees for protection services, often find it difficult to raise capital to scale up their businesses, and have limited access to social security, medical schemes, tax incentives, and other benefits provided by the state to formal large businesses. They are often the subject of extortions and abuse of state agents at borders and crossing points. A free trade agreement that is attentive to the needs of the African trade ecosystems would have prioritized informal SMEs and created a regional legal framework to address the peculiar challenges that African SMEs face. This, rather than foreign direct investment, holds one of the keys to unlocking the productive capacities of African businesses and opening the doors for broad-based intra-Africa trade.

Conclusion

This article explored the AfCFTA from an informality perspective. It showed that the AfCFTA’s ideas and design have been well received by the international trade epistemic community. Trade experts and international trade organizations have lauded it in different ways. Some of them have even described it as a game changer for African economies and an African Marshall Plan.

Drawing insights from the long-standing social science literature on informal economy and the new but burgeoning IR scholarship on informality, it was argued that the neglect of unregistered enterprises, trading networks, and informal business operators in Africa in the design of the AfCFTA and its supplementary protocols makes it an unsuitable trade agreement for the African continent. The Pan-African Free Trade Agreement failed to prioritize or mainstream the ubiquitous informal businesses in Africa in the main AfCFTA text, its supplementary protocols, and annexes. The neglect of informal businesses meant that the agreement does not cover the bulk of trade in Africa, which takes place through informal channels and is driven largely by unregistered small-scale enterprises such as kiosk stores,

market sellers, street vendors, and agri-businesses. The lack of focus on the informal side of the economy means that the ubiquitous ICBT in Africa remains largely outside of the remit of the AfCFTA. Thus, the widely praised Pan-African agreement is trying to create an international economic order that excludes the majority of businesses in Africa.

The design of the AfCFTA from the formal rather than the informal baseline meant that the AfCFTA is tailored more toward registered manufacturing/secondary and service providers than primary producers whose work is fundamentally shaped by informal practices. The AfCFTA provisions, obligations, and benefits are geared toward the formal economy, its traders, manufacturers, and registered service providers. They are silent on informal or unregistered business operators and/or pretended they do not exist in Africa. Informal traders can benefit from the AfCFTA only if they formalize their businesses or ceased to exist in their current form or work through registered and taxable business enterprises. In other words, the agreement wished these actors away. Yet, the reality in most African countries is that unregistered small-scale enterprises in the informal sector, often led and operated by women and youth, are the public face of the African economy. They dominate the African trading system and cannot be wished away. They have grown despite many attempts by various governments in Africa to eliminate them. The lack of focus on the informal entrepreneurs blinded the parties from seeing that African women and youths are the main drivers of intra-African trade.

The creation of the AfCFTA with largely the formal economy in mind meant that agriculture and its products, which are produced and marketed mainly through informal channels, were not given the priority attention and preferential treatment that they deserve. Yet, the bulk of trade in Africa consists of agricultural products usually produced by subsistence farmers whose businesses are mostly unregistered. The absence of preferential treatment of small-scale unregistered agricultural businesses and the limited opportunities offered to agriculturalists in the Pan-African Free Trade Agreement suggests that majority of products produced indigenously on the African continent would not reap many of the benefits associated with the AfCFTA. Without unregistered agricultural businesses, few indigenous African products would remain on the table for cross-border trading. The lack of focus on informal agro-based businesses also means that official state agencies have little capacity to capture these businesses in the official record of intra-Africa. As a result, the actual value of the intra-Africa trade would continue to be underestimated or unknown.

The drafters of the AfCFTA seem to have not learned the necessary lessons from previous trade agreements whose failure to mainstream informal businesses, especially unregistered agricultural enterprises have led to limited uptake in the offers they provide. Majority of the tariff concessions provided in trade pacts such as the ACP-EU Partnership Agreement, the African Growth and Opportunity Act, and even those provided by African RECs remain underutilized and untapped in large part because they fail to mainstream the informal economy, especially unregistered agricultural businesses in these trade agreements. Similar to these trade agreements, most of the provisions in the AfCFTA revolve around formal businesses in the manufacturing and services sectors even though registered businesses in these two sectors are relatively small in most of the economies in Africa. Foreign direct investments are limited, and large corporations are minuscule and sparsely located across the African continent. Yet, these are the businesses that the AfCFTA is centered. The article suggested that the mismatch between

AfCFTA ideas and designs and the complex African trade realities makes the Pan-African Trade Pact look like a beautifully constructed house located in the wrong neighborhood.

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