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Dispute Settlement under the African Continental Free Trade Area

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DISPUTE SETTLEMENT: AFRICAN CONTINENTAL FREE TRADE AREA (AFCFTA)

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A. Introduction

1 In March 2018, 44 of the 55 African States → *African Union (AU)* [MPEPIL] members met in Kigali, Rwanda to sign a landmark pact that aims to transform intra-African trade relations (Viljoen, 2011). In May 2019, that pact, the Agreement Establishing the African Continental Free Trade Area ('AfCFTA'; 'Agreement'), entered into force. The initial implementation was projected to commence in mid-2020; however that plan was temporarily derailed by the coronavirus pandemic and rescheduled for 2021 (African Union, 2021). Trading under the AfCFTA was officially launched on January 1, 2021. If fully realized the AfCFTA will cover 54 countries (the largest of any regional trade bloc), creating a market encompassing over 1.2 billion people (Luke, 2019). There are currently 54 signatories and 34 countries have undertaken their domestic requirements for the ratification of the Agreement. Through the AfCFTA, the AU seeks to create a pan-African free trade area liberalizing the flow of goods and services, thereby increasing intra-African trade and enhancing regional development prospects. Ultimately, the AfCFTA is an important stepping-stone toward the actualization of the African Economic Community ('AEC').

2 There is much still to be done and realizing the ambitions of the AfCFTA will not be easy, as experiences with regional trade pacts on the continent have shown (de Melo, 15, 2013; Geda and Taye, 359, 2008). AfCFTA is a phased project that is designed to evolve (Art 7 AfCFTA). The Phase 1 agreement includes protocols on goods, services and dispute settlement, as well as several annexes. The annexes govern matters such as customs and trade facilitation, sanitary and phytosanitary standards, nontariff and technical barriers to trade and trade remedies. Article 23 of the Agreement brought the Phase 1 instruments into force with the Agreement. Phase II, which includes protocols on investment, intellectual property, and competition, remains the subject of negotiation (IISD, 2019).

3 Article 20 AfCFTA establishes a Dispute Settlement Mechanism, the Protocol on Rules and Procedures on the Settlement of Disputes ('the AfCFTA DSM Protocol'; 'Protocol') and a Dispute Settlement Body ('DSB') for resolving disputes between State Parties. The AfCFTA dispute settlement mechanism is a central element of the AfCFTA as it provides security and predictability to the regional trading system (Art 4 AfCFTA-DSM Protocol). The AfCFTA dispute settlement mechanism will 'preserve the rights and obligations of State Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary rules of interpretation of public international law' (Art 4(1) AfCFTA-DSM Protocol). Accordingly, the AfCFTA dispute settlement mechanism has the potential to enhance the integrity and efficiency of the whole AfCFTA trading system.

4 This entry focuses on the AfCFTA dispute settlement mechanism. In the ensuing sections, this submission reflects on that mechanism from a historical, procedural, comparative, and critical perspective. Where necessary, it highlights areas of improvement that may better position the dispute settlement mechanism to facilitate the objectives of the AfCFTA.

B. Historical and Political Context of the Dispute Settlement Mechanism of the African Continental Free Trade Area

5 The AfCFTA dispute settlement mechanism was born into a complex regime of regional trade agreements and dispute settlement regimes. The quest for economic integration in Africa has been in the pipeline since the 1960s (Cheluget and Wright, 2017, 482-483). One of the founding purposes of

the defunct Organisation of African Unity (Organisation of African Unity Charter, 1963, 'OAU Charter'), was to 'coordinate and intensify cooperation and efforts to achieve a better life for the peoples of Africa' (Art II(1)(b) OAU Charter). To this end, the OAU Member States sought to coordinate and harmonize their respective domestic economic policies (Art II(2) OAU Charter). Member States pledged to settle all disputes among themselves by peaceful means and, accordingly, established a Commission of Mediation, Conciliation and Arbitration (Art XIX OAU Charter; Maluwa, 1989, 301). The OAU Protocol of this Commission laid an elaborate framework for the resolution of disputes between States. The Protocol did not precisely earmark the substantive jurisdiction of what may be termed the OAU dispute settlement mechanism. Rather, the language of the Protocol was sufficiently open-ended to elicit the inference that the OAU dispute settlement mechanism could be used to resolve any form of dispute, including those bordering on trade relations between Member States. Crucially, the absence of an instrument setting out the substantive rights and obligations of States in matters of trade made it impracticable for members to utilize the mechanism to resolve trade disputes. Its limitations notwithstanding, the OAU Protocol occupies a historical position as a continent-wide dispute settlement system in Africa, and, in that respect, can be regarded as a precursor to the AfCFTA dispute settlement mechanism.

6 In the late 1970s, the OAU reiterated its drive for intra-African economic integration with the launch of the Lagos Plan of Action for Economic Development of Africa, built on collective self-reliance to form an African common market (1980-2000) (D'Sa, 1983, 13). These efforts were amplified in 1991 when African heads of state signed the Treaty Establishing the AEC. It contained an ambitious six-stage roadmap to full economic integration, including the establishment of a customs union, a single market and an economic and monetary union (Fasan, 2019). Article 18 of the AEC Treaty established a Court of Justice of the Community ('AEC Court'), whose responsibility was to ensure adherence to law in the interpretation and application of the treaty. Article 87 further specified that any dispute regarding the interpretation of the treaty should be amicably settled through direct agreement by the parties to the dispute; and if the parties failed to settle such dispute, either party could refer the matter to the Court of Justice for a final decision. The AEC Court was never established as the AEC process is still unfolding (Naldi and Magliveras, 1999, 610-615). Suffice to note that today, the AfCFTA Agreement is envisioned as an important step towards the achievement of an African economic community.

7 In 2002, the African Union ('AU') replaced the OAU as the continent's principal intergovernmental establishment. The objectives of the AU were both political and economic (Art 3 AU Constitutive Act). Article 18 of the AU Constitutive Act established a Court of Justice. Article 19 of the AU Protocol of the Court of Justice vests broad jurisdiction on the court over the interpretation, application or validity of Union treaties and all subsidiary legal instruments adopted within the framework of the Union. While it seems that the African Court of Justice was positioned to perform – and even go beyond – the functions hitherto reserved for the AEC Court (Oppong, 2010, 99), the African Court of Justice has also not yet been established.

8 The vacuum created by the continued absence of an active continental trade agreement with a vibrant dispute settlement regime has been filled significantly at the regional levels. Despite the fact that the majority of the regional economic communities have an adversarial European Union courts-styled regime (Alter, 2014, 3-8), most of the disputes adjudicated before the regional courts have been non-trade (Gathii, 2020, 7; Akinkugbe, 2020b). Trade relations between African States have been fostered largely at the regional level with a reliance on the → *World Trade Organization (WTO)* [MPEPIL] (Stoll, 2014) dispute settlement regime ('WTO dispute settlement mechanism').

9 Despite the poor record of African States in utilizing formal dispute settlement regimes, the AfCFTA dispute settlement mechanism is modelled on the WTO dispute settlement mechanism. In this form of transplantation, the AfCFTA dispute settlement mechanism follows the Tripartite Free Trade Area ('TFTA'), a free trade area between three regional economic communities: Common Market for Eastern and Southern Africa ('COMESA'), Southern African Development Community ('SADC'), and the East African Community (Parshotam, 2019). The TFTA Agreement established a dispute settlement mechanism that is similar in structure and function to the present AfCFTA dispute settlement mechanism (Art 30 TFTA Agreement). The TFTA dispute settlement mechanism is projected to become operational in 2020 (Kambafwile, 2020).

10 Independent African States have joined the WTO system in large numbers since the 1960s (apartheid South Africa and Zimbabwe both joined the GATT in 1948). Of the 164 members of the WTO, no fewer than 43 are African States. In addition, nine African States enjoy observer status. As already noted, African States are infrequent users of the WTO dispute settlement mechanism and have been reluctant to litigate trade disputes (Gathii, 2019). Notably, South Africa, Morocco, Egypt and Tunisia are the only States to have been directly involved as parties in any of the 584 disputes brought to the WTO since it was set up in 1995 (Miles, 2019). Some explanations for this dispute paralysis on the part of African States are cost, lack of technical expertise, lack of effective trade policy infrastructure, political reluctance, the rampant use of preferential trade arrangements that derogate from general WTO principles, limited market share and diversity, lack of confidence in WTO institutions, doubts over the quality and reach of the DSB's rulings and the lack of capacity to retaliate (Apecu, 2013, 52–53; Alavi, 2007, 27-29; Van der Borght, 2011). Some of these factors perhaps also explain why none of the AfCFTA Member States has sued another before any of the regional courts (Simo, 2019). A further explanation for the dearth of intra-African adjudication is that African States are historically predisposed to political solutions as opposed to litigation (Maluwa, 1989, 308; Mbengue, 2014, 169-170; Akinkugbe, 2019b).

11 The historical reality notwithstanding, one should not downplay the importance of a functional AfCFTA dispute settlement mechanism. Indeed, recent events such as unilateral border closures by Africa's largest economy, Nigeria, and some other African States, raise concerns and provide a glimpse of potential flashpoints that may be judicialized in the future (Signé and van der VenMonday, 2019; Pete, 2020). Moreover, given the slow pace of trade rules negotiations, a robust dispute settlement mechanism can help to develop and adapt the subsisting rules to emerging situations and fill gaps that may otherwise undermine the effectiveness of the trading system (Apecu, 2013, 52). It is such concerns that, at least in theory, make the AfCFTA dispute settlement mechanism a critical aspect of the AfCFTA establishment. It is worth highlighting that in the majority of investment arbitration disputes, African State parties have been Respondents, yet that has not stopped them from contributing meaningfully to the development of international investment law jurisprudence (Akinkugbe, 2019a). AfCFTA, with its dispute settlement mechanism, is the culmination, so far, of a six-decade march towards rules-based African economic integration. Whether the AfCFTA dispute settlement mechanism will change the culture of African States towards dispute resolution is a totally different question, which only time will tell.

C. Procedural Steps or Issues under the Dispute Settlement Mechanism of the African Continental Free Trade Area

12 The AfCFTA-DSM Protocol offers three broad dispute resolution options. These are: adjudication (See, generally, Arts 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 AfCFTA-DSM Protocol), mediation (Art 8 AfCFTA-DSAM Protocol) (mediation is used as a collective reference to mediation, good offices and conciliation, the three diplomatic methods of dispute resolution jointly contained in the AfCFTA), and arbitration (Art 27 AfCFTA-DSAM Protocol). However when a dispute is submitted, especially for adjudication, State Parties undertake, to participate in consultations in good faith to try to resolve the dispute amicably (Arts 6(1) and 7 AfCFTA-DSM Protocol). Consultations provide an opportunity for State Parties to harness the benefit of the informality of the deliberations in this phase. Although consultations also feature in the WTO dispute settlement mechanism, their inclusion as a preliminary and mandatory step in the AfCFTA dispute settlement mechanism emphasizes the prioritization of amicable settlement over disputation. This feature aligns with the historical disposition of Africa to trade dispute resolution. The Protocol specifies timelines for consultations, and if the process fails, the matter can be referred by the DSB to a Panel for adjudication (Art 7(4), (5), 6) and (9) AfCFTA-DSM Protocol). Irrespective of outcome, consultations must be concluded within 60 days of the receipt of the request for consultations (Art 7(4–6) AfCFTA-DSM Protocol). This specification is welcome for the sake of expediency, as it makes it less convenient for a defaulting State Party to use the process to clog the wheels of justice. Conversely, the 60-day period also makes it less conducive for a party to rush into the more adversarial process of adjudication. Further flexibility in the protocol allows the DSB to establish a panel in a shorter timeframe of 20 days in cases of urgency, for example if the dispute involves perishable goods (Art 7(9) AfCFTA-DSM Protocol).

1. Panel Adjudication

13 Adjudication is the most formal of the AfCFTA dispute settlement mechanism options. It involves the submission of a dispute to a DSB panel for the purpose of resolving that dispute. The AfCFTA dispute settlement mechanism is reserved solely for disputes between State Parties (Art 20(1) AfCFTA). Para 1(h) of the AfCFTA-DSM Protocol clearly stipulates that 'Party to a dispute or proceedings means a State Party to a dispute or proceedings'. The implication being that private entities lack legal standing to institute proceedings, regardless of what justiciable grievances they may have. A private entity's grievance can only be submitted by its home State Party. Why the framers opted for the WTO-style rather than their more flexible regional economic community options is not clear, but this choice is certainly a cause for concern in view of the notorious apathy of African States towards litigation (Simo, 2019). Gathii's assertion is that this wholesale adoption of the dispute settlement mechanism established by WTO rules is premised on the desire by some African States and experts to make the AfCFTA dispute settlement mechanism as strong and successful as that of the global trading system in order to ensure compliance with the AfCFTA commitments (Gathii, 2019). In doing so however, the framers seem to have lost sight of some African peculiarities – political apathy and the role of private entities, for instance – that, perhaps, make any dispute settlement mechanism that is wholly driven by State actors liable to flounder. While there is nothing inherently wrong in the transplantation of dispute systems such as the WTO model, the success of such transplants depends on the extent of the adaptation to the socio-political realities of the destination → *World Trade Organization, Dispute Settlement* [MPEPIL] (Stoll, 2014).

14 The disinclination of African States towards adversarial dispute resolution, as well as trade disputation with private entities, continues to be underlined by an increasing withdrawal of African states from investor-state arbitration. Many African States have recently enacted national legislation to insulate themselves from international disputes. An example is South Africa's Promotion of Investment Act, 2015. Section 15(5) provides that 'The government may consent to international arbitration in respect of investments covered by th[e] Act, subject to the exhaustion of domestic remedies. [...]. Such arbitration will be conducted between the Republic and the home state of the applicable investor.' In 2016, Namibia enacted the Namibia Investment Promotion Act, 2016. Section 28(4) provides that:

> the jurisdiction over disputes relating to this Act lies exclusively with the courts of Namibia, but the Minister and investor or investment, as required by the circumstances of the alleged breach of rights or obligations, may, by written agreement, agree to arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965) in Namibia.

In 2017, Tanzania enacted, the Natural Wealth and Resources (Permanent Sovereignty) Act. Section 11(2) provides that 'disputes arising from extraction, exploitation or acquisition and use of natural wealth and resources shall be adjudicated by judicial bodies or other organs established in the United Republic and in accordance with laws of Tanzania.' They 'shall not be a subject of proceedings in any foreign court or tribunal.' In 2018, Tanzania also terminated its bilateral investment treaty with the Netherlands, citing the rigidity of the treaty as a reason (Habib, 2019). These developments reamplify the deep-seated discontent of African States with formal dispute settlement systems (Akinkugbe, 2020a). Given this background, it is feared that the current mismatch between the chosen AfCFTA dispute settlement mechanism and African States' attitudes could have larger repercussions because, as Regis Simo observes, the potential dormancy of the AfCFTA dispute settlement mechanism would deprive the States Parties of the security and predictability of the African continental trading system.

15 AfCFTA disputes are heard before a panel constituted by the DSB, in consultation with the parties to the dispute (Art 10 AfCFTA-DSM Protocol). A DSB panel may consist of either three members – in the case of a bilateral dispute – or five members – in the case of a multilateral dispute (Art 10(9) AfCFTA-DSM Protocol). Each of the dispute settlement mechanism options discussed here – adjudication, conciliation, or arbitration – may be conducted in a bilateral or multilateral manner. Even where a dispute commenced bilaterally, additional parties may join subject to the consent of the original parties. This is a positive feature as it helps to prevent a multiplicity of actions. This uneven composition ensures that there is no deadlock in a panel's decision making. This provision is complemented by Article 15(9) which stipulates that the panel shall produce a single report reflecting the views of the *majority* of the panelists. This provision, taken literally, does not require that the minority view(s), if any, be included in the report. We are of the view that it is better for the DSB, as well as the Appellate Body, if convened, to have the benefit of the minority view, even though the majority view is prevalent.

16 Article 15(8) provides some insights on what material the panel may consider in reaching its findings on a dispute, ie in addition to the Agreement. It provides that the reports of the Panel shall be based on information and evidence provided by the parties and any other person, → *experts*, or institution, in accordance with the protocol. Each party is entitled to make written submissions to support its case (Art 15(3) AfCFTA-DSM Protocol). It is not stated whether evidence is limited to → *documentary evidence* or may include oral evidence of persons other than experts. However since the panel is to make assessments of fact, it is implicit that it can receive any form of evidence that can enable it to make those assessments. The panel can, in any case, relying on its Article 11(3) powers,

draw up terms of reference that prescribe how parties adduce evidence. The panel is empowered to seek information and technical advice from any source that it deems appropriate and on any matter that may be brought before it, after informing the relevant State Parties to the dispute (Art 16(1) and (7) AfCFTA-DSM Protocol). The panel must nevertheless be consciously guided by the need for expediency in its proceedings. This is because the Agreement requires the panel to submit its findings within five months from the date the panel is established. In urgent cases the report must be submitted within one and a half months (Art 15(4) AfCFTA-DSM Protocol). If a delay is unavoidable, this timeframe may be extended to a maximum period of nine months at the request of the panel made to the DSB.

17 The principal function of the panel is to assist the DSB in discharging its responsibilities under the Agreement. Decisions are ultimately made by the DSB, not the panel. The panel's task is merely to make findings and report to the DSB. It is based on these findings that the DSB makes recommendations or rulings to the disputing Parties (Art 11 AfCFTA-DSM Protocol). All claims, findings and recommendations must be anchored on the AfCFTA Agreement (or one of its protocols and annexes). Thus, the measure complained against can only attract an unfavourable DSB ruling or recommendation if it is found to be inconsistent with some relevant provision(s) of the Agreement (Arts 11 and 23 AfCFTA-DSM Protocol).

18 The adjudicatory process of AfCFTA is designed to engender thoroughness, participation, transparency, a fair hearing, reconciliation, and substantive justice (Art 2 AfCFTA-DSM Protocol). The DSB is obligated to constitute the panel in a manner that ensures a fair hearing (Art 10(4)–(5) AfCFTA-DSM Protocol). At the conclusion of hearing, the panel is required to issue a draft report to the parties, to which the parties may submit their comments and objections within a period set by the panel (Art 18 (1)–(2) AfCFTA-DSM Protocol). After this period, the panel issues an interim report to the parties containing its findings and conclusions. The interim report may also be subject to comments and reviews between the panel and the parties, before the final report is produced, circulated, and forwarded to the DSB (Art 18 AfCFTA-DSM Protocol).

19 The rigorous approach continues even after the report is forwarded to the DSB. Parties can still object to the report. A party may include in its objection newly discovered facts which by their nature have a decisive influence on the decision (Art 19(2) AfCFTA DSM Protocol). The panel's report is reviewed by the DSB before it is adopted. Similar to Article 16(3) of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the 'parties are entitled to participate fully in the consideration of the Panel Reports by the DSB, and their views shall be recorded' (Art 19(3) AfCFTA-DSM Protocol). Adoption shall occur within 60 days of circulation unless the parties agree by consensus not to adopt (Art 19(4) AfCFTA-DSM Protocol). Also, the DSB cannot adopt the report if a party has notified the DSB of its intention to appeal. In that case the report shall not be considered for adoption until the completion of the appeal (Art 19(4) AfCFTA-DSM Protocol). An implication of these provisions is that a party that is unsatisfied with the findings of the panel can get those findings overturned, either by facilitating a consensus against the report, at the DSB level, or by filing an appeal against the report. A party that has participated in the DSB consideration can still appeal, provided that it notifies its intention to appeal before the panel report is adopted. Once the report has been adopted, the decision of the DSB becomes final and the right of appeal abates (Art 6(5) AfCFTA-DSM Protocol).

20 Like the WTO regime (Guan, 2014, 79-82), Article 19(4) of the AfCFTA-DSM Protocol incorporates 'negative consensus' in the adoption process. The provision stipulates that the DSB may

by consensus refuse to adopt a panel report. It does not however specify what happens after a panel report is rejected. Does the matter terminate there? Does the DSB remit the matter to the panel – perhaps, for a fresh consideration – or constitute a new panel to rehear the matter? Do the parties, on an ad-hoc basis, decide what happens next? African States missed an opportunity to go beyond the WTO here. It would be an important step forward if this aspect of the dispute settlement system is clarified further.

2. Appeals

21 The Appellate Body hears appeals against the findings and recommendations of a DSB Panel. Unlike the panel, which is constituted on an ad-hoc basis, the Appellate Body is a standing body consisting of seven persons each appointed by the DSB for a four-year term. Each person can only be reappointed once. Only three persons hear a case (Art 20 (1)–(4) AfCFTA-DSM Protocol).

22 This is another context in which the WTO dispute settlement mechanism transplantation can undermine the AfCFTA dispute settlement mechanism. One of the travails currently bedevilling the WTO-DSB borders is the appointment of Appellate Body members (Article 17 WTO- Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2; → *Election of Appellate Body Members: World Trade Organization (WTO)*). The once vibrant WTO Appellate Body became dormant in late 2019 because the tenure of its members expired, and the US vetoed the appointment of new members (Creamer, 2019, 53). The AfCFTA's similar provisions on appointment mean that the Appellate Body may in the future find itself crippled if just one State decides to ensure that outcome (This is the combined effect of Arts 5(3), 20(4), 5(2), (6) and 1(c) of the AfCFTA-DSM Protocol). In terms of the African experience, it is a fact of recent memory that the SADC disbanded the SADC Tribunal after the regional court held that the Zimbabwean government's land seizures violated the rule of law (Nathan, 2013, 22). The fact that most of the African regional courts with the initial mandate to resolve trade disputes have evolved into the landscape of human rights, in some cases without explicit treaty basis, also raises concern (Gathii, 2010, 245). Based on these lessons, a less vulnerable appointment process for the Appellate Body members – perhaps, one that is based on a specified majority, rather than on consensus – is more suitable.

23 Only parties to the dispute may appeal a panel report. Third parties may be heard if they demonstrate substantial interest in the matter (Art 21(1) AfCFTA-DSM Protocol). Appeals must be determined within a period of 60 days from the date of commencement. This may extend to a period not exceeding 90 days, if the Appellate Body so requires (Arts 21(2) and 22(3) AfCFTA-DSM Protocol). Appeals are limited only to issues of law covered in the panel report (Art 21(3) AfCFTA-DSM Protocol). The Appellate Body has the power to uphold, modify or reverse the legal findings and conclusions of the panel (Art 22(6) AfCFTA-DSM Protocol). Unlike a panel report, which is subject to significant back-and-forth between the parties and the panel and can be objected to before the DSB, the Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties (Art 22(9) AfCFTA-DSM Protocol). The DSB may, however, by consensus, decide not to adopt the Appellate Body report (Art 22(9) AfCFTA-DSM Protocol).

3. Compliance and Enforcement

24 Article 23 mandates that:

> where the Panel or the AB concludes that a measure is inconsistent with the Agreement, it shall recommend that the State Party concerned bring the measure into conformity with the Agreement ... In addition, the Panel or the Appellate Body may suggest ways in which the State Party concerned could implement the recommendations (Art 23 AfCFTA-DSM Protocol).

25 State Parties are obligated to comply voluntarily with DSB rulings and recommendations (Art 34(1) AfCFTA-DSM Protocol). The protocol stipulates timelines for implementation, as well as a mechanism for monitoring implementation (see, generally, Art 24 AfCFTA-DSM Protocol). Compensation or retaliation, in the form of suspension of concessions or other obligations, are prescribed as temporary measures available to the aggrieved party in the event that the recommendations and rulings of the DSB are not implemented within a reasonable period of time Article 25(1) and (3). Similar WTO principles suggest that the main objective of the complaining party in exerting retaliatory measures is not to restore the balance of concessions, but rather to induce the defending party to comply with its obligations (McGivern, 2002, 144; → *Arbitration on the Level of Retaliation: Dispute Settlement System of the World Trade Organization (WTO)*). Article 25(4) prescribes an avenue via which an aggrieved party may invoke retaliatory measures if the other party fails to comply with the DSB recommendations. These countermeasures are meant to be proportionate to the measure adopted by the other party (Art 25(5), (6) and (7) AfCFTA-DSM Protocol). Countermeasures are also meant to be a last resort, when the defaulting party is unyielding to the terms of the treaty.

4. Mediation

26 Article 8 of the Dispute Settlement Protocol provides an avenue for State Parties to a dispute to mediate. Like the consultations process, mediation is meant to foster amicable resolution of disputes among State Parties. Such processes align well with traditional dispute resolution processes of various pre-colonial African communities (Elias, 1956; Attah-Poku, 1998). The process in Article 8 differs from consultations in two keyways. First, unlike consultations which must take place whenever a dispute has been submitted to the DSB, mediation is entirely voluntary. A party to a dispute may opt in or out at any time (Art 8(4) AfCFTA-DSM Protocol). Further, while consultations always precede adjudication, mediation can run concurrently with panel proceedings, if the State Parties to the dispute so agree Art 8(5) AfCFTA-DSM Protocol). Thus while the protocol specifies a time limit of 60 days for consultations, no such restriction applies to mediation.

5. Arbitration

27 Parties to a dispute are at liberty to resort to arbitration (Art 27 AfCFTA-DSM Protocol). AfCFTA recognizes the principle of party autonomy in arbitration (on 'party autonomy', see Livingstone, 2008). Accordingly, the arbitration process is at the behest of the parties involved and is not controlled by the DSB (Chazournes, 2005, 181). State Parties can choose their own forum and procedural rules. The AfCFTA Agreement however governs the substance of the dispute.

28 Parties to a dispute who have agreed to arbitration cannot simultaneously refer the dispute to the DSB (Art 27(2) AfCFTA-DSM Protocol). Again, this is a provision that accords importance to arbitration commitments. Parties must notify the DSB of the decision to go to arbitration. Further,

Article 27(6) of the Protocol stipulates that 'in the event of a Party to a dispute refusing to cooperate, the Complaining Party shall refer the matter to the DSB for determination.' It seems that this provision refers to non-cooperation with the arbitral process, rather than the award. This is because there is a more specific provision that deals with enforcement of awards. If an unsuccessful party does not cooperate with the award, the complaining party's recourse is to the enforcement procedures in Articles 24 and 25, rather than 'refer the matter to the DSB for determination.' Thus, it seems that Article 27(6) is prescribed to cater for situations where a party acts in a manner that is likely to frustrate the arbitration process, pre-award. The extent of what the DSB can do here is also vague. What does 'determination' mean? Does it mean that the DSB will consider the complaint of lack of cooperation and, perhaps, make interlocutory orders directing the uncooperative party to cooperate with the arbitration process? Can the DSB seize the matter from arbitration and instead constitute a panel to resolve or determine the substantive 'matter' in the same manner as a dispute originally referred to the DSB? This seems implausible because it contravenes the principle of party autonomy. There is need for clarity here. Once an award has been issued it becomes binding on the parties and shall be notified to the DSB for enforcement (Chazournes, 2005, 188). The DSB enforces an arbitration award in the same manner as a DSB Panel or Appellate Body ruling/recommendation (Art 27(7) AfCFTA-DSM Protocol).

29 The arbitration mechanism of Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes is rarely used. However, in response to deadlock in the Appellate Body, a group of WTO members developed the Multiparty Interim Appeal Arbitration Arrangement ('MPIA') as a temporary solution to preserve the WTO's Appellate function for disputes among MPIA participants. As at the time of writing this entry, Benin is the only African state that has joined the ad hoc MPIA.

D. The Dispute Settlement Mechanism of the African Continental Free Trade Area and its relationship with other regional Dispute Settlement Mechanisms

30 While the establishment of a rules-based continental trade system has been a protracted affair, African countries have proven more adept at forming regional trade ties. While formal intra-Africa trade with the African continent trails in comparison to trade with Western States, informal trade within the regional economic communities in Africa is a key feature. (Gathii, 2011, 11; Chirisa, 2014, 134)

31 There are no fewer than eight AU recognized regional economic communities on the continent, with some countries belonging to more than one (See UNECA). Examples include COMESA, SADC, → *East African Community (EAC)* [MPEPIL] (Kaahwa, 2013), the Economic Community of West African States ('ECOWAS') and the → *Economic Community of Central African States* [MPEPIL] (Savadogo, 2018) ('ECCAS'). Historically, the regional economic communities ('REC's) were regarded as the building blocks that would morph into an AEC, with conscious recognition of the fact that RECs were at different stages of integration. See Oppong, 2010). Each REC has a dispute settlement mechanism of its own, with some varying characteristics (See: Art 2 COMESA Treaty – establishing the → *Court of Justice of the West African Economic and Monetary Union*; Arts 23 and 27 EAC Treaty – establishing and conferring jurisdiction on the East African Court of Justice; Art 32 SADC Treaty – establishing the → *Southern African Development Community Tribunal*; Art 16 of the ECCAS Treaty –

establishing the Court of Justice for the Community; and Art 76 ECOWAS Treaty – establishing the → *Court of Justice of the Economic Community of West African States (ECOWAS)*. Because the RECs and AfCFTA pursue largely similar objectives – trade liberalization and economic integration – a dispute arising between member States of the same region can provide avenues for forum shopping between the AfCFTA dispute settlement mechanism and an REC dispute settlement mechanism (Pauwelyn, 2004, 240).

32 The AfCFTA will protect the existing *acquis* of the regional economic communities (See Arts 5(b), (l), 8(2) and 18(2) AfCFTA). Article 19(1) AfCFTA attempts to address such issues by providing that in the event of any conflict and inconsistency between the Agreement and any regional agreement, the Agreement shall prevail to the extent of the specific inconsistency. This provision settles the general question as to which rules system prevails in the event of a conflict or inconsistency. However, as an exception, State Parties that are members of RECs which have attained among themselves 'higher levels of regional integration' than under AfCFTA shall maintain such levels among themselves (Art 20(2) AfCFTA). What implications could this exception have on the interaction between the AfCFTA and RECs' dispute settlement mechanisms? Let us consider, for example, the fact that some of the RECs dispute settlement mechanisms allow private disputation (see Art 26 COMESA Treaty. See Arts 27, 28 and 29 EAC Treaty – prescribing that disputes may be referred by the Partner States, the Secretary-General, legal and natural persons). Some of the RECs also allow litigation before national courts), a feature that seems inconsistent with the AfCFTA position. The general effect of Article 19(1) would be to override that position and, therefore, strip private entities of standing in trade matters. Yet, Article 19(2) would allow private entities in some States to continue to enjoy standing if their RECs are deemed to have attained higher integration than the AfCFTA. Not only does this create an asymmetry on access to justice within the AfCFTA, but it also ignores one important consideration: the fact that an REC has attained a higher level of integration does not necessarily mean that its dispute settlement mechanism is more functional than that of AfCFTA. It does not mean that the REC dispute settlement mechanism is more amenable to actualizing the objectives of AfCFTA or the relevant RTA. There is little to suggest that the RECs' dispute settlement mechanisms – even for the relatively more active – have done or can do much to assert regional integration.

33 The lack of uniformity in dispute settlement ensuing from this deference to some REC dispute settlement mechanisms could undermine the core objectives of AfCFTA. As Oppong commenting on uniformity in the integration of the AEC through dispute resolution, puts it:

> A foundation for instability is laid where uneven obligations, in terms of the enforcement and enforceability of community law, are imposed on member states. It is difficult to conceive of a stable and effective economic community where community law is not uniformly applicable within and enforceable against member states. Indeed, the very essence of integration is defeated; "uniformity in the meaning of law is part of the constitutional glue that holds the Community together (Oppong, 2010, 100).

34 The onus must rest on the AfCFTA dispute settlement mechanism to strive towards uniform efficiency in dispute settlement, to disincentivize forum shopping, as well as to facilitate compliance, stability and rapid integration across the board.

E. Imagining an Effective Dispute Settlement Mechanism of the African Continental Free Trade Area

35 The factors that most threaten to undermine the efficacy of the AfCFTA dispute settlement mechanism are the uncertain political will of State Parties and the complete alienation of private actors. The only way that the AfCFTA dispute settlement mechanism can better the history of its forerunners is for the State Parties to exhibit the political will for its success. State Parties must be willing to submit to the system when disputes arise and accept decisions when they go against them. State Parties must willingly avoid the tendency to gravitate towards colonial cum linguistic affiliations that have derailed past continental aspirations (Akinkugbe, 2021, forthcoming). Without these reinforced commitments, the security and predictability that the dispute settlement mechanism is supposed to provide to the trading system will be eroded.

36 Uncertainty, non-compliance, non-transparency and a lack of remedies will undermine the benefits to be gained from any trade agreement (Erasmus, 2011, 18–19). Private entities are the most likely to be negatively affected. Investors will also shy away from markets where they do not enjoy the protection of the law and cannot enforce their rights (Erasmus, 2011). Individuals have an important role to play in economic integration, not least in ensuring the implementation of community laws (Oppong, 2010). It is important to remember that it is private entities that will engage in the actual trade in goods, services, and investments across the continent; and it is the interaction of those private parties that will invariably give rise to commercial or business disputes (Onyema, 2019, 1). They bear the burdens of government policies and measures in the states that they operate in and have certainly shown greater appetite to challenge digressions (See *Polytol Paints & Adhesives Manufacturers Co. Ltd v The Republic of Mauritius*, 2012, where a private entity successfully sued a State party before the COMESA Court of Justice to enforce trade aspects of the COMESA Treaty. See also *British American Tobacco Uganda Limited v Attorney-General of Uganda*, 2019, where the East African Court of Justice held that an additional excise duty that Uganda imposed on cigarettes imported into East Africa constituted a violation of the EAC Common Market Protocol). The jurisdiction of the AfCFTA dispute settlement mechanism should be expanded to accommodate private enforcement, as is the case in some of the RECs. One way to manage the inflow of disputes to the DSB is to empower the secretariat to receive and review complaints from private entities directly – via electronic means – conduct preliminary investigations, if necessary, to determine whether to begin a process of consultations or refer the complaint to a DSB Panel (Olatunji, 2019). This process will enable the secretariat to better monitor compliance with the AfCFTA, advance only those complaints that present substantial issues, while also giving private stakeholders the opportunity to play a major part in the dispute settlement process (Olatunji, 2019; See also Oppong's earlier suggestion, with regard to the AU Court of Justice, that private individuals be allowed to litigate before the court, with the special leave of the court and after exhausting local remedies (Oppong, 2010, 101).

37 Even when private entities are not suing States, in their official capacities or to enforce AfCFTA obligations, they may also have cause for commercial disputes from trading with other private entities across borders. When such disputes arise, resort to national courts faces various challenges, including language barriers, multiplicity of legal systems, bureaucratic bottlenecks and time and cost constraints (Onyema, 2019). There is need for a universally responsive AfCFTA-centric legal regime and dispute mechanism to override such challenges. As an alternative to national courts and national legal orders, Onyema advocates the harmonization of economic laws and the installation of a supranational dispute settlement mechanism – Regional Arbitration Centers – that is competent to arbitrate disputes arising from intra-African commercial transactions and efficiently enforce awards emanating therefrom

(through a one-stop African Commercial Court with a mandate to enforce Regional Arbitration Centers' awards anywhere in the free trade area) (Onyema, 2019, 1). For this system to work, State Parties must be willing to cede some of their sovereignty to a supranational economic law and arbitration system with powers of enforcement, to boost the confidence of private stakeholders operating in the AfCFTA (Onyema, 2019, 467 ; Onyema points to a similar system that is already in place in the Organization for the Harmonization of Business Law in Africa ('OHADA') axis, covering 17 African countries; → *Common Court of Justice and Arbitration (CCJA) of the Organization for the Harmonization of Business Law in Africa (OHADA)*).

38 Unless AfCFTA member States can underline their unreserved commitment to the entire AfCFTA dispute settlement mechanism, it is pertinent that a commercial arbitration system, as envisaged by Onyema, is isolated from the States-only dispute settlement mechanism. Separation can help to prevent a similar fate as that of the SADC Tribunal which, initially empowered to hear disputes between SADC member States as well as private persons against the States, was crippled after its first landmark decisions in the *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (2008). The result of that decision was the amputation of its competence to be seized by individuals and eventual descent into dormancy (Simo, 2019). In the context of the African experience, a reimagined AfCFTA dispute settlement mechanism that focuses on the settlement of commercial disputes between private entities, perhaps stands a better chance of survival and optimal utilization. This leaves the State Parties to enjoy, as they choose, their exclusive right to patronize the more reconciliatory dispute settlement techniques already in place, and political solutions to address their concerns under the present AfCFTA dispute settlement mechanism model.

39 Finally, there is need to review the remedies that the AfCFTA provides. Presently, compensation and retaliation are the ultimate remedies for the violation of AfCFTA obligations (Art 25 AfCFTA-DSM Protocol). Compensation can be faulted for potentially decreasing overall compliance with DSB rulings, especially as the remedy is merely voluntary (Mercurio, 2009a, 327). The viability of retaliation has been questioned (Mercurio, 2009b, 400) and is identified as one of the reasons why African countries do not use the WTO dispute settlement mechanism (Mosoti, 2006, highlighting that this remedy is skewed against African countries – which lack the capacity to retaliate against their wealthier counterparts – and therefore not effectively usable if the need arises). The wholesale adoption of this remedy into the AfCFTA dispute settlement mechanism is therefore questionable given that the same factors that make retaliation unattractive to the weaker WTO member States also exist among African States where, admittedly, not "all fingers" are equal. There is, in my view, a need to incorporate alternative remedies – group retaliation and widespread loss of privilege for nonconformists for instance – in order to entrench the security and certainty that AfCFTA needs. These measures should however only be applied in extreme cases.

F. Conclusion

40 This entry analyzes the AfCFTA dispute settlement mechanism historically and comparatively. Historically, the entry locates the AfCFTA dispute settlement mechanism in the context of other WTO-styled dispute mechanisms in Africa, as well as the near inactivity of trade-related disputes from the dockets of regional economic community courts. Based on this transplantation and a dearth of trade-related disputes, the entry highlights the challenges that the AfCFTA dispute settlement mechanism may confront –apathy and a formal trade-related dispute phobia by the AfCFTA Member States in utilizing the regime. The entry also analyzes the procedural steps for initiating disputes under

the AfCFTA dispute settlement mechanism and where necessary, briefly assesses the potential areas of improvement that may better position the dispute settlement mechanism to facilitate the overall objectives of the AfCFTA.

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Cited Bibliography

T O Elias, *The Nature of African Customary Law* (Manchester University Press 1956).

RM D'Sa, 'The Lagos Plan of Action – Legal Mechanisms for Co-operation between the Organisation of African Unity and the United Nations Economic Commission for Africa' (1983) 27:1 Journal of African Law 4–21.

T Maluwa, 'The Peaceful Settlement of Disputes among African States, 1963–1983: Some Conceptual Issues and Practical Trends' (1989) 38 International and Comparative Law Quarterly 299–320.

A Attah-Poku, *African Ethnicity, History, Conflict Management, Resolution and Prevention* (University Press of America 1998).

Gino J. Naldi and Konstantinos D. Magliveras, 'The African Economic Community: Emancipation for African States or Yet Another Glorious Failure' (1999) 24 N.C. J. Int'l L. & Com. Reg. 601–31.

BP McGivern, 'Seeking Compliance with WTO Rulings: Theory, Practice and Alternatives' (2002) 36 Intl Lawyer 141–44.

J Pauwelyn, 'Going Global, Regional, or Both? Dispute Settlement in the Southern African Development Community (SADC) and Overlaps with the WTO and other Jurisdiction' (2004) 13 Minn. J Global Trade 231–304.

LB De Chazournes, 'Arbitration at the WTO: a terra incognita to be further explored' in Charnovitz, Steve, Steger, Debra P. and Van Den Bossche, Peter, *Law in the Service of Human Dignity: Essays in Honour of Florentino Feliciano* (CUP Cambridge 2005) 181-201.

V Mosoti, 'Africa in the First Decade of WTO Dispute Settlement' (2006) 9:2 Journal of Intl Economic Law 427–53.

A Alavi, 'African Countries and the WTO's Dispute Settlement Mechanism' (2007) 25 Development Policy Review 25–42.

A Geda and HK Taye, 'Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA' (2008) 17 Journal of African Economies 357–97.

ML Livingstone, 'Party Autonomy in International Commercial Arbitration: Popular Fallacy or Proven Fact' (2008) 25 Journal of Intl Arbitration 529–35.

B Mercurio, 'Why Compensation Cannot Replace Trade Retaliation in the WTO Dispute Settlement Understanding' (2009a) 8 World Trade Review 1-24.

B Mercurio, 'Retaliatory Trade Measures in the WTO Dispute Settlement Understanding: Are There Really Alternatives?' in J Hartigan (ed), *Trade Disputes and the Dispute Settlement Understanding of the WTO: An Interdisciplinary Assessment* (Emerald/Elsevier 2009b) 397–442.

JT Gathii, 'The Under-Appreciated Jurisprudence of African Regional Trade Judiciaries' (2010) 12 Or. Rev. Int'l L 245–81.

J.T. Gathii, *African Regional Trade Agreements as Legal Regimes*, (CUP Cambridge 2011).

RF Oppong, 'The African Union, the African Economic Community and Africa's Regional Economic Communities: Untangling a Complex Web' (2010) 18 African J of Intl & Comparative L 92–103.

G Erasmus, 'Is the SADC trade regime a rules-based system?' (2011) SADCLJ 17–34.

K Van der Borght, 'Justice for All in the Dispute Settlement System of the World Trade Organization?' (2011) 39 Georgia Journal of Intl & Comp Law 787–806.

F Viljoen, '*African Union (AU)'* in R Wolfrum (ed), The Max Planck Encylopedia of Public International Law (OUP 2011), www.mepepil.com (accessed 20 February 2021)..

J Apecu, 'The Level of African Engagement at the World Trade Organization from 1995 to 2010,' *International Development Policy* (2013) <http://journals.openedition.org/poldev/1492> (accessed 16 May 2020).

W TK Kaahwa, '*East African Community'* in R Wolfrum (ed), The Max Planck Encylopedia of Public International Law (OUP 2013), <www.mepepil.com> (accessed 20 February 2021).

J de Melo, 'Regional trade agreements in Africa: Success or failure?' *International Growth Centre blog* (3 December 2013) <https://www.theigc.org/blog/regional-trade-agreements-in-africa-success-or-failure/> (accessed 16 May 2020).
L Nathan 'The Disbanding of the SADC Tribunal: A Cautionary Tale' (2013) 35 Human Rights Quarterly 870–92.
Peter-Tobias Stoll, 'World Trade Organization (WTO)' in R Wolfrum (ed), The Max Planck Encylopedia of Public International Law (OUP 2014), <www.mepepil.com> (accessed 20 February 2021).
K Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton University Press, 2014)
W Guan, 'Consensus Yet Not Consented: A Critique of the WTO Decision-Making by Consensus', (2014) 17 Journal of International Economic Law 77–104.
MM Mbengue, 'African perspectives on inter-state litigation' in Natalie Klein (ed), *Litigating International Law Disputes*, (CUP Cambridge 2014) 166–90.
I Chirisa, 'The Role of the informal Sector in African Regional Integration: Scope and limits', (2014) 6 Insight on Africa 131-144.
K Cheluget & S Wright, 'COMESA and the Tripartite Free Trade Area: Towards an African Economic Community?' (2017) 24 South African Journal of International Affairs 481–99.
L Savadogo, 'Economic Community of Central African States', in R Wolfrum (ed), The Max Planck Encylopedia of Public International Law (OUP 2018), www.mepepil.com (accessed 20 February 2021).
OD Akinkugbe, 'Reverse Contributors? African State Parties, ICSID and the Development of International Investment Law' (2019a) 34 *ICSID Review - Foreign Investment Law Journal* 434–54.
OD Akinkugbe, 'What the African Continental Free Trade Agreement Protocol on Dispute Settlement says about the culture of African States to Dispute Resolution', *Afronomicslaw Blog*, (April 9, 2019b) <https://www.afronomicslaw.org/2019/04/09/what-the-african-continental-free-trade-agreement-protocol-on-dispute-settlement-says-about-the-culture-of-african-states-to-dispute-resolution/> (accessed 18 May 2020).
CD Creamer, 'Can International Trade Law Recover? From the WTO's Crown Jewel to its Crown of Thorns' (2019) 113 AJIL 51–55.
JT Gathii, 'Evaluating the Dispute Settlement Mechanism of the African Continental Free Trade Agreement' (10 April 2019) *Afronomicslaw blog* <https://www.afronomicslaw.org/2019/04/10/evaluating-the-dispute-settlement-mechanism-of-the-african-continental-free-trade-agreement/> (accessed 18 May 2020).
S Habib, 'Tanzania Faces a New ICSID Claim under the Terminated Netherlands BIT' *Kluwer Arbitration Blog* (21 June 2019) <http://arbitrationblog.kluwerarbitration.com/2019/06/21/tanzania-faces-a-new-icsid-claim-under-the-terminated-netherlands-bit-2/?doing_wp_cron=1590651845.3182539939880371093750> (accessed 18 May 2020).

T Olatunji, 'Protecting the Interest of Private Investors under the AfCFTA Dispute Settlement Mechanism' *LACIAC Dispute Resolution Update* (October 2019) <http://www.laciac.org/files/Dispute%20Resolution%20Update_October%202019.pdf> (accessed 16 May 2020).
E Onyema, 'Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement' (2019) World Trade Review 1–23.
A E Pete, 'Nigeria's Border closure and AFCFTA Agreement', *Economic Confidential* (10 January 2020) <https://economicconfidential.com/2020/01/nigerias-afcfta-agreement/> (accessed 17 May 2020).
R Simo, 'A Future Court without Cases? On the Question of Standing in the AfCFTA Dispute Settlement Mechanism,' *Afronomicslaw blog* (19 August 2019)

<https://www.afronomicslaw.org/2019/08/19/a-future-court-without-cases-on-the-question-of-standing-in-the-afcfta-dispute-settlement-mechanism/> (accessed 18 May 2020).
OD Akinkugbe, 'Dispute Settlement Under the African Continental Free Trade Area Agreement: A Preliminary Assessment' (2020a) 28 African Journal of International and Comparative Law 138–58.
OD. Akinkugbe, 'Towards an Analysis of the Mega-Political Jurisprudence of the ECOWAS Community Court of Justice' in JT Gathii (ed), *The Performance of African's International Courts: Using Litigation for Political, Legal, and Social Change* (OUP Oxford 2020b).
JT Gathii (ed), *The Performance of African's International Courts: Using Litigation for Political, Legal, and Social Change* (OUP Oxford 2020).
OD Akinkugbe, *Law, Economics and Regionalism in Africa: A Socio-Legal Analysis of the Economic Community of West African States* (Routledge forthcoming, 2021).

Further Bibliography

T Miles 'African nations join majority in opposing U.S. blockage at WTO,' *Reuters* (26 June 2019) <https://www.reuters.com/article/us-usa-trade-wto-africa/african-nations-join-majority-in-opposing-u-s-blockage-at-wto-idUSKCN1TR1WH> (accessed 17 May 2020).
D Luke, 'Making the Case for the African Continental Free Trade Area', *Afronomicslaw Blog*, (15 January 2019) <https://www.afronomicslaw.org/2019/01/12/making-the-case-for-the-african-continental-free-trade-area-2/> (accessed 15 November 2020).
O Fasan, 'AfCFTA: Africa is moving too slowly towards economic integration' *IGC blog* (18 February 2019) <https://www.theigc.org/blog/afcfta-africa-is-moving-too-slowly-towards-economic-integration/> (accessed 17 May 2020).
A Parshotam, 'Can the African Continental Free Trade Area Offer A New Beginning for Trade in Africa?" (June 2019) *SAIIA Occasional Paper* No. 280 <https://saiia.org.za/research/can-the-african-continental-free-trade-area-offer-a-new-beginning-for-trade-in-africa/> (accessed 17 May 2020)
P Kambafwile, 'More Countries Ratify Tripartite Free Trade Area Agreement' (17 January 2020) <https://www.comesa.int/more-countries-ratify-tripartite-free-trade-area-agreement/> (accessed 16 May 2020).
S Marks, 'Coronavirus hits Africa's mega trade deal plans', *Politico* (23 March 2020) <https://www.politico.eu/article/coronavirus-scuppers-africa-mega-trade-deal/> (accessed 16 May 2020).

Cited Documents

African Union, 'Statement by the Secretary-General of the AfCFTA Secretariat, H.E. Wamkele Mene, at the AfCFTA Start of trading Ceremony Webinar' (1 January 2021) <https://au.int/en/speeches/20210101/statement-he-wamkele-mene-afcfta-start-trading>.
Agreement Establishing the African Continental Free Trade Area (adopted, 28 March 2018, entered into force 30 May 2019).
Agreement Establishing the World Trade Organisation (signed 15 April 1994, entered into force 1 January 1995) UNTS 1867, 1868, 1869.
Charter of the Organisation of African Unity (done 25 May 1963, entered into force 13 September 1963) UNTS 479.
Constitutive Act of the African Union (adopted 1 July 2000, entered into force 26 May 2001) UNTS 2158.

* IISD, 'AfCFTA enters into force; Phase II on investment, competition, IPRs to last through 2020–2021' (27 June 2019) <https://www.iisd.org/itn/2019/06/27/afcfta-enters-into-force-phase-ii-on-investment-competition-iprs-to-last-through-2020-2021/> (accessed 14 May 2020).*
OHADA, <https://www.ohada.org/index.php/en/ohada-in-a-nutshell/general-overview> (accessed 18 May 2020.
Organisation of African Unity: Protocol of the Commission of Mediation, Conciliation and Arbitration (done 21 July 1964) 479 UNTS, 39.
Treaty Establishing the Economic Community of West African States (done 28 May 1975). *Treaty of the Southern African Development Community (signed 17 August 1992).*
Treaty for the Establishment of the Economic Community of Central African States (signed 18 October 1983, entered into force 18 December 1984).
Treaty Establishing the Common Market for Eastern and Southern Africa (signed 5 November 1993, entered into force 8 December 1994).
Treaty for the Establishment of the East African Community (signed 30 November 1999, entered into force 7 July 2000).
UNECA, <https://www.uneca.org/oria/pages/regional-economic-communities>(accessed 16 May 2020).

Cited Cases
* *Mike Campbell (Pvt) Limited and 78 ors v Zimbabwe*, Merits, Case No SADC(T) 2/2007, IHRL 3118 (SADC 2008), (2008) AHRLR 199 (SADC 2008), [2008] SADCT 2, 28th November 2008, Southern African Development Community [SADC]
* *Mauritius v Polytol Paints & Adhesives Manufacturer Company Limited, Application No 1 of 2012, [2018] COMESACJ 13, 6th December 2012, COMESA Court of Justice.*
* *British American Tobacco (U0 LTD v A.G. of Uganda* (Reference No.7 of 2017) [2019] EACJ 4; (26 March 2019).

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#Economic Community of Central African States [ECCAS]
#Common Market for Eastern and Southern Africa [COMESA]
#Southern African Development Community [SADC]
Settlement of disputes
Regional trade