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Original Article

Dispute Resolution Mechanism under the African Continental Free Trade Area Agreement

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Abstract

The African Continental Free Trade Area Agreement (AfCFTA) features a detailed judicial-based dispute resolution system modeled after the World Trade Organization (WTO)'s trade dispute resolution method (DRM). The paper undertook an overview of the Agreement. It examined trade dispute mechanisms under it. It also identified and appraised the challenges of the dispute resolution method under the Agreement. A qualitative research approach was adopted, and AfCFTA's dispute resolution method was compared with that of the WTO and similar regional bodies in Africa and elsewhere. The paper revealed that the DRM under AfCFTA is comprehensive and rules-based. The analysis of the AfCFTA's Protocol on DRM was preliminary because the Treaty entered into force in 2019. It was also found that the use of resolution techniques such as parties' negotiations, good offices, mediation, conciliation, and arbitration could enhance DRM under AfCFTA. Its major challenge is that the DRM under AFCFTA is limited to State Parties and disputes.

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Introduction

The African Continental Free Trade Agreement's (AfCFTA) purpose is to open the African market to all the Member States to enlarge their economies and benefit from global trade integration. It further aims to improve the intention of the African Union (AU) to improve trade among members and the whole world.[1] Though a series of efforts have been made to liberalize trade in Africa,[2] this is the first Treaty made by the AU that covers the whole of the continent. Although regional economic communities have existed in various parts of Africa, little has been achieved in ensuring trade liberalization. For example, the Economic Community of West African States' efforts at liberalizing trade had been overcome by regional insecurity, corruption, and fear of domination by members that harbour the belief that Nigeria, being a giant in the zone, would have a lot to gain.[3] Furthermore, ECOWAS appears to be more than a regional trade regulator, as it has, on a number of occasions, regulated the political affairs of Member States.[4] The West African regional body has both economic and political mandates for regional integration and economic growth.[5] Its 1993 Amended Treaty expanded the power of its Directorate of Political Affairs, Peace and Security (PAPS) due to increasing political, religious, and ethnic conflicts in the region.[6]

The AfCFTA has been predicted to be capable of moving intra-African trade from $ 50 billion in 2024 to $570 billion in 2040.[7] The Agreement promises a more efficient trade in goods, mobility of labor, and the development of digital markets across Africa. It is also capable of reducing poverty and unemployment while it fast-tracks foreign direct investment and increases access to local markets.

The AfCFTA's implementation can lead to unprecedented growth and accelerated regional economic and political integration of regional bodies such as ECOWAS, the Common Market for Eastern and Southern Africa (COMESA), the Arab Maghreb Union (AMU), Intergovernmental Authority on Development (IGAD), Economic Community of Central African States (ECCAS), and a host of others in achieving their economic objectives. This paper focuses on the exploration of the dispute resolution mechanism of AfCFTA. The objectives of the study are to:

(i) Undertake an overview of the Agreement.

(ii) examine the innovations introduced by the dispute resolution Protocol under the Agreement, and

(iii) Identify and appraise challenges to dispute resolution under AfCFTA.

2. Overview of the AfCFTA

2.1 History and Objectives

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[1]Nigerian Economic Summit Group, 'Economic Implication of the African Continental Free Trade Agreement (AfCFTA) on the Nigerian Industrial Sections'(nd.) <https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf 15 March 2024.

[2] For example, ECOWAS, Trade Policy

[3]Chieke Ihejinka, 'ECOWAS: The Dilema of Integration in a Fragmented Sub-Region' https://www.kckccc.edu accessed 15 March 2024

[4]Aljazeera, 'ECOWAS holds emergency session over Senegal crisis and member exits' *Aljazeera,* Feb 24, 2024 < https://www.aljazeera.com/news/2024/2/8/ecowas-holds-emergency-session-over-senegal-crisis-and-member-exits> accessed 16 March, 2024

[5]ECOWAS, 'Political Affairs', ECOWAS 2015 < https://www.ecoslate.g.thub.io/ecowas section> accessed 15 March 2024

[6]Ibid.

[7] Ibid.

The body was approved in January 2012[8] by the continental body to improve African trade. The central aim of the trade agreement was the acceleration of economic development in Africa. The AfCFTA was established on 30th May 2019 as part of the Agenda 2063 of the AU for a harmonized customs service and a common market.[9] The objectives adopted at the session include: the creation of a single market for goods and services; the free market for goods and services; preparing ground for the African Customs Union; "promotion and attainment of inclusive socio-economic development, gender equality, and structural transformation" as stipulated in Agenda 2063.[10]

The Agreement aimed at enhancing economic development among the state parties, promoting industrialization through diversification of the supply chain, and resolving the challenges of multiple and overlapping memberships and fast-track regional and continental integration processes.[11] It has seven important protocols, which it intends to achieve as objectives. These are: "trade in goods"; 'trade in services"; "rules and procedure on the settlement of disputes"; "investment"; "intellectual property rights"; and "competition policy".[12] These protocols are sub-agreements that guide the implementation of the Agreement. They are detailed and comprehensive and highlight the procedures through which the objectives would be achieved.

The aim and the expansive objectives of the Agreement point to the African Union's desire to establish a united continent, with political and socio-economic affiliation to achieve its potentialities as a continent most blessed with natural resources.[13] The AU Agenda 2063 appears to be a strategy for achieving a unified customs union, a political and socio-economic union, and an Africa full of opportunities and economic boom.[14] Based on these objectives, projections have been made on what Africa stands to gain from the effective implementation of the Agreement, namely, a sustainable growth in African trade.[15]

2.2 Organs of AfCFTA

These consist of the Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat.[16]

2.2.1 Assembly

[8] African Union, 'The African Continental Free Trade Area' Retrieved from < https://au.int/en/african-continental-free-trade-area> accessed 25 January, 2024.

[9] Richard Frimpong Oppong, Private International Law and the African Economic Community: A Plea for corrector Attention. *The International Comparative Law Quarterly,* 2006(55)4, 911-928.< https://www.semanticscholar.org/paper/Private-International-Law-and-the-African-Economic-Oppong/85544d1644a1a0178e9116ff46908f0dd4a3afec > accessed 16 March 2025.

[10] Agreement Establishing the African Continental Free Trade Area.

[11] Ibid.

[12] Ibid, Art. 3

[13] Nigerian Economic Summit Group (NESG), Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors'.<https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf on 15 March 2024.

[14] Richard Frimpong Oppong (n .); Orji Uka; Cross Border Dispute Resolution under AfCFTA: A Call for the Establishment of a Pan-African Harmonized Private Internal and Legal Regime to Actualise enda 2063, Law Digest Journal Spring 2020, < https://conflictoflaws.net/2020/cross-border-dispute-resolution-under-afcfta-a-call-for-the-establishment-of-a-pan-african-harmonised-private-international-legal-regime-to-actualise-agenda-2063/> accessed 16 March 2025.

[15] NESG, Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors'.

[16] AfCFTA, Art 9.

This is the foremost decision-making organ of the AU. It has oversight of the strategic guidance on the AfCFTA, which includes taking efforts to boost trade through Boosting Intra-African Trade (BIAT), an innovation developed to promote African trade. It also interprets the Agreement through the Council of Ministers. The Assembly must decide by consensus.[17]

2.2.1 Council of Ministers

This is the second institution established by the Treaty. It comprises Ministers of Trade, or any other Ministers, authorities, or officials that State Parties designate.[18] Its functions are as contained in Article 11(3)(a) – (p). It reports to the Assembly through the Executive Council.[19] Its terms of reference include decision-making, implementation, and enforcement of the objectives of the Agreement. It collaborates with the appropriate organs and institutions of the AU.[20] It also harmonizes policies, strategies, and measures for implementation; delegates tasks to committees; prepares its decisions and those of its other bodies; and supervises work with groups and experts.[21] It issues rules and regulations, directives, and proposes recommendations for the implementation of the Agreement.[22]

2.2.3 Senior Trade Officials

Article 12 presents the functions of this institution. Its composition includes the Permanent or Principal Secretaries or other officials of the State Parties,[23] while its functions are the implementation of the Council of Ministers' decisions, development of programs and action plans for implementation, monitoring, and keeping the Agreement under constant and proper review.[24] Others include the establishment of committees and working groups, overseeing the implementation of the provisions of the Agreement, directing the Secretariat to undertake specific assignments, and performing any other function that may be given to it by the Council of Ministers.[25] The Committee reports to the Council of Ministers, upon whose directive it meets twice in a year.[26]

2.2.4 Secretariat

This is the last institution of the Agreement. It was established by the Assembly, which decides its location and approves its structure and budget. It is established as an autonomous body of the AU with a legal personality.[27] The implication of this is that the Secretariat is to be independent of the AU Commission while its funds are derivable from the overall budget of the African Union.[28] However, the Council of Ministers has the responsibility to determine the schedules of the Secretariat.[29]

2.3 Administration of the Agreement

The Agreement has seven protocols, namely "protocols on trade in goods, trade in services, investment, intellectual property rights, competition policy, and rules and procedures for dispute resolution and digital trade".[30] These protocols were designed to be

[17] Ibid.
[18] Ibid Art 11(1).
[19] This is the Executive Council of the General Assembly.
[20] Ibid, Art 11(3)(a)-(c).
[21] Ibid, Art 11(3)(d)-(h).
[22] Ibid, Art 11(3)(i)-(j).
[23] Ibid, Art 12(1).
[24] Ibid, Art 12 (2)(a) – (c).
[25] Ibid, Art12(2)(c)-(g).
[26] Ibid, Art12(3).
[27] Ibid, Art 13(3)
[28] Ibid, Art 13(4) & (5).
[29] Ibid, Art13(6).
[30] FDI, 'Breaking Down the AfCFTA: What You Need to Know about Africa's Latest Trade Initiative,;(Research FDI, 7 March 2023) https://researchfdi.com/breaking-down-the-afcfta-what-

implemented in Phases I-III. Phase I is on trade in goods and services, Phase II focuses on investment, competition policy, and intellectual property rights, while Phase III is to develop e-commerce and women and youth in trade.[31]

Its highest decision-making body is the Assembly, while the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat provide the structure for its implementation. The position of the Council of Ministers of Trade appears critical in the organogram in that it is the body that breaks down the trade policies into implementable action plans for seamless enforcement by the Senior Trade Officials. In its decision-making, the AfCFTA acts by consensus on substantive issues.[32] In any matter where the consensus could not be achieved by the Committee of Trade Officials, it refers to the Council of Ministers. If the Council cannot arrive at a common agreement on the matter, it shall be referred to the Assembly.[33] However, procedural decisions are made by a simple majority of the Member States that are qualified to exercise the franchise.[34] while the absence of a State Party would not vitiate the adoption of the decisions.[35]

3. Dispute Resolution Mechanism under AfCTA

3.1 Disputes Defined

The term 'dispute' is used either as a noun or a verb. When used as a noun, it means "a quarrel, a controversy, an agreement, a difference of opinion, or a debate."[36] The use of dispute as a verb shows the word in action. It means "argue", "contest", "call into question", "disagree", "debate", "quarrel or discuss."[37] The word "dispute", either as a verb or a noun, involves a contest or a disagreement either within oneself, between a person, or a group and another group.[38]

The nature and conception of a dispute are further exemplified in *Exfin Shipping (India) Ltd v Tolani Shipping Co Ltd*[39] where the English court interpreted the provisions of Section 9 of the United Kingdom's Arbitration Act 1996. The section provides that when a party to an arbitration agreement applies to the court for the commencement of proceedings, the other may apply to the court for a stay of proceedings. The fact of the case was that the plaintiff had requested the recovery of a sum of money outstanding and unpaid to the plaintiff by the defendant. The defendant acknowledged that the sum was owed and was yet to be paid, thereby admitting liability for it. The court held that the refusal to pay the amount due despite the admittance of defendant was a dispute. Therefore, the claim that there was no dispute was rejected. However, their Lordships, in this case, overlooked the fact that the defendant did not refuse to pay the amount owed, as she did not deny liability. The import of the decision is that a dispute between the parties need not be an open conflict, but being passive about the

you-need-to-know-about-africas-latest-trade-initiative/ accessed 16 March 2025.

[31] Talkmore Chidede, 'AFCFTA Phase II and III Negotiations-Update' (Tralac, 10 February 2021) https://www.tralac.org/blog/article/15090-afcfta-phase-ii-and-iii-negotiations-update.html accessed 16 March 2025.

[32] Ibid, Art 14(1)

[33] Ibid, Art 14(2).

[34] Ibid, Art 14(3) & (4).

[35] Ibid, Art 14(5).

[36] M.M. Stanley-Idum and J.A. Agaba, *Civil Litigation in Nigeria* (Nelag & Company Limited, 2015) 25.

[37] The Dictionary.com 2024. Accessed from <https://www.dictionary.com on 22nd February 2024.

[38] M.M. Stanley-Idum & J.A. Agaba, 25.

[39] (2006) EWHC 1090.

agreement already made may constitute a dispute in business transactions.[40]

3.2 Dispute Resolution in AfCFTA

The Agreement is the latest effort by members of the African Union (AU) to introduce a common market among Member States, influence the international economic order, and ensure that the potentialities of the African market are harnessed for accelerated economic growth. A Dispute Settlement Mechanism (DSM) is established to settle all the disputes arising from the State Parties and is administered in line with the Protocol on Rules and Procedures on the Settlement of Disputes (PRPSD).[41] The AfCFTA Dispute Settlement Mechanism (AfCFTA–DSM) is patterned after the World Trade Organization(WTO) Dispute Settlement Understanding (DSU).[42] This is an innovation over the dispute settlement procedures of regional economic bodies in Africa, which are modelled after the Court of Justice of the European Union.[43]

However, the innovation appears not to be the first time that an African trade dispute mechanism would be patterned after the WTO Model.[44] The Tripartite Free Trade Area Agreement, which operated among three regional economic communities in Africa – COMESA, EAC, and which was made before AfCFTA, was based on the EU Model.

3.2 AfCFTA Agreement's Organs for Dispute Resolution

It establishes legal and institutional frameworks for dispute settlement under its PRSPD. The Protocol is established sequel to Article 20 of the Agreement, and its aim is to ensure that the settling of disputes is transparent, accountable, fair, predictable, and consistent with other parts of the Agreement.[45] The Dispute Settlement Mechanism (DSM) is created to settle disputes between State Parties, and it is governed by the Protocol on Rules on the Settlement of Disputes, which in turn establishes the Dispute Settlement Body (DSB).[46] Part IV, Article 20 of the AfCFTA Agreement sets up the Dispute Settlement Mechanism.[47]

The Protocol is a subsidiary document that seeks to put into practical and workable actions the provision of Article 20 of the Treaty on DSM.[48] The implication of this is that the Agreement (AfCFTA) takes precedence over the Protocol, which is the implementing rules and procedures for the Agreement only. Any disparity between the provisions of the Protocol and the AfCFTA is resolved in favor of the latter. This is understandable in view of the importance of the Agreement as the supreme document on continental trade relations.[49] Whenever a State Party initiates a DSM on any particular matter, it cannot make use of any other platform outside the Protocol to resolve the dispute.[50] The restriction is, perhaps, to ensure that the dispute resolution is

[40] M.M. Stanley-Idom & J.A, Agaba, supra.

[41] AfCFTA, Article 20

[42] Olabisi D. Akinkugbe, Dispute Settlement under the African Continental free Trade Area Agreement. A Preliminary Assessment' African Journal of International Comparative Law < https://digitalcommons.schulichlaw.dal.ca/scholarly_works/1232/> 12 March 2025

[43] See Joost Paulweyn, Going Global, Regional or Both? Dispute Settlement in the South African Development Community (SADC) and Overdays with the WTO and Trade, 231 - 304

[44] Ibid

[45] Art. 2, Protocol on Rules and Procedures on the Settlement of Dispute

[46] Art. 20, AfCFTA.

[47] Ibid.

[48] Art. 3(1), Protocol Rules, and Procedures on the Settlement of Disputes (PRPSD)

[49] Ibid, Art. 3(2)

[50] Ibid, Art. 3(4)

not unnecessarily delayed by litigations, which could frustrate the objectives of the Agreement. Organs established by the Protocol for dispute settlement are the Dispute Settlement Body (DSB), the Panel, and the Appellate Body (AB). The functions of each of these bodies in dispute resolution for the success of the Agreement will be discussed *infra.*

3.2.1 Dispute Settlement Body (DSB)

This body resolves conflicts that result from the implementation of the AfCTA.[51] Its membership is made up of the nominees of the State Parties.[52] The body establishes Dispute Settlement Panels (DSP) and an Appellate Body (AB); considers and adopts the Panel and the AP reports; monitors the enforcement of Panels and AP ‘s decisions, and directs the suspension of concessions and other duties under the AfCFTA.[53] The election of the DSB Chairperson is done by the State Parties.

The meetings of the DSB come up as and when necessary to discharge its functions under the Protocol. The body takes decisions by consensus, which indicates that no decision can be taken when a member is either absent from the meeting or objects to an issue.[54] This may cause delays in dispute resolution because an aggrieved DSB Member may use it as a tool to get back to either the disputing parties or the Assembly. The DSB is the most important dispute settlement organ of the AfCFTA.

3.2.2 Dispute Settlement Panels

The State Parties resolve their disputes by consultation. However, when this fails, they could use other ADR methods such as conciliation, mediation, good offices, and arbitration.[55] The Complaining Party may petition the DSB in writing for the establishment of a panel. The DSB is under an obligation to set up the Panel.[56]

The Complaining Party, rather than relying on standard terms, may propose its own terms of reference. The request for setting up the Panel must indicate efforts already made by the parties in resolving the dispute before coming to the Panel stage. The request must also summarize the legal issues of the complaint.[57]

The DSB holds its meeting not later than fifteen (15) days of receiving the request for the establishment of the Panel, if at least ten (10) days' advance notice of the meeting is given.[58] Not later than ten (10) days after the meeting, the Panel will be set up.[59] The urgency with which the Panel is constituted reflects the commitment of the DSB to the quick resolution of disputes.

3.2.3 The Panel

Panelists are selected from the register of the nominees of the State Parties. Each State Party nominates two (2) people annually to the Secretariat for inclusion in the pool of experts in the area(s) related to the agreements.[60] The list submitted shall be considered and approved by the DSB. This is to ensure that the panelists possess the skills and experience in international trade law and other issues incidental to the actualization of the AfCFTA goals.[61]

Furthermore, the panelists must be objective, reliable, and have sound judgment. They must

[51] Ibid, Art 5(1).
[52] Ibid, Art. 5(2)
[53] Ibid, Art. 5(3).
[54] Ibid, Art 5(6).
[55] Ibid, Art 9.
[56] Ibid, Art 9(2)(4).
[57] Ibid.
[58] Ibid, Ibid, Art 10.
[59] Ibid, Art 10(1).
[60] Art 10(3).
[61] Ibid.

also be impartial, independent from the Party's bias. They should be able to accept a code of conduct formulated by the DSB. Other factors the Protocol identified for being chosen as panelists are integrity, impartiality, fairness, and diversity of background.[62]

These complex requirements for selection as a panelist are necessary to make it difficult for the process of dispute resolution to be truncated.

The Panel is the most important organ of the DSM of AfCFTA. It hears the complaints of the parties, writes the report, which it submits for the consideration of the DSB. Nominations as panelists to serve on a dispute resolution team must be accepted by the Parties to the dispute.[63] These accords with international best practices in international trade law and domestic provisions on fairness and fair hearing.[64]

The Protocol provides standard terms of reference for the Panel unless they are rejected by the parties to the dispute within twenty (20) days from the creation of the Panel.[65] The DSB may also empower the Panel and Chairperson, acting in conjunction with the Parties in dispute, to formulate acceptable and comprehensive terms of reference. The terms of reference, thereafter formulated, shall be circulated to all State Parties.[66]

The Panel has the power to hear the Third Parties who lodge complaints before it. This is subject to the disputing party's agreement that the Third-Party claim is substantial.[67] The Third Party has opportunities for a fair hearing at the Panel under the Protocol. However, the Third Parties may opt to use other methods in the Protocol if proceeding at the Panel will negate their interests.[68]

At its sittings, the Panel adopts flexible procedures for effective and timely dispute settlement. The Panel has a maximum of five (5) months for the consideration of a dispute, while in the case of perishable goods, a maximum of one and a half ($1^1/2$) months is allowed.[69] However, when a solution to the dispute has been found and agreed to by the parties, the Report should be a summary of the case, indicating that a solution has been found.[70] Where the Panel is unable to complete the task within the maximum time allowed, an extension of the period not exceeding nine (9) months could be requested.[71]

The Report of the Panel would be presented for consideration and adoption by the DSB.[72] while the Parties' dissent to it should be written and submitted to the DSB within ten (10) days of its meeting.[73] Copies of the objections shall be served on other Parties to the dispute.[74] To ensure transparency, parties to the dispute have a right to participate in the consideration of the Reports of the Panel by the DSB. A final decision on the Panel's Report should not exceed 60 days of its submission to the DSB.[75] while the Parties have no more than seven (7) days after the Report's adoption to receive a signed copy.[76]

3.2.4 Appellate Body

[62] Ibid.
[63] Art 19(4)
[64] United Nations Business and Human Rights (UNBHR), Art 1.
[65] Art 11.
[66] Ibid.
[67] Ibid, Art. 13(2).
[68] Ibid, Art. 13(3).
[69] Ibid, Art 14(4).
[70] Ibid, Art 14(6).
[71] Ibid, Art 14(7).
[72] Ibid, Art 19(1).
[73] Ibid, Art 19(2).
[74] Ibid, Art 19(1) & (2).
[75] Art 19(4)
[76] Art 19(5)

The Appellate Body (AB) is established by the DSB to hear appeals from the panels. Its composition is seven (7) persons, three of whom shall serve in a case.[77] Members of AB serve a four (4) year renewable term, and they should not be affiliated with any government.[78] Parties to the dispute and Third Parties with a substantial interest in the matter under consideration may also appeal, subject to their complaints in Article 13(2) of the Dispute Protocol. The proceedings of the AB would not go beyond 60 days except in special cases and with the approval of the DSB. In that case, the proceeding may be extended to 90 days.[79]

3.3 Alternative Dispute Resolution Methods under the AfCFTA Agreement

The DSM under the Agreement recognizes ADR methods such as consultation, good offices, conciliation, mediation, and arbitration.

3.3.1 Consultation

The Agreement makes use of consultation to ensure the peaceful resolution of disputes by State Parties. Each State Party considers others and strives to make the environment conducive for peaceful resolution.[80] Opportunities for consultation should be mutually given by the disputing parties.

If Disputing State Parties are ready to resolve the dispute by mutual discussion, the DSB would be informed of the readiness in writing through the Secretariat, while reasons should be stated for the request.[81] Issues should be identified, and the legal basis for the complaint must be stated.[82] The implication of this is that the State Parties agree to make use of the Consultation for dispute resolution. State Parties have ten (10) days to mutually agree to consultation.[83] In that way, the option of consultation has been set aside, and the DSB takes over the dispute settlement by setting a Panel. Unless by an agreement, consultation would conclude within 60 days of its commencement.[84]

The Agreement provides that, as a dispute resolution strategy, consultation should be confidential and non-derogatory to the rights of the State Party.[85] The implication of this is that the outcome of the consultation should be treated with utmost confidentiality and good faith so as not to jeopardize the rights of the other disputing Party. [86] The maximum period for the settlement of any dispute by consultation is 60 days, after which the matter may be referred to the DSB. The seat of consultation may be in the territory of the complaining Party unless otherwise agreed.[87]

he rule for consultation perishable goods is reduced from 30 to 10 (10) days, while the dispute must have been settled not later than twenty (20) days, failing which the complaining party may call on the DSB to establish a panel.[88]

3.3.2 Good Offices

This is a dispute resolution method which is of international disputes. In this procedure, a Third-Party State, with the agreement of the disputing parties, serves as an intermediary to convince the parties to negotiate and settle the matters between themselves, at their terms and

[77] Art 20(2)
[78] Art 20(4)
[79] Art 21(2)
[80] Art. 7(2), AfCFTA
[81] Ibid, Art 7(3).
[82] Ibid.
[83] Ibid, Art 7(5).
[84] Ibid, Art 7(9).
[85] Ibid, Art. 7(7).
[86] Ibid, Art 7(8).
[87] Ibid.
[88] Ibid, Art 7 (9) (b).

without its intrusion.[89] Treaties and international conventions recognize the use of 'good offices' as a means of peacefully resolving international disputes.[90] 'Good offices' come immediately after consultation, and it is immediately followed by mediation, as it stops where mediation commences. Sometimes, good offices and mediation are hardly distinguishable, as both involve the intervention of a third party.[91] The Pact of Bogota states that: [92]

> *The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens which is not a party to the controversy, to bring the parties together, to make it possible for them to reach an adequate solution between the parties.*

Good Offices stop the formal and direct resumption of direct negotiations, which happens when the dispute has been submitted to a neutral party by mutual agreement of the parties.[93]

'Good Offices' came into legal literature in *Schooner Exchange v McFaddon* [94]when the term was first used to describe a dispute resolution technique. Good Offices end at the point when the parties' negotiations begin. In the peaceful resolution of conflicts, Good Offices do not become involved in the negotiation; its duty is to bring parties together. The difference between Good Offices and mediation is thin. While 'Good Offices' brings parties together for peaceful resolution, without participation in the negotiation, parties to mediation are required to submit their complaints to the third party, who complain to submits it to the third-party negotiator.[95] Hence, in Good Offices, the third party's role is limited to bringing the disputing parties together; in mediation, the third party conducts the negotiation.[96]

3.3.3 Mediation

This method resolves disputes between parties through the intervention of a neutral party. The dispute is settled outside the court. The findings of the mediation are not binding on the parties but may be considered towards their eventual resolution.

Though related, mediation and conciliation are different in some ways. First, in mediation, a third party assists in dispute resolution, whereas an expert is appointed for dispute settlement.[97] Furthermore, mediation requires confidentiality and trust, whereas the confidentiality of the conciliator is a product of the statute or treaty. A mediator is also a facilitator and an evaluator.

[89] Sompong Sucharitkul, 'Good Offices as a Peaceful Means of Setting Regional Differences' In Peter Sanders (ed), *International Arbitration* (Martinis Nijhoff, 1967) 338- 347 < https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1549&context=pub accessed 17 March 2025.

[90] Pact of Bogota. April 30, 1948.

[91] Ibid, 340.

[92] Pact of Bogota, Art IX.

[93] Ibid, Art X.

[94] 11 US (7 Crunch) 116 (1812) < https://tile.loc.gov/storage-services/service/ll/usrep/usrep011/usrep011116/usrep011116.pdf> accessed 12 April 2025.

[95] Ibid

[96] 11 US (7 Crunch) 116 (1812)

[97] Amrisha Jain, 'Difference between Mediation and Conciliation' *Mediation and Arbitration Centre.* < https://viamediationcentre.org/readnews/MjAz/Difference-between-Mediation-and-Conciliation> on 16 March 2024

The AfCFTA recognizes both mediation and conciliation as ADR tools in dispute resolution.[98]

3.3.4 Conciliation

Conciliation as an ADR is available in the AfCFTA Agreement. It is a dispute settlement procedure that is friendly and non-antagonistic, but it is done through an independent third party called the conciliator.[99] who does not give a judgment or an award, like the arbitrator, but can offer an opinion to the parties that could aid in the settlement of the disputes.[100] It is more formal than the mediator, who also does not give a judgment or an award. Conciliation as an ADR is amply provided for in Nigeria's municipal laws (the Arbitration and Conciliation Act[101] and Trade Disputes Act.[102])

3.3.5 Arbitration

Rather than referring their dispute to the DSB, the parties may decide on arbitration. The moment the decision to resort to arbitration is made, the matter can no longer go through the DSB. However, notice of the intention to opt for arbitration is conveyed to the DSB.[103] Third Parties may only join in the arbitration if the disputing parties concede to it. Parties who opt for arbitration must accept its outcome.[104] However, if any of the parties disagrees with the outcome of the AP, the DSB will reconsider and determine the case. The arbitration award will be implemented in line with Articles 24 and 25 of the Protocol.

4. Challenges to Dispute Resolution Under AfCFTA

4.1 Harmonization of Private Law with Domestic Laws

The AfCFTA comprises 55 countries and more than 1.3 billion people.[105] It comes second to the World Trade Organization (WTO). Given AfCFTA's enormous potential for economic growth in African markets, Orji Uka[106] suggests that many disputes that will necessarily arise from its implementation should be addressed by provisions of the private international law. The legal diversity and plurality in Africa have necessitated this suggestion. The non-harmonization of the private international law in Africa with local legislations and judicial systems has also been noted to be a great obstacle to regional economic integration in Africa, and it has been the bane of the previous efforts in this regard.[107] It is contended that the adoption of the doctrine of *lex situs* would allow disputes from AfCFTA

[98] Protocol on Rules and Procedure for Settlement of Disputes, Art 8.

[99] Pon Staff, 'What are the Three Basic Types of Dispute Resolution? What to Know about Mediation, Arbitration and Litigation' (Blog, 26 December 2025) < https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation/ > accessed 18 March 2025.

[100] Cap A18, Laws of the Federation of Nigeria 2004, Ss 37 - 42

[101] Cap 18 LFN2004

[102] Cap T8, LFN 2004, S. 69

[103] Art 27 (3)

[104] Art 27 (5)

[105] Orji Uka, 'Cross Border Dispute Resolution under AfCFTA: A call for the Establishment of a Pan-African Harmonized Private International Legal Regime to Actualize Agenda 2063. *Law Digest Journal Spring* 2020 < https://conflictoflaws.net/2020/cross-border-dispute-resolution-under-afcfta-a-call-for-the-establishment-of-a-pan-african-harmonised-private-international-legal-regime-to-actualise-agenda-2063/ accessed 19 March 2025.

[106] Ibid

[107] Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for Greater Attention' (2006) 55(4) *Law Quarterly* 912-0-928 < https://www.research.lancs.ac.uk/portal/en/publications/private-international-law-and-the-african-economic-community--a-plea-for-greater-attention(24e0501e-e331-40e4-8d35-07709a9745cc).html> accessed 19 March 2025.

to be resolved by the law of the place where the trade infraction occurred.[108] The doctrine allows the use of the laws of origin of the cause in its resolution. It allows the harmonization of domestic laws to the interpretation and application of international treaties and pacts.[109]

4.2 Effect on the Industrial Sector

Another major challenge that the stakeholders have noticed is the effect the African common market would have on the local industrial sector. The fear is real for a country like Nigeria and a giant player in the AfCFTA Agreement because of its "weak non-oil export capacities, infrastructure deficits and a host of other trade-related shortcomings".[110]

It has been further contended that Nigeria's membership of the continental body will expose its soft side of the economy, especially the non-oil sector, which is largely undeveloped, to competition from other State Parties.[111] A central argument is that if the market is deregulated and competition from other African countries is allowed, what will be the fate of the local industries? Although tariff concessions have been suggested as palliatives to local inclusions, these should be based on country-specific trade-offs.[112] Doing these promises a drastic reduction in potential trade disputes among the State Parties and other Third-Party interests.

Experiences could be drawn from the challenges inherent in the operation of the WTO since its inception. First, the AfCFTA Agreement is rules-based. Its panels are special courts operating on a complex system of rules for hearing disputes. Its most significant drawback is that only State Parties could file complaints, and that most members, especially developing nations, do not have the requisite knowledge and expertise for complex legal and rules-based proceedings under the world body, and they lack sufficient resources to pay for external WTO lawyers to handle the litigation.[113] WTO Dispute Settlement System (DSS) is, therefore, outrightly expensive and complicated. It is, therefore, unattainable for developing countries to access the human and financial requirements of the process.[114]

A look at the costs of litigation in the Japan and United States' case on Measures Affecting Consumer Photographic Film and Paper reportedly cost the parties an amount exceeding 10 million US Dollars.[115] The amount involved in the legal tussle was enormous and could be beyond the affordable limit of developing countries. Many State Parties in AfCFTA are developing countries that could not afford expensive legal fees and are lacking in legal knowledge, technical expertise, and experience

[108] Ibid

[109] Ibid

[110] Nigerian Economic Summit, Economic Implications of the African Continental Free Trade Agreement (AfCFTA) on the Nigerian Industrial Sections (The Summit House,).<https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf> accessed 3 March 2024.

[111] Ibid

[112] Ibid

[113] Nottage Hunter, 'Developing Countries in the WTO Dispute Settlement System (CEG Working Paper, 2009/47) (2009) < https://www.econstor.eu/bitstream/10419/196308/1/GEG-WP-047.pdf> accessed 19 March 2025.

[114] Ibid.

[114]World Trade Organisation. Dispute Settlement DSS 44-Japan: Measures Affecting Consumer Photographic Film <https: www.wto.org/English/tratop_/dispute/cases_e/ds44_ehtm > accessed 19 March 2025.

[115] Ibid.

to undertake a litigation like that of America and Japan. [116]

The AfCFTA is different from the WTO in its DSU by not distinguishing the status of the State Parties. Moreover, all its members belong to the WTO's categorization of developing and least developed countries.[117] It is apt to state that the categorization of Member States based on their economic strength comes with advantages, as it could be harnessed for stronger trade relations among the group and extending aid and support for the developing and least developed nations. The categorization affords the developing countries opportunities for Special and Differential Treatment.

4.4 Enforcement of Rulings of DSM

Although ample provisions have been made for the AfCFTA Court and Tribunals (DSB, Panel, and Appellate Body), none of these appear to have the power to enforce their ruling against a Member State. Its Protocol states clearly that the acceptance of the recommendations and rulings of the DSB is persuasive.[118] The Enforcement of the rulings is by persuasion within 30 days of the ruling. If a State Party does not agree to the ruling, the DSB is powerless, pending the commencement of arbitration.[119] Article 24 provides for deadlines, failing which the DSB or the Secretariat will not be able to take any binding action, should the State Party concerned insist on non-performance.

It appears the action(s) available to the Member States to enforce the decisions of the DSB or the Arbitration are through compensation, suspension of concessions, and stoppage of other obligations in the interim.[120] The request for the payment of compensation or withdrawal of concessions and obligations appears to be the highest that the State Parties could exact. This situation is understandable in that the AfCFTA deals with sovereign nations that are State Parties. Hence, the erring State Party could only be given trade sanctions, withdrawal of concessions, and an obligation if it neglects its duty, to the detriment of other Parties. This appears to be a setback for trade organizations. Given the diversity of African nations, the challenges of enforcing the DSM constitute threats to the success of AfCFTA.

4.5 Lack of Domestic Dispute Settlement Mechanisms

State Parties may not be able to use the DSM of AfCFTA because many of them do not have domestic mechanisms to identify and resolve trade barriers. Domestic legislation in some of these countries does not align with the DSM. Hence, it is difficult for the State Parties who do not possess adequate skills, finance, and legal knowledge to put forward a case, defend it, and expect success at the DSB. In Nigeria, for example, its municipal laws on dispute settlement (through courts and ADR) do not envisage the complex DSM rules of AfCFTA. The Agreement sets up a dispute settlement system like the WTO. But unlike the world body with dichotomies, the AfCTA's membership is of the same category, with the possibility of enforcing the rulings of the DSB

[116] Ibid.

[117] L.N. Anyiwe and E. Ekhator, 'Developing Countries and the WTO Dispute Resolution System. A legal Assessment and Review' (2012) 2(1), *Afe Babalola University Journal of Sustainable Development and Policy.* 121-128 <https://www.ajol.info/index.php/jsdlp/article/view/122604/112152> accessed 19 March 2025.

[118] Art 24 on Protocol on Rules.

[119] Ibid, Art 24 (3) (c).

[120] Ibid, Art 25(1).

through economic/political sanctions appearing remote.

4.6 Lack of Cultural and Economic Integration

The State Parties lack cultural and economic integration that could make the Agreement work and its DSM implementable. Stable economic growth and development could be fostered by a common currency.[121] Although Africa is strategizing to integrate an economic union by 2027, with a common currency,[122] regional communities like the West African Economic and Monetary Union (WAEMU) and *Communaute Economique et Monetaire del' Afrique Centrale* (Economic and Monetary Community of Central Africa (CEMAC)) have also tried to promote common currency, greater economic integration, and a common external tariff (CET) without success. As AfCFTA has just come on board, it is expected that it would be able to learn from these early efforts, foster greater economic and monetary integration with minimal disputes, capable of being resolved by its DSB. The 2027 harmonized currency system is salutary, and the impact of African trade integration on State Parties differs depending on their pre-AfCFTA trading activities with African countries. Nigeria's trading with African countries is low.[123] Nigeria is a market leader in Africa as its most populous nation. Its trading activities over the years have been largely with Europe, Asia, and North America. It was reported that between 2012 and 2018, only 9% of its trade was conducted with other African countries, whereas it conducted extensive trade with other regions. 40% and 30% of the trade within the same period was conducted with Europe and Asia, respectively, while 91% of the total international trade in Nigeria was done with nations outside Africa, notwithstanding that it was a member of a regional free trade zone, ECOWAS.[124]

It is hoped that if this is achieved, it will assist AfCFTA in achieving its mandate.[125]

4.7 Volume of Trade with African States

The above analysis implies that with the current AfCFTA regime, there must be an orientation shift, especially in trade in goods and services. The composition of the trade must equally change. It is currently skewed in favor of crude oil and primary goods.[126]

4.8 Political Instability and Insecurity

Peaceful dispute resolution under AfCFTA is also confronted with political instability and insecurity. Threats of terrorism, banditry, cross-border crimes, drug trafficking, human trafficking, money laundering, piracy, illicit mining, wildlife poaching, and oil theft, among others,[127] stand in the way of the success of the AfCFTA dispute resolution mechanism. Other security challenges include advanced fee fraud, armed robbery, theft,[128] corruption, and bad governance. Military coups have the potential

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[121] The case of European Union is an example.

[122] F. Mangeni & J. Attah-Mensah, *Existential Priorities for the African Continental Free Trade Area* (United Nations Economic Commission for Africa, 2022), 13-32 < https://repository.uneca.org/handle/10855/47860> accessed 19 March 2025.

[123] National Economic Summit Group, 'Economic Implications of the African Continental Free Trade Agreement (AfCFTA) on the Nigeria Industrial Section'(Supra).

[124] Ibid

[125] D. Garba & W.A. Alexander, 'The Challenges of Regional Integration and Effective Implementation of African Continental Free Trade Area (AfCFTA) Policy in Africa', (2023) 16(2) *AJPAS* 712-734 < https://www.ajol.info/index.php/ajpas/article/view/260420/245856> accessed 19 March 2025.

[126] Ibid

[127] Garba & Alexander, (Supra).

[128] D. Garba & W.A. Alexander, 'African Union single passport: The challenges' (2021) 7(1) *CUJPIA,* 13559 –

to negate amicable dispute resolution. The recent withdrawal of Burkina Faso, Niger, Guinea and Mali from ECOWAS,[129] a regional economic body exemplifies the effect of political instability. The withdrawal of the States was a failure of the dispute resolution mechanism under ECOWAS. The States resisted the sanctions imposed on them by other State Parties, which had no alternative but to re-open their border and lift the sanctions.[130] Furthermore, the spate of violence and insecurity in most parts of Africa for varying causes is a challenge to DSM under AfCFTA. In Nigeria, rural conflicts between the pastoralists and farmers and other violent conflicts have posed serious threats to food security in Sub-Saharan Africa. [131] The object of the AfCFTA is to create a free trade area for the continent. This cannot be actualized in the face of violence and famine. The response of the Nigerian Government, being the largest market in Africa, to these has been criticized as lukewarm.[132]

Conflicts have large social and economic costs, with negative impacts on the realization of developmental goals, which include poverty and hunger, poor educational attainment, increased child mortality, and lack of access to essential services.[133] In economic terms, conflicts lead to a reduction in tax revenue, increasing public debt and expenditure on security, which undermine macroeconomic stability and long-term growth.[134]

5. Conclusion

5.1 Summary

The dispute resolution mechanism under the AfCFTA is comprehensive and complex. Its focus, like the WTO, is the resolution of disagreements through legal contest. Its implementation, therefore, requires extensive training and a full understanding of the operations of the bodies it creates in the adjudicatory process. Compared to the WTO, which provides for the dichotomy between developed and developing nations based on the privileges and assistance that could be accessed, AfCFTA does not distinguish the

13572 < https://journals.covenantuniversity.edu.ng/index.php/cujpia/article/view/2606> accessed 19 March 2025.

[129] Timothy Obiezu, 'Analysts examine implication of African states' exit from ECOWAS' (VOA, Jan 29, 2024. < https://www.voanews.com/a/analysts-examine-implications-of-african-states-exit-from-ecowas/7461968.html > accessed 9 March 2024.

[130] African Business, 'Nigeria Re-open Borders with Niger as ECOWAS boundary Isolation Strategy' < https://african.business/2024/03/politics/nigeria-reopens-borders-with-niger-as-ecowas-abandons-isolation-strategy> accessed 16 March 2024.

[131] James Muriuki & Daren Hudson, 'The impact of conflict on food security, evidence from household data in Ethiopia and Malawi'https://agricultureandfoodsecurity.biomedcentral.com/articles/10.1186/s40066-023-00447-z accessed 16 March 2024.

[132] Amnesty International, 'Nigeria: Government failings leave rural communities at the mercy of gumnut' August 24, 2020, Press Release' < https://www.amnesty.org/en/latest/press-release/2020/08/nigeria-government-failings-leave-rural-communities-at-the-mercy-of-gunmen/> accessed March, 2024.

[133] Institute for Economics Peace, 'Global Terrorism Index 2024'< https://www.economicsandpeace.org/wp-content/uploads/2024/02/GTI-2024-web-290224.pdf> accessed 19 March 2025.

[134] International Monetary Fund, 'The African Continental Free Trade Area: Potential Economic Impact and Challenges. (IMF,2020) < International Monetary Fund. The African Continental Free Trade Area: Potential Economic Impact and Challenges (IMF,2020) < https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2020/05/13/The-African-Continental-Free-Trade-Area-Potential-Economic-Impact-and-Challenges-46235> accessed 10 March 2024.

membership status of the members. This implies that all State Parties, irrespective of their economic position, political stability, security, or poverty, are expected to fulfill the same obligations under the Agreement.

5.2 Findings

State Parties are mostly deficient in using the Protocol on Dispute Resolution because many of them do not have domestic mechanisms to identify and use the complex DSB. Like its predecessor (WTO), upon which it is patterned, the AfCFTA DSB requires specialized skills and training to be realized.

It models the WTO's Dispute Settlement Understanding and adopts its GATT Rules. It takes into cognizance the diversity of the State Parties and the need for the peaceful resolution of disputes. It is a newly introduced Protocol, the effectiveness of which has not been tested by the practical realities of trade relations. In its ADR section, it emphasizes the use of consultation, good offices, mediation, conciliation, and arbitration.

Its complex bodies have not been known to regional bodies in Africa (ECOWAS, SEMAC, and EAC). Although innovative and dynamic, it has not been put into practice, The State Parties needed to learn from WTO's DSU, highlight its achievements, and underscore its weaknesses.

AfCFTA promises accelerated developments for international trade co-operation in Africa; its aim and objectives are applaudable, but there is a need to pay attention to the economic peculiarities of the Parties. While some of them have good GDP, many battle with poverty, unemployment, infrastructural deficits and corruption, and insecurity.

5.3 Recommendations

The dispute resolution protocol requires high-level expertise in its operation. This is not available in most of the Member States. However, just like the assistance for developing nations under the WTO, the African Union should rise to the occasion by providing training grants and aid to less developed members for the purpose of human and technical empowerment.

In view of the diversity of cultures, religions, and values in Africa, there is a need for the development of private international law to aid the implementation of the DSM under the Agreement. Doing this will resolve the challenges of conflicts of laws and promote trade facilitation.

Although some regional trade and economic groups have attempted a common tariff and same currency like the European Union, this has not worked due to several factors such as cultural differences, economic disparities, mutual suspicion, and political instability in Africa. It is, however, recommended that for a seamless implementation of the Agreement, these should be done as proposed. The strategies to actualize these by the year 2063, proposed for the harmonization of the common tariffs and the same currency, require immediate implementation if the deadline is to be met. To promote ease of implementation of the treaty, common tariffs, reduction of technical and non-technical barriers to trade in goods and services, and use of currency across the continent are advocated. This will foster trade relations and promote unity amidst diversity.

National and regional insecurities, especially in Sub-Saharan Africa, constitute a major threat to cross-country trades in goods and services. It is recommended that the AU pay particular attention to the resolution of the security challenges for continental trade to achieve its objectives.

A bane to national and international trade in Nigeria is corruption. This cuts across Africa. It is recommended that at the national, regional, and continental levels, serious attention should be paid to addressing the menace.