

REGIONALISM AND LEGAL INTEGRATION IN AFRICA: THE ROLE OF DISPUTE SETTLEMENT UNDER THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

Collins E Daniel *

Abstract

The African Continental Free Trade Area (AfCFTA) is a landmark initiative aimed at deepening regional economic integration through a rules-based continental trade regime. Central to this framework is the Dispute Settlement Mechanism (DSM), established to ensure the consistent interpretation, application and enforcement of AfCFTA obligations. This article examines the role of the AfCFTA DSM in advancing legal integration within Africa's fragmented regional trade architecture. Adopting a doctrinal and comparative methodology, it analyses the legal framework of the AfCFTA DSM alongside the dispute settlement systems of the World Trade Organization (WTO) and the International Centre for Settlement of Investment Disputes (ICSID). The article argues that although the DSM provides an important institutional foundation for legal integration, its effectiveness is constrained by jurisdictional fragmentation, enforcement challenges, sovereignty concerns, and uneven State participation. It contends that the mechanism nevertheless possesses significant potential to foster interpretative coherence, strengthen compliance, and contribute to the development of African trade jurisprudence. It concludes that the DSM can serve as a cornerstone of Africa's evolving legal and economic integration project. The article recommends the operationalisation of the appellate mechanism, clarification of relations with regional economic community tribunals, and targeted capacity-building for State Parties.

Keywords: *AfCFTA, Dispute Settlement, Legal Integration, Regionalism, Trade Governance.*

1. Introduction

The emergence of the African Continental Free Trade Area Agreement (AfCFTA) marks a transformative moment in the evolution of international economic law in Africa. As the most ambitious integration project on the continent since the establishment of the African Union, the AfCFTA seeks to create a single market for goods and services, facilitate the free movement of capital and persons, and lay the foundation for a continental customs union.¹ Beyond its economic aspirations, however, the AfCFTA represents a deliberate shift towards a rules-based system of governance, in which legal norms rather than political expediency structure regulate economic relations.²

* PhD Candidate in Law, Rivers State University, Port Harcourt (Nigeria); FCARB, FDRI, Researcher in International Law. collinsedaniel@yahoo.com, collinsedaniel56@gmail.com; +2348037075805

¹ Agreement Establishing the African Continental Free Trade Area (2018), (AfCFTA Agreement) art 3(a)–(c).

² O Akinkugbe, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment' (2020) 28 African Journal of International and Comparative Law 138.

A central, though often underappreciated, pillar of this rules-based architecture is the Protocol on Rules and Procedures on the Settlement of Disputes, which establishes the AfCFTA Dispute Settlement Mechanism (DSM)³. Modelled in significant respects on the system of the World Trade Organization (WTO), the AfCFTA DSM is designed to provide a structured, predictable, and legally binding framework for the resolution of disputes arising under the Agreement.⁴ Its institutional design featuring a Dispute Settlement Body, panels, and an Appellate Body reflects an intention to replicate the relative success of the WTO's Dispute Settlement Understanding (DSU) in fostering compliance and legal certainty within a multilateral trade regime.⁵

Notwithstanding this institutional ambition, the effectiveness of the AfCFTA DSM must be assessed against the broader structural realities of African regionalism. For decades, Africa's integration landscape has been characterised by a proliferation of Regional Economic Communities (RECs), including Economic Community of West African States (ECOWAS), South African Development Commission (SADC), and Common Market for Eastern and Southern Africa (COMESA), many of which possess their own dispute settlement mechanisms and overlapping legal obligation.⁶ This multiplicity of regimes has generated fragmentation, normative inconsistency, and jurisdictional ambiguity, thereby undermining the coherence of trade governance on the continent.⁷ In this context, the AfCFTA DSM is not merely a procedural innovation: it is a potential instrument for legal integration, capable of harmonising interpretations, consolidating jurisprudence, and reducing institutional duplication.⁸

Yet, the capacity of dispute settlement mechanisms to drive legal integration is neither automatic nor guaranteed. Comparative experience from the WTO and investor–state arbitration under the International Centre for Settlement of Investment Disputes (ICSID) demonstrates that while adjudicatory bodies can enhance predictability and compliance, they are also shaped and often constrained by political, institutional, and normative factors.⁹ The paralysis of the WTO Appellate Body, for example, underscores the fragility of even the most sophisticated dispute settlement

³ Protocol on Rules and Procedures on the Settlement of Disputes (AfCFTA DSM Protocol) arts 1–3.

⁴ Understanding on Rules and Procedures Governing the Settlement of Disputes (1994), (DSU), arts 3(2), and 23.

⁵ JH Jackson, *The World Trading System: Law and Policy of International Economic Relations* (2nd edn, MIT Press 1997) 109–113.

⁶ African Union, *Agenda 2063: The Africa We Want* (2015), paras 10–15; Revised Treaty of the Economic Community of West African States (ECOWAS) 1993, art 4; Treaty Establishing the Common Market of Eastern and Southern Africa (COMESA) 1993, art 3.

⁷ J Pauwelyn, *Bridging Fragmentation and Unity: International Law as a Universe of Interconnected Islands* (2004) (25) *Michigan Journal of International Law* 903.

⁸ JT Gathii, *African Regional Trade Agreements as Legal Regimes* (Cambridge University Press 2011) 1 – 33.

⁹ ML Busch and E Reinhardt, 'Developing Countries and GATT/WTO Dispute Settlement' (2003) (37) *Journal of World Trade* 719; G Van Harten, *Investment Treaty Arbitration and Public Law* (Oxford University Press 2007) 58–63.

system.¹⁰ Likewise, the jurisprudence of investment tribunals reveals ongoing tensions between investor protection and state regulatory autonomy, particularly in cases such as *Philip Morris v Uruguay*.¹¹

Against this backdrop, this article interrogates the role of the AfCFTA DSM in advancing legal integration in Africa. It seeks to answer three interrelated questions. First, to what extent can the AfCFTA DSM promote the uniform interpretation and application of trade rules across a fragmented regional landscape? Second, what institutional, political, and structural challenges may limit its effectiveness? Third, how does the AfCFTA DSM compare with established models of dispute settlement in international economic law, particularly those of the World Trade Organization and the International Centre for Settlement of Investment Disputes?

Methodologically, the article adopts a doctrinal and comparative approach. It undertakes a close analysis of the legal texts underpinning the AfCFTA DSM, supplemented by a comparative examination of jurisprudence and institutional practice from the WTO and ICSID systems.¹² In addition, it draws on emerging case law from African regional courts and tribunals to assess the practical realities of dispute settlement within the continent.¹³

The central argument advanced in this article is that while the AfCFTA DSM provides a necessary legal infrastructure for regional integration, its ability to function as an engine of legal integration remains contingent on several critical factors. These include the operationalisation of its appellate mechanism, the resolution of jurisdictional tensions with existing REC tribunals, the enhancement of state capacity to engage in complex litigation, and the cultivation of political will among member states to comply with adverse rulings.¹⁴

2. Conceptual and Theoretical Framework

A critical examination of the dispute settlement mechanism under the African Continental Free Trade Area Agreement (AfCFTA) requires a clear conceptual understanding of the relationship between regionalism, legal integration, and adjudication in international economic law. These concepts are not merely descriptive: they provide the analytical lens through which the effectiveness of the AfCFTA dispute settlement mechanism (DSM) can be properly assessed.

¹⁰ J Pauwelyn, *WTO Dispute Settlement Post 2019: What to Expect?* (2019) 22 *Journal of International Economic Law* 297 – 321.

¹¹ *Philip Morris Brands Sàrl v Oriental Republic of Uruguay* ICSID Case No ARB/10/7 (Award), 8 July 2016) paras 287–306.

¹² *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* 1965 (ICSID Convention), arts 25 and 53–54.

¹³ KJ Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton University Press 2014) 74–79.

¹⁴ M Elsig, 'Legalisation in Context: The Design of the WTO Dispute Settlement System' (2017) 19 *The British Journal of Politics and International Relations* 304.

Regionalism, in its contemporary form, refers to the institutionalised cooperation among geographically proximate States aimed at promoting economic integration and regulatory coordination.¹⁵ While the multilateral trading system, embodied in the World Trade Organization, seeks to establish universal rules governing international trade, regional arrangements reflect more localised economic priorities and political realities.¹⁶ In Africa, regionalism has historically been pursued through a network of regional economic communities (RECs), including ECOWAS and the East African Community, each with distinct legal and institutional frameworks. However, rather than producing coherent integration, this multiplicity of regimes has generated a fragmented legal order characterised by overlapping memberships, conflicting obligations, and competing dispute settlement mechanisms.¹⁷ The resulting complexity has often undermined legal certainty and weakened the overall effectiveness of trade governance on the continent.

The AfCFTA represents an attempt to move beyond this fragmented model by establishing a continent-wide framework capable of consolidating and harmonising existing regional arrangements. In this regard, it reflects a broader shift towards what has been described as deeper or ‘second-generation’ regionalism, which extends beyond tariff liberalisation to encompass regulatory convergence and institutional development.¹⁸ Such an approach necessarily implicates the concept of legal integration, which constitutes a central objective of the AfCFTA project.

Legal integration, in this context, refers to the process through which legal norms across different jurisdictions are aligned, harmonised, or unified in order to facilitate predictability, coherence, and uniform application.¹⁹ It is not a monolithic process but rather occurs along a spectrum. At one end lies harmonisation, where States adopt similar legal standards while retaining formal sovereignty; at the other lies supranational integration, where centralised institutions possess the authority to interpret and enforce binding rules.²⁰ Between these poles lies a more gradual process of convergence, often driven by judicial interpretation and institutional practice. The experience of the European Union illustrates how adjudicatory bodies can play a transformative role in this regard, as the jurisprudence of its court system has been instrumental in embedding uniform legal principles within diverse domestic systems.²¹ Although the African context differs significantly in terms of institutional capacity

¹⁵ B Hettne, ‘Beyond the “New” Regionalism’ (2005) 10(4) *New Political Economy* 543, 543 – 550.

¹⁶ World Trade Organization, *World Trade Report 2011: The WTO and Preferential Trade Agreements* (WTO 2011) 58–62.

¹⁷ J Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford University Press 2008) 27–33; African Union, *Agenda 2063: The Africa We Want* (2015), paras 10–15.

¹⁸ R Baldwin, ‘21st Century Regionalism: Filling the Gap between 21st Century Trade and 20th Century Trade Rules’ (2011) WTO Staff Working Paper, ERSD – 2011 – 08, 6 – 9.

¹⁹ JHH Weiler, ‘The Transformation of Europe’ (1991) 100 *Yale Law Journal* 2403.

²⁰ JHH Weiler, *The Constitution of Europe: Do the New Clothes Have an Emperor? and Other Essays on European Integration* (Cambridge University Press 1999) 10–14.

²¹ A Stone Sweet, *The Judicial Construction of Europe* (Oxford University Press, 2004) 1 – 44.

and political commitment, the underlying insight remains applicable: legal integration is unlikely to be achieved without effective mechanisms for the authoritative interpretation and enforcement of legal rules.

It is within this analytical framework that the role of dispute settlement mechanisms becomes particularly significant. In international economic law, dispute settlement serves not only to resolve specific conflicts but also to clarify legal norms, promote compliance, and enhance the predictability of the legal system.²² The dispute settlement system of the World Trade Organization provides a useful illustration. Through its structured procedures and the development of a relatively coherent body of jurisprudence, it has contributed to the stabilisation of expectations among Member States and reinforced the rules-based character of the multilateral trading system.²³ Similarly, arbitration under the International Centre for Settlement of Investment Disputes has generated an extensive body of decisions that, notwithstanding concerns about inconsistency, has shaped the interpretation of investment treaties and influenced State behavior.²⁴

However, the integrative potential of dispute settlement mechanisms is contingent upon a number of interrelated factors. These include the degree of institutional independence, the existence of effective compliance and enforcement mechanisms, and the willingness of States to utilise and adhere to adjudicatory processes. In the absence of these conditions, dispute settlement bodies risk becoming marginal or ineffective. The experience of African regional tribunals underscores this point. While some have demonstrated a capacity to advance legal accountability, their broader impact has often been constrained by political resistance and weak enforcement structures, as illustrated by the suspension of the SADC Tribunal following its decision in *Mike Campbell v Zimbabwe*.²⁵

Against this backdrop, the AfCFTA DSM occupies a pivotal position within Africa's emerging trade architecture. Its potential contribution to legal integration lies in its capacity to provide a centralised forum for the resolution of disputes, to foster consistent interpretation of AfCFTA provisions, and to promote compliance through a rules-based process. Yet, as subsequent sections of this article will demonstrate, the extent to which this potential is realised will depend not only on its formal design but also on its practical operation within a complex and evolving regional landscape.

²² Weiler, 'The Transformation of Europe' (n19), 2413 – 2422.

²³ DSU (n4) arts 3(2) and 11; JH Jackson, *Sovereignty, the WTO and Changing Fundamentals of International Law* (Cambridge University Press 2006) 134 – 139.

²⁴ ICSID Convention (n12), arts 25(1), and 53 – 54; *CMS Gas Transmission Company v Argentina Republic* ICSID Case No ARB/01/8 (Award, 12 May 2005) paras 274–280.

²⁵ *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (2/2007) [2008] SADCT 2 (28 November 2008) paras 44 – 52 and 78 – 82.

3. Legal and Institutional Design of the AfCFTA Dispute Settlement Mechanism

The dispute settlement mechanism (DSM) established under the African Continental Free Trade Area Agreement constitutes a central pillar of its legal architecture. Conceived as a rules-based system for resolving disputes arising from the interpretation and application of the Agreement and its Protocols, the AfCFTA DSM reflects a deliberate effort to institutionalise adjudication within Africa's regional trade framework. Its design draws heavily from the model of the World Trade Organization, particularly the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), while incorporating features tailored to the African context.

3.1 Legal Basis and Normative Framework

The legal foundation of the AfCFTA DSM is established in the Protocol on Rules and Procedures on the Settlement of Disputes, which forms an integral part of the AfCFTA Agreement.²⁶ The Protocol defines its scope of application, jurisdiction, and governing principles. Specifically, article 3 provides that the mechanism applies to disputes concerning the rights and obligations of State Parties under the AfCFTA Agreement and its annexed Protocols.²⁷ Article 4 further emphasises that the prompt settlement of disputes is essential to the effective functioning of the Agreement, echoing the language of article 3(3) of the WTO DSU.²⁸

The Protocol also affirms that dispute settlement serves to preserve the rights and obligations of State Parties and to clarify the provisions of the Agreement in accordance with customary rules of interpretation of public international law.²⁹ This formulation closely mirrors article 3(2) of the WTO DSU and reflects an intention to anchor AfCFTA adjudication within the broader framework of general international law. Importantly, the Protocol discourages unilateral measures and requires State Parties to have recourse to the DSM in resolving disputes, thereby reinforcing its compulsory and exclusive character.³⁰

3.2 Institutional Structure

The institutional structure of the AfCFTA DSM is modelled on a two-tier adjudicatory system comprising the Dispute Settlement Body (DSB), panels, and an Appellate Body. The DSB, established under article 5 of the Protocol, is responsible for administering the rules and procedures of the DSM, including the establishment of panels, adoption of reports, and surveillance of implementation.³¹ Its

²⁶ AfCFTA DSM Protocol (n3), art 1(1).

²⁷ Ibid art 3(1).

²⁸ Ibid art 4; DSU (n4), art 3(3).

²⁹ Ibid art 3(2).

³⁰ Ibid art 3(7); DSU (n4), art 23(1).

³¹ Ibid art 5(1)-(3).

decision-making is generally guided by the principle of consensus, reflecting a similar approach under article 2(4) of the WTO DSU.³²

Panels constitute the first level of adjudication under the AfCFTA Dispute Settlement Mechanism. Where consultation fail to produce amicable resolution, a party to the dispute may refer the matter to the Dispute Settlement Body and request the establishment of a Panel.³³ Panel composition is governed by article 10, which requires the selection of independent and impartial individuals possessing relevant expertise experience.³⁴ The procedural framework for panel proceedings is governed by the protocol and its prescribed working procedures, which regulate written submissions and other aspects of the conduct of proceedings.³⁵ Panel reports are circulated to State Parties and, meetings and hearings, third party participation, subject to an appeal, are considered for adoption by the DSB in accordance with the procedures prescribed the protocol.³⁶

The Appellate Body, provided for under article 20 of the Protocol, constitutes the second tier of adjudication and is tasked with reviewing issues of law and legal interpretation arising from panel reports.³⁷ Its role is essential in ensuring consistency and coherence in the interpretation of AfCFTA provisions. The appellate process is further governed by article 21, which outlines procedures for the adoption of appellate reports by the DSB.³⁸ The design closely parallels articles 17 and 16(4) of the WTO DSU, underscoring the AfCFTA's reliance on established multilateral adjudicatory models.

3.3 Jurisdiction and Scope of Application

The jurisdiction of the AfCFTA DSM is explicitly limited to disputes between State Parties concerning the interpretation and application of the Agreement.³⁹ This is set out in article 3(1) of the Protocol and reflects a traditional State-to-State model of dispute settlement. Unlike arbitration under the International Centre for Settlement of Investment Disputes, which allows private investors to initiate proceedings directly against States, the AfCFTA DSM excludes private actors from direct participation.⁴⁰

The Protocol also addresses the issue of jurisdictional overlap with other dispute settlement mechanisms. Article 26 provides that where a dispute arises under both the AfCFTA Agreement and

³² DSU (n4) art 2(4).

³³ AfCFTA DSM Protocol (n3) arts 6(1), (2) and 9(1).

³⁴ AfCFTA DSM Protocol (n3), art 10(3)-(5).

³⁵ Ibid arts 9-12.

³⁶ Ibid art 19(1) and (4).

³⁷ AfCFTA DSM Protocol (n3), art 20(1)-(2).

³⁸ Ibid art 21(1)-(3); DSU (n4), arts 16(4), 17(13).

³⁹ AfCFTA DSM Protocol (n3), art 3(1).

⁴⁰ ICSID Convention (n12), art 25(1).

another international agreement, the complaining party may select the forum in which to bring the dispute, but once a forum is chosen, that choice is exclusive.⁴¹ This ‘fork-in-the-road’ provision seeks to prevent parallel proceedings and conflicting rulings, although its practical effectiveness will depend on how it is interpreted and applied in practice.

3.4 Procedural Framework

The procedural framework of the AfCFTA DSM follows a structured sequence beginning with consultations. Article 7 requires State Parties to enter into consultations in good faith with a view to reaching a mutually satisfactory solution.⁴² If consultations fail within the prescribed timeframe, the complainant may request the establishment of a panel under article 6.⁴³ Panel proceedings are conducted in accordance with the prescribed procedures under the protocol and applicable rules adopted to conduct proceedings.⁴⁴ Panels are required to make an objective assessment of the matter before them, including the facts of the case and the applicability and conformity with the relevant provisions of the Agreement.⁴⁵

Following the circulation of the panel report, parties may appeal issues of law to the Appellate Body under article 20.⁴⁶ The appellate process culminates in the adoption of the report by the DSB, rendering it binding on the parties.⁴⁷ The final stage of the process concerns implementation. Article 23 requires the losing party to bring its measures into conformity with its obligations within a reasonable period of time.⁴⁸ In cases of non-compliance, article 25 provides for compensation or the suspension of concessions as temporary measures pending full implementation.⁴⁹

3.5 Assessment of Institutional Design

The design of the AfCFTA DSM reflects a hybrid approach that combines elements of legalism and diplomatic flexibility. On the one hand, it establishes a structured, rule-based system with binding outcomes and clearly defined procedures. On the other hand, it retains features such as consensus decision-making and an emphasis on consultations, which preserve a degree of political control over the process. This balance may enhance the acceptability of the system among State Parties, but it may also constrain its effectiveness as an autonomous adjudicatory mechanism.

⁴¹ AfCFTA DSM Protocol (n3), art 26(1) – (3).

⁴² Ibid arts 6(1) and 7(1)-(4).

⁴³ Ibid art 6(2).

⁴⁴ Ibid arts 9(1), 10-12.

⁴⁵ Ibid art 12(2).

⁴⁶ AfCFTA DSM Protocol (n3), art 20(1).

⁴⁷ Ibid art 21(2)-(3).

⁴⁸ Ibid art 23(1)-(2).

⁴⁹ Ibid art 25.

The reliance on the institutional model of the World Trade Organization suggests an aspiration to replicate the relative success of the WTO DSM in promoting compliance and legal certainty. However, as subsequent sections will demonstrate, the effectiveness of such a system depends not only on its formal design but also on its practical operation and the broader political context in which it is embedded.

4. Comparative Analysis: The WTO Dispute Settlement System and ICSID Arbitration

A proper assessment of the dispute settlement mechanism (DSM) under the African Continental Free Trade Area Agreement (AfCFTA) requires situating it within the broader landscape of international economic adjudication. Two systems are particularly instructive in this regard: the dispute settlement system of the World Trade Organization (WTO) and investor–State arbitration under the International Centre for Settlement of Investment Disputes (ICSID). These regimes represent, respectively, the most developed models of State-to-State trade adjudication and investor–State dispute resolution. While the AfCFTA DSM borrows heavily from the former, the latter provides important comparative insights into questions of access, enforcement, and legitimacy.

4.1 The WTO Dispute Settlement System

The WTO dispute settlement system, governed by the Dispute Settlement Understanding (DSU), has been widely regarded as a highly developed mechanism for the adjudication of international trade disputes.⁵⁰ Its design featuring compulsory jurisdiction, binding rulings, and a two-tier adjudicatory structure has contributed to the predictability and stability of the multilateral trading system.⁵¹ The AfCFTA DSM closely reflects this architecture, particularly in its reliance on panels and an Appellate Body.

A defining feature of the WTO system is its contribution to the development of a coherent body of jurisprudence. In the United States – Standards for Reformulated and Conventional Gasoline (US–Gasoline), the Appellate Body affirmed that WTO agreements must be interpreted in accordance with customary rules of treaty interpretation, specifically articles 31 and 32 of the Vienna Convention on the Law of Treaties.⁵² This approach has been consistently applied in subsequent cases, reinforcing the normative coherence of WTO law.

Similarly, in European Communities – Measures Concerning Meat and Meat Products (Hormones) (EC–Hormones), the Appellate Body addressed the role of scientific evidence in trade regulation,

⁵⁰ Jackson (n5).

⁵¹ DSU, arts 3(2), 16(4), 17(1)-(6).

⁵² United States – Standards for Reformulated and Conventional Gasoline WT/DS2/AB/R (Appellate Body Report, 29 April 1996) 16–17.

holding that sanitary measures must be based on a risk assessment grounded in scientific principles.⁵³ This decision clarified the balance between regulatory autonomy and trade liberalisation, demonstrating the system's capacity to reconcile competing policy objectives.

In United States – Import Prohibition of Certain Shrimp and Shrimp Products (US–Shrimp), the Appellate Body further elaborated on the relationship between trade obligations and environmental protection.⁵⁴ While recognising the legitimacy of environmental measures under article XX of GATT 1994, it emphasised the requirement of non-discriminatory application. These decisions collectively illustrate how WTO adjudication contributes to the progressive clarification and development of international trade law.

Notwithstanding these achievements, the WTO DSM has encountered significant challenges in recent years. The paralysis of the Appellate Body, resulting from the failure to appoint new members, has undermined the finality of dispute settlement and raised concerns about the sustainability of the system.⁵⁵ This development underscores the dependence of adjudicatory mechanisms on continued political support and highlights a key vulnerability that the AfCFTA DSM must seek to avoid.

4.2 Investor–State Arbitration under ICSID

In contrast to the State-centric WTO model, arbitration under the International Centre for Settlement of Investment Disputes allows private investors to bring claims directly against host States. Established under the ICSID Convention, this system has become the principal forum for the resolution of international investment disputes.⁵⁶ Its jurisdiction is defined by article 25(1) of the Convention, which requires a legal dispute arising directly out of an investment between a contracting State and a national of another contracting State.

ICSID jurisprudence has significantly shaped the development of international investment law. In *Salini Costruttori SpA v Kingdom of Morocco*, the tribunal articulated a set of criteria for determining the existence of an investment, including contribution, duration, risk, and contribution to economic development.⁵⁷ These criteria often referred to as the ‘Salini test,’ have influenced subsequent interpretations of investment under the Convention.

⁵³ European Communities – Measures Concerning Meat and Meat Products (Hormones) WT/DS26/AB/R (Appellate Body Report, 16 January 1998) paras 180–193.

⁵⁴ United States – Import Prohibition of Certain Shrimp and Shrimp Products WT/DS58/AB/R (Appellate Body Report, 12 October 1998), paras 129–134, 153, 161–156.

⁵⁵ Pauwelyn (n10) 1.

⁵⁶ ICSID Convention (n12) art 25(1).

⁵⁷ *Salini Costruttori SpA and Italstrade SpA v Kingdom of Morocco* (Decision on Jurisdiction) ICSID Case No ARB/00/4 (23 July 2001), paras 52–58.

In *CMS Gas Transmission Company v Argentina*, the tribunal examined the scope of the fair and equitable treatment standard and the defence of necessity under customary international law.⁵⁸ It held that Argentina's measures during its economic crisis did not fully satisfy the requirements of the necessity defence, thereby affirming the binding nature of treaty obligations even in periods of economic distress.

Similarly, in *Philip Morris Brands Sàrl v Uruguay*, the tribunal addressed the tension between investment protection and public health regulation.⁵⁹ It upheld Uruguay's tobacco control measures as a legitimate exercise of regulatory authority, thereby reinforcing the principle that investment treaties do not preclude bona fide public interest regulation. This case is particularly significant in demonstrating the system's evolving sensitivity to public policy considerations.

Despite these contributions, ICSID arbitration has been subject to sustained criticism. Concerns have been raised regarding inconsistency in arbitral decisions, limited transparency, and perceived bias in favour of investors.⁶⁰ These critiques have prompted ongoing reform efforts at both bilateral and multilateral levels, including proposals for the establishment of a standing investment court.

4.3 Comparative Insights and Implications for the AfCFTA

A comparative analysis of the WTO and ICSID systems yields several insights relevant to the AfCFTA DSM. First, both systems demonstrate the importance of adjudication in generating interpretative clarity and promoting compliance. The jurisprudence of the World Trade Organization illustrates how a structured appellate process can foster coherence, while ICSID arbitration highlights the role of access in driving jurisprudential development.

Second, enforcement remains a central challenge across both systems. WTO rulings rely on compliance and authorised retaliation under articles 21 and 22 of the DSU, while ICSID awards benefit from a more robust enforcement mechanism under article 54 of the Convention, which requires domestic courts to recognise and enforce awards as if they were final judgments.⁶¹ The AfCFTA DSM, which adopts a model similar to the WTO, may therefore, encounter similar enforcement limitations, particularly in asymmetrical economic relationships.

Third, access to dispute settlement mechanisms significantly affects their utilisation and impact. The inclusion of private actors in ICSID arbitration has led to a substantial volume of cases and a rich body of jurisprudence, whereas the State-to-State nature of the WTO system has resulted in more selective

⁵⁸ *CMS Gas Transmission Company v Argentina*, ICSID Case No. ARB/01/8 (Award, 12 May 2005) paras 315–331.

⁵⁹ *Philip Morris Brands Sàrl v Uruguay* (n11) paras 287–306, 399–420.

⁶⁰ G Van Harten, *Investment Treaty Arbitration and Public Law* (Oxford University Press 2007) 121–127, 167–172.

⁶¹ DSU (n4), arts 21–22; ICSID Convention (n12), art 54(1)–(2).

engagement. The AfCFTA DSM's exclusion of private parties may limit its capacity to generate a similarly dynamic jurisprudence.

Finally, both systems underscore the importance of legitimacy and institutional resilience. The challenges faced by the WTO Appellate Body and the criticisms directed at ICSID arbitration demonstrate that legal design must be accompanied by sustained political and institutional support. For the AfCFTA, the long-term success of its DSM will depend on its ability to maintain both credibility and functionality within a complex and evolving regional context.

5. The Role of the AfCFTA Dispute Settlement Mechanism in Legal Integration

The establishment of a dispute settlement mechanism (DSM) under the African Continental Free Trade Area Agreement (AfCFTA) reflects an explicit recognition that legal integration requires more than the formal adoption of rules; it depends fundamentally on the existence of institutions capable of interpreting, applying, and enforcing those rules in a consistent and predictable manner. In fragmented regional systems, adjudication serves as a critical mechanism for bridging normative divergences and fostering coherence.

A central dimension of legal integration lies in the development of uniform interpretations of treaty provisions. In the absence of authoritative interpretation, identical legal rules may be applied divergently across jurisdictions, thereby undermining predictability. The experience of the World Trade Organization demonstrates how a structured adjudicatory framework can generate a relatively coherent body of jurisprudence, contributing to the stabilisation of expectations among member States.⁶² By adopting a comparable institutional design, the AfCFTA DSM is positioned to perform a similar function within the African context.

However, the realisation of this potential is contingent upon the operational effectiveness of its adjudicatory organs, particularly the Appellate Body. As WTO practice shows, appellate review is critical in ensuring consistency in legal interpretation. Without it, panel decisions may remain fragmented and inconsistent. This risk is particularly evident in the current challenges faced by the World Trade Organization Appellate Body, where the absence of a functioning appellate tier has led to uncertainty in dispute settlement outcomes.⁶³ For the AfCFTA, the operationalisation of article 20 of the Dispute Settlement Protocol is, therefore, central to achieving jurisprudential coherence.

Beyond interpretative consistency, the AfCFTA DSM contributes to legal integration by promoting compliance with agreed rules. Article 3(2) of the AfCFTA Dispute Settlement Protocol explicitly

⁶² Jackson (n5) 134-139.

⁶³ Pauwelyn (n10) 1.

provides that the system serves to preserve the rights and obligations of State Parties and to clarify the provisions of the Agreement.⁶⁴ This aligns with the broader function of dispute settlement in international economic law, where adjudication reinforces the binding nature of legal commitments. As Jackson argues, compliance in trade law is sustained not merely by coercion but by the internalisation of legal norms through repeated adjudicatory practice.⁶⁵

Nevertheless, enforcement within the AfCFTA framework remains structurally constrained. Like the WTO system, it relies on implementation and, in cases of non-compliance, the possibility of retaliation under articles 23–25 of the Protocol.⁶⁶ However, the effectiveness of such measures is often contingent on the relative economic power of the parties involved. Busch and Reinhardt demonstrate that developing countries may face disadvantage arising from limited market size and retaliatory power, thereby constraining their ability to secure favourable outcomes through dispute settlement.⁶⁷ This asymmetry raises concerns about the practical capacity of the AfCFTA DSM to ensure uniform compliance across diverse economies.

A further dimension of the integrative role of the AfCFTA DSM lies in its potential to address fragmentation within Africa's regional trade architecture. The coexistence of multiple regional economic communities (RECs), each with its own legal regime, has historically produced overlapping obligations and inconsistent interpretations. Gathii observes that African regional trade agreements often operate as parallel legal regimes rather than components of a unified system.⁶⁸ The AfCFTA DSM, by providing a centralised forum for dispute resolution, has the potential to mitigate these challenges by fostering convergence in legal interpretation.

However, the relationship between the AfCFTA DSM and existing REC tribunals remains legally complex. Article 26 of the Dispute Settlement Protocol introduces a forum selection rule designed to prevent parallel proceedings.⁶⁹ Yet, the absence of a clear hierarchical structure between AfCFTA and REC tribunals may still give rise to conflicting jurisprudence. Pauwelyn's analysis of fragmentation in international law demonstrates that overlapping jurisdictions often lead to inconsistent interpretations in the absence of coordination mechanisms.⁷⁰ This risk is particularly acute in the African context, where multiple regimes coexist without a clearly defined normative hierarchy.

⁶⁴ AfCFTA DSM Protocol (n3), art 3(2).

⁶⁵ Jackson (n5) 112-115.

⁶⁶ AfCFTA DSM Protocol (n3), arts 23-25.

⁶⁷ Busch and Reinhardt (n 9) 722.

⁶⁸ Gathii (n8) 1225.

⁶⁹ AfCFTA DSM Protocol (n3), art 26(1)-(3).

⁷⁰ Pauwelyn (n7) 1021.

The capacity of dispute settlement to drive legal integration must also be assessed in light of political realities. African States have historically exhibited caution towards binding adjudication, particularly where it may constrain domestic policy autonomy. The experience of the SADC Tribunal provides a notable illustration. In *Mike Campbell v Zimbabwe*, the Tribunal held that Zimbabwe's land reform measures violated treaty obligations relating to non-discrimination and access to justice.⁷¹ However, the subsequent suspension of the Tribunal underscores the limits of adjudicatory authority in the face of political resistance.⁷² This episode highlights the importance of political acceptance in sustaining the authority of dispute settlement mechanisms.

At the same time, there are indications of a gradual shift towards greater acceptance of legal adjudication within Africa. Alter notes that regional courts can, over time, cultivate compliance through incremental jurisprudence and institutional legitimacy.⁷³ The AfCFTA DSM may contribute to this process by normalising the use of dispute settlement and demonstrating its practical benefits in resolving trade disputes.

Another critical factor is institutional capacity. Effective engagement with dispute settlement processes requires technical expertise and financial resources, which may be unevenly distributed among State Parties. UNCTAD reports indicate that capacity constraints remain a significant barrier to participation in international dispute settlement for many developing countries.⁷⁴ Without targeted capacity-building measures, the utilisation of the AfCFTA DSM may remain limited, thereby reducing its integrative impact.

Finally, the exclusion of private actors from the AfCFTA DSM has important implications. Unlike arbitration under the International Centre for Settlement of Investment Disputes, where investors can initiate claims directly, the AfCFTA framework relies entirely on State-to-State dispute settlement.⁷⁵ While this approach preserves sovereignty, it may limit the number of disputes brought before the system and slow the development of jurisprudence. As Van Harten argues, access to adjudication is a key driver of legal development in international economic law.⁷⁶

In sum, the AfCFTA DSM has the potential to serve as a central mechanism for legal integration in Africa by promoting interpretative coherence, enhancing compliance, and addressing fragmentation.

⁷¹ *Campbell v Zimbabwe* (n25) paras 44-52, 102-108.

⁷² L Nathan, 'The Disbanding of the SADC Tribunal: A Cautionary Tale' (2013) 35(4) *Human Rights Quarterly* 870 – 876 – 877.

⁷³ Alter (n13) 74-79.

⁷⁴ UNCTAD, 'African Continental Free Trade Area: Design of Dispute Settlement Mechanism should reflect preferences and Realities of All its member States' UNCTAD Policy Brief No 105 (2023) 3.

⁷⁵ ICSID Convention (n12), art 25(1).

⁷⁶ Van Harten (n60) 58-63.

However, its effectiveness will depend on the resolution of key structural challenges, including enforcement asymmetries, jurisdictional overlap, institutional capacity, and political commitment. Without addressing these factors, the DSM may fall short of its integrative potential.

6. Challenges and Structural Limitations of the AfCFTA Dispute Settlement Mechanism

Notwithstanding its ambitious design, the dispute settlement mechanism (DSM) under the African Continental Free Trade Area Agreement faces significant structural, institutional, and political constraints that may affect its effectiveness in practice. These limitations reflect deeper tensions between sovereignty, capacity, and the demands of rules-based integration.

A primary challenge lies in institutional and administrative capacity constraints among State Parties. Effective participation in dispute settlement requires specialised legal expertise, financial resources, and institutional coordination. However, evidence suggests that many African States face significant limitations in trade law capacity. UNCTAD reports indicate that developing countries often lack the technical expertise and financial resources necessary to engage effectively in complex dispute settlement proceedings, particularly in trade and investment contexts.⁷⁷ This asymmetry creates an uneven playing field, where more resourced States are better positioned to initiate and defend claims.

Closely linked to this is the problem of underutilisation of adjudicatory mechanisms. Empirical studies of African regional courts reveal that many dispute settlement bodies remain underused despite their formal availability. Gathii notes that African regional tribunals have historically experienced low case volumes relative to their jurisdictional scope, limiting their capacity to generate jurisprudence and influence State behavior.⁷⁸ This pattern raises concerns that the AfCFTA DSM may similarly remain underutilized; thereby constraining its integrative potential.

Another significant constraint is the persistence of sovereignty sensitivities among African States. Despite formal commitments to binding dispute settlement, many States remain cautious about subjecting domestic regulatory measures to external adjudication. Howse observes that WTO dispute settlement has developed within the context of intense diplomatic and political contestation, institutional tension and competing conceptions of judicial authority.⁷⁹ This tension is evident in the

⁷⁷ UNCTAD (n74) 3.

⁷⁸ JT Gathii (ed), *The Performance of Africa's International Courts: Using Litigation for Political, Legal, and Social Change* (Oxford University Press 2020) 300 – 344.

⁷⁹ R Howse, 'The World Trade Organization 20 Years On: Global Governance by Judiciary' (2016) 27(1) *European Journal of International Law* 9 – 77.

broader international system, including within the World Trade Organization, where political considerations have increasingly shaped engagement with dispute settlement processes.⁸⁰

The enforcement architecture of the AfCFTA DSM presents a further limitation. Like the WTO system, enforcement relies on compliance and, where necessary, the authorisation of retaliatory measures. However, the effectiveness of retaliation is often constrained by economic asymmetry. Busch and Reinhardt demonstrate that weaker States are less able to impose meaningful trade sanctions, thereby reducing the deterrent effect of dispute settlement rulings.⁸¹ This limitation raises concerns about the practical enforceability of DSM decisions within the AfCFTA framework.

In addition, the coexistence of the AfCFTA DSM with existing regional economic community (REC) dispute settlement mechanism introduces jurisdictional complexity. Many African States belong to multiple RECs, each with its own legal framework. The AfCFTA seeks to coexist with these regimes rather than replace them, thereby creating potential for overlapping jurisdiction. The African Union's implementation framework acknowledges the need to coordinate between AfCFTA and REC legal systems, but does not fully resolve questions of hierarchy and precedence.⁸² This lack of clarity may lead to forum shopping and inconsistent jurisprudence.

The problem of fragmentation is further compounded by the absence of a fully operational appellate mechanism. While the AfCFTA Protocol provides for an Appellate Body under article 20, its effectiveness depends on actual operationalisation. Experience from the World Trade Organization demonstrates that the absence of a functioning appellate tier can significantly weaken the coherence of a dispute settlement system, as evidenced by the ongoing Appellate Body crisis.⁸³ Without appellate review, panel decisions may diverge, undermining predictability and legal certainty.

Another structural limitation relates to the exclusion of private actors from the AfCFTA DSM. Unlike arbitration under the International Centre for Settlement of Investment Disputes, where investors have direct access to dispute settlement, the AfCFTA framework is limited to State-to-State disputes. While this preserves sovereignty, it also reduces the volume of cases likely to be brought before the system. Van Harten argues that access to adjudication is a key driver of jurisprudential development, and limitations on access can constrain the evolution of legal norms.⁸⁴

⁸⁰ WTO, Annual Report 2023 (WTO 2023) 134–139.

⁸¹ Busch and Reinhardt (n 9) 58-63.

⁸² AfCFTA DSM Protocol (n3) Grt 26(1) – (3).

⁸³ Pauwelyn (n10) 1.

⁸⁴ Van Harten (n60) 167-172.

A further challenge lies in the broader political economy of regional integration. Trade disputes are often embedded within diplomatic and strategic considerations, leading States to prefer negotiated solutions over formal adjudication. While consultations are an integral part of dispute settlement, excessive reliance on diplomacy may weaken the authority of legal mechanisms. Alter notes that the effectiveness of international courts depends on a gradual process of legitimisation, which requires consistent use and acceptance by States.⁸⁵

Finally, legitimacy remains a central concern. The effectiveness of dispute settlement mechanisms depends on their perceived fairness, independence, and relevance. If State Parties perceive the DSM as biased or intrusive, they may be less willing to comply with its rulings. This concern is particularly relevant in the African context, where historical experiences with external legal systems have shaped attitudes towards international adjudication. Ensuring legitimacy will, therefore, require a careful balance between legal rigor and sensitivity to developmental priorities.

In sum, the AfCFTA DSM is constrained by capacity limitations, sovereignty concerns, enforcement weaknesses, jurisdictional fragmentation, and legitimacy challenges. These factors do not negate its potential significance, but they do highlight the need for careful institutional development and sustained political commitment.

7. Reform Options and Future Trajectories of the AfCFTA Dispute Settlement Mechanism

While the dispute settlement mechanism (DSM) under the African Continental Free Trade Area Agreement faces significant structural and operational challenges, these limitations do not foreclose its potential evolution into an effective instrument of legal integration. International adjudicatory systems are inherently dynamic, and their development is shaped by institutional practice, political commitment, and jurisprudential refinement.

A first and foundational reform concerns the operationalisation and strengthening of the appellate function. The existence of an appellate mechanism is central to ensuring coherence, consistency, and predictability in dispute settlement outcomes. Experience from the World Trade Organization demonstrates that appellate review plays a critical role in correcting legal errors and harmonising interpretative approaches across panels.⁸⁶ As Jackson observes, the appellate process has been instrumental in consolidating a relatively coherent body of WTO jurisprudence.⁸⁷ Conversely, the current paralysis of the WTO Appellate Body illustrates the systemic risks associated with institutional

⁸⁵ Alter (n13) 74-79.

⁸⁶ DSU, art 17(6)-(13).

⁸⁷ Jackson (n5) 112-115.

dysfunction, including the erosion of legal certainty and the fragmentation of adjudicatory outcomes.⁸⁸ For the AfCFTA, ensuring the effective implementation of article 20 of its Dispute Settlement Protocol is, therefore, essential to preserving the integrity of the system.⁸⁹

A second reform relates to the clarification of jurisdictional boundaries between the AfCFTA DSM and existing regional economic community (REC) tribunals. Africa's regional legal landscape is characterised by overlapping memberships and multiple adjudicatory frameworks, creating the potential for conflicting jurisdiction and forum shopping. Article 26 of the AfCFTA Dispute Settlement Protocol introduces a forum selection rule, but its practical application remains uncertain.⁹⁰ Pauwelyn's analysis of fragmentation in international law demonstrates that overlapping regimes often generate inconsistent interpretations in the absence of coordination mechanisms or hierarchical ordering.⁹¹ To mitigate this risk, there is a need for clearer rules on jurisdictional precedence, as well as interpretative dialogue between AfCFTA and REC tribunals.

Third, enhancing institutional capacity among State Parties is critical to the effective functioning of the DSM. Participation in dispute settlement requires specialised expertise in trade law, as well as financial and administrative resources. UNCTAD reports consistently highlight capacity constraints as a major barrier to effective engagement in international dispute settlement for developing countries.⁹² Without targeted capacity-building initiatives, including training programmes and legal advisory support, the utilisation of the AfCFTA DSM may remain limited, thereby constraining its integrative impact.

A fourth reform concerns the strengthening of compliance mechanisms. The AfCFTA DSM, like the WTO system, relies on implementation and where necessary, the authorisation of retaliation under articles 23–25 of the Protocol.⁹³ However, as Busch and Reinhardt demonstrate, retaliation is often ineffective for economically weaker States, thereby limiting its deterrent value.⁹⁴ Alternative approaches, such as compensation mechanisms, compliance monitoring frameworks, or phased implementation arrangements, may provide more effective means of ensuring adherence to rulings.

Fifth, consideration may be given to the gradual expansion of access to the DSM. The current State-to-State model limits participation to governments, excluding private economic actors who are often

⁸⁸ Pauwelyn (n10) 1.

⁸⁹ AfCFTA DSM Protocol (n3), art 20(1)-(4).

⁹⁰ Ibid art 26(1)-(3).

⁹¹ Pauwelyn (n7) 1021.

⁹² UNCTAD (n74) 3.

⁹³ AfCFTA DSM Protocol (n3), arts 23-25.

⁹⁴ Busch and Reinhardt (n9) 58-63.

directly affected by trade measures. Comparative experience from arbitration under the International Centre for Settlement of Investment Disputes suggests that broader access can contribute to a more dynamic and responsive adjudicatory system.⁹⁵ While a full transition to investor–State dispute settlement may not be politically feasible, intermediate mechanisms such as advisory opinions or structured private sector input could enhance the system’s relevance without undermining State sovereignty.

Beyond these institutional reforms, the future trajectory of the AfCFTA DSM will depend on broader political and economic dynamics. The effectiveness of any dispute settlement system ultimately rests on the willingness of States to accept and comply with adjudicatory outcomes. As Howse notes, the effectiveness and legitimacy of adjudication depend not only on legal rules but also on the broader political and institutional environment in which those rules operate.⁹⁶ The gradual internalisation of legal norms is, therefore, essential to the long-term success of the DSM.

In addition, the accumulation of jurisprudence will play a central role in shaping the authority and credibility of the system. Even in the absence of a formal doctrine of precedent, consistent adjudicatory practice can generate *de facto* coherence over time. The experience of the World Trade Organization demonstrates how repeated interpretation of treaty provisions can stabilise expectations and reinforce the rules-based character of the system.⁹⁷ For the AfCFTA, early decisions will be particularly influential in establishing interpretative patterns and normative expectations.

Finally, the AfCFTA DSM must be understood within the broader evolution of international economic law. Ongoing debates on reforming dispute settlement, including proposals for greater transparency, inclusivity, and institutional accountability, are likely to influence its development. Alter’s analysis of international courts highlights the importance of legitimacy and institutional trust in sustaining adjudicatory systems.⁹⁸ For the AfCFTA, building such legitimacy will require not only technical competence, but also sensitivity to the developmental priorities of its Member States.

Conclusion

This article has examined the role of the AfCFTA dispute settlement mechanism in advancing legal integration within Africa’s evolving regional trade order. It has demonstrated that the DSM constitutes a critical institutional pillar of the AfCFTA framework, with the potential to promote interpretative consistency, enhances compliance with trade obligations, and contribute to the development of a

⁹⁵ ICSID Convention (n 12) art 25(1); Van Harten (n60) 58-63.

⁹⁶ Howse (n79).

⁹⁷ DSU (n 4), art 3(2); Jackson (n 23) 134-139.

⁹⁸ Alter (n13) 74-79.

coherent body of African trade jurisprudence. Through a comparative assessment of the WTO dispute settlement system and ICSID arbitration, the article has shown that while the AfCFTA DSM draws significantly from established international models, it operates within a distinct legal and political environment characterised by jurisdictional complexity, capacity limitations, and continuing sovereignty concerns.

The analysis further revealed that the success of the DSM will depend not merely on its formal legal design but on its practical implementation and institutional development challenges relating to enforcement, fragmentation and State participation remain significant and must be addressed if the mechanism is to realise its integration potential. Notwithstanding these constraints, the AfCFTA DSM represents an important opportunity to strengthen the rule of law in African trade-governance and to facilitate deeper continental integration. If supported by sustained political commitment, effective institutional reforms, and continued capacity development, the mechanism can evolve into a credible and authoritative forum capable of underpinning Africa's long-term economic and legal integration project.

The AfCFTA DSM has the potential to become a robust and uniquely African dispute settlement mechanism that advances legal and economic integration through targeted reforms, sustained political commitment, and progressive jurisprudential development.

9. Recommendations

i. Operationalisation of the Appellate Body

The effectiveness of the AfCFTA dispute settlement mechanism depends substantially on the existence of a fully functional appellate mechanism capable of ensuring consistency and predictability in the interpretation of AfCFTA rules. While the Protocol on Rules and Procedures on the Settlement of Disputes provides for the establishment of an Appellate Body, its practical operationalisation remains indispensable to the long-term credibility of the system. Experience from the WTO demonstrates that appellate review contributes significantly to jurisprudential coherence by harmonising legal interpretations and correcting errors of law. The African Union and State Parties should therefore prioritise the appointment of qualified members to the Appellate Body, the adoption of detailed procedural rules, and the provision of adequate financial and administrative support necessary for its effective functioning.

ii. Clarification of AfCFTA–REC Jurisdictional Relations

A major challenge confronting the AfCFTA dispute settlement architecture is the coexistence of multiple regional economic communities (RECs) with overlapping memberships and dispute

settlement mechanisms. Although article 26 of the Dispute Settlement Protocol seeks to regulate forum selection, uncertainties remain regarding the relationship between AfCFTA adjudicatory bodies and existing REC tribunals. To minimise the risks of forum shopping, conflicting decisions, and legal fragmentation, a clearer framework should be developed to define the jurisdictional relationship between the AfCFTA DSM and REC judicial institutions. Such clarification may be achieved through interpretative guidelines, supplementary protocols, or institutional cooperation arrangements aimed at fostering coherence within Africa's emerging legal order.

iii. Strengthening Compliance and Enforcement Mechanisms

The authority of any dispute settlement system ultimately depends on the effectiveness of its compliance framework. Although the AfCFTA Protocol provides for surveillance of implementation, compensation, and suspension of concessions in cases of non-compliance, these measures may prove inadequate where significant disparities exist between the economic capacities of State Parties. Consequently, additional mechanisms should be explored to strengthen compliance. These may include enhanced monitoring procedures, periodic implementation reviews, and greater involvement of the AfCFTA Secretariat in tracking compliance with adopted rulings. Strengthening enforcement structures would enhance confidence in the DSM and reinforce its capacity to serve as an effective instrument of legal integration.

iv. Establishment of an AfCFTA Legal Advisory and Assistance Facility

The successful utilisation of the dispute settlement mechanism requires access to specialised legal expertise and technical support. Many African States continue to face capacity constraints in international trade litigation, thereby limiting their ability to participate effectively in dispute settlement proceedings. In order to address this challenge, an AfCFTA Legal Advisory and Assistance Facility should be established to provide legal advice, technical assistance, and representation support to State Parties, particularly least developed and resource-constrained members. Such a facility, modelled on successful international examples, would contribute to greater equality of arms among participating States and promote broader utilisation of the DSM.

v. Capacity Building for State Parties

Beyond legal assistance, there is a pressing need for sustained capacity-building initiatives aimed at strengthening expertise in trade law and dispute settlement across the continent. Effective engagement with the AfCFTA DSM requires specialised knowledge of international trade law, treaty interpretation, evidence management, and litigation strategy. The African Union, AfCFTA Secretariat, academic institutions, and development partner.