

**ARBITRATION UNDER THE AFRICA CONTINENTAL FREE
TRADE AGREEMENT: STRENGTHENING TRADE DISPUTE
RESOLUTION IN AFRICA**

By

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Abstract

The Africa Continental Free Trade Agreement (AfCFTA) represents a groundbreaking effort to promote regional economic integration and trade facilitation within the African continent. The agreement was adopted by African Union member States in March 2018, and after the ratification process was completed by the required number of countries, it entered into force on May 30, 2019. With the operationalization of the AfCFTA, disputes among member States and other parties are inevitable. To ensure effective resolution of these disputes, the AfCFTA – Dispute Settlement Mechanism Protocol offers three broad dispute resolution options. This article explores the arbitration provisions under the AfCFTA, evaluates their potential strengths, challenges, and offers recommendations for strengthening the arbitration framework within the trade agreement. Capacity-building initiatives will empower stakeholders to engage effectively in arbitration proceedings, while promoting diversity and inclusivity in arbitrator appointments will instill confidence in the fairness of the process. Increased transparency and public awareness will foster trust and wider utilization of arbitration, while collaboration with established arbitration institutions will enrich the AfCFTA dispute resolution practices.

Keywords: *Africa Continental Free Trade Agreement; economic integration; trade facilitation; trade dispute; arbitration.*

1.0 Introduction

The Africa Continental Free Trade Agreement (AfCFTA)¹ represents a groundbreaking effort to promote regional economic integration and trade

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¹ Before the establishment of the African Continental Free Trade Agreement (AfCFTA), several regional trade frameworks existed in Africa. These regional agreements aimed to

facilitation within the African continent. The agreement was adopted by African Union member States in March 2018, and after the ratification process was completed by the required number of countries, it entered into force on May 30, 2019. The operational phase, which involved the commencement of trading under the agreement, began on January 1, 2021.² The AfCFTA aims to create a single market³ for goods and services by removing tariffs, enhancing trade facilitation measures, and promoting cooperation among African nations. In addition to this, the AfCFTA also aims at creating a pan-African trade bloc that has the potential to unite 1.2 billion people and create a \$3.4 trillion economic area.⁴ According to the International Monetary Fund (IMF)⁵, the AfCFTA will help unlock Africa's long-stymied economic potential by boosting intra-regional trade, strengthening supply chains, and promoting expertise. The AfCFTA reflects both Africa's new model of what a trade

promote economic integration, enhance intra-regional trade, and foster cooperation among member States. Some of the notable regional trade frameworks in Africa before AfCFTA are: East African Community (EAC) established in 2000; Economic Community of West African States (ECOWAS) formed in 1975 consisting of 15 West African countries, Southern African Development Community (SADC) established in 1980 comprising 16 countries in Southern Africa; Common Market for Eastern and Southern Africa (COMESA) founded in 1994, includes 21 countries in Eastern and Southern Africa; West African Economic and Monetary Union (WAEMU) established in 1994, consisting of eight Francophone West African countries and East African Community Customs Union (EACCU) launched in 2005.

² African Union. "About The AfCFTA." African Union AfCFTA, n.d., <https://au-afcfta.org/about/>.

³ A single market refers to a type of economic integration where member countries remove barriers to trade, investment, and the movement of goods, services, capital, and labor within the participating countries. In a single market, the member States treat each other as if they were part of one domestic market, facilitating the free flow of goods, services, and factors of production without tariffs, quotas, or other trade restrictions.

⁴ U. E. Ofodile, 'Dispute Settlement Under the African Continental Free Trade Agreement: What

Do Investors Need to Know?' Kluwer Arbitration Blog (September 29, 2019), <<https://kluwarbitrationblog.kluwarbitration.com/2019/09/29/dispute-settlement-under-the-african-continental-free-trade-agreement-what-do-investors-need-to-know/>> accessed 27 September 2023

⁵ Reuters, 'Economic "Game Changer"? African Leaders Launch Free-Trade Zone.' Reuters, 7 July 2019. <<https://www.reuters.com/article/uk-africa-trade/economic-game-changer-african-leaders-launch-free-trade-zone-idUKKCN1U20BZ>> accessed 27 September 2023

agreement should look like and aspects of the multilateral legal framework of the World Trade Organization (WTO).⁶

With the operationalization of the AfCFTA, disputes among member States and other parties are inevitable. To ensure effective resolution of these disputes, the AfCFTA – Dispute Settlement Mechanism Protocol offers three broad dispute resolution options.⁷ It is important to note that mediation is used as a collective reference to mediation, good offices and conciliation, the three diplomatic methods of dispute resolution jointly contained in the AfCFTA and Arbitration under Article 27.⁸ This paper explores the arbitration provisions under the AfCFTA, evaluates their potential strengths, challenges, and offers recommendations for strengthening the arbitration framework within the trade agreement.

1.1 OBJECTIVES AND SCOPE OF THE AfCFTA

The primary objective of the AfCFTA is to enhance economic growth, foster industrial development, and promote economic diversification across Africa. By creating a single market, the agreement seeks to boost intra-African trade, reduce dependence on external markets, and enhance the continent's competitiveness in the global arena. Additionally, the AfCFTA aims to facilitate the movement of goods and services, promote investment, and foster cooperation among African countries.⁹

2.0 DISPUTES RESOLUTION MECHANISMS UNDER THE AfCFTA

With the implementation of the AfCFTA, the potential for trade disputes¹⁰ among member States and other stakeholders will expectedly, increase.

⁶ Kuhlmann, Katrin and Akinyi Lisa Agutu. 'The African Continental Free Trade Area: Toward a New Legal Model for Trade and Development.' (2020) 51 Georgetown Journal of International Law 756.

⁷These are adjudication under Articles 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, Mediation under Article 8.

⁸O. D. Akinkugbe, 'Dispute Settlement: African Continental Free Trade Area (AfCFTA)', (March 31, 2021). Max Planck Encyclopedia of International Procedural Law, Helene Ruiz Fabri (Ed), Oxford University Press, Forthcoming, <https://ssrn.com/abstract=3825805> accessed 17 September 2023

⁹ Preamble to the AfCFTA.

¹⁰ Trade disputes, also known as trade conflicts, arise between countries when they disagree on the interpretation or enforcement of international trade rules and agreements. The World Trade Organization, (WTO) as an example, provides a dispute settlement system to resolve these conflicts through consultations, mediation, panels, and the Appellate Body. Examples

Disputes may arise over tariff-related matters, rules of origin, intellectual property rights, competition policy, and other trade-related issues. Efficient and fair dispute resolution mechanisms are crucial to maintaining the integrity and success of the agreement, as well as instilling confidence among investors and traders.

The Protocol on Rules and Procedures for the Settlement of Disputes under AfCFTA constitutes a foundational pillar within the agreement, providing a well-defined and comprehensive framework for resolving disputes between member States. As AfCFTA strives to foster economic integration, sustainable development, and intra-African trade, the effective management of trade-related disputes is of paramount importance. The Protocol establishes a structured and transparent process for dispute settlement, emphasizing diplomacy, cooperation, and the pursuit of mutually agreeable solutions. By outlining procedures for consultations, negotiations, mediation, panels, and arbitration, the Protocol aims to instill confidence in the trade environment, encourage investment and uphold the principles of fairness and equity among African nations. Article 21 of AfCFTA refers to dispute settlement and establishes a dispute settlement mechanism (DSM) akin to the mechanism used under the World Trade Organisation (WTO) Instruments.¹¹

2.1 KEY SECTIONS OF THE PROTOCOL ON RULES AND PROCEDURES ON THE SETTLEMENT OF DISPUTES

2.1.1 Dispute Settlement Body (DSB)

The Protocol establishes a Dispute Settlement Body (DSB)¹² as the central authority responsible for administering and overseeing the dispute settlement process. The DSB is composed of representatives from each member State,

of trade disputes under the WTO include disagreements over tariffs, non-tariff barriers, subsidies, intellectual property rights, dumping, and trade measures in response to security concerns. The WTO's dispute settlement process aims to address these disputes fairly and transparently, promoting a level playing field in international trade and encouraging economic cooperation among member countries.

¹¹ The United Nations Commission on Trade and Development (UNCTAD) had proposed that the WTO DSM mechanism system should be adopted under the AfCFTA. See UNCTAD Publication, 'African Continental Free Trade Area: Policy and Negotiation Options for Trade in Goods', (2016) available at: http://unctad.org/en/PublicationsLibrary/webditc2016d7_en.pdf accessed 26 July 2023.

¹² Article 5 of the Protocol establishes the Dispute Settlement Body which comprises all State Parties. The body adopts the reports of the Panels and the Appellate Body and ensures that the rulings and recommendations are upheld.

and it plays a crucial role in maintaining the integrity and effectiveness of the dispute settlement system. The DSB provides a platform for consultations, negotiations, and the settlement of disputes in a diplomatic and cooperative manner.

2.1.2. Consultations and Negotiations¹³

The Protocol places a strong emphasis on resolving disputes through consultations and negotiations between the parties involved. Before initiating formal dispute settlement procedures, the member States are encouraged to engage in direct talks to seek amicable solutions. These pre-dispute discussions provide an opportunity for parties to understand each other's positions, address concerns, and explore potential compromises, fostering a spirit of cooperation among African States.

2.1.3 Mediation and Conciliation¹⁴

The Protocol allows parties to resort to mediation or conciliation as alternative dispute resolution methods. Mediation involves the intervention of a neutral third party who assists the parties in finding mutually acceptable solutions. Conciliation, on the other hand, involves a neutral third party facilitating the resolution of disputes through non-binding recommendations. These mechanisms offer flexibility and promote consensual settlements, while also reducing the burden of formal adjudicative procedures.

2.1.4 Establishment of the Panels¹⁵

If consultations, negotiations, mediation, or conciliation do not lead to a resolution within the specified timeframes, the Protocol allows for the establishment of panels. Panels¹⁶ are composed of independent and impartial experts¹⁷ who are not affiliated with any member State involved in the dispute.

¹³ Article 7 of the Protocol on Rules and Procedures on the Settlement of Disputes of the Africa Continental Free Trade Agreement (AfCFTA).

¹⁴ Article 8 of the Protocol on Rules and Procedures on the Settlement of Disputes of the Africa Continental Free Trade Agreement (AfCFTA).

¹⁵ Article 9 of the Protocol on Rules and Procedures on the Settlement of Disputes of the Africa Continental Free Trade Agreement (AfCFTA)

¹⁶ The members of the Adjudicating panels are selected from an Indicative List. The Panel comprises competent individuals with experience in law, international trade, and other matters covered by the Agreement. Each State Party nominates two individuals to the Indicative List maintained by the AfCFTA Secretariat.

¹⁷ Article 10 (3) (c) of the Protocol on Rules and Procedures on the Settlement of Disputes of the Africa Continental Free Trade Agreement (AfCFTA)

The panelists are chosen based on their expertise and experience in trade and legal matters.¹⁸ Panels are responsible for examining the facts, legal arguments, and relevant provisions of the AfCFTA to issue findings and recommendations.

2.2 ARBITRATION AS A DISPUTE RESOLUTION MECHANISM

Article II (1) of the New York Convention refers to an agreement to arbitrate as ‘an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not.’ Therefore, according to Ajogu ‘arbitration is thus a process by which a neutral third party, tribunal or panel considers evidence presented by the parties and makes decision which will be binding, according to the prior consent of the parties.’¹⁹ Arbitration can also be defined as a formal and binding process where an independent tribunal, composed of arbitrators, renders a final and enforceable decision, called an Award.

Arbitration is today the preferred mechanism for settling commercial and investment disputes the world over, including Africa, due to its numerous advantages over traditional litigation in courts. With the growing prominence of international trade and investment in the continent, African countries have recognized the importance of establishing effective and efficient dispute resolution mechanisms to foster investor confidence and promote economic growth. Arbitration offers several key benefits that make it an attractive choice for resolving disputes.

Firstly, arbitration provides parties with a neutral and impartial forum for resolving their disputes. By choosing arbitrators from diverse backgrounds and legal systems, parties can ensure a fair and balanced decision-making process.²⁰ Additionally, the ability to select arbitrators with expertise in specific areas of law or industry sectors ensures that disputes are adjudicated by individuals with relevant knowledge, experience, and expertise.

¹⁸ Article 10 (3) (a) of the Protocol on Rules and Procedures on the Settlement of Disputes of the Africa Continental Free Trade Agreement (AfCFTA)

¹⁹ F. Ajogu *Commercial Arbitration in Nigeria: Law and Practice*. (Lagos: Mbeyi & Associates (Nig.) Ltd, 2009) p.5

²⁰ S. Charlotin, & R. Kordupleski, ‘International Arbitration in Africa: A Preliminary Review of Its Evolution and Key Challenges’ (2019) 20(1) *Chicago Journal of International Law* 241-270.

Secondly, arbitration offers flexibility and efficiency in the dispute resolution process. Parties can tailor the arbitration proceedings to suit their specific needs, including the choice of procedural rules, language, and the location of the arbitration. Compared to traditional court litigation, arbitration typically offers quicker dispute resolution, reducing the time and costs associated with lengthy court proceedings.²¹

Thirdly, the confidentiality of arbitration proceedings is a significant advantage in commercial and investment disputes. Parties can protect sensitive business information and maintain the privacy of their affairs, which is particularly crucial in matters involving trade secrets, intellectual property, or sensitive contractual arrangements.²²

Arbitration awards are generally final and binding, ensuring a definitive resolution of commercial and investment disputes. The certainty and enforceability of arbitral awards provide the parties with a reliable mechanism for enforcing decisions across borders, thereby facilitating cross border trade and investment.²³

2.2.1 ARBITRATION UNDER AfCFTA

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution mechanism instead of court room litigation.

Article 27 of the Protocol on Rules and Procedures on Settlement of Disputes of AfCFTA

Provides for arbitration as follows:

1. Parties to a dispute may resort to arbitration subject to their mutual agreement and shall agree on the procedures to be used in the arbitration proceedings.

²¹ A. Dieng, 'Commercial Arbitration in Africa: Current Challenges and Prospects' (2017) 35(3) ASA Bulletin 607-618.

²² P. Gastrow, 'Arbitration in Africa – A Continent on the Rise' (2018) 20(6) SchiedsVZ 277-285.

²³ C. A. Nyampong, 'The Adoption of the UNCITRAL Model Law by African Countries: Trends, Challenges, and Opportunities' (2020) 6(1) International Journal of Arbitration, Mediation, and Dispute Management 1-21.

2. Parties to a dispute who may have referred a dispute for arbitration pursuant to this Article shall not simultaneously refer the same matter to the DBS.
3. Agreement by the parties to resort to arbitration shall be notified to the DBS.
4. Third parties shall be joined to an arbitration proceeding only upon the agreement of the parties to the arbitration proceedings.
5. The parties to an arbitration proceeding shall abide by the arbitration award and the award shall be notified to the DSB for enforcement.
6. In the event of a party to the dispute refusing to cooperate, the complaining party shall refer the matter to the DSB for determination.
7. Arbitration awards shall be enforced in accordance with the provisions of Articles 24 and 25 of this protocol mutatis mutandis.

Article 6 (6) of the protocol provides that:

Where parties to a dispute consider it expedient to have recourse to arbitration as the first dispute settlement avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this protocol.

As can be deduced so far, AfCFTA recognizes arbitration as a formal mechanism for dispute resolution under the agreement. The protocol on Rules and Procedures on the Settlement of disputes, which is an integral part of AfCFTA, specifically provides for arbitration as a dispute settlement mechanism. The parties to a dispute are at liberty to resort to Arbitration under Article 27 of the Protocol. AfCFTA recognizes the principle of party autonomy in arbitration. Accordingly, the arbitration process is at the behest of the parties involved and is not controlled by the DBS.²⁴

It is important to note that parties to a dispute who have agreed to arbitration cannot simultaneously refer the dispute to the DSB. If the parties agree to arbitration to resolve their dispute, they must notify the DSB of this decision.²⁵ Article 27 (6) of the protocol stipulates that in the event of a party to a dispute refusing to cooperate, the complaining party shall refer the matter to the DSB for determination.

²⁴ O. D. Akinkugbe (n 8).

²⁵ Article 27 (2) of the AfCFTA Protocol on Rules and Procedures on Settlement of Disputes

It is important to note that this provision refers to non-cooperation with the arbitral process and not with the award because there is a more specific provision that deals with the enforcement of awards. If an unsuccessful party does not cooperate with the Award, the complaining party has recourse to the enforcement procedures in Articles 24 and 25 of the protocol rather than refer the matter to the DSB for determination.²⁶ It therefore appears that Article 27 (6) is prescribed to cater for situations where a party acts in a manner that is likely to frustrate the arbitration process, pre-award.²⁷

Once an award is published it becomes binding on the parties and shall be notified to the DSB for enforcement. The DSB enforces the arbitration award in the same manner as a DSB panel or the Appellate Body ruling or recommendation.²⁸

2.2.2 THE ADVANTAGES OF ARBITRATION UNDER THE AfCFTA

The General principles of Arbitration

Arbitration under AfCFTA embodies the generally recognized principles of Arbitration which includes:

- a. Arbitration commences pursuant to the agreement of the parties,
- b. Party autonomy,
- c. Arbitration under AfCFTA precludes the parties from simultaneously referring the matter to the DSB or any other dispute settlement process,
- d. AfCFTA arbitration process allows for joinder of third parties.
- e. The Award is final, binding, and enforceable.²⁹
- f. Arbitration under AfCFTA is flexible and enhances the perceived impartiality of the process, thus instilling confidence in the fairness of the proceedings and the ultimate outcome of the process.

2.2.3 Expertise in Trade-Related Matters

AfCFTA arbitration mechanism permits the appointment of experienced arbitrators with expertise in international trade law. These arbitrators are well-

²⁶ O. D. Akinkugbe, (n 8)

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²⁸ *ibid*

²⁹ Article 27 of AfCFTA protocol on Rules and Procedures on the Settlement of Disputes.

versed in the complexities of trade-related issues and are equipped to navigate the intricacies of international trade disputes. By having arbitrators with specialized knowledge, AfCFTA arbitration process ensures that disputes are adjudicated by experts familiar with the unique challenges and nuances of trade matters, leading to more informed and accurate decisions.

2.2.4. Confidentiality and Efficiency³⁰

Confidentiality is a significant advantage of arbitration proceedings under the AfCFTA. Parties can protect sensitive business information, trade secrets, and proprietary data from public disclosure. This confidentiality feature is particularly beneficial in commercial and investment disputes where preserving confidentiality is crucial. Additionally, the efficiency of arbitration offers a faster resolution compared to traditional litigation in domestic courts. The streamlined and focused nature of arbitration proceedings helps avoid lengthy court delays, making it an attractive option for parties seeking timely resolution of disputes.

2.2.5 Enforcement of Arbitral Awards

Article 27(5) of the Protocol States that the Parties to an arbitration proceeding shall abide by the arbitration award. The enforcement of arbitration awards is to be conducted following the relevant provisions of the Protocol (Articles 24 and 25). Additionally, the arbitration award is required to be notified to the Dispute Settlement Body (DSB) for enforcement. This notification to the DSB serves to officially recognize the award and make it part of AfCFTA's dispute settlement record.

3.0 CHALLENGES AND CRITICISMS OF ARBITRATION UNDER AfCFTA

3.1 Capacity and Resources

The diverse levels of institutional capacity and resources among African countries may pose challenges in effectively implementing and managing the arbitration process. Disparities in legal infrastructure, technical expertise, and administrative support could affect the smooth functioning of arbitration proceedings. Addressing these capacity-related issues may require targeted capacity-building initiatives and cooperation among member States.

³⁰ Article 17 of the Protocol on Rules and Procedures on the Settlement of Disputes of the Africa Continental Free Trade Agreement (AfCFTA).

3.1.2 Perceived Bias

Concerns over potential biases in favor of more influential or economically dominant parties may emerge in the arbitration process. To mitigate such concerns, transparency in arbitrator selection and decision-making is essential. Ensuring diversity in the appointment of arbitrators from different regions and legal backgrounds can enhance the perception of fairness and impartiality.

3.1.3 Applicability and Jurisdictional Issues

The AfCFTA arbitration mechanism ought to provide clarity on the applicability of arbitration to certain types of disputes and jurisdictional questions may require further clarification. Ambiguity in the scope of arbitration may lead to disputes over the appropriate dispute resolution mechanism itself, which may undermine the effectiveness of the process.

3.1.4 Lack of Awareness and Understanding

The success of the AfCFTA arbitration mechanism depends on stakeholders' awareness and understanding of its benefits and procedures. Insufficient awareness among businesses and investors may lead to underutilization of the mechanism, with parties opting for traditional litigation instead. To address this, comprehensive public awareness campaigns and targeted training initiatives are vital to promote the advantages of AfCFTA arbitration and foster greater acceptance and usage of the mechanism.

One of the criticisms of AfCFTA Arbitration process is Article 27 (6) of the protocol which provides that '*In the event of a party to a dispute refusing to cooperate, the complaining party shall refer the matter to the DSB for determination*'. The stage of the DSB determination in the event of lack of cooperation of a party to the dispute is not clear. Does the lack of cooperation and DSB determination relate to the arbitration proceedings or the enforcement proceedings? Also, the meaning of "determination" of the DSB under Article 27 (6) is not clear. What does "determination" mean? Does it mean that the DSB will consider the complaint of lack of cooperation and, perhaps, make an interlocutory order directing the uncooperative party to cooperate with the arbitration process? Can the DSB seize the matter from arbitration and instead constitute a panel to resolve or determine the substantive matter in the same way as a dispute originally referred to the DSB?

There is need for clarity here because once an award has been published it becomes binding on the parties and shall be notified to the DSB for

enforcement. The DSB therefore enforces an arbitration award in the same manner as a DSB panel or Appellate Body Ruling or recommendation.³¹

4.0 RECOMMENDATIONS FOR STRENGTHENING ARBITRATION UNDER AfCFTA

4.1 Capacity Building and Training

To bolster the effectiveness of AfCFTA arbitration mechanism, member States should prioritize capacity-building and training programs. These initiatives should target key stakeholders, including government officials, legal practitioners, arbitrators, and businesses. By investing in educational workshops, seminars, and specialized training in international trade law and arbitration practices, member States can enhance their understanding of the arbitration process and foster a cadre of skilled professionals. Capacity building would also empower member States to effectively participate in arbitration proceedings, making the dispute resolution process more efficient and ensuring a fair and well-informed resolution of trade disputes.

4.1.2 Diversity of Arbitrators

Promoting diversity in the appointment of arbitrators is essential for ensuring an inclusive and impartial arbitration process. Diverse arbitrator appointments from various legal systems, regions, and backgrounds can reduce perceptions of bias and enhance the legitimacy of the arbitration process. AfCFTA should encourage the selection of arbitrators from different genders, ethnicities, and nationalities, reflecting the diverse makeup of its member States. Emphasizing diversity in the composition of arbitral tribunals will instill confidence in the arbitration process and contribute to a more balanced and fair resolution of disputes.

4.1.3 Transparency and Public Awareness

Enhancing transparency and public awareness surrounding AfCFTA arbitration mechanism is vital for garnering public trust and support. Increased transparency in the arbitration process, including publishing key decisions and awards (with appropriate redactions to protect the parties and their sensitive information), promote accountability and understanding of the dispute resolution process. Additionally, conducting outreach programs and publicizing successful arbitration cases can raise awareness among businesses,

³¹ O. D. Akinkugbe, (n 8)

investors, and the public about the benefits of using the arbitration mechanism. Greater transparency and awareness can lead to wider utilization of arbitration as a preferred mechanism for resolving trade disputes, reducing the burden on domestic courts, and contributing to more predictable and efficient dispute resolution processes.

4.1.4 Cooperation with Regional and International Arbitration Institutions

Collaborating with established regional³² and international arbitration institutions can significantly enhance AfCFTA arbitration framework. Engaging with organizations like the International Chamber of Commerce (ICC),³³ the International Centre for Settlement of Investment Disputes (ICSID),³⁴ and the Permanent Court of Arbitration (PCA)³⁵ can provide the AfCFTA with access to best practices, expertise, and procedural rules for arbitration proceedings. Such cooperation will also contribute to the harmonization of arbitration practices, ensuring consistency and predictability in dispute resolution within AfCFTA. Building strong ties with renowned institutions can elevate the credibility and international recognition of the AfCFTA arbitration process.

5.0 CONCLUSION

AfCFTA arbitration provisions play a crucial role in ensuring the effective resolution of trade disputes among member States and other stakeholders. While the mechanism holds significant potential, addressing challenges and implementing recommendations are essential for optimizing its effectiveness.

³² Some prominent arbitration centers in Africa that offer specialized services for resolving disputes include the Cairo Regional Centre for International Commercial Arbitration (CRCICA) – Egypt, the

Regional Centre for International Commercial Arbitration – Lagos Nigeria, the Johannesburg Chamber of Commerce and Industry Arbitration Centre (JCCI) - South Africa, the Kigali International Arbitration Centre (KIAC) – Rwanda and the Nairobi Centre for International Arbitration (NCIA) – Kenya.

³³ The ICC is one of the world's leading arbitration institutions, headquartered in Paris, France. It offers international arbitration services and is widely recognized for its expertise in resolving complex commercial and investment disputes.

³⁴ ICSID is an institution specialized in the resolution of investment disputes between States and foreign investors. Established by the World Bank's Convention on the Settlement of Investment Disputes, it is located in Washington, D.C., USA.

³⁵ The PCA is an intergovernmental organization based at The Hague, Netherlands, established by the 1899 Hague Convention.

By implementing these recommendations, AfCFTA can strengthen its arbitration mechanism, ensuring an efficient, impartial, and transparent process for resolving trade disputes among member States. *Capacity-building initiatives will empower stakeholders to engage effectively in arbitration proceedings, while promoting diversity and inclusivity in arbitrator appointments will instill confidence in the fairness of the process.* Increased transparency and public awareness will foster trust and wider utilization of arbitration, while collaboration with established arbitration institutions will enrich the AfCFTA dispute resolution practices. Embracing these recommendations will contribute to AfCFTA success in promoting intra-African trade and advancing economic integration on the continent.

To ensure the effectiveness of the whole AfCFTA dispute resolution system, it has been suggested that there is need to review the remedies that AfCFTA provides, under Article 25, which presently are compensation and retaliation for the violation of AfCFTA obligations.³⁶

Compensation can be faulted for potentially decreasing overall compliance with DSB Rulings, especially as the remedy is voluntary and the viability of retaliation has been questioned³⁷ and is identified as one of the reasons why African countries do not use the WTO dispute settlement mechanism which is argued, is skewed against African countries, which lack the capacity to retaliate against their wealthier counterparts and therefore not effectively usable if the need arises. The wholesale adoption of this remedy into AfCFTA dispute settlement mechanism is questionable given that the same factors that make retaliation unattractive to weaker WTO member States also exist among African States.³⁸

Based on this transplantation of the WTO dispute settlement system and the dearth of trade-related disputes, the challenges that AfCFTA dispute settlement mechanism may be confronted with is apathy and a formal trade related dispute phobia by AfCFTA member States in utilizing the dispute settlement regime.³⁹

³⁶ O. D.
Akinkugbe
(n 8)

³⁷ *ibid*

³⁸ *ibid.*

³⁹ *ibid.*

An analysis of the procedural steps for initiating disputes under AfCFTA dispute mechanism and where necessary, assessing the potential areas of improvement that may better position the dispute settlement mechanism to facilitate the overall objectives of the AfCFTA will be a welcome development.⁴⁰

Overall, the dispute settlement mechanism under AfCFTA aims to foster trust, accountability, and the rule of law in operationalizing the AfCFTA Agreement, while not focusing on the challenges.⁴¹ Since the dispute settlement mechanism in AfCFTA is modelled on the Dispute Settlement Mechanism of the WTO, AfCFTA can leverage on the experience of the WTO in the implementation of its dispute settlement regime.

⁴⁰ *ibid.*

⁴¹ United Nations UNCTAD Policy Brief No. 105