



# Dispute Settlement: Lessons from Judgments by the REC Courts

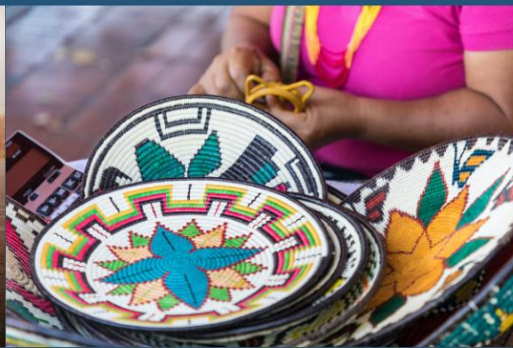
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# Is intra-African Trade & Integration rules-based?

- The answer to this question matters: Certainty, Predictability, transparency
- Dispute settlement part of this picture
- What about the AfCFTA? Pictured as a sophisticated & modern dispensation
- Protocol on Dispute Settlement adopted swiftly, based on DSU of WTO.
- Only State Parties have standing ....will we see any applications?
- What implications if there are no disputes?
- Note the amicus curiae brief possibility
- What happens in REC Courts? Most cases here about human rights violations
- Some domestic disputes about trade related executive actions
- Investment Agreements do it differently...see relevant AfCFTA Protocol.
- How to ensure a rules-based AfCFTA? Any role for REC Courts?

# The wider African dispute settlement dimension

- REC FTAs are building blocs of AfCFTA & *acquis* to be preserved (Art 5 AfCFTA Agreement)
- Rec Courts have Jurisdiction over Trade related State Measures
- Last year tralac published a book on their case law.
- SADC Tribunal abolished in 2010.
- New trend: validity of trade measures of Member States contested.
- **Article 26 of the COMESA Treaty:** *Any person who is resident in a Member State may refer for determination the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty.*
- Community law is *sui generis*.

# Examples of rulings by the COMESA Court of Justice

- In 2015 the First Instance Division of the COMESA Court of Justice in *Polytol Paints & Adhesives Manufacturers versus The Republic of Mauritius* accepted an application by a private party to enforce a regional Protocol & protected trade related rights of a private firm.
- Polytol turned away by national Courts. (Dualism in Constitution)
- Under Art 46 of the COMESA Treaty Member States were required, by 2000, to eliminate customs duties on goods eligible for Common Market treatment. Mauritius initially complied but in 2001 re-introduced a 40% customs duty on products imported from Egypt, which included products imported by the Applicant. Only Egyptian products were targeted.... "*not cast in stone*".
- Government of Mauritius lodged an appeal, but later withdrawn. The Court then issued a final order that the matter had been settled.
- This ruling says the traditional view (that only states parties derive rights from trade agreements and have standing before Int. Tribunals when violations occur) is qualified in community law-based integration schemes.
- *Malawi Mobile Ltd & Agiliss Limited Cases*

# Trade Remedies & Safeguards will pose new Challenges

- Through *Agiliss* Cases/Appeals CCJ will provide clarity on exhaustion of domestic remedies
- But Trade Remedies and Safeguards are entering the picture
- They are in Annex 9, including Preferential Safeguards
- Also in Comesa law
- First dispute under EU-SADC EPA on preferential safeguards
- Due process in Trade Remedies & Safeguards investigations
- National Law must provide ditto (Investigating Institutions and judicial review)
- What implications for implementing AfCFTA?
- What implications for REC Law?
- Could REC Courts face AfCFTA related issues?