Does the AfCFTA protect the rights of Private Parties?

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AfCFTA Basic Features

- The AfCFTA is a **member driven** Free Trade Area (FTA)
- Has no supra-national institutions
- REC FTAs & REC Courts will continue
- The AfCFTA is not a customs union.
- Private Parties have no standing under AfCFTA Dispute Settlement Protocol
- AfCFTA dispute settlement replicates DSU of WTO
- Governments can act on behalf of private parties
- What are the benefits of legal certainty?
What has happened re trade related disputes?

• African governments don’t litigate over compliance with trade agreements

• It is unlikely that they will do so in respect of the AfCFTA Agreement.

• Find “solutions” through discussions in political structures.

• Protectionist measures justified for national needs and policies

• Tolerated when taken by other governments too.

• Does it mean African economic integration is not rules-based?

• What are then the consequences?
Private parties are the traders and investors

- Private Parties venture into cross-border commercial transactions
- In Africa they are mostly SMEs ... Big firms better placed to protect themselves
- Private interests at stake when trade agreements are implemented.
- Industrialized economies have specific needs
- Trade Remedies and Safeguards
- What required for protecting trade in agricultural products?
- Customs related issues and Investment Protocol have specific features.
Where to look?

• Best guarantees via **good governance**, respect for the **rule of law** and **transparency**.

• They appear in the texts of the AfCFTA legal instruments. Good trade governance part of the rule of law.

• Firms must be able to rely on legal certainty State Parties **implement** the AfCFTA Protocols.

• AfCFTA Agreement notes **non-discrimination**, **transparency**, and **disclosure of information**. State Parties “shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner”.

• Must act in a **non-discriminatory** manner. “Shall accord to products imported from other State Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs.”
Other options

• National constitutions/law provide for a **right to administrative justice**. Firms ally has the right to administrative action that is **lawful, reasonable, and fair**.

• If these rights are violated through national executive measures dealing with trade governance, affected private parties can approach domestic courts to review them.

• But domestic litigation is expensive and can be time consuming. Often urgent remedial action is required.

• Could REC courts be approached?

• AfCFTA goals requires rules-based governance, & accommodation of SMEs.