



When Private Party Rights are Affected under African Trade Agreements

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Private Remedies: Traditional Approach

- Int. trade conducted under Int. Agreements
- The Parties thereto are States
- Sovereignty – but ratified obligations bind
- Disputes are between states – see WTO success
- Private Parties mostly affected by violations
- Their governments to act on their behalf
- Example of Trade Remedies
- When must States of Nationality act on behalf of their Nationals?



Need for Private Remedies

- When/how are Private Parties affected?
- Through measures/ omissions of State Parties
- Local Examples: Polytol, honey, chickens, dairy...
- Special protection under BITs
- Protect earlier --- transparency, due process
- Private parties the engine – they risk their resources to do business across borders
- This includes “foreigners”
- “Foreigners” the moment they cross a border

Private Remedies under Community Law

- When regional integration advances.....
- Unique legal needs follow
- Supra-national institutions & Community Law
- Which need to be developed
- For direct effect, preventing fragmentation....
- and Standing for private parties
- Regional courts with own jurisdiction
- But **not** courts of appeal/ human rights tribunals
- Exhaustion of local remedies & denial of justice

African REC Practice

- Picture is mixed but improving in certain parts
- SADC Tribunal saga: Why did it happen?
- Community law unlikely when national mess
- SADC now limited to inter-states disputes...
- Which will not happen.
- Why not? SADC derogations
- COMESA advancing --Polytol
- EAC advancing but....
- Is there an acquis on dispute settlement?

Domestic Remedies for Private Parties

- Due process/transparency/admin Law=national
- Domestic litigation increasing
- Cannot invoke Int. Agreements without domestication
- But what remedies then?
- Is domestic litigation good/bad thing?
- Example of licence application
- Certain domestic remedies need national law reforms
- Example of Trade Remedies

New Scope under TFTA and CFTA?

- What does TFTA allow?
- What does CFTA Framework require?
- What is the *acquis*? Best practice?
- Should we apply WTO discipline in some areas?
- How will CFTA be negotiated?
- We need Panels.....
- And Judges familiar with Trade Law disciplines
- What is required? Clear Design & Reversed consensus
- Forum shopping when RECs continue

