On 26 April 2021, the first inaugural session of the Dispute Settlement Body was held at the AfCFTA Secretariat. Article 20 of the AfCFTA Agreement establishes an inter-State Dispute Settlement Mechanism applicable to disputes, defined at art. 1, e) as any disagreement between State Parties regarding the interpretation and/or application of the (AfCFTA) Agreement in relation to their rights and obligations.

The AfCFTA Agreement refers to the Protocol on Rules and Procedures on the Settlement of Disputes for what concerns the administration of such mechanism, which has been basically modeled upon the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes , a legal text contained in the Annex 2 of the WTO Agreement that provides the rules for dispute settlement in the WTO.

Typically, in the WTO system, a dispute arises when one WTO Member adopts a trade policy measure that one or more other Members consider to be inconsistent with the obligations set out under the WTO Agreements. The WTO Member or Members that feel aggrieved by the measure are then entitled to activate the WTO dispute settlement system in order to challenge that measure. The first step in this process is an attempt to reach a mutually agreed solution through consultations among parties.

If no settlement of the dispute is achieved within 60 days after the date of receipt of the request for consultations, the complaint is filed to a body composed of representatives of all WTO Members, the Dispute Settlement Body (DSB). Being made up of governmental representatives (in most cases diplomatic delegates of the Trade or the Foreign Affairs Ministries of the WTO Members seconded in Geneva, where the WTO is headquartered), the DSB is a political body. This is why the adjudication of disputes is conferred to one or more panels to be established by the DSB, made up of 3 members (or 5 if the disputing parties require so), whose composition has be agreed by the disputing parties. Differently from the DSB, members of the dispute settling panels must act independently from the governments they represent and must take an objective assessment of the matter and the fact of the case. Their decisions, which are binding for the disputing States, can be appealed before an Appellate Body made up of 7 members nominated by the DSB. This body however, is currently paralyzed because of a "veto power" exerted since 2019 by the United States which blocked the appointment of its members.

Similar to the WTO Dispute Settlement Understanding (DSU), the AfCFTA mechanism is a two-tier system comprising a Dispute Settlement Body (DSB), which will assign disputes arisen between African States to specifically appointed Dispute Settlement Panels (Panels) whose decisions can be appealed before an Appellate Body.

Parties to a dispute must first enter into preliminary consultations, with a view to finding an amicable resolution. If the latter is not achieved, the dispute is therefore assigned by the DSB to a panel. However, experience gained from other RECs (most of them having established Courts of Justice), shows that the cases in which African States bring controversies on trade-related matters before a jurisdictional organ are more unique than rare. Those few cases where an African State has been brought before a Court of Justice of a REC for a violation of trade-related provisions contained in the Treaties establishing a REC or other regional regulations, have all been initiated by private parties.

Although the AfCFTA dispute resolution system is not a judicial, but a quasi-judicial system (meaning that its organs are technical bodies that exercise powers or functions that resemble those of a court or a judge), one wonders how much the AfCFTA DSB procedures will be used by African States, considering their low propension to appeal these kind of organs to defend their interests. In fact, African states generally tend to solve trade frictions through cooperation, dialogue and consultation (usually culminating in the adoption of MOUs or other form of bilateral cooperation arrangements). The extremely reduced number of complaints submitted by African states to the WTO DSB is a fact that supports this theory.
This seems however something of which the drafters of the AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes are aware, considering the fact that they have introduced in such text many provisions allowing disputing parties to use, in every stage of the dispute, alternative dispute resolution methods such as conciliation, mediation, and arbitration (art. 4(5)). These systems, indeed, are deeply rooted in the customary African law, deriving from ancient conciliation tribal practices such as “village elder” judgments that in many African ethnic realities are still existing. As such, as indicated by professor Alioune Badara Fall (in “ Le juge, le justiciable et les pouvoirs publics: pour une appréciation concrète de la place du juge dans les systèmes politiques en Afrique “, 2003), non-judicial conflict resolution methods in Africa are generally more accepted and benefit from more credibility than judicial (and quasi-judicial) systems.