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Africa and the Great Power Competition at the World Trade Organization

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Introduction

Since opening its doors on January 1, 1995, the World Trade Organization (WTO) has been the premiere forum for global multilateral trade negotiations and rulemaking. However, the past few years have seen the organization lose some of its luster, and its members are increasingly circumventing WTO rules to discipline their own adversaries and to advance their national interests. Despite these challenges, the organization remains an important platform for global trade relations, especially for developing regions like Africa.

The WTO is one of the few international fora where each member has veto power and a seat at the table to discuss the most pressing issues facing global trade and economic relations today.¹ The organization has also been responsive and agile in the face of emerging global challenges and changing priorities. For example, the 2022 waiver of certain patent-related provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) illuminated the challenges

developing countries still face when accessing essential medicines, including COVID-19 vaccines.² Moreover, under the leadership of its director general, Ngozi Okonjo-Iweala, the WTO has staked a claim in global sustainability discussions by enhancing its visibility and relevance at the United Nations Framework Convention on Climate Change negotiations.³ While members like the United States frequently question the utility of the embattled organization,⁴ none have yet withdrawn. In fact, in 2024, the WTO welcomed two new members, Comoros and Timor-Leste, increasing its membership to 166 countries.⁵ Exiting the WTO would imply surrendering certain advantages like market access and protection from discriminatory measures in foreign markets.⁶

The WTO has not been impervious to the frictions among the organization's largest economies—the United States, the European Union, and China—which are also Africa's largest bilateral trade partners. These rising tensions have not only disrupted the organization's internal dynamics but have also impacted



other members' rights. Due to these internal conflicts, among others, the WTO's once exemplary Dispute Settlement Mechanism (DSM) has been incapacitated, and some members are exploiting that paralysis, which disproportionately affects less powerful members, including African countries. Although African countries do not frequently use the DSM, they rely heavily on a rules-based system to counteract power asymmetries. The DSM crisis highlights the urgent need to restore its functionality, enabling full participation in the organization for all its members, especially those that have few alternatives to advance their economic interests in a fair and inclusive manner.

A Primer on the WTO's Dispute Settlement Mechanism

The DSM is the most widely used state-to-state dispute settlement system. From January 1, 1995, to March 4, 2025, 634 disputes were initiated for resolution, and 350 rulings were issued.⁷ In comparison, during the same period, eighty-one disputes were initiated at the International Court of Justice (ICJ), and ninety-one judgments and eight advisory opinions were issued.⁸ At the International Tribunal for the Law of the Sea (ITLOS), thirty-three contentious cases were initiated,⁹ while thirty orders and judgments and three advisory opinions were issued.¹⁰

Unlike those other international tribunals, the WTO has a two-tiered mechanism: an initial panel phase and an appellate review stage.¹¹ The panels are constituted ad hoc and are usually composed of three panelists. The Appellate Body is the WTO's permanent appellate tribunal, which has seven members. Three are required to adjudicate an appeal. One of the less-touted successes of the WTO's DSM is the access it has afforded developing countries to resolve their trade disputes in a legally binding, rules-based system. In addition to

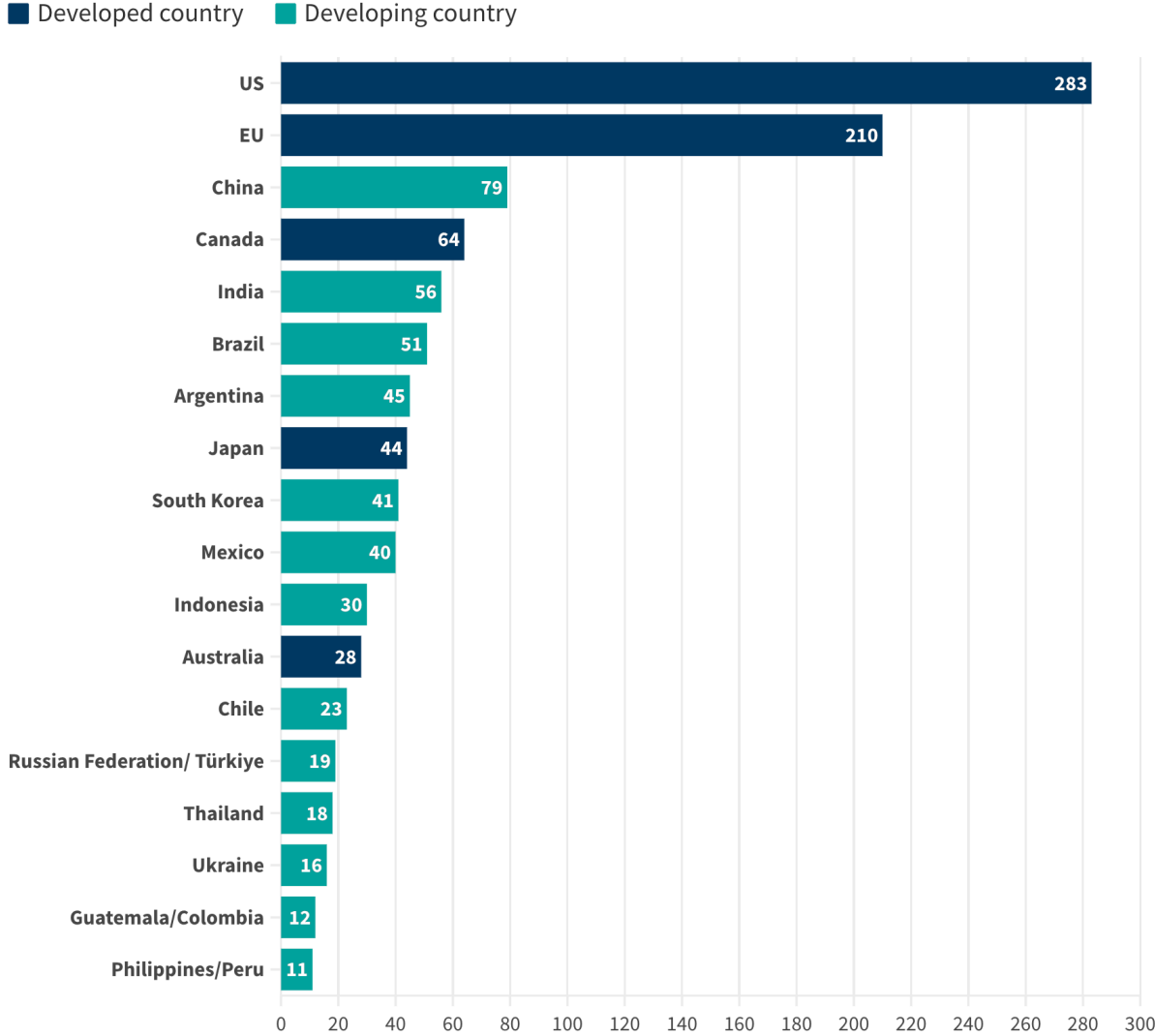
bigger economies like the United States, EU, China, and Japan, middle powers like Argentina, South Korea, Indonesia, and Thailand are frequent users of the DSM (see Figure 1). The virtues of this rules-based process have encouraged Ukraine to bring six disputes against Russia, Poland, Hungary, and Slovakia within the context of its ongoing conflict with Russia. The WTO DSM has provided less powerful countries some respite from the inherent power asymmetries that arise when they attempt to assert their rights against much stronger trade partners.

African Countries Participation at the WTO DSM

African countries rarely participate in the WTO DSM. Thus far, only four African countries, South Africa, Egypt, Morocco, and Tunisia, have been parties in a WTO dispute, and of those, only South Africa and Tunisia have initiated disputes. Tunisia initiated two anti-dumping disputes involving school textbooks against neighboring Morocco, and South Africa has initiated two disputes against the EU challenging its sanitary and phytosanitary measures on citrus products.¹² One of Tunisia's disputes against Morocco proceeded through the panel phase, although Morocco appealed the panel report in July 2021. South Africa's disputes against the EU are still at the consultations phase.

African countries have mostly been respondents in WTO disputes (see Table 1). Most of these disputes involved trade remedies, particularly anti-dumping measures, and have not proceeded past the consultations phase. Thus far, three panel reports involving African countries as respondents have been issued. These are Morocco's disputes against Tunisia (appealed in July 2021) and Türkiye (adopted in January 2020) and Egypt's dispute against Türkiye (adopted in October 2002); the latter was the first WTO panel report involving an African country.

Figure 1. Top Users of the WTO DSM (1995-2024)



Source: WTO, "Disputes by Member", https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (accessed on January 13, 2025).

Note: At the WTO, development status is self determined.

Table 1. African Countries' Participation at the WTO DSM

Country	Name of Dispute	Complainant	Respondent	Date of Initiation	Status of Dispute
	European Union — Measures Concerning the Importation of Citrus Fruit from South Africa (DS613)	South Africa	European Union	27-Jul-22	Panel established, but not yet composed
	European Union — Additional Measures Concerning the Importation of Citrus Fruit from South Africa (DS624)	South Africa	European Union	15-Apr-24	Panel established, but not yet composed
	South Africa — Anti-Dumping Duties on Certain Pharmaceutical Products from India (DS168)	India	South Africa	01-Apr-99	Still in consultations
South Africa	South Africa — Definitive Anti-Dumping Measures on Blanketing from Turkey (DS288)	Türkiye	South Africa	09-Apr-03	Still in consultations
	South Africa — Anti-Dumping Measures on Uncoated Woodfree Paper (DS374)	Indonesia	South Africa	09-May-08	Mutually agreed solution notified
	South Africa — Anti-Dumping Duties on Frozen Meat of Fowls from Brazil (DS439)	Brazil	South Africa	21-Jun-12	Still in consultations
	South Africa — Provisional Anti-Dumping Duties on Portland Cement from Pakistan (DS500)	Pakistan	South Africa	09-Nov-15	Still in consultations
	Egypt — Import Prohibition on Canned Tuna with Soybean Oil (DS205)	Thailand	Egypt	22-Sep-00	Still in consultations
	Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey (DS211)	Türkiye	Egypt	06-Nov-00	Implementation of DSB recommendations notified
Egypt	Egypt — Measures Affecting Imports of Textile and Apparel Products (DS305)	United States	Egypt	23-Dec-03	Mutually agreed solution notified
	Egypt — Anti-Dumping Duties on Matches from Pakistan (DS327)	Pakistan	Egypt	21-Feb-05	Mutually agreed solution notified
	Egypt — Registration Requirements Relating to the Importation of Certain Products (DS609)	European Union	Egypt	26-Jan-22	Still in consultations
	Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey (DS513)	Türkiye	Morocco	08-Jan-20	Report(s) adopted, with recommendation to bring measure(s) into conformity
Morocco	Morocco — Provisional Anti-Dumping Measures on School Exercise Books from Tunisia (DS555)	Tunisia	Morocco	05-Jul-18	Still in consultations
	Morocco — Definitive Anti-Dumping Measures on School Exercise Books from Tunisia (DS578)	Tunisia	Morocco	21-Feb-19	Panel report under appeal
	Morocco — Provisional Anti-Dumping Measures on School Exercise Books from Tunisia (DS555)	Tunisia	Morocco	05-Jul-18	Still in consultations
Tunisia	Morocco — Definitive Anti-Dumping Measures on School Exercise Books from Tunisia (DS578)	Tunisia	Morocco	21-Feb-19	Panel report under appeal

Source: "Disputes by Member," WTO, accessed on January 13, 2025, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm.

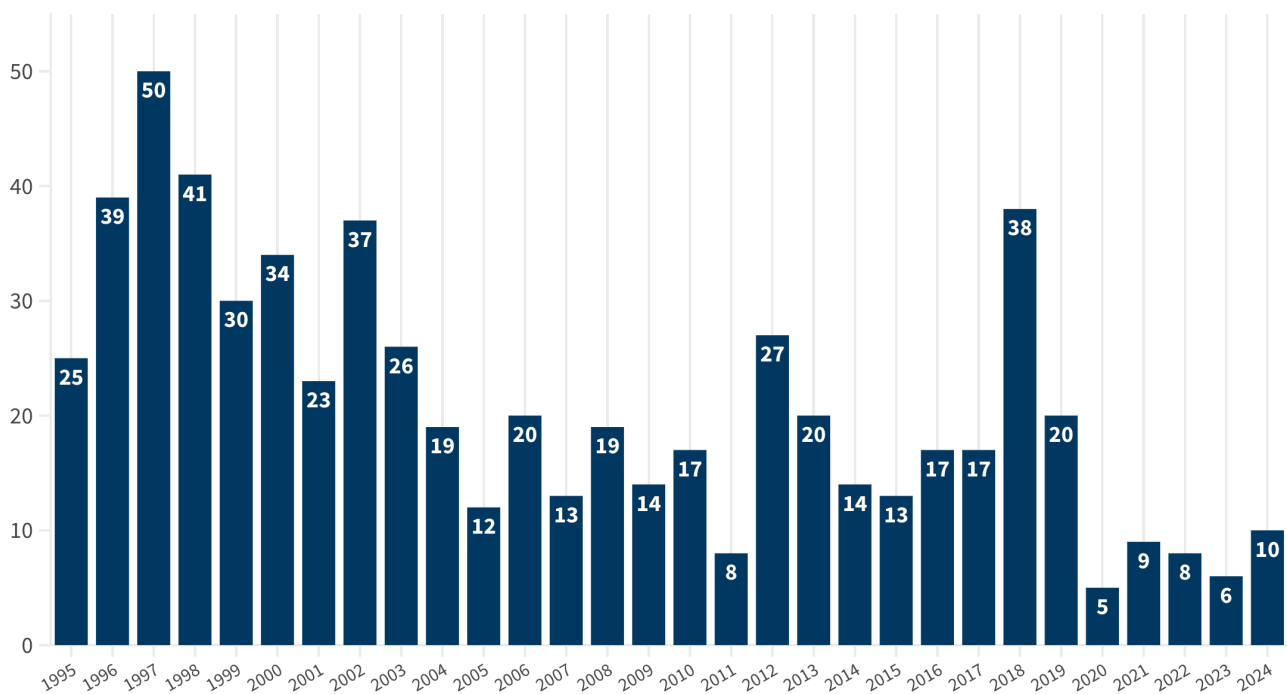
The State of Play of the WTO's DSM

The WTO's DSM has been in crisis mode for over seven years.¹³ Once described as the “crown jewel” of the WTO,¹⁴ it now only barely functions at the panel level. The number of disputes initiated each year has been declining. In 2018, thirty-eight disputes were initiated; in 2024, there were only ten (see Figure 2). The Appellate Body no longer exists. As a result, the use of the DSM has plunged since 2020. Currently, thirty-one decisions are stuck at the appellate review stage.¹⁵ Of those rulings, twenty-four were appealed into the void to sidestep compliance because of the absence of the appellate review mechanism. The organization's three largest powers (the United States, EU, and China) have used the weakened WTO DSM to their advantage. They often initiate disputes against each other or appeal panel reports into the void to avert compliance.

The United States' Role: The Instigator

Even though the United States played a crucial role in shaping the WTO DSM, it has also been one of its most vociferous critics.¹⁶ In August 2017, the United States formally announced that it could not support the appointment of Appellate Body members until its concerns were addressed.¹⁷ This announcement came months after the United States had dragged its feet on the issue, at times citing its domestic political transition and the confirmation of the United States Trade Representative (USTR) as reasons for its inability to complete the appointment process.¹⁸ As a result, on December 11, 2019, the terms of the last two of the three remaining Appellate Body members ended. The Appellate Body was left with one member, which meant that it could no longer adjudicate appeals. The term of the last Appellate Body member ended in November 2020.

Figure 2: Number of WTO Disputes Initiated by Year



Source: WTO, “Dispute Settlement Activity — Some Figures”, chart 2, https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm (accessed on January 13, 2025); also, author's elaboration from WTO, “Chronological List of Disputes Cases”, https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm (accessed on January 13, 2025).



In February 2020, a mere few months after the Appellate Body was incapacitated, the USTR issued a *Report on the Appellate Body of the World Trade Organization* in which it explained its perspectives.¹⁹ In sum, the United States disagreed with (i) the excessively long appeal proceedings; (ii) Appellate Body members continuing to complete appeals after their terms had ended; (iii) judicial overreach and activism, including by issuing “advisory opinions” on issues not necessary to resolve a dispute; and (iv) treating WTO rulings as binding precedent, contrary to public international law.

The United States has not initiated a dispute since the incapacitation of the Appellate Body. In contrast, the United States has exercised its right to appeal in eight disputes thus far; it has appealed more disputes into the void than any other WTO member. Its appeals constitute a third of all the disputes that were initiated after the demise of the Appellate Body. Four of those disputes involve the Section 232 tariffs on steel and aluminum adopted by the first Donald Trump administration in March 2018.²⁰ Three of the reports appealed by the United States involve China.

The EU’s Response: The Fixer

As a result of this impasse, a group of nineteen members, led by the EU, notified the WTO of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) Pursuant to Article 25 of the Dispute Settlement Understanding on April 30, 2020.²¹ The EU and its collaborators sought to preserve the functioning of the WTO’s two-tiered DSM. The MPIA closely mirrors the Appellate Body’s procedures and operates within the WTO Secretariat. The MPIA’s membership has since grown to twenty-seven WTO members; its only African participant thus far, Benin, joined in June 2020.²² Although it has been snubbed by some of the DSM’s most frequent users like the United States, India, Russia, and South Korea, it has drawn other important users, including China, Brazil, Canada, Japan, and Mexico. While it has been subject to criticism, including from the United States, the MPIA is functioning well for those WTO members who wish to access an appellate

review mechanism. Even non-MPIA member Türkiye used MPIA procedures and arbitrators in its dispute against the EU.²³

In contrast to the United States, the EU has continued to initiate disputes at the WTO DSM. The bloc is currently the number one user of this system, initiating ten disputes since the Appellate Body was incapacitated.²⁴ Five of those disputes are against China and two against Russia. In January 2022, the EU initiated its first dispute against an African country at the WTO. This dispute involves Egypt’s requirements for registering imported products. Notwithstanding the EU’s leadership in maintaining the integrity of the WTO’s DSM, it appealed one dispute into the void in August 2020. The dispute was initiated against it by Russia.²⁵

China’s Approach: Business as Usual

For its part, China is positioning itself as a “defender” of the multilateral trading system.²⁶ It has described itself as “an active participant, staunch supporter and major contributor”²⁷ and identified breaking the Appellate Body appointment impasse as one of the “crucial and urgent issues threatening the existence of the WTO.”²⁸ It collaborated early with other WTO members, including the EU, to try to find a solution to the impasse before the Appellate Body was dismantled.²⁹ When its efforts failed, it became one of the founding members of the MPIA. As an acceding WTO member, China has always considered that the rules to which it must abide are stricter than those that applied to other members, and that some members treated it unfairly.³⁰ In addition to being the target of trade wars, one example of China’s discontent is that, when it acceded to the WTO in 2001, it was designated a non-market economy (NME) for trade remedies purposes. This status allowed WTO members to impose higher anti-dumping duties on Chinese products. WTO members also agreed that China’s NME status would expire fifteen years after China’s accession, that is, by the end of 2016. However, the United States and EU continue to use similar methodologies to determine dumping by

Chinese exporters despite the expiration.³¹ These two WTO members consider WTO rules inadequate to address China's economic prowess built on the back of "massive subsidies . . . heavy government intervention," and forced technology transfers, as legal scholar Henry Gao has written.³²

China's support of the WTO DSM stems from its view of it as a legitimate multilateral dispute settlement forum that seeks to discipline increasingly unilateral trade measures. With fifty-two disputes initiated against it, China is a frequent respondent in WTO disputes. In comparison, it has initiated twenty-nine disputes including a dispute against the recent tariffs adopted by the United States.³³ With the exception of three cases, all the other disputes initiated by China are against the United States and the EU. Interestingly, since the dismantling of the Appellate Body in December 2019, China has initiated eight disputes, trailing only the EU with the highest number of disputes initiated at the WTO since 2020. On the other hand, China also trails the EU (and its member states) as the WTO member that has been subject to the highest number of disputes in this period (eight and fifteen disputes, respectively). Notwithstanding its self-appointment as a champion of the multilateral trading system, China has appealed two disputes into the void. Both disputes involved the United States.

Implications for Africa

Notwithstanding their low participation, African countries are invested in ensuring the integrity of the WTO DSM. Due to power asymmetries with trading partners, especially the United States, EU, and China, the current crisis impacts African WTO members' ability to enforce their rights and to resolve their trade disputes. The fragile state of the WTO's rules-based DSM disproportionately affects countries with less political and economic power, subjecting them to coercion.³⁴ Less powerful countries, like African countries, are also subjected to higher loss of

trade opportunities because, while the more powerful country's market is an important one for them, it might represent a tiny fraction of trade to the bigger power that will not hesitate to jeopardize it because it has other sourcing options.

As such, African countries have always been actively involved in discussions relating to the reform of the DSM. They have advocated for, *inter alia*, facilitated access and special treatment because of their low levels of development and internal capacity.³⁵ In the current WTO reform discussions, the African Group of WTO members has stated that "a functioning, independent and effective dispute settlement system is indispensable for preserving the rights and obligations of all WTO members and for ensuring that the rules are enforced in a fair and even-handed manner."³⁶ Moreover, they consider the restoration of the Appellate Body a high priority and by and large do not consider alternatives, like the MPIA, suitable.

Indeed, African countries have already been affected by the state of the WTO DSM. Like other WTO members, they have also asserted their right to appeal in their favor. In November 2018, Morocco became the first (and, thus far, only) African country to initiate a WTO appeal in its dispute with Türkiye.³⁷ However, on December 4, 2019, Morocco withdrew its appeal as the challenged anti-dumping measures had expired while the dispute was waiting in the queue caused by the shortage of Appellate Body members.³⁸ While Morocco still believed that the panel report was flawed, it nonetheless proceeded with its adoption, notwithstanding the adverse findings against its measures. As a result of Morocco's withdrawal, the Appellate Body issued its report on December 10, 2019. This dispute, involving an African country, is significant because it is the last Appellate Body report issued while the Appellate Body was still functional. The panel and Appellate Body reports in this dispute were adopted on January 8, 2020.³⁹ It is one of the last Appellate Body reports to be adopted at the WTO. In July 2021, Morocco appealed the panel report in its dispute against Tunisia into the void, also taking advantage of the incapacitated Appellate Body.



Conclusion

The strained U.S.-EU-China relations have had profound implications for Africa, including within the WTO. While the WTO DSM has historically offered a rules-based platform for resolving trade disputes, its current dysfunction disproportionately affects smaller economies, including those in Africa, by limiting their ability to enforce their rights under the WTO agreements. As their major trade partners pursue divergent strategies, African nations find themselves navigating a complex trade landscape shaped by power asymmetries. Despite limited participation in the WTO DSM, Africa's engagement in advocating for reforms, including restoring the Appellate Body, underscores the continent's commitment to a multilateral trading system that is underpinned by inclusion and the rule of law. Notwithstanding the challenges and complications, African countries must continue to engage with fellow WTO members to resolve the troubles plaguing the organization. As one of the least economically powerful regions in the world, the stakes are high for Africa to do all it can to ensure the restoration of a fully functioning DSM.

About the Author

Kholofelo Kugler is a nonresident scholar with the Carnegie Endowment for International Peace's Africa Program. She is an experienced international trade lawyer and specialist on African trade issues. Previously, she served as counsel at the Advisory Centre on WTO Law in Geneva, Switzerland, where she litigated and provided legal advice and training on WTO law.

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