

5. Africa in the World Trade Organization

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The multilateral trade regime, centred on the World Trade Organization (WTO), is the umbrella under which trade between its members is regulated, based on key principles including openness, predictability and non-discrimination. With over a quarter of the WTO's 164 country membership being African, it is important that the WTO works for and with Africa (African Business 2020). The appointment of Dr Ngozi Okonjo-Iweala in 2021 as the first African WTO director-general sent a strong signal that Africa, as a late-developing continent, has a vested interest in the WTO and its rules that help to shape development outcomes.

This chapter delves into the question of how African agency at the WTO is exercised to achieve pro-development results against the backdrop of geopolitical shifts, anti-globalisation sentiments, the re-emergence of nationalism, the digital revolution and an increasingly urgent climate crisis. The stalemate over the Doha Round that was launched in 2001 to respond to developing country concerns, coupled with the failure of the WTO to achieve consensus to enlarge its negotiating agenda to encompass new issues that have since emerged, have led many to question the organisation's continued relevance. Having walked away from the Doha Round, most developed countries are determined to press on with a new agenda on a plurilateral basis. This carries the risk of splintering the WTO into a two-tier operation. The collapse of the Appellate Body, the pinnacle of the WTO's dispute settlement process, has weakened its adjudicative function. While these issues remain to be substantively addressed, the WTO's 12th ministerial conference, in June 2022, saw progress regarding fishery subsidies, one of the outstanding issues in the Doha Round, and agreed on a partial waiver on certain TRIPS provisions for Covid-19 vaccine patents.

These developments form the backdrop against which the WTO must be examined in relation to the role it could play to enhance Africa's development prospects. This is not straightforward as it depends on one's narrative about the role of the WTO from a developmental perspective. For those who see the

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WTO trade regime as ‘the tide that lifts all boats’, the key principles comprising the multilateral trade system, including discrimination, enhanced transparency and lower trade barriers, are believed to generate strong development outcomes. This may also be described as the neo-liberal or ‘establishment’ narrative. Conversely, those who consider WTO rules to be inherently unfair and constraining, limiting opportunities for agricultural development, industrialisation and catch-up growth, will emphasise the importance of securing flexibilities and exemptions from existing rules. This may be described as the ‘principled’ narrative.

At the risk of oversimplification, the current gridlock at the WTO can be seen as a stand-off between these two narratives, with developed countries predominantly pointing to trade’s development benefits, while developing and least-developed countries highlight the system’s constraints. But it is also possible to draw upon elements from these two perspectives – some of which are intertwined – to construct a third narrative as a strategy for action. This may be labelled the ‘pragmatic’ narrative. A pragmatic narrative would focus on results over principles and procedural niceties, technical analysis over ideological positioning, and would be future-oriented.

This chapter addresses two main themes. The first two sections outline the main elements in the two narratives to set the scene for the second half of the chapter, which assesses African member states’ record of engagement with the WTO. The assessment is conducted from three perspectives: in relation to the deliberative bodies that oversee the WTO regime; negotiations that establish the rules of the regime; and in the settlement of disputes that arise in the application of the rules. African agency has in a few areas been effective in pursuing African interests. In other areas, Africa has failed to obtain desired results. Moreover, in relation to the analytical framework for assessing the trade policy cycle outlined in Chapter 1, African engagement at the WTO presents a mixed record given the gaps with respect to openness, transparency, inclusive participation, accountability and efficiency. But Africa’s capacity and resource limitations must also be recognised. These issues are taken up in the concluding section of the chapter. Inspired by the framework established in *Six Faces of Globalization* (Roberts and Lamp 2021), a deconstruction of the narratives that dominate discussions about the WTO helps to explain diverging views about how African countries can maximise the benefit of WTO membership. It also enables an approach to the question of African engagement at the WTO from an analytical as opposed to an ideological perspective. The merits of the ‘establishment’ and ‘principled’ narratives are now considered.

5.1 The establishment narrative

The establishment narrative has dominated Western thinking in the post-World War II international economic order, with antecedents that go back

even further. Free trade is the starting point. Specifically, free trade has enabled countries to specialise, allowing economic actors to focus on their comparative advantage and to exchange products (and services) that they are good and efficient at making with products (and services) in which other countries have a comparative advantage. By creating new markets, free trade has also led to advances in technology and productivity. With respect to development, the economist Paul Krugman, for example, argued that:

the raw fact is that every successful example of economic development this past century – every case of a poor nation that worked itself up to a more or less decent, or least dramatically better, standard of living—has taken place via globalization; that is, by producing for the world market rather than trying for self-sufficiency. (Krugman 1999, cited in Roberts and Lamp 2021)

This establishment narrative underlies the thinking of the ‘the guardians’ of the international economic order, including the WTO Secretariat. In assessing the role of the WTO in Africa’s development, official WTO publications consistently tout the benefits of free trade. For example, a 2021 report under the title ‘Strengthening Africa’s Capacity for Trade’ noted that:

[A] stable, multilateral trading system and access to international markets has had positive effects on the development of industrialization in Africa, and efforts to build capacity, to enable African countries to take fuller advantage of the benefits that trade brings. (WTO Africa Report 2021)

It further notes that:

Trade has allowed many developing countries to benefit from the opportunities created by emerging new markets by enabling them to integrate into the world market through global value chains. Moreover, the unbiased, predictable and non-discriminatory regime maintained by the multilateral trading system places all economies – developing and developed, small and large – on an equal footing.

More explanation is provided in the 2021 WTO Annual Report that:

The system’s overriding purpose is to help trade flow as freely as possible – provided that there are no undesirable effects – because this stimulates economic growth and employment and supports the integration of developing countries into the international trading system. (WTO, 2021 Annual Report)

Similarly, a joint World Bank and WTO report celebrated:

[A] dramatic increase in developing country participation in trade has coincided with an equally sharp decline in extreme poverty worldwide. Developing countries now constitute 48 percent of world trade, up from 33 percent in 2000, and the number of people living in extreme poverty has been cut in half since 1990, to just under one billion people. (World Bank 2015; WTO 2015)

Another prong of the establishment narrative is the focus on technical assistance. Here the WTO recognises the role of technical assistance to help developing countries build capacity. In this sense, capacity-building is itself part of the narrative that the WTO is working for Africa. For example, the 2021 WTO report ‘Strengthening Africa’s Capacity for Trade’ claimed that ‘[t]hrough technical assistance programs and support for economic diversification and industrialization on the African continent, the WTO has played a role in fostering economic transformation.’ The same report highlighted that ‘the WTO has supported trade and development in Africa through its leadership on Aid for Trade.’

5.2 The principled narrative

The principled narrative focuses on the system’s inherent biases and unfairness. Reflecting neo-colonial perspectives, proponents of this narrative consider that international economic rules have evolved primarily to advance the interests of developed countries, at the expense of developing countries and LDCs. According to this narrative, ‘developed countries have used international law and international institutions to perpetuate quasi-colonial domination of developing countries in the spheres of international trade, investment and finance’ (Roberts and Lamp 2021). While the principled narrative acknowledges that open trade can be beneficial, it considers that countries at dissimilar stages of development should be treated differently to benefit from trade liberalisation. This view is aptly captured by the economist Ha-Joon Chang, who explains that the WTO rules are ‘kicking away the ladder’ (2002) that was used by now-developed countries to climb up to where they are now. While proponents of the establishment narrative emphasise the positive contribution of the multilateral system to industrialisation, the principled narrative points to the constraining nature of the WTO rules on policy space to achieve industrialisation and economic transformation.

The principled narrative also focuses on the hypocrisy of developed members’ negotiating positions. While touting the benefits of trade liberalisation, developed countries ensured that high trade barriers were maintained in sectors of particular interest, notably agriculture, where the rules they constructed allowed a subset of developed countries to continue to subsidise

agricultural production. These rules have distorted global agriculture including incentives for greenfield investments in countries where subsidies are not available thereby undermining their competitiveness (African Business 2020). As set out in Annex 1, various statements have been submitted by developing countries and least-developed countries to reform agricultural domestic subsidies – including with respect to cotton, which stands out as an egregious example of global market distortion. These countries have also sought a right to public stockholding for food security purposes, which likewise has market distorting implications.

Over the years, the submissions to WTO deliberative bodies by the Africa Group, the Africa, Caribbean and Pacific (ACP) Group and the LDC Group have repeatedly stressed the importance of policy space to promote economic development. For example, a 2022 Africa Group submission emphasised ‘the need to ensure that S&DT is strengthened in all WTO agreements to provide the necessary flexibilities and policy space that African countries need to achieve their economic development objectives.’ (African Group 2022). Similarly, a statement submitted by South Africa and others to the WTO General Council focused on the need for the WTO to ensure that its rules enable, and do not inhibit, developing and least-developed countries from pursuing policies to achieve industrialisation, structural transformation, and diversification of their economies (WTO 2019b).

The view that WTO rules are unfair as they limit the policy space necessary to develop translates into a position that seeks deeper, longer and greater exemptions from these rules. Indeed, as further detailed in Annex 1, statements submitted by the Africa Group, the Least Developed Country (LDC) group and the G90 all focus on deepening special and differential treatment (SDT) provisions. Some of these provisions establish explicit derogations from rules to create policy space. A focus on capacity constraints, as well as the concern that future rules would result in unfair outcomes for African countries, has translated into calls for technical assistance. The link between narrative and position is further set out in Table 5.1. Procedural rectitude (i.e. the view that a set of negotiations that was previously agreed, e.g. the Doha Round, must be satisfactorily concluded before new issues are addressed) has translated into continued adherence to the decisions and ministerial directives that were adopted as part of the Doha Round. Geneva-based African ambassadors interviewed as part of the research for this chapter emphasised the continued reluctance of African governments to engage in new issues, given that these do not reflect the priorities which were set out in the Doha Round.

The principled narrative is evolving to include the concept of common but differentiated responsibilities as regards issues at the intersection of trade, climate and sustainability. The view here is that decades of overconsumption by developed countries, which have generated various planetary emergencies, should not take away a right to economic development. These concerns have appeared most prominently in the context of the fisheries negotiations. For

Table 5.1: Connecting the principled narrative to positions of African countries

Narrative	Position
<i>Process</i> is unfair due to unfinished Doha Round which sought to rebalance the outcome of the Uruguay Round	Principled opposition to any new negotiations; emphasis to adhere to Doha Decisions and Ministerial Declarations
<i>Rules</i> selectively applied to areas in which industrialised countries have comparative advantage; protectionism prevails in other areas (agriculture)	Amend rules (e.g. domestic support in agriculture)
<i>Rules</i> limit policy space, thereby limiting industrialisation opportunities	Seek exemptions from rules; extend transition phases; do not make new commitments
Difficult to comply with rules because of capacity constraints	Seek exemptions, provide technical assistance, capacity-building; make compliance contingent on provision of technical assistance
<i>Future rules</i> could prevent countries from taking advantage of economic opportunities that were available to other countries (e.g. fisheries subsidies negotiations)	Seek exemption from the rules; ensure rules apply only to a targeted group of WTO members

Source: Authors' compilation.

example, the LDC Ministerial Declaration for the WTO's 12th Ministerial Conference (MC 12) called for an agreement on fishery disciplines that are 'balanced and proportionate to the responsibility of Members' and notes that 'LDCs are not the contributors to overfishing and overcapacity and therefore should be exempted from such subsidy disciplines' (LDC Group 2021). Environmental concerns will increasingly feature in WTO initiatives and climate-justice arguments can be expected to become more prominent in the principled narrative.

Having outlined the narratives that define the current impasse at the WTO, the focus now shifts to the record of African agency at the WTO in securing results that are in its interest. Three specific areas of WTO operations are assessed: the deliberative bodies that oversee the WTO regime; negotiations that establish the rules of the regime; and the settlement of disputes that arise in the application of the rules.

5.3 Participation in deliberative bodies

Governance of the multilateral trading system is carried out through an inter-governmental committee system devoted to the myriad of issues under the

WTO's purview. The WTO operates on a consensus basis, which means that each member state technically has a veto. There is provision for voting, but this is rarely utilised as consensus decision-making is the practice. This is important as the WTO has few means of pressing unwilling governments to obey its decisions (Hoekman and Kostecki 2009). As a member-driven organisation, the deliberative bodies administer the WTO's rules and disciplines, with the Secretariat providing back-office support and technical advice.

Except for key bodies that are of obvious strategic interest, African members' attendance and participation in WTO deliberations are generally low. This reflects both capacity constraints and the high cost of maintaining diplomatic missions in Geneva. Typically, African diplomatic missions are understaffed, with concurrent responsibility for covering deliberations at other international organisations in Geneva like the UN Human Rights Council, the World Intellectual Property Organization (WIPO), the World Health Organization (WHO) and the International Labour Organization (ILO). This, in turn, necessitates prioritisation. Participation in WTO committees is not always at the top of the list (van der Ven 2018a).

However, with the African diplomatic missions stretched thin, the Africa Group at the WTO – which comprises African countries that are WTO members and observers – provides a forum for coordinating African participation in the committees and for aligning negotiating positions. The Africa Group typically assigns a member to follow specific issues and report back. This helps with keeping abreast of the latest developments. The same can be said for other groupings that operate at the WTO, in which African countries participate such as the Least Developed Country (LDC) Group, the Africa, Caribbean and Pacific (ACP) Group and the G90.

Aside from the General Council, which is the WTO's main forum for decision-making between ministerial summits, where African attendance and participation are high, the deliberative bodies that attract the highest level of African participation are the Committee on Trade and Development (CTD) and the Trade-Related Intellectual Property Rights (TRIPS) Council. The former is responsible for oversight of development matters that impact WTO rules and trade capacity development initiatives, among other concerns. The latter deals with the sensitive issue of intellectual property rights. At the CTD, for example, African members in coalition with other developing countries continue to press the question of fair rules and a level playing field including through provisions for SDT. The Aid for Trade initiative that provides a framework for development partners' accountability for support to trade development is monitored by the CTD with strong backing from African members. At the TRIPS Council, African members helped to put through an amendment to the TRIPS Agreement that entered into force in 2017. This secured a legal pathway for developing countries to obtain access to generic medicines. African members led by South Africa have been instrumental in pressing for a waiver from certain provisions of the TRIPS Agreement to facilitate access to vaccines and medicines for the prevention, containment and treatment of Covid-19.

On the other hand, African participation in most other WTO deliberative bodies is less substantial. This is a missed opportunity to engage in the strategic use of trade policy instruments to advance national commercial interests, including in areas of importance to African countries, such as sanitary, phytosanitary and other technical standards (Low, Osakwe and Oshikawa 2016).

5.4 Participation in negotiations

Since the WTO's establishment in 1995, it has failed to conclude a major round of negotiations. As earlier noted, the Doha Round, launched in 2001, aimed at an ambitious programme of reform in agriculture, tariffs on industrial goods, and to provide developing countries with flexibilities and policy space. WTO members are divided over the merits of further pursuing the Round (Okonjo-Iweala 2020; World Trade Organization 2015). Developed country members have effectively turned their back on it. Moreover, WTO members have negotiated few new agreements, apart from the 2015 decision to eliminate all forms of agricultural export subsidies (not to be confused with domestic subsidies, which remain) and the Trade Facilitation Agreement (TFA), which entered into force in 2017.

Meanwhile, in response to a changing world – geopolitically, economically and socially – several initiatives and negotiations have been launched with enthusiastic promotion by developed country members. These include joint statement initiatives (JSIs) on e-commerce, investment facilitation, services domestic regulation, trade and environmental sustainability, plastics pollution and environmentally sustainable plastics trade, and micro, small and medium-sized enterprises (MSMEs) in trade. Gender equality in trade has also featured as a new area of interest. Africa's participation in these negotiations and discussions is characterised by either low levels of engagement and/or an overwhelming focus on re-emphasising the issues in the unfinished Doha Round.

As set out in Table 5.2, 25 out of 44 African WTO members are participating in at least one JSI. Participation between the different JSIs is not equally spread, reflecting, in part, the distinct set of draft provisions set out in each of the JSIs. For example, the draft JSI on e-commerce includes market access provisions and other measures on cross-border data flows and data localisation requirements that will have implications on a country's regulatory approaches to e-commerce and data governance. African members remain wary of making commitments in these areas. The JSIs on services domestic regulation and investment facilitation do not cover market access but envisage binding commitments. The JSIs on MSMEs, plastic pollution, and trade and environmental sustainability reflect mostly best endeavour provisions focused on regulatory cooperation. Investment facilitation is the JSI with the highest level of African participation.¹ This reflects not only African prioritisation of investment mobilisation but also the fact that the draft proposals

Table 5.2: Overview of African countries that have signed on to the JSIs (April 2022)

E-commerce (as of January 2021)	Investment Facilitation for Development (as of December 2021)	MSMEs (as of January 2022)	Services Domestic Regulation (as of December 2021)	Trade and Environmental Sustainability (as of 17 November 2020)	Plastics Pollution and Sustainable Plastics Trade (as of November 2021)	Joint Ministerial Declaration on the Advancement of Gender Equality
Benin	Benin	Côte d'Ivoire	Mauritius	Cabo Verde	Cabo Verde	Angola
Burkina Faso	Burundi	Gambia	Nigeria	Chad	Cameroon	Botswana
Cameroon	Cabo Verde	Kenya		Gambia	Central African Republic	Burundi
Côte d'Ivoire	Central African Republic	Nigeria		Senegal	Chad	Chad
Kenya	Republic				Chad	Côte d'Ivoire
Nigeria	Chad				Gambia	Democratic Republic of the Congo
	Congo				Morocco	Morocco
	Djibouti					Eswatini
	Gambia					Gabon
	Guinea					Gambia
	Guinea-Bissau					Lesotho
	Liberia					Liberia
	Mauritania					Madagascar
	Mauritius					Malawi
	Morocco					Mauritius
	Nigeria					Namibia
	Sierra Leone					Niger
	Togo					Nigeria
	Uganda					Rwanda
	Zambia					Senegal
	Zimbabwe					Sierra Leone
						Togo
						Uganda
						Zambia
6	20	4	2	4	6	23

Source: Authors' own compilation

do not cover controversial matters such as market access but focus on facilitating investment through rules on streamlining bureaucratic requirements and processes.

Several factors explain the general lack of engagement in most of the JSIs that address so-called 'new issues', such as e-commerce or services domestic regulation, which are meant to update the WTO rulebook. These include a lack of trust in that agreeing to an additional set of rules would further limit developing countries' policy space; the perception that the new initiatives favour the interests of the developed economies at the expense of developing countries and LDCs; the disincentive provided by the WTOs most favoured nation (MFN) provision, envisioned to be included in some JSIs, which would enable African countries to 'free ride' on the benefits without having to make concessions; and questions about whether the WTO is the right institution to engage in some of the issues (e.g. e-commerce and MSMEs). In addition, on grounds of both principle and procedural rectitude, most African members are reluctant to engage fully in the JSIs and other new issues until the core subjects of the Doha Round are addressed.

Even so, African countries registered some consequential results at the MC 12 that took place in June 2022. For example, led by South Africa, African members obtained a waiver to the TRIPS Agreement to override patents and produce vaccines to combat the Covid-19 pandemic. A multilateral agreement on fishery subsidies, one of the major outcomes the ministerial conference, also includes some gains for African members. Table 5.3 summarises key outcomes of the ministerial conference, and highlights how this relates to known positions of the Africa Group, LDCs and/or ACP Group. These outcomes demonstrate that negotiating breakthroughs, technical solutions and results that are development-friendly are possible even in a systemically biased and polarised WTO.

5.5 Participation in dispute settlement

As was earlier mentioned, the WTO is grappling with an ongoing disputes settlement crisis. The absence of a functioning Appellate Body allows for panel reports to be appealed 'into the void', thereby leaving disputes unresolved (Lester 2022). This makes it difficult to enforce WTO obligations when members are in violation of these (Lester 2022). While some members have set up an alternative arbitration arrangement, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), this will be at best a partial solution given that membership is optional and contributes to the risk of a splintered WTO. The Africa Group addressed the Appellate Body crisis in a June 2019 communication, noting the importance of the dispute settlement system as a 'central element in providing security and predictability to the multilateral trading system'. The Africa Group further highlighted the importance of the disputes settlement system as a legitimate forum where members have equal

Table 5.3: Outcome of the 2022 WTO Ministerial Conference

Issue/topic/outcome	Known position of Africa Group/LDCs/ACP Group	Comments
Fisheries: Multilateral Agreement on Fishery Subsidies		
Prohibition of subsidies to illegal, unreported and unregulated (IUU) fishing	Strong support for the elimination of harmful fish subsidies that lead to IUU fishing	A gain for African countries
Prohibition of subsidies to fishing overfished stocks	Disciplines on harmful subsidies that contribute to overfishing and overcapacity	A gain for African countries
LDC exemption and technical assistance and capacity provision	Need for common but differentiated responsibility in the negotiations and their outcomes, and the need for SDT for developing countries in order to ensure food security, protect the livelihoods of coastal communities and provide policy space to strengthen their fisheries industries and capacities for economic and social development	Specific exceptions were granted only for LDCs, while technical assistance and capacity-building provision was included. Subsidies for disaster relief were excused (the latter was requested by the ACP Group, WT/MIN (22)/3)
Transitional period was granted to developing countries with respect to implementing disciplines on IUU and overfished stocks subsidies	An appropriate <i>de minimis</i> threshold and sufficient transitional periods to accommodate the development objectives of African countries. Further exclusion of small artisanal/small-scale fishing	No <i>de minimis</i> rule was introduced. Still, developing countries have a period of two years to grant or maintain such subsidies. No exemption for small artisanal/small-scale fishing was granted
Ministerial Declaration on the WTO Response to the Covid-19 Pandemic and Preparedness for Future Pandemics/Ministerial Decision on the TRIPS Agreement		
Partial waiver on certain TRIPS provisions relating to grant of compulsory licences and patents over Covid-19 vaccines	African countries supported the India–South Africa submission seeking a TRIPS waiver for copyrights, industrial designs, patents and protection of undisclosed information with regard to vaccines, diagnostics and therapeutics on Covid-19	Only a part of what was requested in the India–South Africa draft waiver, which was co-sponsored by many African countries, was included in the declaration, namely compulsory licences and patents

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Table 5.3: (Continued)

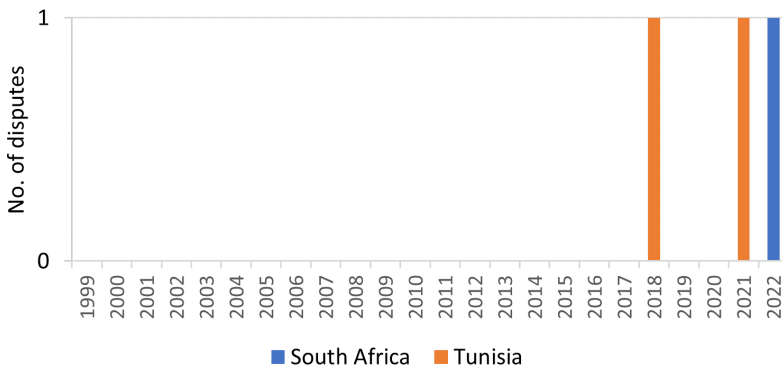
Issue/topic/outcome	Known position of Africa Group/LDCs/ACP Group	Comments
Ministerial Declaration on the Emergency Response to Food Insecurity		
Ministerial Declaration on the Emergency Response to Food Insecurity	African countries supported the draft Ministerial Decision on Food Insecurity in net food importing developing countries (NFIDCs) and LDCs to respond to immediate and urgent challenges of food insecurity and loss of livelihoods	A gain for African countries
Agriculture		
Domestic support	Call for a substantial reduction of trade-distorting domestic support	No agreement was reached. Generally, agriculture subsidies were not properly addressed
Ministerial Decision on World Food Programme (WFP) Food Purchases Exemptions from Export Prohibitions or Restrictions	Support for the Ministerial Decision on WFP Food Purchases Exemptions	A gain for African countries
Public Stockholding for Food Security Purposes	Adoption of a Draft Ministerial Decision on Public Stockholding for Food Security Purposes for Developing Country Members. This would include reference to adequate agricultural food security tools, including through the establishment of a permanent solution on public stockholding that caters for the needs of all developing and least-developed countries and through adopting a meaningful special safeguard mechanism	No agreement was reached
Sanitary and Phytosanitary Declaration on Modern Challenges		
Sanitary and Phytosanitary Declaration for the 12th WTO Ministerial Conference: Responding to Modern SPS Challenges	Support for the Ministerial Declaration on SPS	A gain for African countries

Issue/topic/outcome	Known position of Africa Group/LDCs/ACP Group	Comments
Special and differential treatment		
Special and differential treatment	African countries supported additional special and differential treatment rules, especially with respect to agricultural trade disciplines, services and TRIPS	Aside from certain aspects in the TRIPS waiver and the fishery subsidies agreement, no additional provisions were agreed
Aid for Trade and Enhanced Integrated Framework		
Aid for Trade	African countries sought to strengthen and improve Aid for Trade and ensure that it contributes towards achieving trade-related capacity-building objectives, including removing supply-side constraints, developing infrastructure and facilitating the integration of developing economies, particularly LDCs, in regional and global trade	No new provisions were agreed
Ministerial Decision on the E-commerce Moratorium and Work Programme (extension of moratorium)		
Moratorium on not imposing customs duties on electronic transmissions was extended until MC13	South Africa, along with India and Indonesia, considered adopting positions against the extension of the moratorium, highlighting the deep digital and technological divide between developing and least-developed countries	African countries are divided on this issue
Services		
Special and differential treatment for LDCs	Implementation of the 2015 Ministerial Decision on Preferential Treatment to Services and Service Suppliers of Least Developed Countries	No new provisions were agreed
Ministerial Declaration on the WTO Response to the Covid-19 Pandemic and Preparedness for Future Pandemics	African countries sought to address the impact of the Covid-19 pandemic and services challenges and opportunities, especially in the travel, tourism, hospitality, air freight, maritime and land transport sectors to developing countries	The ministerial declaration contained only minor references to these issues, and did not identify any particular commitment or action plan

opportunity to enforce their rights (African Group 2019). It further emphasised that any dispute settlement reform should seek to enhance the participation of African countries in the dispute settlement system. The latter concern refers to low levels of African participation in the WTO’s dispute settlement system. Here again, key factors limiting participation are the expense involved in litigation, technical and capacity constraints at the African diplomatic missions in Geneva and at home in the capitals, fear of retaliation by donor countries in some situations, and the reality that most African countries mainly trade under preferential schemes.

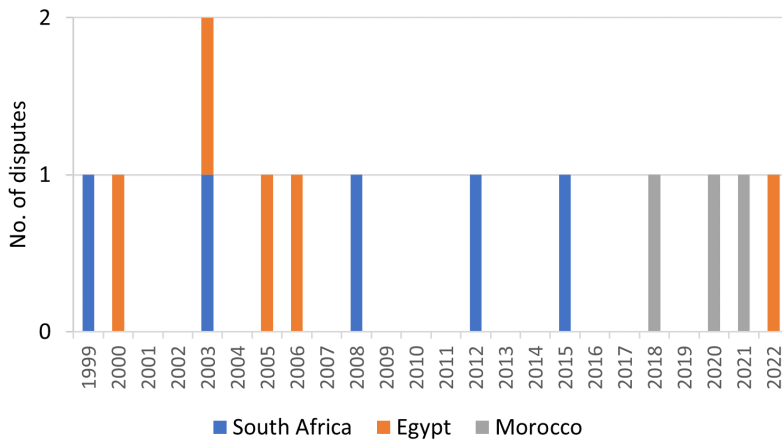
Systemically, low-income countries have less economic heft to back up settlements. The benefits to low-income country complainants for filing a case

Figure 5.1: Number of disputes participated in as a complainant, by country



Source: Authors’ calculations.

Figure 5.2: Number of disputes participated in as a respondent, by country



Source: Authors’ calculations.

are limited by their imports comprising only a small share of the respondent's total exports. Given that retaliation rights must be equivalent to the cost of damage, retaliation might not present a sufficiently strong incentive for the respondent to bring its measures into compliance if this is the outcome of the adjudication (Bartels 2013). As underlined in the Africa Group communication, systemic biases like these must be addressed in dispute settlement reform procedures.

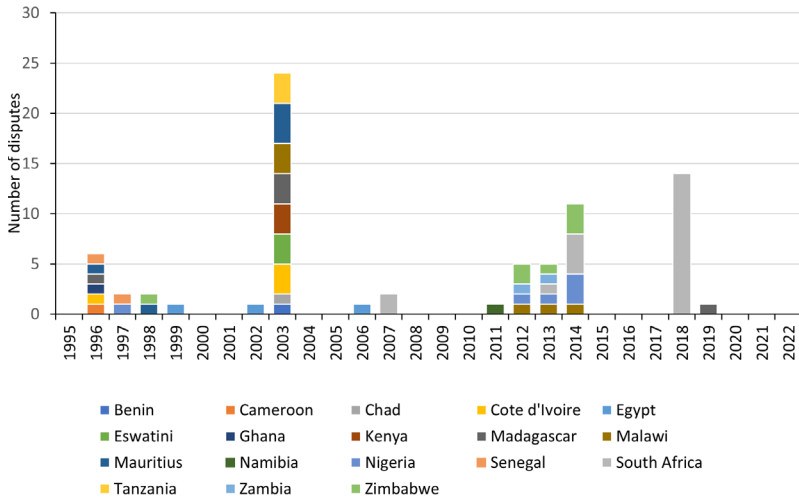
Until 2022, Tunisia was the only African country ever to have filed a dispute as a complainant (Figure 5.1). This concerned a case against Morocco on anti-dumping measures on school exercise books. In July 2022, South Africa filed a complaint against EU phytosanitary requirements on its fruit exports. On the respondent side, only three African countries (Egypt, Morocco and South Africa) have been sued, being subject to a total of 13 disputes (Figure 5.2). Most of these disputes concerned anti-dumping claims and were resolved in the consultation phase. Two disputes advanced to the panel stage and, in one, Morocco filed an appeal that it later withdrew. Unsurprisingly, the three African countries that have been subject to disputes are among the largest economies on the continent.

With respect to third-party participation, a total of 19 African countries had reserved their rights to participate as third parties in various disputes by the end of 2020 (Figure 5.3). These countries participated as third parties 104 times, out of a total of 3,311 participating third parties. Since African countries comprise over a quarter of WTO membership, this is relatively low. The African countries concerned had a direct commercial or strategic interests in the cases, which included sugar and cotton subsidies, bananas, tobacco advertisement laws, trade remedies, and trade and environmental issues in relation to extraterritoriality.

Another indicator of African participation in the WTO dispute settlement concerns the appointment of African panellists. These are the assessors who review complaints. As illustrated in Figure 5.4, African panellists' participation is low and concentrated in a handful of countries. Prior to 2010, African panellists originated exclusively from three countries: South Africa, Egypt and Morocco. Since 2011, however, this list has expanded to include Botswana, Kenya, Zimbabwe, Zambia and Tunisia. This reflects a long-standing practice of drawing panellists from traditional regional pools. This could be remedied by concerted effort to enhance diversity in the composition of panels (Apecu 2013). Overall, African participation in the WTO's dispute settlement processes has mainly been as third parties in cases of interest. But, even here, African countries account for less than 5 per cent of participation as third parties.

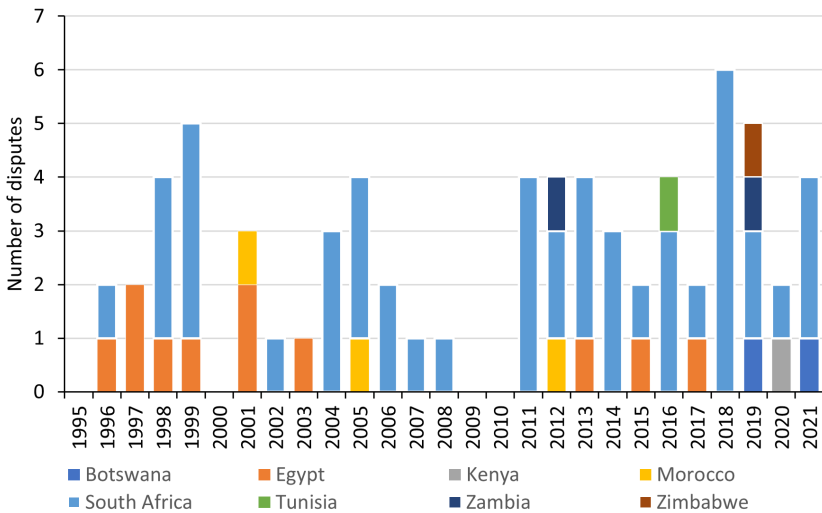
Low levels of participation in the core functions of the WTO suggests that African members are not sufficiently linking development priorities to their rights and obligations under the WTO framework. It also reflects systemic biases against small economies, such as in dispute settlement, and severe capacity constraints. With respect to negotiations, low levels of participation

Figure 5.3: Number of disputes participated in as a third party, by country



Source: Authors' calculations.

Figure 5.4: Number of disputes participated in as a panellist, by country



Source: Authors' calculations.

reflect adherence to the Doha Round procedural rectitude and the belief that signing up to additional rules and commitments will be detrimental to Africa's development. At the same time, where major interests are perceived to be at stake, African agency has been exerted in pursuing them in the deliberative

bodies and negotiations – including through coalitions such as the Africa Group and the LDC Group – and in dispute settlement.

Summary

The main conclusion from this examination of African agency at the WTO must be that overall performance is mixed as measured against the steps of the trade policy cycle outlined in Chapter 1. Results have been meagre but significant. With limited resources and capacity constraints in Geneva and the capitals, African members have worked in coalitions, including the Africa Group, but also with other developing or least-developed countries. This achieves both a pooling of resources and an amalgamation of economic clout and influence. However, the downside of coalitions involving both African and other developing countries' groups is that this does not allow for sufficient differentiation of Africa's specific needs. On some SDT issues, for example, emerging economies or higher-income developing countries that have already acquired substantial market share in some sectors are unlikely to be granted policy space flexibilities, having already climbed some distance 'up the ladder'. Here, it should be noted that China and other emerging economies still claim developing country status at the WTO. Refusal of advanced countries to accept this is another driver of paralysis at the WTO. As the region with the smallest (and declining – see Chapter 1) share of world trade, and having seen that technical solutions are possible, African members can differentiate their needs better and pinpoint with finer clarity where SDT is required to support their growth (Bacchus and Manak 2021).

The red lines that were established by African countries have been clear and consistent in the two decades since the Doha Round was launched, despite pressure from other parties. They have balanced offensive and defensive interests by sticking to their red lines. But procedural rectitude and ideological positioning have limited their engagement in the JSIs that address 'new issues' to update the WTO rulebook in a changing global economy. Here ideology trumped pragmatism. The latter would have entailed reliance on empirical evidence and analysis for guidance on how JSI proposals are likely to impact development concerns and formulating negotiation priorities and strategies accordingly.

All the same, African countries have registered some results, for example in securing the first ever substantive amendment of a WTO agreement. The amendment to the TRIPS Agreement concerned new disciplines to secure access to medicines to combat the HIV/AIDS epidemic. The experience from this episode emboldened the African members led by South Africa to pursue a waiver to the TRIPS Agreement to override patents and produce vaccines to combat the Covid-19 pandemic as was noted.

Capacity and resource constraints being a perennial challenge, however, implementation of WTO obligations has not always been straightforward,

though still commendable in some areas. As regards implementation of obligations related to the Trade Facilitation Agreement (TFA), for example, all except for three African members have to date ratified the TFA and fulfilled notification obligations employing the novel SDT provisions of this agreement (van der Ven 2018a).

The analytical framework that was set out in Chapter 1 further outlined good governance principles for trade policymaking. Assessed against these principles, African engagement at the WTO has been mixed. In terms of efficiency and appropriateness, gaps were noted in African members' attendance and participation across the deliberative bodies – although they have been effective at prioritising where to engage. However, compelling evidence is yet to emerge that African governments and their representatives in Geneva are actively pursuing openness and transparency, inclusive participation, and accountability with their publics in their engagement with the WTO. Some African ambassadors who were interviewed for this chapter complained about the lack of sufficient input based on national-level consultation from their capitals, especially on issues that are not within the domain of the trade ministries to which they report on WTO matters. Among examples cited were digital trade and environmental issues such as trade-related aspects of plastics pollution, which fall under the responsibility of communications and environmental ministries, respectively.

A final takeaway is the urgent need to address deficits in the technical capacities of African missions in Geneva. Here, the African Union, which maintains a representative office that monitors deliberations at the Geneva-based international organisations, could play a key role. It should strengthen its establishment to pool expertise and provide technical services to the Africa Group, including in drafting proposals and preparing responses to proposals from interlocutors. Some African ambassadors who were interviewed identified the dearth of drafting skills as a priority to be remedied and the need to surmount over-reliance on a few Geneva-based development-friendly think tanks. To enhance the role of the African Union in Geneva, it is essential that it is given observer status at the WTO, which it is currently denied. More broadly, the fact that there is no think tank on the African continent that is devoted to WTO issues is also a matter that needs to be urgently addressed by the African Union. India's Centre for WTO Studies in India, now in its 23rd year, is the powerhouse behind the country's formidable WTO performance.

Note

- ¹ The Ministerial Declaration on Gender has the highest number of participating African countries, but this does not have the status of a JSI.

Annex 1

Table 5A.1: Linking the principled narrative to statements made by the LDC, Africa Group and G90

Narrative	Position	LDC proposal for MC12	G90 Declaration on SDT (G90, 2021)	Africa Group Job/Ag/2014 12 July (TWN, 2021)	African Declaration on WTO Issues 8 Jan 2019
<p>Process is unfair due to unfinished Doha Round which sought to rebalance the outcome of the Uruguay Round</p>	<p>Principled opposition to any new negotiations</p>	<p>Urge members to find pragmatic solutions to unfinished business of 20 years ago</p>			<p>Recall and reaffirm importance of implementing WTO ministerial, General Council decisions and declarations adopted since Doha in 2001; reiterate commitment to SDT in para 44 of Doha</p>
<p>Rules selectively applied to areas in which industrialised countries have comparative advantage; protectionism prevails in other areas (agriculture)</p>	<p>Amend rules (e.g. domestic support in agriculture)</p>	<p>Need for reform of the Agreement on Agriculture; ensure that MC12 negotiations result in substantial cuts in trade-distorting support and reduce existing asymmetries; eliminate domestic support on cotton; develop permanent solution to public stockholding</p>		<p>Detailed overview of perceived imbalances in WTO's Agreement on Agriculture concerning conditions attached to public stockholding for food security and flawed calculations; highlight need for permanent outcome on public food stockholding programmes</p>	<p>Reaffirmation of positions on outcomes to trade-distorting domestic support, cotton, public stockholding for food security, special safeguard mechanism, and SDT</p>

(Continued)

Table 5A.1: (Continued)

Narrative	Position	LDC proposal for MC12	G90 Declaration on SDT (G90, 2021)	Africa Group Job/Ag/204 12 July (TWN, 2021)	African Declaration on WTO Issues 8 Jan 2019
<p>Rules limit policy space, thereby limiting industrialisation opportunities</p>	<p>Seek exemptions from rules; extent transition phases; do not make new commitments</p>	<p>Reaffirmation of the importance of SDT for LDCs to achieve structural economic transformation and take full advantage of international trade</p>	<p>‘WTO rules must give space for economic actors to grow local production capacities, thereby energizing local, domestic, and regional markets and economies, and improving the quality of employment and living standards.’</p>		<p>Reaffirm SDT, to address development needs in line with Africa’s industrial development priorities as set out in Agenda 2063 on structural transformation and industrialisation; various reiterations of importance of SDT</p>
			<p>Ensure ‘sufficient flexibility and policy space in tariff structure’ to ‘grant the tariff protection required for infant industries.’</p> <p>Flexibilities are required with respect to local content requirements in the ASCM Agreement to promote resuscitation of ailing industries, upgrade and modernise domestic manufacturing capabilities, employment generation, support SMEs and promote exports</p>		

Narrative	Position	LDC proposal for MC12	G90 Declaration on SDT (G90, 2021)	Africa Group Job/ Ag/204 12 July (TWN, 2021)	African Declaration on WTO Issues 8 Jan 2019
<p>Difficult to comply with rules because of capacity constraints</p>	<p>Seek exemption, provide technical assistance, capacity-building; make compliance contingent on provision of technical assistance</p>	<p>Notes of appreciation for EIF and the importance of Aid for Trade; calls for extension of LDC-specific exemptions after LDC graduation</p>	<p>WTO members should always undertake commitments commensurate with their level of development in recognition of differences in capabilities, capacities and resources</p>	<p>Reaffirm importance that Aid for Trade contributes to meeting objectives related to capacity-building, overcoming supply-side constraints, infrastructure development, facilitating integration of developing economies. Calls for strengthening and improving of Aid for Trade and 'avoid conditioning implementation to the participation on negotiation new issues in the WTO'</p>	
<p>Future rules could prevent countries from taking advantage of economic opportunities available to other countries (e.g. fisheries subsidies negotiations)</p>	<p>Seek exemption from the rules; ensure rules apply only to a targeted group of WTO members</p>	<p>Ensure that fishery disciplines are 'balanced proportionate to the responsibility of Members'; exempt LDCs from overfishing and overcapacity disciplines</p>		<p>Reaffirm importance of negotiations on fisheries subsidies and need for SDT for Africa to 'guarantee policy space necessary to strengthen fishing industries and capacities necessary for economic and social development'</p>	

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