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The WTO and Africa: The State of Play and Key Priorities Going Forward

FAITH TIGERE

Recommendations

- At the WTO, African states should pursue a renewed emphasis on negotiations that are participatory rather than aimed at blocking new negotiations.
- In terms of health, African member states must apply a tailored and narrow waiver proposal specific to the COVID-19 vaccine.
- The current health crisis, however, does offer a best-case study for highlighting the drawbacks of the compulsory licensing mechanism. Arguments for the vaccine waiver would be strengthened if African states tested the mechanism in its current form to illustrate its flaws.
- A regional approach will most likely be the best solution to capacity challenges, particularly for other African states that lack the necessary capacity to manufacture and distribute the vaccine.
- Active participation must be pursued in ongoing side negotiations, especially through JSIs such as e-commerce, investment facilitation for development, and micro, small and medium enterprises.

Executive summary

For African states, pursuing an economic development agenda remains at the centre of their trade strategy at the World Trade Organization (WTO). Many of these developmental objectives are embodied in the Doha Round, which began in 2001. With limited outcomes on the issues raised at the Doha Round, and to reflect the changing trade environment, some WTO member states have begun negotiating through joint statement initiatives. In addition, the COVID-19 pandemic has opened discussions on the potential waiver of intellectual property rights in the face of rising vaccine nationalism. Against this backdrop, African states need to formulate a clear strategy that responds to these global trade shifts. This refocused and renewed negotiating strategy should be adopted in time for the WTO's Twelfth Ministerial Conference.

Introduction

The survival of the WTO and its continued involvement in global trade is indispensable for African states' economic development. Africa has been pursuing a development agenda since the inception of the WTO. While the core objectives at the WTO might not have changed, the institution itself has changed. In the past few years, the WTO has been facing unprecedented challenges ranging from limited success at negotiations and an appellate body crisis, to systemic protectionism, trade wars and issues arising from the COVID-19 pandemic. So, the appointment in March 2021 of the first woman and first African director-general came as a timely and welcome move.

While Africa continues to benefit from several preferential market access mechanisms, including special and differential treatment, its global trade footprint remains marginal at less than 3% of global trade. For many African states, development remains the core focus at the WTO alongside levelling the playing field in international trade. This has informed their negotiation strategy and positions at the WTO.

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With MC12 (12th Ministerial Conference) set to take place in Geneva, Switzerland, in late 2021 and with new leadership in place, there are hopes for successful negotiations. But for African states to get results, they need to review all the issues currently at play in the WTO and decide on a way forward. In this brief, some of those issues are reviewed and key areas

for African states are identified. The brief also offers policy recommendations for Africa's trade agenda at the WTO going forward.

State of play at the WTO

The early resignation of the WTO's former director-general, Roberto Acevedo, in August 2020 left the organisation with a leadership gap. This opened a race for the next director-general, with eight candidates vying for the position, three of whom were African.¹ Nigeria's Ngozi Okonjo-Iweala and South Korea's Yoo Myung-hee made it to the final round of the selection process. While 164 WTO member states favoured Okonjo-Iweala, the US opposed her candidacy² in favour of Myung-hee, and blocked Okonjo-Iweala's appointment.³

That hurdle was, however, later cleared when the Biden-Harris administration expressed support for Okonjo-Iweala's candidacy in February 2021.⁴ Even without a trade background, Okonjo-Iweala's résumé was impressive. It included positions such as finance minister and foreign minister of Nigeria and managing director at the World Bank. This experience adequately equipped her with the necessary skills to navigate the international trade landscape and steer the WTO accordingly.

Although the director-general is African, her role requires that she remains impartial when dealing with all WTO members. There are, nevertheless, expectations from African member states that her position will help bridge the gap between the WTO and Africa. With her economic background and experience, and understanding of Africa's development challenges, she can serve as an effective interlocutor and raise difficult questions on both sides. African states hope that their calls for a fair and equitable trading system will magnify some of their development concerns, particularly at the WTO where Africa is essentially, an onlooker in the world trading system, accounting for a meagre 2 per cent of global exports.⁵

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- 1 Candidates: Dr Ngozi Okonjo-Iweala (Nigeria), Ms Amina Mohamed (Kenya), Mr Abdel-Hamid Mamdouh (Egypt), Dr Jesús Seade Kuri (Mexico), Ms Yoo Myung-hee (South Korea), Mr Tudor Uliianovschi (Moldova), Mr Mohammad Maziad Al-Tuwajiri (Saudi Arabia) and Mr Liam Fox (UK).
- 2 The US opposed Okonjo-Iweala's candidature, citing that she did not have enough trade experience and, as such, was not capable of leading the WTO.
- 3 Elliot, L. 2020. "US Blocking Selection of Ngozi Okonjo-Iweala to be Next Head of the WTO", *The Guardian*, October 28, 2020, <https://www.theguardian.com/world/2020/oct/28/us-blocking-selection-of-ngozi-okonjo-iweala-to-be-next-head-of-wto>.
- 4 "Office of the US Trade Representative Statement on the Director-General of the World Trade Organization", February 5, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/february/office-united-states-trade-representative-statement-director-general-world-trade-organization>.
- 5 Kingsley Chiedu Moghalu, 'Africa's WTO Moment', *All Africa* October 24, 2020, <https://allafrica.com/stories/202010240021.html>.

When she took office in March 2021, Okonjo-Iweala called on members in her opening statement to do things differently to keep the WTO relevant. She also indicated her priorities: tackling the health crisis, concluding fisheries negotiations, reforming the dispute settlement mechanism, and developing a feasible work programme for MC12 with three or four clear deliverables.⁶

Health

The current health debate at the WTO centres on the India-South Africa TRIPS waiver proposal. Tabled in October 2020, the waiver seeks to suspend intellectual property rights related to COVID-19,⁷ including patents, industrial designs, copyright and the protection of trade secrets, including pharmaceuticals and equipment.

If granted, the waiver would, in effect, allow developing countries to produce and distribute affordable COVID-19 equipment and vaccines without the threat of disputes being lodged against them at the WTO. It would also address some of the current challenges of vaccine shortages in the context of vaccine nationalism.⁸

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While the waiver has rallied majority support from African and other developing member states,⁹ it has been rejected by some developed countries except for the US.¹⁰ They argue that the waiver in its current form would violate intellectual property rights and jeopardise future innovation, and that it is unnecessary since the WTO's TRIPS agreement already contains flexibilities/exemptions to access the vaccine through compulsory licensing.¹¹

6 WTO, "DG Okonjo-Iweala: WTO Can Deliver Results if Members 'Accept to do Things Differently'", March 1, 2021, https://www.wto.org/english/news_e/spno_e/spno1_e.htm?utm_source=dlvr.it&utm_medium=twitter.

7 WTO, "Council for Trade-Related Aspects of Intellectual Property Rights: Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19", October 2, 2020, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True>.

8 Vaccine nationalism refers to the inequality in vaccine access and distribution where wealthy governments have signed advance purchase agreements with pharmaceutical companies to first supply their own populations with vaccines, consequently limiting the stocks available to other countries.

9 WTO, "Members Discuss TRIPS Waiver, LDC Transition Period, Green Tech for Small Business", March 11, 2021, https://www.wto.org/english/news_e/news21_e/trip_11mar21_e.htm.

10 EU, Canada, Switzerland, Japan, Norway, UK, Singapore and Australia.

11 Compulsory licensing is a mechanism or flexible provision within the TRIPS agreement that allows governments to issue licences to third parties to produce and distribute a patented product without the consent of the patent owner.

Proponents of the waiver argue that the limitations and complexity of applying for compulsory licensing make it unsuitable.¹²

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As this deadlock persists and discussions continue, the waiver proposal remains unapproved in the TRIPS Council. Now that the US supports the waiver, it remains to be seen how other developed nations will respond. The expectation, of course, is that support from the US will mean that other developed countries will revise their positions and potentially be more open to negotiation. After the statement of support from the US, the European Union indicated that it was willing to negotiate. Countries such as Germany and Switzerland were not swayed and remain opposed to the waiver.

Doha negotiations

On the negotiations front, African states remain committed to the Doha Round. However, there has been no progress on the Doha Round since it was launched in 2001, and the chance of any progress in future is slim as it is seen as outdated and misaligned with the current reality, dominated by other concerns in a digital era.

With MC12 now scheduled for November 2021,¹³ African states are hoping to obtain meaningful outcomes on their long-standing issues, particularly agriculture.¹⁴ The previous conference, MC11, which was held in Argentina in 2017 and that round, failed to achieve any negotiated outcomes and, as a result, a future work programme was not agreed on.

Despite the lack of progress in the Doha Round, African member states want to keep development at the forefront of the work programme, as per the WTO Ministerial, and General Council Decisions and Declarations adopted in Doha in 2001.¹⁵ As such, African

12 Hurdles include the time taken to issue the licence and past disputes lodged by developed countries and technology owners.

13 WTO, 'Twelfth Ministerial Conference to Take Place in Geneva in Late 2021', https://www.wto.org/english/news_e/news21_e/minis_01mar21_e.htm. Due to the COVID-19 pandemic, MC12 was postponed in 2020 and rescheduled to late 2021.

14 Issues include public stockholding, cotton, export competition (export subsidies) and special safeguard mechanisms, among others.

15 WTO, 'African Group Declaration on WTO issues', January 8 2019, https://docs.wto.org/dol2fe/Pages/FE_Search/ExportFile.aspx?id=250733&filename=q/WT/L/1054.pdf.

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members have been reluctant to include new trade issues on the negotiation agenda before tackling their most pressing development concerns.

To date, several of the Doha Round issues have registered limited progress, except for trade-distorting domestic support. Currently, the Doha Round is at an impasse, with African states arguing for its continuation and others arguing for negotiating new issues, such as e-commerce.

JSIs and the WTO's dispute settlement mechanism

Since the WTO has failed to conclude any significant negotiations owing to the rule of consensus-decision making resulting in an impasse, WTO members (both developed and developing) have turned to informal negotiations such as the Joint Statement Initiatives (JSIs). These were launched at MC11 to initiate discussions on issues of increasing relevance to the trading world.¹⁶ However, African states have not had a common response to the JSIs, with some, such as South Africa,¹⁷ openly opposed to them, while others participate only as observers, and few actively participate (Nigeria, Ivory Coast, Benin). JSIs have no clear legal standing because they are informal and, as such, fall outside the ambit of the WTO's governance structure. Despite their informal nature, JSIs continue to shape and influence future trade rules. The coordinators of the JSIs have indicated that substantial progress has been made in their respective discussions¹⁸ and that they are on track to deliver concrete results or additional progress at MC12.

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16 WTO, "Coordinators of Joint Initiatives Cite Substantial Progress in Discussions", December 18, 2020, https://www.wto.org/english/news_e/news20_e/jsec_18dec20_e.htm.

17 WTO, "The Legal Status of Joint Statement Initiatives and their Negotiated Outcomes", February 19, 2021, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W819.pdf&Open=True>.

18 Thus far, members have launched initiatives on e-commerce, investment facilitation for development, domestic regulation services and MSMEs.

Another area of concern, not only for African members, is the current impasse around the WTO's dispute settlement mechanism. The WTO is a rules-based institution that relies on its appellate body to enforce the rules. Without this mechanism the institution loses its relevance.

As a result of the US blockade,¹⁹ the WTO's appellate body has had no judges since November 2020, which has led to a backlog of cases. While some WTO members have created an alternative temporary arbitration system – the Multi-Party Interim Appeal Arbitration Arrangement – to resolve disputes, most members have not signed on and this remains a temporary measure.²⁰ While members have continued to engage on the issue, that engagement remains useless without the participation of the US. It is hoped that under a new US Administration and with a new US Trade Representative, channels for further engagement will open. The survival and functioning of the WTO appellate body is important for African states whose dispute settlement mechanism is premised on the WTO's.

Key priorities: What should Africa do?

The WTO remains a dynamic organisation. While there might be calls for institutional-level reforms, there is also a need for reforms within member states. As geopolitical issues at the WTO have changed, so has the trading environment. Since the Doha Round was launched, these changes have been characterised by a fraying multilateral order, shifting alliances between countries and the increasingly influential soft power diplomacy of countries like China. Strong leadership is required to champion Africa's interests within this changing environment. Although Okonjo-Iweala is African, her position as WTO director-general is neutral and she should not be expected to push or focus on African issues. In this regard, the African Union could play a role in coordinating and harmonising Africa's common policy positions on global trade issues.

While there might be calls for institutional-level reforms, there is also a need for reforms within member states

In 2019, the AU requested observer status at the WTO. Although this request is currently under consideration, the AU holds ad hoc observer status in some WTO bodies,²¹ which

19 The US is one of the original members of the WTO and has one of the biggest markets in international trade. It is also the WTO's biggest funder, so its withdrawal would negatively affect the WTO.

20 Participating members include the European Union, along with Australia; Brazil; Canada; China; Chile; Colombia; Costa Rica; the European Union; Guatemala; Hong Kong, China; Iceland; Mexico; New Zealand; Norway; Pakistan; Singapore; Switzerland; Ukraine and Uruguay.

21 AU ad hoc observer status in the Committee on Trade and Development and Committee on Phytosanitary and Sanitary Measures.

would allow it to follow discussions that are of interest. Through monitoring several meetings at the WTO, the AU can enhance Africa's limited position and engagement and lobby for items on its agenda to be prioritised. If granted, this observer status will also enhance the visibility of the African Continental Free Trade Area at the WTO. Consequently, African states need to reforge their alliances and start negotiating as a bloc, not only on Doha Round issues, but on those newer issues highlighted in the JSIs.

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Health

With regards to health, the proposed TRIPS waiver in its current form is too broad and will continue to face opposition from other parties. In addition, there are also concerns that granting the waiver will not solve Africa's capacity challenges to produce vaccines. However, since the outbreak of COVID-19, African states have, to date, proved themselves to be capable of containing the virus and keeping their infection rates much lower than anticipated.

Their proven ability to produce preventive items, such as facemasks and sanitisers, also obviates the need for a broad waiver. Instead, the proposal should focus on the production of COVID-19 vaccines and provide a detailed strategy on how the waiver should be applied temporarily and specifically to these vaccines.

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With the US explicitly supporting the waiver for the vaccines only, it is an opportune moment for African members to revise their proposal. Support from the US comes against the backdrop of it being consistently firm with African countries regarding intellectual property rights, either through free trade agreements or arrangements such as the [African Growth and Opportunity Act](#). With this in mind, South Africa and India must be prepared to concede in some areas – such as intellectual property rights of other pharmaceuticals and equipment – and rather negotiate for a vaccine-specific waiver.

With access to produce vaccines secured, African states then need to focus on finding solutions to capacity challenges. African states that have potential production capacity – such as South Africa, Senegal, Algeria and Tunisia – could serve as regional hubs. Meanwhile, other African states can ramp up their current infrastructure capacity to cater for vaccine production where opportunities arise.

Doha negotiations

In terms of the broader WTO negotiations agenda, the reality is that momentum has shifted away from Doha Round issues to new issues being negotiated under the JSIs. Instead of African states continuing to seek outcomes on Doha Round issues, they should renew their negotiation strategy to focus on outcomes at MC12. The old strategy of blocking new issues has proved unsuccessful and has led to negotiations happening elsewhere outside the ambit of the WTO system.

The new director-general, determined to serve as a broker, has indicated that a limited number of deliverables for MC12 is the optimal outcome for making progress in negotiations. Accordingly, African states need to prioritise and select only one or two development outcomes from the Doha Round while obtaining an acknowledgement on the agricultural issues. The MC12 should lead to some wins for Africa if there is political will to compromise and move forward on certain issues within a clearly defined trade strategy.

Broader participation

Finally, African member states need to take initiative and engage in the different conversations and work happening at the WTO. While the Doha Round remains important, it is not the only forum in which to unlock trade challenges. Participation in committees that implement the WTO agreements is crucial in accessing all the trade benefits that the WTO can offer. African states also need to take cognisance of the changing trade environment. With the digital era at our doorstep and climate change a constant threat, it is vital for them to participate in all related conversations.

While the Doha Round remains important, it is not the only forum in which to unlock trade challenges

For example, the COVID-19 pandemic has exposed, among many other things, the digital divide and vulnerabilities for many African states. In addition, the lack of digital infrastructure and limited digital connectivity in developing countries is contributing

substantially to the South's slow economic recovery and accelerating existing global inequalities.²²

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With negotiations for e-commerce being negotiated under a JSI, it is better for African states to either actively participate in the negotiations that are shaping digital rules or participate as observers. Currently, only Nigeria is participating, while South Africa has voiced its opposition to the JSIs. Despite opposition and non-participation, the negotiations will go forward without Africa's participation, which will inevitably result in African states being rule takers instead of rule makers. The same applies to other JSIs, particularly on investment facilitation for development and MSMEs, which are extremely relevant to African states.

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Conclusion and policy recommendations

Leading up to MC12, African member states can focus on efforts aimed at rebalancing and renewing momentum for negotiations. The main focus in this regard should be on formulating a clear negotiation strategy that will result in outcomes for their priority issues. This should also be done while remaining cognisant of the current trade environment, where issues such as digital technology, climate change and the COVID-19 pandemic are dominating and affecting trade.

- African states should pursue a renewed emphasis on negotiations that are participatory rather than aimed at blocking new negotiations, which has thus far been unsuccessful.

22 UNCTAD, "Joint Initiative Statement on E-Commerce (JSI): Economic and Fiscal Implications for the South", February 2021, https://unctad.org/system/files/official-document/ser-rp-2021d1_en.pdf.

Instead, African states should assess the existing state of play at the WTO and work towards achieving those goals that will have the greatest effect on Africa's trade in future. This entails rethinking its stance on the Doha Round and focusing on specific issues (for example, domestic support), and not the entire package, while engaging in some of the new issues currently being negotiated.

- In terms of health, African member states must apply a tailored and narrow waiver request specific to the COVID-19 vaccine. A broad waiver proposal that extends beyond the vaccine creates a great deal of resistance and, as a result, is unlikely to be supported by member states who have previously rejected it. Africa also needs to ramp up its vaccine production capacity, which is a major challenge for the entire continent.
- The current crisis, however, does offer a best-case study for highlighting the drawbacks of the compulsory licensing mechanism. The waiver proposal would be strengthened if African states tested the mechanism in its current form to illustrate its flaws. Compulsory licensing is yet to be used. The last time it was applied, by Rwanda, it took the country three years to procure HIV/AIDS antiretroviral drugs.
- A regional approach will most likely be the best solution to capacity challenges, particularly for states that lack the necessary capacity to manufacture and distribute COVID-19 vaccines. Creating regional distribution hubs in countries that have capacity could help address this challenge.
- Active and broader participation must be pursued in ongoing side negotiations, especially through JSIs such as e-commerce, investment facilitation for development and MSMEs. These initiatives are important for African states, especially since the COVID-19 pandemic has exposed Africa's vulnerabilities. In a rapidly evolving digital age, African states should learn how to harness the potential benefits of the digital ecosystem through participating in the conversations that will mould the future of digital trade. African states should be part of the rule-making process. There are other negotiations taking place at the WTO where African members can participate to effect change at the committee level.

Author

Faith Tigere Pittet

is a consultant at UNCTAD and an associate of the Trade Policy Hub LSE Consulting. She holds a master's degree in International Trade Law and Economics from the University of Bern, Switzerland; and a postgraduate diploma and LLB from the University of the Witwatersrand, Johannesburg, South Africa.

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Jan Smuts House, East Campus, University of the Witwatersrand
PO Box 31596, Braamfontein 2017, Johannesburg, South Africa
Tel +27 (0)11 339-2021 · Fax +27 (0)11 339-2154
www.saiia.org.za · info@saiia.org.za