Thesis on Africa and The WTO Dispute Settlement Mechanism: Underlying Challenges and Reform Proposals

by

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COMMITTEE APPROVAL

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Keywords/Abbreviations

AB	Appellate Body
ACP	African Caribbean Pacific Group of Nations
AfCFTA	African Continental Free Trade Area
AGN	African Group of Negotiators
AG	African Group
AU	African Union
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
EPAs	Economic Partnership Agreements
ICJ	International Court of Justice
LC	Lomé Convention
LDCs	Least Developed Countries
GATT	General Agreement on Tariff and Trade
MA	Marrakesh Agreement
SDT	Special and Differential Treatment
WTO	World Trade Organization

Abstract

The inception of WTO in 1995 created renewed optimism among the developing nations that the economic prosperity from global trade would be equitably shared. However, over the 25-year period, only four African countries (South Africa, Egypt, and Morocco) have so far been involved in the WTO dispute settlement mechanism as either litigants or respondents. The research thesis examines the challenges faced by African countries and the reform proposals to enhance their participation in the WTO DSM process.

A mixed qualitative research design approach was employed using primary research (online surveys), systematic review design and content analysis of the WTO cases. Thematic coding (analysis) approach was used to analyse information from the interview and the systematic review. Content analysis was employed to analyse the three case laws (WTO DS500, WTO DS327 and WTO DS578), involving South Africa, Egypt, Morocco, and Tunisia and two potential trade disputes involving African countries, which were not pursued further.

The findings from the thematic and content analysis indicate that lack of transparency, perceived unfairness, limited human/legal resource, high litigation costs, ineffectiveness of the WTO DSB to enforce its own ruling and outdated WTO DSU rules represent the main challenges faced by African countries. The thesis acknowledges that reform proposals could be strengthened by plans to have an independent trading bloc (African Continental Free Trade Area), which would strengthen the continent's bargaining power although lack of unity remains a challenge. There is also a need for review of the WTO rules, especially the restrictive agricultural subsidies agreement, anti-dumping rules and the compensation remedies under s. 21.5 and 22.2. The findings have significant

implication for the need to enhance independence of the WTO DSB through decreasing its financial reliance from the advanced nations.

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1.0: Introduction

1.1 Research Background

Globalisation has created an open economy with its potential for cross-border trade, which tends to enhance a country's economic growth and development (Amin, 2007). The opportunity presented by international trade is expected to reduce income inequality among countries, especially if there is fairness in the extent and terms of engagement among developing nations, including many African countries and the developed nations (Buyonge & Kieeva, 2008). Therefore, to facilitate international trade and actualize the promise of economic prosperity through globalization, the World Trade Organization (WTO) was formed and on 1st January 1995, the global trading body adopted the WTO agreements, which were mainly structured under the Dispute Settlement Understanding (DSU) (Esserman & Howse, 2003).

At the inception of WTO under the new regime in the year 1995, most developing countries, including those in Africa had greater expectations that the economic prosperity promise of globalization would be achieved (Footer, 2001). The renewed optimism among the developing nations was informed by the WTO resolutions and agreements, which required developed nations to lower or eliminate tariffs on exports from developing countries (Naif, 2015; Mark, 2016). However, the WTO's legal regime, DSU's structural aspects, decision-making processes seem to have failed most African nations who continue to be subjected to skewed rules under the WTO regime (Ng'ong'ola, 2005). Besides the skewed WTO rules under the DSU legal mechanism, issues such as lack of financial and legal resources, the threat of retaliation, poor enforcement of DSU rulings, and the long duration of the WTO DSB's mechanism also seem to have created challenges in the African nations' involvement in WTO's DSM (Naif, 2005). Therefore, the

perceived ineffectiveness and inaccessible dispute resolution mechanism under WTO seem to have discouraged the involvement of many African countries in the WTO's DSM (Kessie & Addo, 2007).

The limited involvement of African countries in the WTO's dispute resolution mechanism is evidenced by the fact that since its inception, 25 years ago (1995), only one African country (Tunisia) sought the intervention of WTO's DSB in its school exercise books' anti-dumping complaint against Morocco during the year 2018. In its official complaint to WTO's DSB, Tunisia claimed that Morocco violated the several sections, including Article 1, 2.1 and 12.2.2 of the WTO Anti-dumping Regulations (WTO, 2020). The official statistics indicate that out of the 51 WTO member countries that have initiated at least one dispute over the period, 1995-2020, only one country (Tunisia) is from Africa. Specifically, when African countries are compared to developed nations in terms of the number of WTO cases (as complainants), the ratio is 273:1 as of 31st December 2020 with the U.S. (124 cases) leading the way (WTO, 2020). The limited participation of African countries in the WTO dispute resolution mechanism is depicted inTable1.1, which shows that only Tunisia sought the assistance of WTO's DSB in its trade dispute with Morocco and that was 23 years after the WTO inception.

Table1.2 also depicts that only three African countries have been involved directly as respondents in the WTO dispute settlement mechanisms. These include South Africa, which has been involved the most (five times) in the WTO's DSM with the most recent being in 2014 when Pakistan accused the country of violating ant-dumping rules on its export of Portland cement. The other countries, which have also been involved in the

WTO's dispute resolution mechanism as respondents, include Egypt (four times) and Morocco (three times).

Table 1.1
Summary of African Countries WTO's DSU Involvement as Claimants

Complainant	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008	2012	2014	2017	2018
Egypt														
South Africa														
Morocco														
Tunisia														1

Table 1.2
Summary of African Countries WTO's DSU Involvement as Respondents

Respondent	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008	2012	2014	2017	2018
Egypt						1	1		2					
South Africa					1				1	1	1	1		
Morocco													1	2
Tunisia														

Therefore, based on the stated facts presented in Table 1.1 and 1.2, the purpose of this study is to explore and assess various challenges that have inhibited African nations' participation in the WTO dispute resolution mechanisms, especially as claimants. Specifically, the insightful outcome from this study is expected to come up with a set of concrete and workable solutions and, or strategies to address the barriers that are currently inhibiting the involvement of African countries in the WTO's dispute resolution mechanism. The solutions will be informed by the insight from existing research and the African Group's proposals that had been offered previously to the WTO based on the article by Keet (2006) and Damme (2009).

1.2 Problem Statement

The issue of limited involvement by African countries in the WTO's dispute resolution mechanism is one of the key aspects that has dominated research discussions, especially with respect to the African development discourse and diplomatic circles (Anyiwe & Ekhator, 2013). The 25-year period since its inception has only had one African country (Tunisia) participate in the WTO's DSM against Morocco. Besides, the lack of interest among African countries in the WTO's dispute settlement mechanism is evidenced by the fact that only four countries (Egypt, Morocco, South Africa and Tunisia) have been involved in the WTO's DSM as either claimants or respondents (Ehlermann, 2017; WTO, 2020). The developing nations, especially majority of the African countries have considerable challenges that appear to have restricted their active participation in the WTO's dispute settlement mechanism. These challenges include, limited financial and legal resources, the threat of retaliation and ambiguity in the DSB's enforcement of its rulings as well as the long duration of the dispute resolution process (Brewer & Young, 1999; Naif, 2015). These challenges were also highlighted by the African Group's proposals as part of its reform recommendations to improve the WTO's DSU legislations. Therefore, this study seeks to undertake and evaluation of the challenges, issues or barriers that are currently restricting the African nations and other third world countries' involvement in the WTO's dispute resolution mechanism. This study will also specifically examine how the protectionist exclusion clause can be modified and addressed to attain the goal of fairness in the dispute resolution.

1.3 Research Questions

On the basis of the stated problem and purpose statement, the research study seeks to focus and answer the following three (3) research questions;

1. What are the challenges facing African countries under the WTO dispute settlement mechanism?

(a) Are the WTO litigation costs and duration of DSB proceedings so expensive and restrictive for African countries?

(b) Are the DSB's precedent rulings deterrent enough to restrict African countries' involvement in the WTO dispute settlement mechanism?

(c.) Does the DSB have the power and authority to enforce its own rulings and whether the stated concern limits African nations' participation in the WTO's DSM?

(d) Are the retaliatory, compensation and, or concession withdrawal remedies effective?

2. What are the specific provisions of the WTO's legal regime that restrict African countries' participation in the WTO dispute settlement mechanism?

(a) Are the WTO's DSU provisions biased against African countries and other developing nations?

(b) Which provision under the WTO's DSU mechanism should be a source of concern for African countries and other developing nations?

3. What are the reform strategies that can be adopted by WTO to enhance the participation of African nations in the WTO dispute settlement mechanism?

1.4 Hypothesis of the Study

The study is guided by the premise that the lack of financial and legal resources as well as the perceived unfairness in the implementation of the WTO's legal regime are likely to be the main factors that restrict African countries' participation in the WTO's DSM. In addition, the study is also based on the postulation that the threat of retaliation, ineffectiveness of DSB's to enforce its rulings and the long delays (duration) of the WTO's DSB legal proceedings are also some of the challenges that have inhibited African countries' participation in the WTO's DSM. The study also hypothesis that several provisions of the WTO dispute settlement mechanism, including Article 1, 21.5, and 22.2 of the WTO's DSU tend to restrict the African nations' participation in the WTPO dispute settlement mechanism.

1.5 Research Objectives

The broad research objective of the study is to examine the challenges facing African countries in their limited involvement in WTO's dispute settlement mechanism. Therefore, based on the stated broad research objectives, there are seven specific research objectives (aims) that are relevant for this study.

(**i**) To examine the extent to which African countries are required to settle their trade disputes under the WTO's DSU proceedings and the WTO dispute settlement legal regime.

(**ii**) To examine and identify the extent (level) of African countries' involvement in the WTO's dispute settlement mechanism.

(**iii**) To identify the factors, which have restricted African countries' participation in the WTO's DSU mechanism.

(**iv**) To examine whether the WTO's DSU provisions (either in part or wholly) and its institutional structures have inhibited the African nations' participation in the WTO's DSM.

(**v**) To highlight any other significant research findings that might explain the limited African nations participation in the WTO's DSU proceedings.

(**vi**) To present a strategic framework proposal with a set of recommendations to WTO to ensure that a greater number of African countries are participating in the WTO's DSU proceedings.

(**viii**) To assess the alternative solutions to the current WTO dispute settlement mechanism, specifically for African nations, while waiting on the outcome of possible reform proposals from the continuing WTO negotiations.

1.6 Significance of the Study

A number of African nations and other developing nations have yet to attain the level of economic growth and development, which the free global trade promised after the formation of the WTO over 25 years go (Halverson, 2008; Buyonge & Kieeva, 2008). Therefore, the main significance of the research study is that its findings (outcome) are expected to contribute immensely to the growing body of evidence that expound on the limited African nations' participation in the WTO's dispute settlement proceedings. There are four specific significance aspects/ contribution that this study expects to provide based on the findings. These are specified as follows;

1. The study is expected to establish the conceptual framework of the existing WTO regime with a specific focus on the African nations and other developing countries.

2. The study is expected to contribute to the current ongoing efforts to reform the WTO legal framework and the DSU regime.

3. The study is expected to contribute efficacious knowledge on the factors or issues that have inhibited and which if addressed will facilitate successful participation of African nations in the WTO dispute settlement proceedings.

4. The insightful outcome from the study is expected to draw attention of the African Group of Negotiators and other developing nations' initiatives to reform the DSU and WTO rules, particularly the cultural exclusion clauses, which has not been noted by the stated groups.

1.7 Theoretical Framework of the Study

The primary objective of the study is to ascertain the challenges that have inhibited African nations' participation in the WTO's dispute settlement mechanism and how to address the stated factors. Therefore, in order to draw concrete recommendations to address the challenges, the theoretical background of the study will be informed by the focus on the following concepts related to international dispute resolutions. Figure 1.3 summarises the theoretical conceptual framework underlying the study.

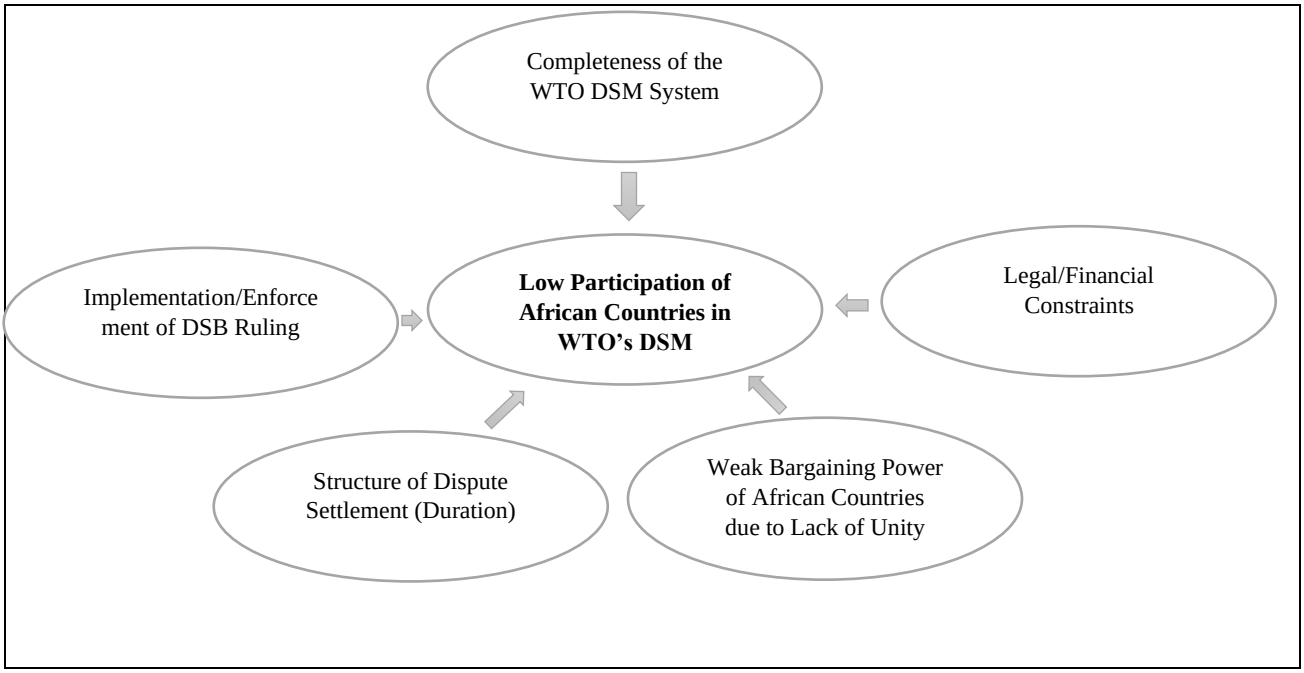

Figure 1.1: Theoretical Conceptual Framework

The attainment of the study objectives and possible recommendations is guided by the following theoretical concepts on the WTO's dispute settlement mechanism.

1. Completeness of the WTO DSM system.
2. Implementation and, or enforcement of the WTO's DSB rulings.
3. Legal and financial constraints.
4. Structure of the dispute settlement mechanism in terms of the duration.
5. Weak Bargaining Power of African Countries due to Lack of Unity

These five factors are presented in the theoretical conceptual framework of the study to capture the general insight from relevant theoretical and empirical literature on the topic. For instance, the poor implementation of the WTO's DSB ruling has been noted to discourage African countries from making formal legal complaints due to the threat of retaliation (Persson, 2007; Kessie & Addo, 2007). The legal and financial constraint factors were also justifiably selected and included in the theoretical conceptual framework as opposed to limited personnel factors because despite the continent's fairly high annual economic growth rate of 3.7%, majority of African nations are low-income countries, which cannot afford the excessive litigation costs under the WTO's DSB dispute settlement mechanism. This is because, a formal WTO case is expected to cost approximately $500,000 if pursued up to the appellate body (Mosoti, 2005). The study by Reich (2017) finds that there is a fairly strong positive correlation between a country's GDP and the number of times that the nation has filed a request for consultation at the WTO. The issue of limited skilled personnel was not included as a factor because of the general perception that with substantial financial resources, African countries would have outsourced the required legal expertise. Despite the fact that some of the delays in the WTO dispute

settlement mechanism is attributed to the political will of the parties, the issue of long duration was included and justified by the existing evidence. For instance, although WTO rules stipulate a period of between 12-15 months to conclude a case, the insight based on the article by Bacchus and Lester (2019) indicates that over the years, the timeframes have doubled, which means that it takes longer for parties to have their complaints litigated today than at the start of 1995. A good example is the anti-dumping case (*DS464*) between the U.S. and Korea, which took more than four years (29th August 2013 to 26th December 2017) from the consultation to implementation. Therefore, although, the political will of the parties to a dispute can determine the duration, the legal and administrative complexities at the WTO's DSB might also explain the factors, which have limited African nation's active involvement in WTO dispute settlement process.

1.8 Research Methodology

The research methodology for the thesis relies on a mixed research design, specifically using three research approaches (strategies). First the research study will be based on the systematic review of the existing literature that has focused on the challenges encountered by African nations in their involvement with the WTO dispute settlement mechanism. The systematic review design will rely on the insight from relevant prior studies that have examined the issues facing African nations, which have restricted their participation in the WTO dispute settlement mechanism. The thesis will also integrate a review of the past WTO case laws, especially those that involve the four African nations (South Africa, Egypt, Tunisia and Morocco). The case law review of the stated cases will provide insight on the nature of outcome and the specific DSU provisions, which were in contention. Finally, a small primary research design will also be

incorporated to assess the views of international trade professionals, academics, and ministry of trade professionals in the stated four countries. The primary surveys will involve a small sample of ten (N = 10) participants who will offer their opinion on the current challenges facing African countries' participation in the WTO dispute settlement proceedings.

1.9 Data Analysis Strategy

The data analysis relied on the following Simple Multiattribute Rating Technique (SMART) decision criteria model, which define specific weights for each of the three research design approaches. The initial weights for each of the three data analysis approaches is depicted in Table 1.3 below;

Based on the SMART strategic decision criteria tool, the primary research data, which was analysed using thematic data analysis approach and entails the survey of the insight from ten participants was assigned the highest total weight scores (**810**). This means that the primary research design is assigned the highest priority in the research design. The main reason for the greater weight assigned to the primary research design is because, it scored the highest value (10/10) for relevance, which is the most important key success factor with a weight of 30%. Similarly, the SMART tool indicates that the primary research design also scored the highest value for quality (7/10) and second highest value for reasonableness (7/10), which constitute two of the top three (3) key success factors for the research design.

The case law review design, which was analysed based on content analysis of the relevant WTO cases involving South Africa, Tunisia, Morocco, and Egypt was assigned the second highest total weight score of **700**. The main justification is because

the case law review design scored the highest in reasonableness (8/10) and second highest in relevance (7/10), which are two of the most important key success factors. The case law review design also obtained the highest score (10/10) in terms of precision given the availability of accurate records on the WTO rulings. Finally, the systematic review design was assigned the least total weight (**590**), which was the lowest compared to the primary research design and the case law review design. The main reason is because, the systematic review design scored the least in relevance (6/10) and reasonableness (5/10), which are the two most important key success factors. However, the systematic review design scored the highest in comprehensiveness (8/10) and quality (7/10) given the availability of various studies that have focused on the issues facing African nations and their limited participation in the WTO dispute settlement mechanism.

Table 1.3summarises the SMART strategic decision criteria that was applied when conducting the data analysis. As shown in the SMART strategic decision criteria tool, relevance, reasonableness, and quality attributes were assigned the highest weight (70% in total) as part of the research design. The precision, comprehensiveness as well as the cost-benefit aspects were also taken into consideration when conducting the research. Specifically, relevance (30), reasonableness (20), and quality (20) were given greater consideration as key success factors when conducting primary research as shown in Table 1.3.

These six success factors were considered most important in the SMART model because of their effect in enhancing the validity of the thesis findings. For instance, relevance, reasonableness, and quality are key aspects in the SMART model, which have a potential to increase the reliability of the thesis findings. Other important success factors

such as context and quality of the research setting were not given as much weight as the stated six key success factors because of their less influence on validity of the thesis findings.

Table 1.3

SMART Strategic Decision Criteria Tool for the Research Design

Key Success Factors	**Weight**	**Primary Research Design**	**Systematic Review Design**	**Case Law Review Design**
Relevance	30	10 = 300	6 = 180	7 = 210
Reasonableness	20	7 = 140	5 = 100	8 = 160
Quality	20	7 = 140	7 = 140	5 = 100
Precision	10	8 = 80	4 = 40	10 = 100
Comprehensiveness	10	6 = 60	8 = 80	6 = 60
Cost-Benefit	10	9 = 90	5 = 50	7 = 70
Total Weighted Scores	**100**	**810**	**590**	**700**

NB: Scores (Ratings) out of 10

1.10 Limitations of the Study

The main limitation of the study is that the analysis will only cover a limited period of 25 years since the inception of WTO. The limited short duration is also emphasised by the fact that there are only few African countries (four nations), which have actively participated in the WTO dispute settlement mechanism. The other limitation of the study is that majority of the case laws involve African countries as respondents, which might not reveal considerable insight on the issues.

1.11 Chapter Delineation

Layout of the proposed chapters for the whole study is given below. Chapter 1 provides background to the study and an introduction to WTO regime in African country. It will contextualize the WTO DSM in general across the world and the possible challenges that have inhibited the participation of African countries under the WTO's DSM. Chapter 2 will provide literature review relevant to the current study. Chapter 3 provides detailed research methodology, research process, research design followed in the current thesis. Chapter 4 would test hypothesis and discusses the results of the current thesis along with implications of the current thesis. Chapter 5 is conclusion chapter that discusses results of the study and future scope of the research.

2.0: Literature Review

2.1 Introduction

The research paper examines the challenges faced by African countries, which have limited their involvement in the WTO's dispute settlement mechanism. This chapter presents a literature review perspective that mainly focuses on the stated challenges, the specific restrictive DSU's provisions and the proposed solutions that have been suggested to improve African countries' participation in the WTO's dispute settlement process. The literature review chapter begins by offering a historical perspective that presents evidence of the low participation by African countries, especially as litigants in the WTO's DSU regime since it was instituted 25 years ago in 1995.

There is substantial body of available literature on Africa and other third world nations' participation in the WTO's dispute settlement system. This study would lean on the works by Amin Alavi, Busch and Reinhardt, Clement Ng'ong'ola, Edwini Kessie and Kofi Addo, Muheki, and Susan Esserman and Robert Howse and several others to demonstrate that despite the usual challenges that are inhibiting Africa's participation, there are other numerous problems confronting Africa under the DSB/DSU. Several other literatures in this subject area are consulted along in the progression of this study.

2.2 Historical Perspective on African Countries' Participation in the WTO's DSM

At the time of inception of the WTO's dispute settlement mechanism under the DSU, there was considerable optimism, especially among the developing nations that the legal regime would result in fairness and equity (Alavi, 2007; Bore, 2020). Muheki (2010) puts it plainly that at the time, the WTO's dispute settlement mechanism was considered a "jewel" among the developing nations. To date, statistics show that out of the 597 active

disputes that have been brought at the WTO's DSU legal regime, a total of 350 rulings have been issued (WTO, 2020). However, these statistics and figures fail to explicitly show that majority of the participants in the WTO's dispute settlement mechanism are developed/industrialised nations, specifically the U.S. and a host of European countries (Muheki, 2010).

The detailed analysis of the WTO's active cases and those, which have already been resolved indicates that there has been minimal involvement of African nations in the WTO's dispute settlement mechanism. The review of the case shows that only one African nation (Tunisia) in its textbook anti-dumping legal complaint against Morocco, which was made during the year 2018 remains as the only WTO case in which an African country had participated in the DSU legal mechanism as a litigant. Furthermore, Figure 2.1 indicates that there are only four (4) African countries, which have participated in the WTO's dispute settlement process since its inception 25 years ago. As depicted in Figure 2.1, South Africa remains the only African country with the highest frequency of involvement in the WTO's dispute settlement process where the nation has been involved five times as a respondent with the most recent being the Year 2014 dispute lodged by Pakistan for violating the Portland cement anti-dumping legislations (Bartels, 2016; WTO, 2020). Buyonge and Kieeva (2008) also observed that the first 10 years since the inception of WTO's dispute settlement regime, no African countries had been involved in the WTO's dispute resolution process as either respondents or third parties.

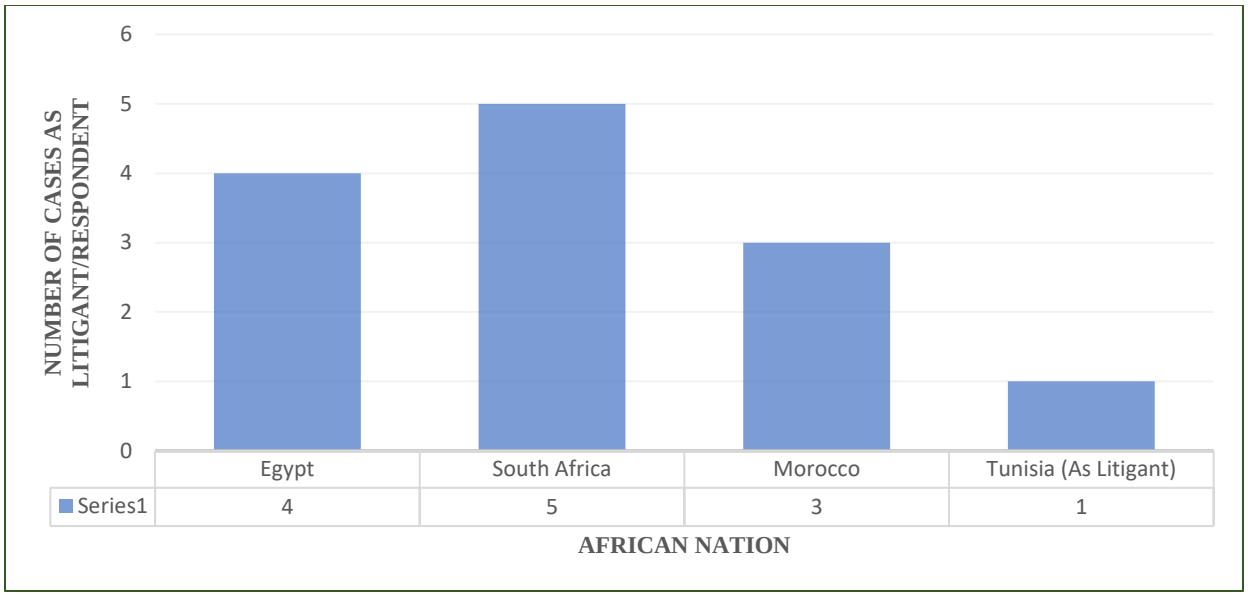

Figure 2.1: African Countries' Participation in the WTO's DSU as Respondent or Litigants

Therefore, the statistics show that to date, the African countries' involvement in the WTO's DSM represents only 2% of the total number of cases (disputes) that have so far been lodged at the international trade dispute settlement body (WTO, 2020). The insinuation is that the WTO's dispute settlement mechanism has largely failed to inspire confidence in addressing the challenges and needs of the developing nations, especially those countries from Sub-Saharan region (Muheki, 2010; Sacerdoti, 2019). There are several factors which accounts for this ranging from the ineffectiveness of the WTO's DSM, skewed WTO rules, delays in the WTO DSB's dispute resolutions, limited financial resources, perceived threat of retaliation, and poor enforcements of the WTO DSB's rulings, which appear to have restricted the involvement of African nations in the WTO dispute settlement process (Naif, 2015).

2.3 The WTO's Dispute Settlement Mechanism

According to WTO (2021), there are two main dispute settlement procedures that can be adopted once a formal complaint has been filed by the aggrieved party to the dispute. As depicted in the flowchart (Figure 2.2), the two parties to a dispute can find a mutually agreed solution during the bilateral consultation phase. This means that in case of a mutually agreed solution, the case might end up at the consultation phase. The second approach to a dispute settlement is through adjudication where the losing party is required to implement the panel/appellate body report.

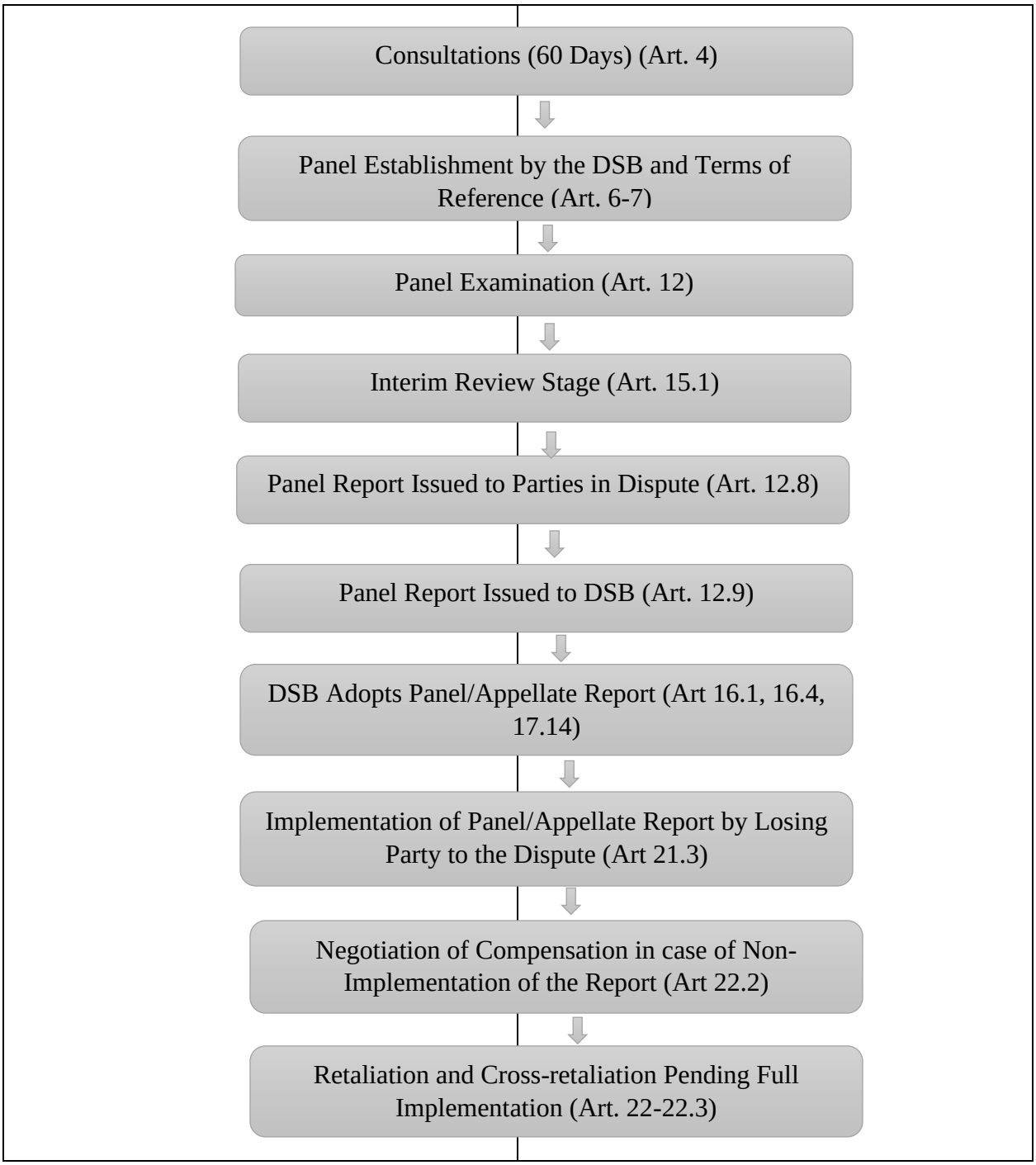

Figure 2.2: Flowchart of the WTO Dispute Settlement Procedure; Source: WTO (2021)

The flowchart presented in Figure 2.2 indicates that the procedures to the WTO dispute settlement process can mainly be summarized into three (3) distinct stages. The

first stage is the consultation between parties and probably explains the delay in the selection of a panel to hear cases, especially when the parties to a dispute have indicated willingness to resolve their disagreements (Naif, 2015). The second stage, which is mostly time-consuming involves adjudication of the case by the selected panel and if possible, the WTO appellate body (Buyonge & Kieeva, 2008; WTO, 2021). The third stage in the WTO dispute settlement process relates to the implementation of the panel or appellate body report by the losing party. In this stage, there could be countermeasures, retaliation and cross-retaliation pending full implementation where the losing party fails to implement the report (WTO, 2021).

2.4 Challenges of African Nations under the WTO's Dispute Settlement Mechanism

The little involvement of African nations in the WTO's dispute settlement process since its inception in the Year 1995 has mainly been attributed to the fact that under its current structural setup, the DSU merely advances the interests of the developed nations (Al-Islam & Alqadhafi, 2007; Buyonge & Kieeva, 2008; Naif, 2015). Specifically, insight based on the study by Al-Islam and Alqadhafi (2007) notes that lack of an effective democratic governance structure, which is considered fair is one of the factors that has limited African countries' involvement in WTO dispute settlement process. The paper by Al-Islam and Alqadhafi (2007) mainly focuses on the perceived *political* "unfairness" in the WTO's DSM given that the advanced countries are overrepresented to the detriment of the developing nations. In this regard, Al-Islam and Alqadhafi (2007) state that, "The U.S. and other advanced nations will always drive the WTO agenda in a manner that promotes their own interests" (p. 3). However, the stated insight by Al-Islam and Alqadhafi (2007) can be challenged based on recent events where developed nations such as the

U.S. have not managed to obtain favourable WTO DSB rulings. Besides, other advanced nations in Europe such as the UK did not have an independent trade policy until Brexit.

The insightful review based on the study by Persson (2007) suggests that ineffective implementation of the WTO's DSU rulings due to inconsistencies in Article 21.5 and 22.2 presents one of the other challenges. Persson (2007) notes that there are three possible remedies to address trade disputes based on the DSU mechanism. These include compensation, suspension of concessions and the final remedy, which entails the withdrawal of the WTO's inconsistent measure. In addition to the fact that the compensation remedy is voluntary and must be consistent with the various trade agreements, there is an understanding that under the current WTO's DSU structure, compensation may not provide a sufficient reimbursement of damages suffered by the complainant (Persson, 2007). Furthermore, the study by Persson (2007) also highlights the limitation associated with the suspension of the concession remedy, which creates a risk of cross-retaliation that is not a genuine option for smaller developing countries.

The perceived failure of the WTO DSM's distributive justice system is another challenge that has limited African nations' participation in the WTO dispute settlement process (Saif, 2010). The main distributive justice concern of the WTO DSU's regime is that it fails to take into account the interests of developing nations. For instance, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP) provisions have restricted the ability of emerging pharmaceutical companies in developing nations to transfer technology (Saif, 2010). The perceived ineffectiveness of the WTO's DSU enforcement system also appears to restrict the ability of African nations to participate in the dispute settlement process.

The study by Alavi (2007) highlighted three main challenges and concerns faced by African nations that have restricted their overall participation in the WTO dispute settlement process. Amin Alavi (2007) examines the position of African countries in relation to the WTO's Dispute Settlement Mechanism (DSM), particularly as participants in the ongoing review of the WTO rules under the DSU. Whiles he posits that the challenges facing sub-Saharan African countries (SSA) in seeking recourse under the DSM are akin to those other third world nations, he contends that these problems are even more difficult to overcome. Alavi concurs with the African Group's conception of the obstacles to their own participation in the DSM – high entry barriers, lack of credible retaliatory system/power, etc. Also, he advances his own reasons for Africa's minimal role in the WTO, which includes low level of development and insignificant stake in international trade that in turn undermines their ability to build a pool of experts who can negotiate the best possible deals individually and for the whole continent. Alavi (2007) equally concurs with the insight suggested by Persson (2007) that majority of the developing nations, especially from the Sub-Saharan Africa are concerned about the threat of retaliation when opting for the suspension of concessions remedies.

Alavi (2007) asserts that the WTO's and its legal framework seem to alienate African and other third world nations because those rules were drafted without due considerations to their concerns and realities. He further frowns on the retaliatory provision under the WTO rules because African countries barely have the power to retaliate against industrialized nations when the recourse to their complaints from the DSU/DSB is retaliation. Therefore, he recommends that African countries build alliances

with other nations with similar interest like the collaborative support to the G-20's negotiation position on agriculture during the Hong Kong Ministerial in 2005.

Additionally, he also contends that due to ineffectiveness of the WTO DSM's legal structure, the concerns by most African countries who depend on foreign markets is that the use of the litigation approach might adversely affect their diplomatic and trade relations with advanced nations. That the negative financial, economic, and political consequences that might affect smaller developing countries have also been cited as among the major challenges, which have restricted African nations' involvement in the WTO dispute settlement mechanism.

He equally asserts that the WTO's and its legal framework seem to alienate African and other third world nations because those rules were drafted without due considerations to their concerns and realities. Alavi further frowns on the retaliatory provision under the WTO rules because African countries barely have the power to retaliate against industrialized nations when the recourse to their complaints from the DSU/DSB is retaliation. Therefore, he recommends that African countries build alliances with other nations with similar interest like the collaborative support to the G-20's negotiation position on agriculture during the Hong Kong Ministerial in 2005.

Much as Alavi identifies the specific challenges confronting African nations participation under the WTO's DSM, he has failed in identifying possible solutions like third-party party participation, which can enable State parties to join a principal party in case before the DSB and/or its Appellate Body as an interested party in the possible outcome of the case (Zunckel, 2005, p. 20). This was demonstrated in the Upland Cotton precedent where Benin and Chad joined Brazil as third parties in the case against the

US. Alavi equally failed in recognizing other possible solutions to the participation challenges such as private counsels and academic research organizations and think tanks whose research works can help poorer countries to maximize their resources.

Besides, Busch and Reinhardt (2003) sought to explore whether developing countries have derived better outcomes for themselves under the WTO DSM than they had under the previous GATT regime. They aver that capacity and development constraints influences a poor country's determination to initiate a trade dispute or otherwise. They go on to demonstrate that industrialized countries who are plaintiffs are more likely to be able to leverage their power to extract concessions from defendants at the pre-panel phase than third world nations who are complainants. Thus, the authors also assert that "the move has not actually reduced a poor complainant's prospects of inducing concessions from a [vulnerable] defendant; it has merely left behind the poorest complainants" (Busch & Reinhardt, 2003, p. 723).

The WTO DSB's failure to insulate developing countries from the "power politics" system or the world's geopolitical dynamics is also one of the main challenges, which has contributed to their scant use of the World Trade Organization's dispute settlement mechanism (Busch & Reinhardt, 2003). In their research article, Busch and Reinhardt (2003) contend that developing nations, especially those from the Sub-Saharan Africa have neither benefited from the previous GATT's diplomatic approach and the current WTO DSU's legal regime. There is an argument that even in the few cases where African countries have been involved as either litigants (Tunisia) or complainants (South Africa, Egypt and Morocco), the stated nations have not received fair trade concession rulings (Naif, 2015; Paine, 2019).

But as much as these views are credibly persuasive, the authors flounder in addressing the challenges inherently embedded in the nature of the DSM - DSB/DSU. They overlooked the fact that the remedies under the existing DSM does not reinstate full benefits to the injured party up to pre-violation levels. The DSM also lacks financial compensation commiserate to the overall economic losses incurred by a vulnerable respondent, which is further exacerbated by the inability of weaker winning parties like African nations to retaliate.

In addition, Clement Ng'ong'ola (2009) sets out to investigate some stated proposals pushed forward by negotiators of the African countries at the Doha Ministerial conference that was supposed to review the DSU. He takes note of the lack of progress and breakthrough since the beginning of the DSU review processes. He asserts that Africa's major obstacle in the negotiations is how to support nuanced reform proposals in respect of offensive African participation under the WTO's DSM. Clement observes that factors such as third-party rights, panel compositions, special and differential treatment provisions, sequencing and post retaliation and others are being negotiated in a bottom-up approach by State parties to the WTO regime.

Furthermore, he argues that proposals such as a dedicated fund to financing the DSM, hosting the DSM processes in capital cities of third world nations as part of the special and differential treatment provisions, and collective retaliatory measures against one industrialized respondent would amount to nothing or very little effect addressing African countries' lack of participation. Thus, developing countries should look for major reforms beyond these ill-conceived proposals which basically amounts to tokenism with little impact on African participation in the DSM process.

Clement posits that the negotiations are likely to yield no positive outcome for Africa if they do not focus on addressing their insignificant share of international trade, and advocate for stronger third-party participatory rights. Whiles Clement is urging African countries to continue to engage in subsequent negotiations with the view to influencing the evolutionary trends in the DSM, he is especially disappointed and cynical about the African Group's proposals and the overall DSM review process at the Doha Round. Therefore, it is very clear that the WTO's DSM must undergo some organizational and institutional reforms before it can attempt at addressing the needs of African or least developed countries. If African countries who constitute majority of the WTO membership are largely absent or cannot access the DSM, then the overall goal of ensuring the predictability and security of the multilateral trading system remains a mere theoretical endeavour.

Edwini Kessie and Kofi Addo (2007) in recognizing the uniqueness of the WTO's DSM process in comparison to the GATT, noted that the system is being assessed on the basis of the frequency of access to the DSM. They observed that it is mostly the leading industrialized nations who are making use of the DSM than even the African countries and the other developing nations, which is not different from the experience under the GATT as third world nations accounted for only 10% of the initiated cases under that previous GATT regime. According to the authors, Africa's lack of participation in the WTO's DSM process is due to their insignificant share of global trade and lack of expertise in the WTO matters, which they further argue has consequences for the development of legal precedents in the DSM and jurisprudence in the area of international trade law. They

review the African Group's proposals at the Doha Round and correctly predicted the rejection of those overambitious proposals by the industrialized world.

Edwin and Kofi, therefore, admonished African nations to amongst others, adopt certain proposals that could enhance their participation: third party participation and involvement of institutions like UNCTAD in the DSM process, and addressing the supply-sided constraints which obstructed their abilities to diversify their exports. Despite the efforts in providing new alternative proposals to the African Group's proposals, the authors failed to recognize that the factors that constitute majority stake amongst the barriers to the non/little participation by African countries is the DSU itself.

Susan Esserman and Robert Howse acknowledges the compulsory and binding nature of the DSM and suggest that compiling a more comprehensive history of the WTO's negotiation rounds would be resourceful to guiding the DSB and the Appellate Body's interpretation of the texts of the ambiguous treaty provisions in the DSU. They describe the consultative phase of the DSM as superficially ineffective and goes onto suggest the involvement of professionally trained facilitators with expertise in alternative dispute resolution as a recourse to addressing these shortcomings. Whiles the authors are quick to point to the fact that much of the reliefs under the DSU are ineffective, they suggest that those ineffectual WTO rules remain because they represent the most essential pillars of the global economic order that releases the socio-political and economic pressures, which otherwise could have threatened the WTO's mission for free multilateral trade regime.

An article published by WTO; "Developing Countries in WTO's Dispute Settlement" (WTO, 2020) indicates that lack of sufficient legal expertise and human resources in

developing countries is another sphere that has restricted the participation of African nations in the WTO dispute settlement legal process. According to the insight from the articles, a number of smaller countries from the Sub-Saharan Africa lack specialized human resource expertise to handle the complex legal mechanism associated with the WTO dispute settlement procedure. Specifically, the substance and procedural aspects associated with the complex WTO law appear to create an obstacle for African countries' participation in the WTO dispute settlement mechanism.

The research paper by Muheki (2010) outlined the various constraining factors that have restricted participation of African nations in the WTO dispute settlement process. According to Muheki (2010), lack of clear meaningful remedies, especially those associated with compensations and suspension of concessions, lack of transparency and insensitivity to the concerns of the developing nations are key challenges. Muheki (2010) further assert that there is a general understanding, especially among international trade professionals in developing countries and global civil society actors that the existing WTO dispute settlement mechanism has failed to capture the needs of developing nations.

The study by Zunckel (2005) cited the restrictive WTO Agreement on Agriculture, which allows the provision of agricultural subsidies as a key issue that has created the perception of unfairness with respect to the WTO's dispute settlement mechanism. Majority of African countries, which rely on the largely agrarian economy have been adversely affected in terms of their competitiveness while participating in the multilateral trading system. Therefore, some of these restrictive provisions as well as the WTO DSU's Article 21.5 and 22.2 appear to limit the participation of African nations in the WTO's dispute settlement process (Zunckel, 2005; Yu, 2019).

Finally, the study by Naif (2015) also cited several factors associated with the structure of the WTO's dispute settlement regime as the main obstacles that have deterred African nations from participating in the WTO dispute resolution mechanism. According to Naif (2015), there are three main factor aspects, which have limited African countries' involvement in the WTO dispute settlement process. Specifically, Naif (2015) acknowledges that the skewed WTO rules, which favour the interests of advanced nations, long duration of the WTO dispute resolution and poor enforcement of the WTO DSB's rulings are the main challenges, which have hampered the participation of African countries in the WTO dispute process.

2.5 Restrictive Provisions of the WTO' Dispute Settlement Mechanisms

Insight from the review of relevant literature indicates that the complex and perceived unfair WTO rules appear to have placed obstacles and hindered the participation of African nations in the WTO dispute settlement mechanism. As noted in the case law pertaining to Tunisia's complaint to WTO against Morocco as well as the cases involving South Africa and Egypt the current design of the anti-dumping clauses seems to be unfair to most African nations (Naif, 2015). Specifically, there is a concern that Article 1, 2.1 and 12.2.2 of the WTO Anti-Dumping Rules appear to be unfair (Buyonge & Kieeva, 2008). In fact, the review of all the case laws where the three African countries (South Africa, Egypt, and Morocco) have been involved as respondents depict that the common issue of trade dispute pertains to the violation of these stated anti-dumping regulations.

The perceived unfairness of the WTO anti-dumping regulations is also consistent with the insight alluded to by Zunckel (2005). According to Zunckel (2005), the restrictive

WTO Agreement on Agriculture has mainly created perceived inequity against African countries who rely on the agricultural sector as their main source of foreign exchange earnings. A number of African countries are concerned that the restrictive agreement on agriculture has partly contributed to the numerous instances where multinationals from advanced nations are able to exploit the multilateral trading system and its enabled investment treaties to the detriment of the developing nations (Zunckel, 2005; Derrains, 2019). For instance, by allowing advanced nations to provide subsidies to their local firms engaged in the production of agricultural products, majority of developing countries from the Sub-Saharan region tend to encounter unfair competition.

Persson (2007) also notes that the poor implementation of the WTO DSU rulings has been hampered by the inconsistencies and ambiguity between article 21.5 and 22.2 of the WTO Dispute Settlement Understanding. Specifically, the two articles have failed to resolve a long-standing issue related to implementation of the suspension of concession remedy. There is a general recognition that due to their weak economic power, most small developing nations from the Sub-Saharan African region view the suspension of concession remedy as highly risky. Buyonge and Kieeva (2008) acknowledges that a number of African countries fear cross-retaliation, which might adversely affect their trade and diplomatic relationship with the advanced nations. According to Persson (2007), retaliation measures that are most often attributed to suspension of concessions can be damaging for both the litigants and the respondents. He further argues that as a result of the ambiguity in article 21.5 and 22.2 of the WTO DSU, the suspension of concessions remedy is not a viable genuine option for small developing nations from Africa. Therefore, the review of the stated restrictive articles

should be given priority in any efforts to improve the participation of African countries in the WTO dispute settlement process.

2.6 Remedial Solutions to Increase African Countries Participation in WTO DSM

There are several remedial solutions, which have been proposed by researchers in international trade to enhance African countries' participation in the WTO Dispute Settlement Process (Keet, 2006; Buyonge & Kieeva, 2008; Vidigal, 2019). The insight based on the article by Keet (2006) suggests that developing nations can strengthen their bargaining position by insisting that no further multisectoral negotiations should be undertaken without the full review of the existing WTO rules. Specifically, there are several aspects associated with Article 1, 2.1, 12.2, 21.5 and 22.2, which appear to create a sense of inequity or unfairness against African nations. For instance, Persson (2007) argued that the review of possible remedies, especially those pertaining to the suspension of concessions can be effective in improving the participation of African nations in the WTO dispute settlement procedure. Naif (2015) contends that no country can have confidence in a legal process that lacks distributive justice. The review of articles 21.5 and 22.2 can be a first important step towards eliminating perceived legal barriers that have hampered the participation of developing nations in the WTO dispute settlement process.

The insight based on the study by Naif (2015) also recommends the review of the WTO DSU's legal structure and efficiency as a possible option that can convince a number of African nations to actively participate in the WTO Dispute Settlement Process. For instance, efforts to increase the resources for the WTO DSB is likely to improve efficiency of the dispute settlement process resulting in the speedy resolution of the WTO

cases. Furthermore, joint efforts by the WTO DSB and African countries through the various regional blocks, including the AU and the ACP can also create training program that enable the stated small developing nations to gain understanding of the complex WTO dispute settlement regime (Kessie & Addo, 2007; Reich, 2017).

The other alternative solutions that have been proposed to address the challenge related to limited participation of African countries in the WTO dispute settlement mechanism relates to improving transparency and depoliticization of the WTO DSM (Esserman &Howse, 2003). This proposal is informed by the fact that there is a perception that the WTO Dispute Settlement Mechanism (DSM) tends to pursue the interest of the advanced industrialized nations. This stated factor has created the perception that the WTO legal procedures are not sufficiently transparent to promote the interests of smaller African nations because they seem to be not involved in the agenda setting structures of the WTO DSM processes.

Finally, sensitization and awareness campaigns through WTO's conferences and workshops has also been highlighted as a possible strategy that can convince several African nations to participate in the WTO DSM (Ng'ong'ola, 2005). The stated proposed recommendation is informed by the fact that majority of the African nations are still skeptical of the ability and effectiveness of the WTO's DSM in addressing their concerns. In this respect, Naif (2015) also suggests that besides sensitisation and awareness, there is need for real action from the WTO's perspective to integrate the views and concerns of the smaller developing nations into any reform processes like the Ministerials where proposals for review to the WTO rules are considered.

2.7 Summary of the Literature Review

Table 1 presents a summary of the literature review on the challenges restricting African nations' participation in the WTO dispute settlement process, the solutions to address the stated issues and knowledge gaps.

Table 2.1: Summary of the Literature Review

Author	Findings	Knowledge Gaps
Busch & Reinhardt (2003)	Failure by WTO DSB to insulate African countries from the "power politics" is the main factor that has restricted African nations' participation in the WTO DSM.	The study fails to address the legal aspects, especially related to the restrictive WTO DSU provisions.
Zunckel (2005)	The restrictive WTO Agreement on Agriculture has limited the competitiveness of African nations who depend on the agrarian economy in the multilateral trade system.	The study offers a legal perspective although fails to capture the other underlying issues faced by African nations in the WTO dispute resolution system.
Al-Islam &Alqadhafi (2007)	Perceived political "unfairness" and lack of democratic governance structure have hampered African nations' participation in the WTO DSM.	The paper focuses on the political aspects of the WTO DSM but fails to capture or address the legal challenges.
Persson (2007)	Ineffective implementation of the suspension of concessions remedies under Articles 21.5 22.2 have created the perceived risk of "cross-	There is less clarity on the resolution of the stated legal ambiguity associated with the WTO rules.

	retaliation" to small African countries.	
Alavi (2007)	The threat of retaliation and ineffectiveness of the WTO DSM legal structure has restricted the participation of Sub-Saharan African nations in the WTO dispute settlement process.	There is limited focus on the specific provisions of the WTO DSM that have adversely affected the WTO legal structure.
Saif (2010)	Failure of the WTO DSB's distributive justice system is a major obstacle that has limited African countries' participation in the WTO dispute settlement mechanism.	There is less clarity on the WTO DSB's authority that has created a negative perception on the distributive justice system.
Muheki (2010)	Lack of meaningful remedies, insensitivity to concerns of the African nations and issues with transparency in the WTO DSM are some of the factors that have restricted African nations' participation in the dispute settlement mechanism.	The research presents a gap with respect to identification of the relevant WTO DSU provisions that adversely influence the effectiveness the available remedies.
Naif (2015)	Limited financial and legal resources, long delays in the resolution of WTO cases as well as poor enforcement of DSU rulings appear to have created a negative perception associated with the WTO legal process.	There is limited focus on WTO DSB's precedent rulings as a key obstacle for African nations' participation in the WTO dispute settlement process.

Busch and Reinhardt (2003)	Lack or limited capacity and development constraints influences a poor country's determination to initiate a trade dispute or otherwise. Thus, the industrialized countries who are plaintiffs are usually able to leverage their power to extract concessions from defendants at the pre-panel phase than third world nations who are complainants.	Geopolitical dynamics; the lack of the remedy regime in reinstating full benefits to the injured party up to pre-violation levels; and the DSM's lack of financial compensation commiserate to the overall economic losses injured parties.
Clement Ng'ong'ola (2009)	Lack of third-party rights, panel compositions, special and differential treatment provisions, sequencing and post retaliation and others are being negotiated in a bottom-up approach by State parties to the WTO regime.	Lack of organizational and institutional reforms as well as predictability and security of the DSB.
(Kessie & Addo, (2007)	That Africa's lack of participation in the WTO's DSM process is due to their insignificant share of global trade and lack of expertise in the WTO matters. That African nations adopt certain proposals that could enhance their participation: third party	The failure to recognize that the factors that constitute majority stake amongst the barriers to the non/little participation by African countries is the DSU itself.

	participation and involvement of institutions like UNCTAD in the DSM process and addressing the supply-sided constraints which obstructs their abilities to diversify their exports.	
Esserman and Howse, (2003)	Ambiguous treaty provisions in the DSU, and ineffective consultative phase. They propose the involvement of professionally trained facilitators with expertise in alternative dispute resolution the DSM processes.	The lack of proposal to overhaul the ineffectual WTO rules under the DSM/DSB.

2.8 Chapter Summary

The inception of the WTO DSU 25 years ago offered optimism that the dispute resolution mechanism would foster transparency, equity and contribute to the prosperity of African nations in international trade. However, to date the situation is contrary to expectations given that only 2% of the 597 WTO trade disputes involve African nations. Specifically, only four countries (South African Egypt, Tunisia, and Morocco) have been involved in the WTO dispute resolution mechanism as either litigants or respondents. There are several issues, which have been raised among them perceived *political* "unfairness", lack of financial and legal resources, poor WTO DSM's legal structure, long delays in resolution of cases, and restrictive provisions that are relevant in explaining the stated trend. The literature review chapter also presents various solutions that have been proposed to enhance confidence of the WTO dispute settlement process and therefore increase the participation of African nations in the WTO DSM procedure.

3.0: Research Methodology

3.1 Introduction

The research methods section describes how the mixed approach design was employed to identify the challenges and, or issues faced by African countries that have restricted their participation in the WTO dispute settlement mechanism. The chapter is organised into four main sections, which include the research design, population and sampling, data collection and data analysis. The mixed research design is mainly captured by using the systematic review, primary research design and the case laws related to the four (4) African nations, which have been involved in the WTO dispute settlement mechanism as either respondents or litigants.

3.2 Research Design

A mixed research design approach using three strategies, including the systematic review, case law and primary research is employed to answer the four research questions for the study. The main strength of the mixed research design approach is that it provides an opportunity for triangulation (Creswell, 2014). Triangulation is a useful aspect of a mixed research design because it entails the use of multiple research approaches(strategies) to analyse a specific research phenomenon (Saunders, Lewis & Thornton, 2016). Research design triangulation has been known to enhance the validity of the findings from a research study (Sekaran & Bourgie, 2016). The other benefit of using the mixed research design is that the approach allows a comprehensive analysis of the research phenomenon using multiple perspectives. For instance, while the systematic review offers an insight on the current position of the research phenomenon among scholars, the case laws provide actual data/information pertaining to the resolution of the WTO disputes. Moreover, the insight from the primary research design offered a

multi-perspective view/opinion from international trade professionals with respect to the limited participation of African countries in the WTO dispute settlement mechanism.

However, a limitation of the mixed research design is that the approach can only be effectively implemented by an experienced researcher (Creswell, 2014). The complexity of a mixed research design, which requires the consideration of information from different perspective might create challenges for less experienced researchers. Besides, its complex nature, the other limitation of a mixed research design approach is that the technique is time consuming, which implies that it requires considerable amount of time to plan its implementation (Saunders, Lewis & Thornton, 2016). These limitations were addressed by allocating sufficient time for data collection and analysis.

3.2.1 Systematic Review Design

A systematic review design is a research approach, which entails the use of a structured selection, retrieval and evaluation of relevant research articles pertaining to the subject matter of interest (Lewis, 2015). Table 3.1 depicts a summary of the procedure for the systematic selection of the relevant articles, which were retrieved as part of the systematic review design. The structured selection of relevant research studies, which resulted in the final selection of twelve (12) research articles was undertaken in four (4) phases. These include article identification, screening, eligibility and final selection, which incorporated articles that met the relevance and reliability criteria.

Table 3.1 shows that the preliminary identification of the articles was undertaken based on the consideration of keywords and phrases such as “Africa”, “WTO Dispute Settlement Mechanism”, “Dispute Settlement Understanding”, “World Trade Organization” and “Participation of African Nations in WTO DSM”. The database was

mainly specified as any reputable journal (Development Policy Review, Journal of World Trade, Trade Affairs) and WTO Working Papers). The fact that the study examined the participation of African nations in the WTO dispute settlement regime since the inception of WTO, the publication date for the articles was mostly limited to the 25-year period from 1995-2020. In terms of the country of publication, research articles focusing on African countries, or which had been published by African scholars were given priority although the source country was not a strict requirement in the initial article identification phase. The preliminary research article identification process using Google search engine resulted in 75 articles as specified in Table 3.1.

The screening phase of the structured articles selection entailed the review of titles and abstracts/executive summaries for each of the initial articles (N = 45). The screening of articles using titles and abstracts (executive summaries) sought to eliminate those papers, which were not relevant to the research topic nor aligned to the four research questions. The articles' screening process is important in a systematic review design because the prior use of keywords, databases, date and country of publication is likely to generate several articles, which might be unrelated to the research topic (Hair et al., 2010). The other important efficacious feature of the article screening process is that it allows a quick perusal of the content without having to read the entire paper (Creswell, 2014). As shown in Table 3.1, the screening process resulted in the elimination of 25 articles, which did not meet the criteria for research topic. The implication is that after the screening phase, only 20 articles (N = 20) remained, which were further reviewed using the various eligibility criteria.

The eligibility phase of the systematic article selection entailed a full textual review of the 35 articles. This phase involved a detailed analysis of each of the 20 research articles from the previous article screening process. Specifically, in the full textual review, the articles were assessed for relevance to the topic and the research question by examining the introduction, methodology, results and findings as well as the discussion. Based on the eligibility phase, it was found that five (5) articles did not capture challenges faced by African countries in the WTO, the specific WTO DSM provisions, which were in dispute and the WTO dispute settlement procedural issues that adversely affected the participation of African nations in the WTO DSM. This means that after the full textual review, a total of fifteen (15) articles remained, which were subjected to a final review.

The final selection of the articles mainly focused on evaluating the relevance of the problem statement and methodology as well as the extent to which the findings were reliable or could be authenticated. In addition, the final article selection phase also considered the extent to which the articles could potentially answer all the four research questions that were specified in the study. Table 3.1 shows that the final selection phase resulted in twelve (12) research articles, which met the relevance and eligibility criteria. These articles provided the information for the systematic review design to examine the challenges and issues faced by African nations that restrict their participation in the WTO dispute settlement mechanism.

Table 3.1

Structured Selection of Relevant Research Articles in the Systematic Review Design

Phase	Description	Number of Articles
Articles Identification	Keywords, Database (Website), Date of Publication, Country.	45
Articles Screening	Titles, Abstracts	20
Eligibility	Full Textual Review	15
Final Selection	Relevance and Reliability	12

The primary strength of the systematic review design is that the approach is cost effective and less time consuming as long as there exist relevant prior studies that focus on the research topic (Creswell, 2014). The other advantage of the systematic review approach is that it can provide diverse insight sourced from different researchers on the research topic (Sekaran & Bourgie, 2016). However, reliability of the systematic review design is likely to be poor, especially when the articles are retrieved from less reputable journals (Saunders, Lewis & Thornton, 2016). The reliability aspect of the systematic review design was addressed by prioritising on articles, which were published in reputable databases such as the Journal of World Trade and related ones as well as working paper series published by WTO.

3.2.2 Primary Research Design

The primary research design entailed the administration of a small online survey. The online survey conducted using the skype platform involved 10 international trade professionals, ministry of trade officials, and academicians selected from the four (4) African nations, which have so far been involved in the WTO DSM as either litigants or

respondents. This means that the international trade professionals, academicians, and ministry of trade representatives from Morocco, Tunisia, Egypt and South Africa were recruited to partake in the online survey. The participants who volunteered to participate in the brief online survey were mainly asked to offer their views with respect to the challenges/issues faced by African countries, which explain their limited participation in the WTO dispute settlement mechanism.

Population and Sampling: The research population is an important unit of research, which allows researchers to either analyse the characteristics of the entire populace or a specified sample, which represents the attributes of the population (Saunders et al., 2016). The population consisted of all the international trade professionals, academicians, career diplomats, and ministry of trade officials from the four African countries (South Africa, Tunisia, Egypt and Morocco). The international trade professionals are defined as experts in the field of international trade, ministry officials, government representatives to the WTO and legal experts in international trade disputes from the stated four countries. The sample, which consisted of ten (10) international trade professionals, academicians and ministry of trade officials from the four (4) African nations was selected randomly from the directory consisting of ministry officials, academicians, legal experts in international trade and WTO representatives from the four countries; South Africa, Tunisia, Egypt and Morocco. The final sample of 10 international trade professionals, academicians, and ministry of trade representatives included three participants each from South Africa and Egypt given that they have been involved in the WTO disputes on several occasions. In addition, two participants/respondents each from Tunisia and Morocco were also recruited as part of the study sample.

Data Collection Instrument: A primary survey (questionnaire) was used as the main data collection instrument. The survey was designed in such a manner that it consisted of three sections as shown in the appendix section (Exhibit 3). The first part (Section A) of the survey sought to collect specific demographic information of the respondents, including age, gender, education level, designation, country of residence and years of working experience. The second part (Section B) of the questionnaire sought to capture the perceptions and views of the respondents with respect to the challenges/issues faced by African nations that have restricted their participation in the WTO dispute settlement mechanism. The third part (Section C) sought to examine the perceptions with respect to how the current WTO DSU provisions and DSM procedural issues influence the participation of African countries in the dispute settlement process. Part B of the primary survey (questionnaire) consisted of seven (7) questions that focused solely on the challenges faced by African nations that seem to have restricted their participation in the WTO dispute settlement mechanism. On the other hand, part C of the primary survey, which focused on how the current WTO DSU provisions have restricted the participation of African countries in the WTO DSM process also consisted of seven (7) survey questions. As suggested by Creswell (2014), to improve the response rate, all the survey questions required the elicitation of short responses, which meant that the respondent could complete the survey in less than 10 minutes. The limited sample size of the respondents (N = 10) meant that the survey questionnaire design had to be perfect.

Procedure: The sample of ten (10) international trade professionals, academicians and ministry of trade representatives was selected from a directory with a list of contacts of ministry officials and international trade professionals, including legal

experts from South Africa, Egypt, Tunisia, and Morocco. The sampling frame is a list of trade ministry officials, academicians and legal experts from the stated four countries, which is publicly available. Using the email addresses (contacts), a random sample of an invitation to participate in an online survey was sent to 50 potential respondents. The response to the invitation email were sorted and randomly selected such that the final list consisted of 10 participants (N = 10) with three each from South Africa and Egypt as well as two participants each from Morocco and Tunisia

A participant information sheet and consent forms were sent to the email address of the selected participants. The participant information sheet explained the main objectives and goals of the study as well as the expected outcome, which is to enhance the active participation of African nations in the WTO dispute settlement mechanism. The participant consent is an important document in primary research design, which ensures that all ethical issues are taken into consideration (Sekaran & Bourgie, 2016). Using the consent form, the ten (10) international trade professionals, academicians and ministry of trade officials were required to indicate willingness to partake in the survey. Survey questionnaires and respective consent forms were sent by email to the ten (10) selected participants. Even though appeal was made to participants to return answered questionnaires and their respective signed consent forms within a period of one week, it took over to two weeks to get all responses returned. The responses to the questionnaires were sorted and data summarized in an excel spreadsheet using data entry and various data cleaning approaches for further analysis.

Ethical Issues: Primary research surveys entail a considerable level of risk associated with possible ethical violations (Saunders et al., 2016). Therefore, to mitigate

the risk, all the study participants were required to sign an informed consent form attached in the appendix section, which offers seeks authorized permission from the respondents to partake in the survey. All the subjects were free to withdraw their consent any time they deem it necessary to do so without offering any reason/justification for their decision. Furthermore, as part of the ethical consideration, telephone interview was an earlier approved instrument for the study. However, the study instrument was changed from the telephone interviews to survey (by email) when there was difficulty in getting participants to honour their own scheduled interviews. Finally, the original research proposal for the study and the subsequent change of the study instrument were all granted approval from Royal Roads University Ethical Review Committee, which resulted in a positive decision given that the research design met all the minimum criteria.

The primary research design was appropriate in this study because it allowed the consideration of current perceptions and views from international trade professionals, diplomats, academics and ministry of trade officials on the extent to which various issues have restricted the participation of African nations in the WTO dispute settlement mechanism. The other strength of the insight from the primary research survey relates to its reliability because research information is sourced from participants with experience in international trade disputes (Esserman &Howse, 2003). However, despite its reliability and relevance, the primary research design can be expensive and time consuming, especially where the number of participants is very large (Creswell, 2014).

3.2.3 WTO Cases

The final component of the mixed research design entailed the identification, analysis and review of the twelve (12) cases involving the four (4) African countries as either litigants or respondents. The case law is important for the current research because it provides a legal perspective that might facilitate identification of the main procedural issues in the WTO DSM case management regime. This information could raise important insight that explains the African nations' limited participation in the WTO dispute settlement mechanism. Specifically, the case laws could highlight the extent to which delays in the resolution of the WTO disputes, the outcome and specific WTO provisions, which are in disputes hinder the participation of African nations in the WTO DSM.

Population and Sampling: The population consists of all the twelve (12) WTO cases involving African countries as either litigants or respondents and other potential trade disputes, which were not pursued further. Table 3.2 indicates that since its inception in 25 years ago, the WTO DSM has handled only twelve (12) cases that involve four (4) African nations, including South Africa, Morocco, Tunisia and Egypt. The implication based on the review of the information/data presented in Table 3.2 is that the population for the case law is a total of 12 cases involving the four African nations as either litigants or respondents as well as other potential trade disputes that were not pursued to the WTO DSM level.

In terms of the case law sample, only three (3) WTO cases out of the twelve (12) cases and two (2) potential trade disputes, which were not pursued further were reviewed in this study. The three sampled cases include ***Pakistan v. South Africa [2015] WTO DS500***, which involve South Africa as a respondent and Pakistan as a complainant in the

provisional anti-dumping duties related to the importation of Portland cement from Pakistan. The dispute, which is currently in consultation phase was initiated five years ago in 2015 (WTO, 2020).

The second WTO case law involving African nations, which was reviewed relates to Egypt's anti-dumping duties on matches, which were imported from Pakistan. The status of the ***Pakistan v. Egypt [2006] WTO DS327*** is currently 'settled or terminated'. The stated WTO dispute involving Egypt as a respondent and Pakistan as a complainant was initiated fourteen (14) years ago in 2006 (WTO, 2020).

The third WTO case law, ***Tunisia v. Morocco [2019] WTO DS578*** which was reviewed involved Tunisia as complainant and Morocco as a respondent. This WTO dispute is the first case involving an African country (Tunisia) as a litigant given that all the prior eleven (11) cases involved the African nations as respondents. The current status of WTO DS578 is 'panel composed', which means that the case is still in its early phase. The case was selected in order to identify the possible issues that African countries could raise at the WTO dispute settlement mechanism. However, given the fact that the case is still in early stage, the duration and procedural aspects might not be determined beforehand.

The two (2) potential trade disputes involving African countries but not pursued further that were included in the case law analysis include the '***Kenya-Pakistan Trade Dispute (2005)***' and the '***Sudan-Saudi Arabia Trade Dispute (2005)***' despite the fact that both countries were still non-WTO members at the time. The analysis of these potential trade dispute cases, which were not pursued further was considered in order to provide a different perspective on what factors contributed to the failure to settle the cases

using the formal WTO dispute settlement mechanism. The analysis is expected to complement the insight from the three (3) WTO cases involving African nations as either respondents or litigants.

Table 3.2: ***Participation of African Nations in the WTO DSU: 1995-2020***

Country	**Number of WTO DSU Cases**
South Africa	5
Egypt	4
Morocco	3
Tunisia (Litigant) with Morocco	1

Data Collection: The case law data was collected from the WTO data repository website that maintains all the WTO disputes that are currently active or closed. The World Trade Organization (WTO) maintains all the WTO disputes that have been resolved or still in progress since its inception 25 years ago in 1995. The WTO disputes presented in the WTO website have a unique identifier, which facilitates ease of reference and retrieval. The case law information presented in the WTO data repository site is reliable given that it captures the actual facts, rulings, and status of the cases.

3.3 Data Analysis Design

Data analysis is an important phase in research because it determines the validity of the findings and the provides relevant information that answers the research questions (Rego & Cunha, 2008). There are two main qualitative data analysis approaches that will be employed to answer the four research questions of the study. These include content analysis and thematic analysis.

Thematic Coding Analysis: Thematic analysis is a qualitative data analysis approach that entails the derivation of broad thematic insight (subject matter) related to a

research topic of interest (Rourke & Anderson, 2004). Using thematic analysis, it is possible to come up with a list of broad themes that capture the perception or views of participants in a primary research design or systematic review (Sekaran & Bourgie, 2016). The main strength of the thematic analysis is that it is considered the best qualitative data analysis technique for analysing narrative information related to perceptions, views and, or opinion drawn from the research subjects (Creswell, 2014). However, a primary limitation of the thematic analysis is that the qualitative data analysis technique is very subjective. According to Rourke and Anderson (2004), the thematic data analysis approach might result in different themes when two researchers are asked to come up with research themes from the same pool of qualitative data. However, this study plans to address the stated limitation by using Nvivo software to analyse the qualitative data.

The thematic data analysis approach was applied to analyse the survey responses from the 10 international trade professionals who participated in the online survey. This means that broad themes ranging from the challenges, specific provisions of the WTO DSM and dispute settlement procedural issues were identified using thematic analysis conducted in Nvivo statistical software. Additionally, thematic data analysis was also employed to generate key themes from the systematic review of the twelve (12) articles that focused on challenges facing African nations in their participation to the WTO DSM and possible reform suggestions. The implication is that from the review of the twelve (12) articles, a number of relevant themes were identified using NVivo statistical software.

Thematic data analysis and coding was based on the structured approach by Braun and Clarke (2006). The first stage (*abstraction*) involved the identification of common themes from the textual analysis of the interview response statements or the

systematic review insight. For instance, based on the interview responses of the participants on some of the factors that have limited the involvement of African countries in the WTO dispute settlement mechanism, the abstraction phase noted keywords and phrases such as, ‘transparency’ and ‘litigation costs’. In the *subsumption* phase, the thematic coding of the textual statements grouped similar sub-themes into broad themes that represented specific aspects of the research questions. For example, under the challenges, key themes, and sub-themes such as ‘enforcement’, ‘litigation costs’, and ‘lack of transparency’ were group together to capture the factors that have restricted the participation of African countries in the WTO dispute settlement process. On the other hand, themes, and sub-themes such as ‘complexity’, ‘restrictive’, ‘remedies’, and ‘retaliation’ were subsumed together to represent challenges associated with the prohibitive WTO DSM provisions. In addition, as part of the thematic data analysis, *contextualization* also captured themes that depicted key moments that have influenced the decision by most African countries not to actively participate in the formal WTO dispute settlement process. For instance, key themes such as, ‘unfairness and ‘retaliation’ were included to depict important events related to the WTO DSB rulings and enforcements, which changed the perception of African countries towards the WTO dispute settlement process. In this case, the thematic coding was contextualized to reflect the current perceptions of African countries towards the WTO dispute settlement process based on past experiences. Finally, a table that summarizes the key themes and sub-themes derived from the thematic coding for each component of the research question was presented and discussed.

Content Analysis: Content analysis is an alternative qualitative data analysis, which entails the analysis of texts and narratives, which can be retrieved from published articles (Cooper & Schindler, 2005). The content analysis was mainly employed to evaluate the three WTO DSM cases involving South Africa with Pakistan (WTO DS500), Egypt with Pakistan (WTO DS327) and Tunisia with Morocco (WTO DS578). Specifically, using the approach, specific information concerning the duration of the cases, issues in disputes, specific provisions of the WTO DSU that were in disputes, procedural issues, and the outcome of the cases were considered in the content analysis.

3.4 Limitations of the Study

The main methodological limitation of the study is that the analysis only covered a limited period of 25 years, which represents the duration for which the WTO has been existence since its inception in the year 1995. The limited duration of the case law analysis is further exacerbated by the fact that there are only few African countries, which have been involved as either litigants or respondents. To address this limitation, the study incorporates a mixed research design, which supplemented the insight from the case law with the views from international trade professionals (primary research design) and the systematic review of prior studies.

The other limitation of the study is that the data analysis mainly relies on qualitative thematic and content analysis techniques, which have been known to have subjectivity issues (Creswell, 2014). The subjective aspects of the stated qualitative data analysis approaches might have a significant negative effect on reliability of the findings. However, to address the stated limitation, the study used reliable statistical software (NVivo) to

generate the broad themes, especially from the survey responses related to the ten (10) international trade professionals.

3.5 Chapter Summary

A mixed research design approach involving three qualitative research strategies/approaches was used to collect relevant data to answer the three research questions. The research methods chapter describes how primary research survey, systematic review of prior literature and case laws were used in the research. The primary research survey involved the administration of questionnaires to a sample of 10 international trade professionals from four African countries (South Africa, Egypt, Tunisia, and Morocco) using skype. The systematic review design entailed the analysis of twelve (12) research articles that focused on the challenges facing African nations in their involvement with the WTO dispute settlement mechanism. The case law involved the analysis of three cases (WTO DS500, WTO DS327) and WTO DS578) involving South Africa, Egypt, Tunisia, and Morocco. Thematic and content analysis were employed as the main qualitative data analysis approaches.

4.0: Results

4.1 Introduction

Chapter three (3) described how a mixed qualitative research design approach employing primary surveys, systematic reviews and case law was used to answer the four research questions for the study. This chapter presents the thematic analysis results from the online survey with the ten (10) international trade professionals, the outcome from the systematic reviews and content analysis of the three WTO case laws involving African countries. Chapter four (4) is organized into three sections. The first section presents the thematic analysis of the written online surveys while the second section summarises findings from the systematic review. Finally, section three presents a summary of the content analysis from the three WTO case laws (WTO DS500, WTO DS327) and WTO DS578) and two (2) other potential trade disputes, which were not pursued further.

4.2 Thematic Analysis of the Primary Research Survey

4.2.1 Sample Composition of the International Trade Professionals

The primary survey sample consisted of ten international trade professionals, academicians and ministry of trade professionals who were recruited from the four African countries (South Africa, Morocco, Egypt, and Tunisia). Table 4.1 and Figure 4.1 presents a summary of the sample composition based on gender, age, country of residence, years of working experience, and educational attainment. The sample constituent based on the demographic profile indicates that majority of the international trade professionals (50%) were aged between 41-50 years with only 30% of them being between 51-60 years. In terms of gender composition, 60% of the international trade professionals who were interviewed are male while 40% of them are females. Based on the initial primary research

design, three (3) international trade professionals were each selected from Egypt and South Africa representing 60% of the entire sample (Figure 4.1). The remaining four international trade professionals were selected from Morocco (N = 2) and Tunisia (N = 2). The demographic profile of the participants in terms of their years of working experience indicates that 90% of the sample had exposure to WTO international trade knowledge for over eleven (11) years. The implication is that the insight from the primary research survey is likely to reflect the views of high experienced and knowledgeable participants. Finally, when assessed in terms of the educational achievements, 90% of the international trade professionals who were surveyed possessed postgraduate degree with the remaining 10% of the sample composed of individuals with undergraduate level degree.

Table 4.1

Sample Composition of the International Trade Professionals

Age	**Frequency**	**Percentage Frequency**
30-40 Years	1	10%
41-50 Years	4	40%
51-60 Years	3	30%
> 60 Years	2	20%
Gender	**Frequency**	**Percentage Frequency**
Male	6	60%
Female	4	40%
Country of Residence	**Frequency**	**Percentage Frequency**
Egypt	3	30%
Morocco	2	20%
South Africa	3	30%
Tunisia	2	20%
Years of Working Experience	**Frequency**	**Percentage Frequency**

0-5 Years	0	0%
6-10 Years	1	10%
11-15 Years	4	40%
16-20 Years	4	40%
Over 20 Years	1	10%
Educational Attainment	**Frequency**	**Percentage Frequency**
Undergraduate (Bachelors) Degree	1	10%
Postgraduate Degree	9	90%

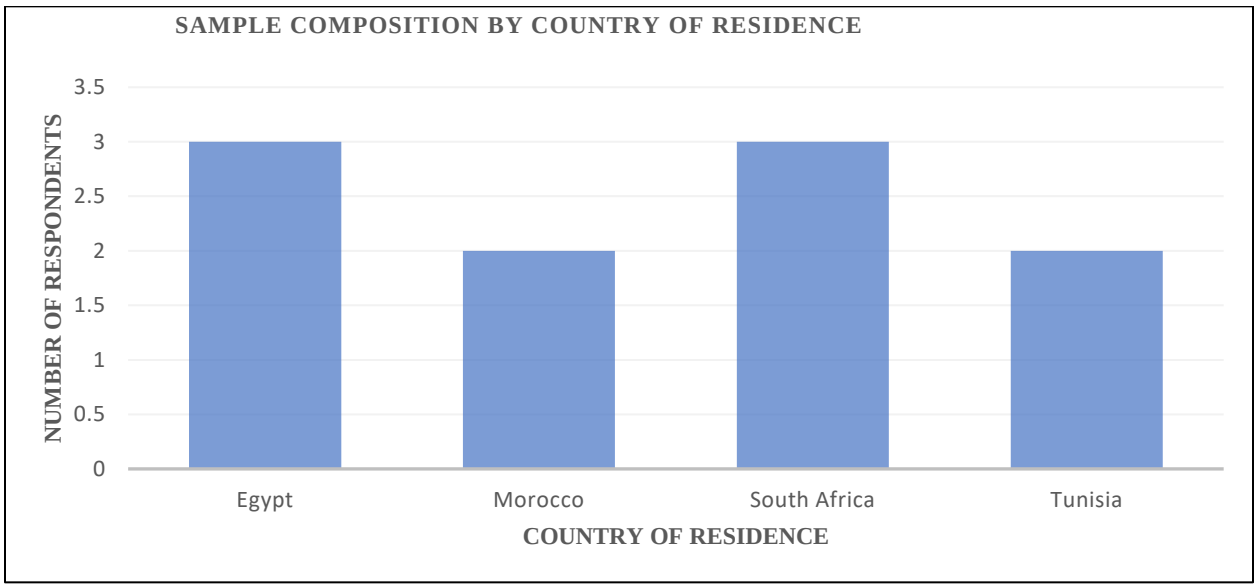

Figure 4.1. Sample Composition by Country of Residence

4.2.2 Thematic Findings:

4.2.2.1 Research Question 1

The first research question, which is the primary focus for this subsection of the results chapter is re-specified as follows;

RQ1: What are the challenges facing African countries under the WTO dispute settlement mechanism?

The thematic findings in Table 4.2 present a summary of the international trade professionals' perceptions with respect to the challenges that are currently faced by African countries, which have limited their participation in the WTO dispute settlement mechanism. The primary questionnaire (survey) incorporated four (4) questions, which were relevant to the first research question. The thematic codes are presented alongside a few of the responses from the interview with the international trade professionals from the four (4) African countries.

Table 4.2

Perceptions of the Challenges Faced by African Countries in the WTO DSM

Survey Question	Responses	Codes
1. Challenges	Lack of transparency and insensitivity to concerns of African nations.	[1]TRANSPARENCY
2. WTO Proceedings	High WTO DSM litigation costs and long durations of proceedings have restricted participation of African nations.	[1]LITIGATION COSTS [2]DURATION
3. Precedent Rulings	Past WTO DSB rulings have not been fair to African nations involved as respondents.	[1]UNFAIRNESS
4.Enforcement Authority	WTO lacks adequate authority to enforce its own rulings under its WTO DSU.	[1]AUTHORITY [2]ENFORCEMENT

The insight from the thematic analysis of the surveys with the ten (10) international trade professionals indicate that a major challenge facing African countries, which has restricted their participation in the WTO dispute settlement mechanism pertains to the perceived lack of transparency. In this respect, all the participants who were interviewed

observed that in most cases, the WTO dispute settlement proceedings are not conducted in a clear and transparent based on the existing WTO rules. For instance, one of the respondents observed, "*In most cases, there are no clear guidelines or WTO legislative provisions, which are being applied to govern the WTO DSB proceedings*" (***Participant 1***).

The thematic analysis of the survey with the ten (10) international trade professionals also indicated that the WTO DSB proceedings are usually characterised by long duration and high litigation costs. These two aspects of the WTO proceedings appear to be deterrent to the African nation's participation in the WTO dispute settlement mechanisms. One of the respondents explained that majority of the African nations feel that the current WTO DSB legal and procedural structure is associated with long delays in the resolution of the cases. "*Personally, I feel that the delays in the resolution of WTO cases is one of the main factors that has restricted the participation of African nations in the WTO dispute settlement mechanism*" (***Participant 3***). Besides, the high financial cost implications of the WTO DSB proceedings also appear to be among the main factors that have deterred the participation of African nations in the WTO dispute settlement mechanisms. In this respect, Participant 2 observed that, "*Yeah. In some way the excess legal costs associated with the WTO proceedings are prohibitive to African countries*" (***Participant 2***).

The thematic analysis findings also indicate that the outcome associated with the previous WTO DSB ruling also seems to have a significant bearing on the lack of active participation of African countries in the WTO dispute settlement mechanism. According to the online survey results, 80% of the international trade professionals who were

interviewed acknowledged that the previous WTO DSB rulings seem to be unfair to African countries. Unfairness in the resolution of the WTO cases involving African nations is exacerbated by the fact that the WTO trade rules seem to be less favourable to African countries. "*I believe that the previous WTO rulings have not been fair to African nations given that the WTO agricultural trade policies and anti-dumping laws have not been favourable to African nations"* (***Participant 7***).

The thematic coding and analysis of the online survey from the ten international trade professionals highlight the fact that the WTO DSB's poor enforcement authority seems to restrict the participation of African nations in the WTO dispute settlement process. Specifically, nine of the ten international trade professionals (90%) who were included in the survey concurred that based on its current structure, the WTO DSB lacks adequate power to enforce its own rulings. According to majority of the international trade professionals who were interviewed, this aspect of the WTO dispute settlement process appears to have adversely affected the confidence of African countries with respect to the ability of the WTO DSB to resolve the cases equitably. For instance, participant 8 observed that, "*The fact that the WTO DSB lacks adequate authority to enforce its own rulings has adversely affected the confidence of the African nations towards the WTO dispute settlement process*" (***Participant 8***). Therefore, from the thematic analysis of the online surveys, two key themes, which were derived based on the participants' responses to the interview question 6 include 'authority' and 'enforcement'.

4.2.2.2 Research Question 2

The second research question, which forms the primary focus for this subsection of the results section is re-specified as follows;

RQ2: What are the specific provisions of the WTO's legal regime that restrict African countries' participation in the WTO dispute settlement mechanism?

The results of the thematic findings presented in Table 4.3 summarises the insight from the participants, which is relevant to answering the second research question. The thematic analysis insight captures the responses of the international trade professionals with respect to the first three survey questions under section C of the primary survey questionnaire: WTO DSM Provisions and Legal Procedural Issues. The identification and specification of thematic codes is also presented alongside the responses to each of the stated three primary survey questions.

Table 4.3: ***Perceptions on the Prohibitive WTO DSM Provisions***

Survey Question	Responses	Codes
1. Comprehensiveness of the WTO DSM Provisions	The WTO DSU provisions are highly complex.	[1]COMPLEXITY
2. Legal Compensations	The current remedies under s. 21.5 and 22.2 create the threat of retaliation.	[1]REMEDIES [2]RETALIATION
3. Unfair WTO DSU Provisions	The WTO Anti-dumping rules and the WTO Agreement on Agriculture are unfair and restrictive.	[1]UNFAIRNESS [2]RESTRICTIVE

The thematic analysis of the written online surveys to assess perceptions of the international trade professionals on the prohibitive nature of the WTO DSU legal

provisions indicate that there are several issues associated with the nature of the WTO dispute settlement provisions. For instance, when the participants were asked to state their views on the comprehensiveness of the WTO DSU provisions, all the international trade professionals who were included in the survey acknowledged that the WTO legal provisions are very complex. "*Yes. I believe that currently, the WTO DSU provisions are very complex, and this issue is made worse by the fact that we are not blessed with sufficient legal experts*" (***Participant 6***). The implication is that the complex nature of the WTO disputes settlement provisions has made it difficult for a number of African countries with limited legal expert knowledge to participate in the WTO dispute settlement process.

The thematic analysis results also indicate that when asked to state their views on the adequacy of the existing WTO compensation mechanisms, a considerable majority of the participants highlighted their issues with the current WTO DSM remedies. Specifically, 80% of the international trade professionals, academicians and ministry of trade representatives who were included in the survey stated that they had issues with articles 21.5 and 22.2 of the WTO dispute settlement understanding. These clauses specify the nature of the available legal compensations (suspension of concessions and, or withdrawal of remedies) to the litigants in the WTO DSM proceedings. The main issue with the suspension of concessions remedy under article 21.5 and 22.2 is that the two clauses are highly inconsistent coupled with the fact that they have a potential to expose African nations to the risk of retaliation. For instance, when asked to state his views on effectiveness of the WTO DSM remedies under article 21.5 and 22.2, participant 9 noted that, "*Given their poor economic background, very few African countries are willing to adopt the suspension of concession remedy for fear of adversely affecting their diplomatic*

relations from advanced countries" (***Participant 9***). Furthermore, participant 10 also noted how the threat of retaliation is real and significant, especially when assessed from the perspective of the sub-Saharan African countries who depend on the advanced nations for financial aid. "*Majority of countries from sub-Saharan Africa fear the threat of retaliation, which means that most of them are unable to implement the suspension of concession remedy*" (***Participant 10***).

Finally, based on thematic findings, there is also a general understanding among the international trade professionals, ministry of trade officials and academicians that most of the WTO DSU legal provisions are unfair and highly restrictive. Specifically, a number of the international trade professionals who were included in the survey cited the fact that majority of the WTO cases involving African nations as litigants or respondents are directly related to the alleged violation of the WTO anti-dumping provisions under articles 1, 2.1 and 12.2.2. "*From my own perspective, I feel that the WTO anti-dumping rules are sufficiently restrictive*" (***Participant 1***). Additionally, there is also a general understanding that the WTO Agreement on Agriculture is highly unfair, especially to the agricultural-based exporters from the sub-Saharan Africa region. In this respect, the international trade professional (academician) (Participant 2) observed that, "*Most of the WTO DSU provisions are unfair, for instance, allowing advanced nations to offer subsidies to their local firms tends to create unfair competition, especially to African countries*" (***Participant 2***). This means that the current WTO DSU provisions are mainly designed to advance the trading interests of developed nations.

4.2.2.3 Thematic Findings: Research Question 3

The third research question, which guides the overall direction of this subsection of this study is specified as follows;

RQ3: What are the reform strategies that can be adopted by WTO to enhance the participation of African nations in the WTO dispute settlement mechanism?

The outcome of the thematic analysis results relevant to the third research question are summarised in Table 4.4 below. The identified themes capture the responses pertaining to the final survey question under section C in the questionnaire. The themes are coded alongside the respective responses that capture the general insight from the ten international trade professionals who participated in the survey.

Table 4.4

Reform Proposals to enhance Participation of African Nations in the WTO Proceedings

Survey Question	Responses	Codes
1. Recommendation for reforms in the WTO DSM.	Review existing WTO rules	[1]WTO Rules
	Review WTO DSM legal and procedural structure to improve its efficiency.	[2]Awareness
	Adopt joint WTO-AU harmonization efforts to raise awareness.	
	Improve transparency and depoliticise the WTO DSM process.	[3]Transparency

The outcome from the thematic synthesis of the views from the international trade professionals, academicians and ministry of trade officials indicate that there are three

main reform proposals, which were suggested to enhance effectiveness and efficiency of the WTO dispute settlement process. Firstly, most participants observed that the current restrictive WTO rules will need to be reviewed and possibly replaced to enhance the perception of equity, especially among the African countries. In this respect, Participant 1 recommended that, "*I would really urge the WTO and all stakeholders involved in the international trade to review the existing WTO legal structure, especially pertaining to the remedies and the anti-dumping rules*" (***Participant 1***). Secondly, the suggestion to raise awareness among the African countries on the importance of seeking legal recourse was also noted from the international trade professionals, academicians and ministry of trade officials who were interviewed. "*The reforms should start with the creation of awareness to African countries through a joint WTO-AU initiative*" (***Participant 7***). Finally, the need to strengthen transparency in the resolution of the cases is also expected to motivate African nations to participate in the WTO DSM.

4.2.3 Summary of the Thematic Analysis of the Interview

The main findings from thematic analysis of the survey are that perceived lack of transparency, financial challenges and the WTO legal-procedural issues such as delays in resolution of the cases appear to be the main challenges facing African countries in their involvement with the WTO DSM. Secondly, the key legal provisions on anti-dumping, agricultural subsidies and the remedial compensations (especially the suspension of concessions) also tend to restrict the participation of African nations in the WTO dispute settlement process. Finally, the suggestions to enhance participation of African countries in the WTO DSM include having a joint WTO-AU harmonisation and sensitisation/awareness initiatives, improving the transparency of the WTO dispute

settlement process and reviewing the WTO rules with a view to address the WTO legal procedural roadblocks.

4.3 Thematic Analysis Findings: Systematic Literature Review

The systematic literature review was incorporated as a supplementary approach to qualitative data analysis to offer an alternative professional perspective on the challenges facing African nations in their relationship with the WTO DSM. The systematic literature review entailed a synthesis of the insight from 12 research articles on the challenges and reform suggestions to enhance the participation of African countries in the WTO dispute settlement process. Table 4.5 presents a summary of the main themes based on the synthesis of the 12 articles included in the systematic literature review.

Table 4.5: ***Summary of the Broad Themes from the Systematic Review***

Challenges	**Number of References**	**Percentage References**
1. Distributive Justice Concerns	9	75%
2. Inadequate Legal and Financial Resources	8	67%
3. Restrictive/Skewed WTO DSM Provisions	8	67%
4. Ineffectiveness of the WTO DSB	5	42%

Reform Proposals	**Number of References**	**Percentage References**
1. WTO DSU Legal Reforms	11	92%
2. Involvement of African Nations in WTO DSM	7	58%
3. Resource the WTO DSB	6	50%

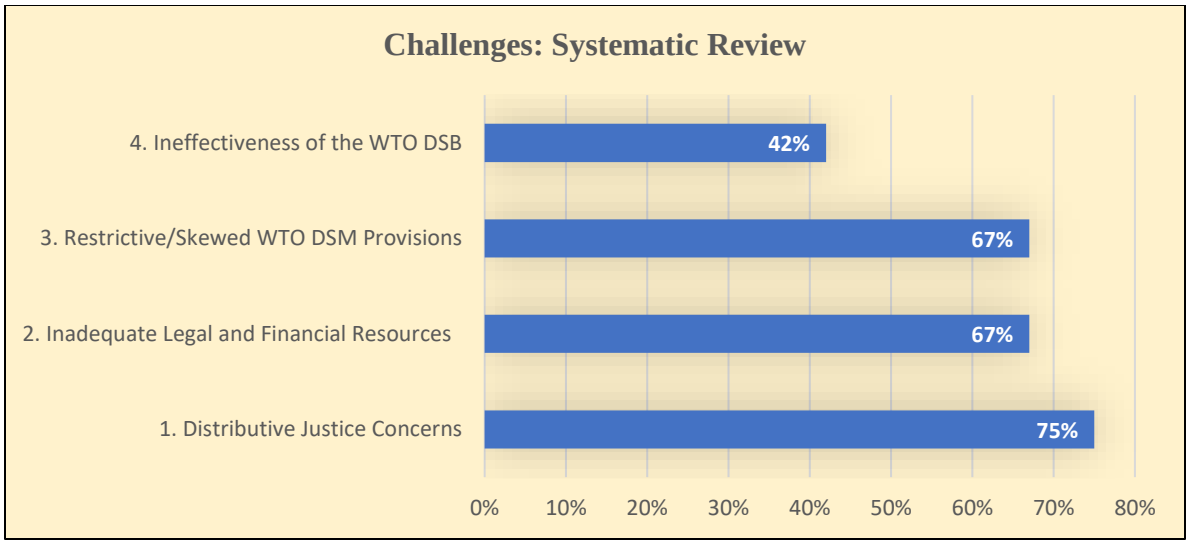

Figure 4.2: Summary of the Broad Themes from the Systematic Review

4.3.1 Challenges Faced by African Countries in the WTO DSM

Distributive Justice Concerns: The findings from the systematic review depict that 75% of the secondary articles, which were reviewed cited concerns about the distributive justice systems as one of the challenges facing African nations in their involvement with the WTO DSM. The perceived unfairness in the distributive justice system is based on the general perception among African countries that the WTO rules are mainly skewed to support the economic/political interests of the advanced nations (Naif, 2015). This means that majority of the African nations opt not to seek legal recourse from the WTO DSM due to the perceived inequity and lack of confidence in the entire legal process.

However, the merit of the stated distributive justice argument by Naif (2015) might be questioned based on the recent experiences where some of the advanced nations such as the U.S. have complained of unfair WTO judgment. For instance, in the EU case challenging the anti-dumping margin computations (zeroing) against the U.S. (*DS294*), the WTO appellate body found that the respondent had acted inconsistently to Article

11.3 of the anti-dumping agreement because the methodology unfairly raises the exporter's margin of dumping (WTO, 2021). Therefore, as a reaction to the ruling, the U.S. threatened to block new appointments to the WTO appellate body because it did not get a favourable outcome. This incidence shows that the distributive justice concern against the WTO DSB might be overstated because there is evidence that some of the decisions turn out to be against the advanced nations and in favour of developing nations such as Brazil and India who were third parties to the stated proceedings.

Inadequate Legal and Financial Resources: The systematic review results indicate that 67% of the articles cited African countries' lack of sufficient legal and human resources as another factor that contributes to their limited involvement in the WTO dispute settlement process. For instance, Alavi (2007) observed that a number of the sub-Saharan countries do not have adequate legal expertise and financial resources to analyse the complex WTO rules. Furthermore, most African countries are also restricted by the prohibitively high litigation costs due to their poor economic ability.

There is substantial merit to the stated insight given that the continent still lacks adequate skilled human resource capacity despite recent progress in the education sector. However, there is also a counterargument that with financial resource, African countries can outsource relevant legal expertise to enable them actively participate in the WTO dispute settlement proceedings. This would however, raise the financial costs of such litigations given that there are concerns that the current costs are excessively prohibitive. These costs are estimated to be in excess of $0.5 million. Therefore, inadequate legal and financial resource is a valid concern that seems to have adversely

contributed to the low involvement of African nations in the WTO dispute settlement process.

Restrictive/Skewed WTO Provisions: The findings from the systematic literature review also depicts that eight of the 12 articles (67%), which were reviewed highlighted the nature of the skewed WTO rules and, or provisions as another significant factor that restricts the participation of African countries in the WTO dispute settlement process. Specifically, while Zunckel (2005) cited the restrictive WTO agreements on agricultural subsidies, the insight based on the study by Buyonge and Kieeva (2008) acknowledged that majority of the anti-dumping legislations under articles 1, 2.1 and 12.2.2 have a potential to adversely affect the overall competitiveness of African firms in the global trade. The skewed WTO rules are attributed to the fact that few African countries are involved in the formulation of the stated legislations.

The merit of the stated systematic review insight can be challenged based on two arguments. Firstly, the so called, ‘prohibitive provisions’ such as Articles 1, 2.1 and 12.2.2 affect all countries that are WTO members regardless of whether the nation depends on agriculture as its economic backbone. Furthermore, there are other advanced nations such as the U.S. and China, which depend substantially on agriculture and would thus be considered as victims of the stated restrictive WTO provisions. Secondly, with unity and common focus such as what the OPEC countries have done, African countries can use platforms such as the Doha Ministerial Conference of 2001 to advocate for better WTO DSU provisions that promote their interests.

Ineffectiveness of the WTO DSB: Finally, the other challenge that was drawn based on the analysis of the thematic insight from the systematic literature review pertains

to the perceived ineffectiveness of the WTO DSB to enforce its rulings. In this respect, the systematic review shows that five of the twelve articles (42%) acknowledge the fact that the WTO dispute settlement board is ineffective in enforcing its rulings. The study by Persson (2010) observed that failure by the WTO dispute settlement board to implement its decisions is exacerbated by the inconsistencies in articles 21.5 and 22.2, which guide the remedial measures that should be implemented as part of the distributive justice system. Furthermore, the WTO DSB also finds it difficult to implement its own rulings, especially when the victim country has considerable political power.

There is a fair level of merit with respect to the stated systematic review insight given the complex nature of the adjudication and implementation phases of the WTO dispute settlement process. The issue of WTO DSB's ineffectiveness in enforcing its own rulings is most likely to occur when the losing party fails to implement the board's resolutions or there is retaliatory fear from the party, which got a favourable ruling. However, to date, there is no considerable evidence that the WTO DSB has found it difficult to implement a ruling where the losing party is one of the advanced nations. For instance, in the DSB294 WTO case, the EU was allowed to adopt the suspension of concessions and other remedies against the U.S. following the appellate body ruling that was issued on 14th May 2009.

4.3.2 Reform Proposals

WTO DSU Legal Reforms: The main suggestion to improve participation of African countries in the WTO dispute settlement process pertains to the need for reforms in the WTO rules of engagement. In this respect, 92% of the articles, which were reviewed indicated that the reform proposal to increase involvement of African countries in the WTO

dispute settlement process need to target the various WTO DSU provisions, especially those related to the remedial measures (Persson, 2010). Furthermore, the insight based on the synthesis of the article by Zunckel (2005) also suggest that reform efforts should target the review of several sections associated with the anti-dumping agreements. For instance, Ng'ong'ola (2005) explains that the meaning of Article 1 of the WTO AD rules should be clarified to reduce instances of unintentional violation of its clauses. Currently, Article 1 requires that WTO member countries should not impose any anti-dumping measures unless the importing country can prove that there are dumped imports, which are hurting the growth of domestic firms (WTO, 2020).

Involvement of African Nations in the WTO DSM: The second reform proposal based on the insight from the systematic review is guided by the fact that there are very few countries, which actively participate in the formulation of the WTO dispute settlement rules (Muheki, 2010). The thematic analysis of the systematic review insight indicates that 58% of the journal articles, which were reviewed cited the fact that the gradual involvement of African nations in the formulation of the WTO rules has a potential to enhance their participation in the WTO DSM. In its current structure, the WTO DSB is mostly composed of member countries from the developed nations, which is in contrast to the fact that majority of the WTO member countries are from developing nations. Davy (2005) also suggests that increasing the active participation of African nations in the WTO dispute settlement system should start with the involvement of African nations in formulation of the WTO rules. This is part of the broad strategy to ensure that the developing nations, especially those from African countries are able to own the WTO DSM and as a result feel part of the entire system (Buyonge &Kieeva, 2008).

Resource of the WTO DSB: The findings from the systematic review indicate that half of the articles, which were synthesised acknowledged that the WTO Dispute Settlement Board (DSB) is currently understaffed. According to the insight from these journal articles, the long delays associated with the resolution of the WTO cases coupled with other legal procedural issues can mainly be attributed to the fact that the WTO DSB is currently under-funded. Therefore, from the synthesis of the prior research articles, 50% of the stated studies recommend that the DSB should be resourced with additional funding to enhance its operational efficiency. According to Payosova, Hufbauer and Schott (2018), WTO reform proposals should target the DSB, which is currently engulfed with numerous challenges including the failure to update its rulebook, which implies that the WTO dispute settlement system is relying on incomplete WTO rules to settle disputes. Additionally, despite the fact that as at to date, the WTO has settled 597 cases, the high number of unresolved WTO trade disputes points to the fact that the WTO has several staffing, legal and administrative challenges, which need to be reviewed for the dispute settlement body to function effectively.

4.3.3 Summary of the Thematic Insight from the Systematic Literature Review

The insight from the systematic review supplemented the findings from the primary research (interview) in terms of the challenges and reform proposals to enhance the participation of African countries in the WTO dispute settlement system. The thematic analysis of prior literature suggests that perceived lack of distributive justice system, inadequate legal/financial resources, skewed WTO rules and perceived ineffectiveness of the WTO DSB to settle its own rulings are some of the main challenges faced by African countries in their relationship with the WTO dispute settlement system. However, there is

an understanding that over the years, the WTO DSB has been an independent institution, which is less influenced by the wishes of advanced nations. Therefore, resourcing/funding of the WTO DSB, legal reforms and active involvement of African nations in the formulation of key decisions are some of the reform proposals that were noted from the systematic review.

4.4 Content Analysis of the WTO Case Laws

The content analysis of the three (3) WTO cases and the two (2) potential cases involving African countries was mainly undertaken to achieve three objectives. Firstly, content analysis of the case laws was considered important in highlighting the specific WTO provisions, which were in contention. Secondly, content analysis of the previous WTO cases involving African nations as either respondents or litigants was also considered efficacious in establishing the extent to which the DSB's ruling/outcome was fair or unfair to the African countries partaking as either litigants or respondents. The third justification for undertaking content analysis of the WTO case laws was also influenced by the need to establish the exact duration that it took to resolve the WTO disputes involving African nations as either respondents or litigants. The sample consists of three WTO cases involving African nations as either respondents or litigants and two other potential trade disputes, which were not pursued further. These include, WTO DS500 (Pakistan v. South Africa), WTO DS327 (Egypt v. Pakistan) and WTO DS578 (Tunisia v. Morocco). On the other hand, the 'Kenya-Pakistan Trade Dispute (2005)' and the 'Sudan-Saudi Arabia Trade Dispute (2005)' were also analyzed as potential trade disputes (cases) that could have been pursued to the WTO DSM level.

4.4.1 WTO DS500: Pakistan vs. South Africa [2015]

Table 4.6 depicts a summary of the content analysis based on the insight pertaining to the WTO DS500 case involving Pakistan as a complainant and South Africa as a respondent. The WTO DS500 case law analysis is based on the summary of the dispute as presented in the WTO website.

Table 4.6: ***Summary of the WTO DS500 Case: Pakistan vs. South Africa [2015]***

Legal Aspects (Issues)	**Details**
1. Date Initiated	12 November 2015 (Duration = 5 Years, 1 Month)
2. Status	Consultation
3. WTO Provision in Dispute	WTO Anti-Dumping Regulation (i.e., Article 1, 2.4. 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 6.1.3., 6.2, 6.4, 6.5, 6.8, 7.1, 12.1.1, 12.2, 18) Article VI of GATT 1994

The WTO DS500 case was initiated five years and one month ago on 12th November 2015 when Pakistan acting as the complainant reported that South Africa had unlawfully imposed provisional anti-dumping duties in contravention to the WTO AD regulations. Therefore, the analysis of the case from the time it started indicates that five years since it was initiated, the WTO case still remains unresolved. One of the main reasons for its delay is that the two countries are still in consultation together with the panel of WTO arbitrators. According to Alavi (2007), such consultations usually take years depending on the extent of the diplomatic and trade relations between the two nations. Therefore, it can be argued that the delay in the resolution of the stated WTO trade disputes is not solely due to the complex litigation structure of the WTO DSB but could

be attributed to the political will of the parties involved to take the dispute to the adjudication phase by requesting a panel.

The main WTO provision that is in dispute pertains to the anti-dumping measures as well as Article VI of the GATT 1994. Specifically, the chief complaint from Pakistan is that South Africa contravened Article 1 of the WTO AD regulations by imposing import duties to Portland cement, which was imported from Pakistan to South Africa. Article 1 of the WTO anti-dumping agreement states that WTO member countries should not impose tariffs/import duties to a member nation unless there is evidence that dumped imports, which are sold in the destination country at a cheaper value are likely to threaten the competitiveness of the domestic firms (WTO, 2020). Furthermore, citing Article 2.4 of the AD agreement, Pakistan also argued that South Africa failed to make a reasonable comparison of the normal value and the export price of the imported merchandise (WTO, 2020).

Therefore, from the synthesis of the WTO DS500 case involving Pakistan as a claimant and South Africa as a respondent it seems that the main aspect that was in dispute pertains to the interpretation of Article 1 and 2.4 of the anti-dumping agreements. The stated WTO case is still in the consultation phase, which means that the two countries (Pakistan and South Africa) are still negotiating with each other together with the WTO panel of arbitrators. The implication is that the case might take some time to conclude as long as the parties to a dispute fail to request a panel in order to adjudicate the matter.

4.4.2 WTO DS327: Pakistan vs. Egypt [2005]

A summary of the content analysis pertaining to the WTO DS327 case involving Pakistan as a litigant and Egypt as a respondent is presented in Table 4.7. Similarly, the WTO DS327 case is also analysed and synthesised based on the details presented in WTO website.

Table 4.7: ***Summary of the WTO DS327 Case: Pakistan vs. Egypt [2005]***

Legal Aspects (Issues)	Details
1. Date Initiated	21February 2005
2. Date Resolved	27 March 2006 (Duration = 1 Years, 1 Month)
2. Status	Terminated
3. WTO Provision in Dispute	WTO Anti-Dumping Regulation (i.e., Article 1, 2.2, 2.2.1.1, 2.2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 3.6, 6.1.3., 6.2, 6.4, 6.5, 6.5.1, 6.5.2, 6.6, 6.8) Article VI of GATT 1994.

The WTO DS327 case, which involved Pakistan as a complainant and Egypt as a respondent was initiated on 21 February 2005 when Pakistan requested the WTO DSB to initiate consultation with Egypt with respect to violation of the anti-dumping agreements. Specifically, the main legal aspect that was in dispute pertained to the fact that Egypt had reneged on its obligation to allow unconditional importation of matchboxes from Pakistan. In its official complaint to DSB, Pakistan argued that Egypt did not have a legal basis to activate the imposition of import duties consistent with Article 1 of the WTO anti-dumping regulations.

The main WTO legal provisions that were in dispute relate to Article 1, 2.2 and 2.4 of the WTO AD regulations as well as the Article VI of the GATT 1994 rules. The insight

from analysis of the case indicates that after the establishment of a DSB panel on 20 July 2005, both parties involved in the WTO dispute (Pakistan and Egypt) had reached a mutual agreement under Article 3.6 of the WTO DSU to terminate the case on 27 March 2006. The nature of the consensus agreement took the form of price undertakings between the exporters from Pakistan and the relevant ministry of trade officials from Egypt. In comparison to the WTO DS500 case, this dispute was resolved within a shorter period of time due to the mutual bilateral and diplomatic trade relation between the two countries. Therefore, in this WTO case, there was no winner or loser because the parties in dispute had reached a mutual consensus to terminate the case.

4.4.3 WTO DS578: Tunisia vs. Morocco [2019]

Table 4.8 presents a summary of the WTO DS578 case that involved Tunisia as a claimant and Morocco as a respondent. This is the most recent case, which involves an African country as either a respondent or claimant. Similarly, details of the WTO DS578 case are also presented based on the information presented in the WTO website.

Table 4.8: ***Summary of the WTO DS578 Case: Tunisia vs. Morocco [2019]***

Legal Aspects (Issues)	**Details**
1. Date Initiated	21 February 2019 (Duration = 1 Year, 9 Months)
2. Status	Panel composed on 21 March 2020
3. WTO Provision in Dispute	WTO Anti-Dumping Regulation (i.e., Article 1, 2.2, 2.2.1.1, 2.2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 4.1, 5.2, 5.3, 5.8, 6.5, 6.5.1, 6.8, 9, 11, 12.2, 12.2.2, 18.1) Article II and VI of GATT 1994.

The WTO DS578 is an active case that was initiated by Tunisia on 21 February 2019 when it requested consultation with Morocco with respect to its violation of the definitive anti-dumping agreements pertaining to importation of school exercise books in Morocco. According to details of the case, the panel was composed on 19th March 2020 and it is expected that the case will be resolved by the first half of year 2021. The implication is that the WTO DS578 case is likely to take slightly more than two years to conclude. As in other WTO cases, the key provisions that were in dispute pertain to the various sections of the anti-dumping agreements as well as Article II and VI of the GATT 1994 legislations. According to Tunisia, Morocco had incorrectly applied the WTO ant-dumping regulations by levying import duties on its imports from Tunisia. The stated WTO case is still in the initial stage where the panel of arbitrators has just been composed.

4.4.4: Kenya-Pakistan Trade Dispute (2005)

The Kenya-Pakistan (2005) trade dispute is a potential case that could have been pursued up to the WTO dispute settlement level but instead that option was never considered by the parties. The stated trade dispute started when Kenya increased import duties (from 35% to 70%) on rice from Pakistan in line with the provisions of the East African Customs Union (Mosoti, 2005). Therefore, in retaliation, Pakistan threatened to restrict the importation of tea from Kenya in response to Kenya's decision to double import duties on rice from Pakistan. However, after intense lobbying over the next four years, Kenya and other members of the East African Customs Union offered Pakistan concessions with respect to the import duty charged on its import of rice to the East African nation (Mosoti, 2005). The insight based on the review of the article by Mosoti (2005) indicates that high costs of litigation and the fear of retaliatory actions were some

of the factors that prevented both countries from pursuing the stated disputes using the WTO dispute settlement process. Furthermore, the fact that both Pakistan and Kenya were major trading partners also contributed immensely to the decision by both parties not to pursue the matter at the WTO level in order to maintain their trade and diplomatic relations (Mugambi, 2005).

4.4.5: Sudan-Saudi Arabia Trade Dispute (2005)

At the time of the dispute, both of these nations were non-WTO members although Saudi Arabia become a member later on 11th December 2005 while currently, there are arrangements to allow Sudan participate in the WTO as a member through a formal accession process (Mosoti, 2005). The Sudan-Saudi Arabia trade dispute arose due to the sporadic failure of the cooling system in the flights transporting meat (goat and lamb meat) from Sudan to Saudi Arabia. Besides, issues of stringent meat specification standards also formed the subject of contention between the two countries. The two countries were continually exploring the possibility of using formal dispute settlement systems at the time. However, that option was not possible because at the time of the dispute, neither country was a member of the WTO. Discussions and consultations were also considered as options to address the dispute.

4.4.6 Summary of the Content Analysis of the WTO Cases

The main insight from the analysis of the WTO case laws indicate that the main challenge faced by African countries in their involvement with the WTO dispute settlement system relates to the lack of diplomatic will among the parties to take the disputes to the adjudication phase, which contributes to delay in the resolution of the WTO cases. Two of the sampled cases involving African countries are expected to take more than two

years and still remain unresolved to date partly due to the slow negotiations among the parties to a dispute and indecision to appoint a panel. The other key conclusion from analysis of the WTO cases is that in nearly all of the WTO cases involved, the main issue of contention relates to violation of the WTO anti-dumping agreement and the GATT 1994 legislation.

4.7 Chapter Summary

The results chapter presented the thematic and content analysis insight from the online surveys, systematic review and the analysis of the previous WTO cases. The insight from the thematic analysis of the surveys and the systematic review highlights that lack of transparency, skewed WTO rules, financial/legal resource challenges, delays in the resolution of the cases (although a considerable portion could be attributed to the political will of the parties) and inability of the WTO DSB to enforce its own rulings are some of the main challenges faced by African nations. The reform proposals that were suggested based on the thematic and content analysis include the sensitisation efforts, review of the existing WTO rules, resourcing of the WTO DSB, and actively involving African nations in the WTO DSU rule/policy formulation. Finally, the insight from the review of the WTO cases confirms that the long duration involved in the resolution of the cases could also be attributed to the hesitancy of the parties involved in requesting a panel in line with the WTO dispute resolution process. The anti-dumping agreements and the GATT 1994 legislations are the main legal aspects in dispute based on analysis of the sampled cases.

5.0: Discussion

5.1 Introduction

The previous section described the results from the thematic analysis of the online surveys and systematic literature review, which focused on the challenges that are currently being faced by African countries with respect to their involvement with the WTO dispute settlement mechanism. The results chapter also presented the outcome from the content analysis of the three case laws (WTO DS327, WTO DS500 and WTO DS578) and two potential trade disputes, which were not pursued further. The content analysis of the three sampled case laws provided a real perspective on the reasons for the delays in resolution of the WTO cases as well as the specific provisions of the WTO rules, which are currently in dispute.

This chapter undertakes a discussion on implication of the findings/results for the three research questions. Additionally, this chapter also interprets the results with respect to the prior findings that focused on the challenges faced by African countries in their involvement with the WTO DSM. Chapter five (5) is organized into four sections as follows. The next section discusses the findings and its implication to the three research questions. Section two presents the implication of the findings for WTO policies and strategies while section three of this chapter discusses the strengths, limitations and suggestions for future research. Finally, section four presents' conclusions and a summary of recommendations.

5.2 Discussion of the Findings

The discussion of the findings is guided by the three research questions, which were formulated for this study. The first research question sought to examine the challenges faced by African nations in their involvement with the WTO dispute settlement

system. The second research question sought to assess the specific WTO DSU provisions, which restricted participation of African countries in the dispute settlement process. Finally, the third research question sought to explore specific reform proposals that would enhance the participation of African countries in the WTO dispute settlement process.

5.2.1 Challenges Faced by African Countries in the WTO DSM

The period since the inception of the WTO in 1995 has witnessed limited involvement of African countries in the WTO dispute settlement system (Payosova et al., 2018). Data from WTO (2020) indicates that over the stated 25-year period only four African countries (South Africa, Egypt, Morocco, and Tunisia) have been involved as either respondents or litigants. The results from the thematic synthesis of the interviews indicate that perceived lack of transparency represent one of the main challenges faced by African countries, which seems to explain their limited participation in the WTO DSM. A considerable majority of the respondents observed that most of the African nations from the sub-Saharan region feel that the WTO trade rules are less favourable to African countries. Furthermore, the limited transparency of the WTO DSM guidelines and rules is also one of the main factors that confirms the suspicion of African countries that the current setup of the WTO dispute settlement system does not favour African countries. "*In most cases, there are no clear guidelines or WTO legislative provisions, which are being applied to govern the WTO DSB proceedings*" (***Participant 1***). These findings from the thematic analysis of the online survey with the ten international trade professionals are consistent with the insight based on the study by Al-Islam and Alqadhafi (2007). According to Al-Islam and Alqadhafi (2007), advanced nations tend to benefit from the

favourable WTO trade rules and dispute settlement rules. However, this might not be the case given that there are numerous cases such as the ***EU v. U.S***. (***DS294***) where the U.S. did not get a favourable ruling from the WTO appellate body. Besides, some of the advanced nations such as the UK did not have an independent trade policy until the year 2020 when Brexit allowed the country to formulate its own foreign trade policy.

The thematic insight from the analysis of the online survey and systematic review also depicts that excessive litigation costs coupled with limited financial muscle of the sub-Saharan African nations also explains their limited involvement in the WTO DSM. The implication is that it is very costly to initiate WTO DSB proceedings given the prohibitively high legal fees as well as other indirect costs, including the possibility of adversely affecting the existing trade/diplomatic relations. The issue of high litigation costs associated with the WTO DSB proceedings was also noted by Naif (2015) as one of the main challenges faced by African countries, which appears to limit their participation in the WTO dispute settlement process.

The other challenge pertains to the fairly long duration in the resolution of the WTO cases, which tends to be costly for majority of the poor African nations from the sub-Saharan region. Delays in the settlement of the WTO cases was also highlighted based on the insight from the interviews, systematic review, and the WTO cases involving African nations. For instance, content analysis of the WTO DS500 (Pakistan v. South Africa) indicates that the stated case, which is currently in consultation phase has taken slightly more than five years. In addition, the WTO DS578 (Tunisia v. Morocco), which is currently in the panel hearing phase is also expected to take more than two years to conclude. The insight from the analysis of these two WTO cases suggests that in the

scenario where the participating nations do not arrive at a mutual agreement, the cases in disputes are likely to take long to resolve. Therefore, the issue of delays in the conclusion of the WTO cases can mostly be attributed to the failure by the participating parties to request a panel and initiate the adjudication phase as soon as possible. For instance, one of the reasons that the Pakistan v. South Africa case has taken long is because the defendant (South Africa) lacks the political will to request for a panel, which would take the case to the adjudication phase. The research article by Esserman and Howse (2003) also cites the long duration of the WTO cases as a significant barrier that impedes the participation of African countries in the WTO dispute settlement process.

The other problem, which has restricted the participation of African nations in the WTO dispute settlement system pertains to the negative perception with respect to the efficacy of the WTO DSB to enforce its rulings. The thematic synthesis of the online surveys from the ten international trade professionals, academicians and ministry of trade officials generated two important broad thematic codes (Authority and Enforcement), which seem to characterise the current status of the WTO DSB. The enforcement authority/power of any public decision-making body is an important attribute that enhances public confidence (Kim, 2008; Nordstrom & Shaffer, 2008). The WTO DSB has been described as an institution with a mandate to decide and settle WTO cases involving member countries but lacks the authority to enforce its rulings. This position is evidenced by the insight from participant 8 who observed that, "*The fact that the WTO DSB lacks adequate authority to enforce its own rulings has adversely affected the confidence of the African nations towards the WTO dispute settlement process*" (***Participant 8***). The WTO member countries, especially those from developing nations appear to question the

effectiveness of the WTO dispute settlement body to resolve the trade disputes if the WTO body is not in a position to enforce its decisions with a view to promote fairness. Persson (2007) also concurs with the stated insight from a legal perspective. Additionally, Payosova et al. (2018) explains that the limited enforcement authority of the WTO DSB can be attributed to the fact that the institution is currently operating on ambiguous or incomplete WTO rules, which have not been updated for some time. The findings from the systematic review also supported this assertion given that 42% (five out of the twelve articles) cited the ineffectiveness of the WTO DSB as a major factor that has restricted their participation in the WTO dispute settlement system.

5.2.2 Prohibitive WTO DSU Provisions

The underlying challenges facing African nations in the WTO dispute settlement system were also examined based on the nature of the restrictive WTO DSU provisions. The legal structure and, or interpretation of the legal clauses plays an important role in promoting participation of the WTO member countries in the dispute settlement process. The results from thematic analysis of the online survey and the systematic review of prior literature depicts that the various WTO DSU clauses/provisions are highly technical and complex in nature. The implication is that most African nations with limited legal human resource expertise find it difficult to interpret the specific WTO DSU provisions. This aspect is an important consideration for African nations who need to evaluate their legal options and whether it is worthwhile to pursue a specific legal recourse as part of their duties and obligations under the WTO dispute settlement system (Aydin, 2007; Conti, 2008; Altaer, 2010).

The other restrictive WTO provisions, which were noted to play an important role in limiting the participation of African nations in the DSM relates to the two remedial compensation clauses. The systematic review findings noted that the WTO s. 21.5 and 22.2 are highly inconsistent and therefore tend to limit their effectiveness in addressing the long-standing challenges faced by countries from Africa. Based on the current structure and design of the WTO DSU, there are three main issues associated with the remedial compensation clauses in s. 21.5 and s. 22.2. Firstly, the thematic findings from the systematic review indicate that there is a risk the financial compensation remedy might not fully reimburse the litigants in terms of covering the financial loss/damages associated with the violation of the specific WTO rule (Persson, 2007). Secondly, there is also a general understanding from various international trade professionals and academicians in the field of international trade that the suspension of concession remedial measure might not be well suited to the small African countries who depend on foreign aid. There is evidence that most developing countries that opt to use the suspension of concessions remedy tend to suffer retaliatory measures, which in some cases have considerable financial implications for the economies of the stated countries (Persson, 2007; Naif, 2015). The most important insight from the detailed analysis of s.21.5 and s. 22.2 is that given their current design, majority of African nations are unlikely to seek any legal recourse given the remote nature of the remedial compensations. According to Persson (2007), the third option, which requires the withdrawal of the WTO inconsistent measures appears to be fairly reasonable compared to the compensation and the suspension of concession remedies. The thematic analysis findings from the online

survey and systematic review have important implication for future WTO trade policy formulation.

The WTO Agreement on Agriculture, which allows advanced nations to offer subsidies to their local agricultural-based industries was also noted based on the systematic review findings as an important legislative item that could create a perception of unfairness. This is especially important given that most sub-Saharan economies are agrarian in nature. One of the international trade professionals who was included in the online survey observed that, "*Most of the WTO DSU provisions are unfair, for instance, allowing advanced nations to offer subsidies to their local firms tends to create unfair competition, especially to African countries*" (***Participant 2***). According to Kim (2008), the unfair nature of the WTO Agreement on Agriculture partly explains why nearly all of the WTO cases involving African countries relate to violations associated with the anti-dumping regulations. The implication is that due to imposition of subsidies on agricultural products, some of the African countries such as South Africa, Egypt and Morocco have been forced to misinterpret Article 1 of the WTO AD agreement in order to protect their domestic industries (Zunckel, 2005).

Finally, the other restrictive WTO DSU provisions, which were noted based on the content analysis of the three WTO cases involving the four African nations (South Africa, Egypt, Morocco, and Tunisia) relate to the WTO Anti-dumping regulations. Specifically, Article 1, 2.2, 2.4, 2.6, and 12.2.2 were the most cited clauses/provisions in the WTODSB dispute proceedings. The insight from analysis of the three sampled WTO cases indicate that there seems to be an issue with the exact interpretation of the wording and meaning of the relevant clauses that activate the imposition of import duty. For instance, in its

consultation request to the WTO dispute settlement board, Pakistan complained that South Africa had misinterpreted Article 1 of the WTO AD agreement, which allows the imposition of import duty under certain conditions. Based on the WTO DS500, Pakistan claimed that there was a variation in the normal value and the export value, which were relied upon by South Africa to impose import duty on importation of Portland cement. The insight from the review of the WTO cases suggests that the inconsistencies in the interpretation of the WTO legislations/provisions appear to restrict participation of African nations in the WTO dispute settlement system. Therefore, the findings from the thematic and content analysis indicate that the restrictive provisions, which have not been updated for years remain one of the main factors that appear to have restricted the participation of African countries in the WTO dispute settlement process. Payosova et al. (2018) adds that the WTO DSB codebook is currently outdated and as a result will need to be reviewed to enhance its overall efficiency.

5.2.3 WTO DSB Reform Proposals

The inconsistent and outdated nature of the WTO DSU rules described in the previous section offers seems to have guided the overall direction of the reform proposals/recommendations for action by the WTO. Firstly, the main insight from the thematic analysis of the written online survey is that majority of the participants recommended the review of the existing WTO trade rules, especially pertaining to the WTO AD agreement, Agricultural subsidy agreements and the remedial compensation measures under s. 21.5 and s. 22.2. For instance, participant 1 who was one of the international trade professionals was quoted as follows, "*I would really urge the WTO and all stakeholders involved in the international trade to review the existing WTO legal*

structure, especially pertaining to the remedies and the anti-dumping rules" (***Participant 1***). The outcome from the systematic review also confirms the importance of legal reforms as an important aspect that should be considered as part of the entire reform proposals. It is worth noting from the systematic review that 92% of the reviewed articles (11 out of 12 journal articles) were in agreement that the WTO reform proposals must first begin with the reformulation and re-enactment of the outdated WTO rules. This point is confirmed based on the insight from Payosova et al. (2018) who suggests that the WTO DSB is in desperate need of reforms. The lack of an updated WTO rulebook has meant that majority of the cases are decided on an ad-hoc basis or using incomplete rules, which might exacerbate the perception of unfairness in the administration of distributive justice by the dispute settlement board.

The thematic findings, which were derived based on analysis of the online survey also depicts that a number of them recommended the adoption of reforms in the WTO dispute settlement mechanism. A considerable number of the international trade professionals, academicians and ministry of trade officials who were included in the survey observed that in its current setup, the WTO rules such as the agreement on agricultural subsidies and the anti-dumping regulations are mainly designed to safeguard the interest of developed nations. However, this might not be the case given that some of the restrictive WTO trade policies and DSU provisions apply equally to all WTO member countries as noted by Reich (2017).

Capacity building and joint awareness creation as well as sensitization initiative guided by both the WTO and the representatives of African nations such as AU was also noted to be an important reform proposal. Effective implementation of this strategy is

expected to ensure that majority of the poor African countries are able to understand and appreciate their duties/obligations as WTO member countries (Muheki, 2010). Specifically, this reform proposal was influenced by the fact that most poor developing countries from the sub-Saharan region have limited knowledge on their respective duties and obligations, which allows them to initiate proceedings using appropriate WTO mechanisms. As part of the reform proposals, the joint awareness initiative is also expected to ensure that a number of the African countries are able to accurately interpret the various sections of the WTO DSU rules (Payosova et al., 2018).

The involvement of African countries in the review and formulation of the WTO rulebook similar to the Doha Ministerial Conference of 2001 is also likely to have a significant positive effect in encouraging a number of African countries to participate in the WTO dispute settlement process. In this respect, seven of the twelve research articles (58%), which were reviewed acknowledged that as more African countries are incorporated in the WTO DSM and decision-making structure, they are likely to appreciate being part of the dispute settlement system. The implication is that as a result of their active involvement in the WTO DSM decision-making, most of them would be encouraged to participate in the legal determination of the trade disputes as litigants (Kim, 2008).

Finally, the findings from the systematic review insight indicates that although the political will of the parties is key, the long delays in the resolution of the WTO cases can also partly be attributed to the fact that the WTO DSB is currently under-resourced. Therefore, several authors, including Payosova et al. (2018) as well as Muheki (2010) appear to acknowledge the importance of adequately funding the WTO DSB. For instance, adequately staffing the WTO DSB is expected to improve its efficiency in

handling the numerous WTO disputes. In their research article, Payosova et al. (2018) contend that without effective resolution of this challenge, the WTO DSB is likely to find itself understaffed, which would adversely affect its ability to review the WTO cases. There is evidence that the WTO DSB has a backlog of unresolved cases because of the limited number of employees/members that enforce its agenda (Payosova et al., 2018; Moise, 2019).

5.3 Implication of the Findings for WTO Policy and Practice

The thematic and content analysis insight on the challenges and reform proposal to enhance participation of African countries in the WTO dispute settlement process has significant implication for the most appropriate policy measure that should be adopted by the WTO. The most important implication of the findings for policy is the need for WTO to separate its mission/objective with power politics. The adoption of this policy measure is part of the strategy to ensure that the WTO DSB is an independent institution whose decisions/outcome cannot be influenced by any country (Charnovitz, 2017). According to the findings based on the study by Payosova et al. (2018), there is a general consensus that independence of the WTO DSB would be important in ensuring that the WTO serves the interest of all its members without the perception of bias or inequities. Therefore, an important policy proposal to enhance the independence of the WTO DSB is to ensure that the WTO institutional body does not depend on funding from the advanced nations (Economist, 2017). The adoption of this policy proposal would require WTO to source additional funding from member countries to limit its overall dependency on advanced nations and therefore guarantee integrity of the WTO dispute settlement process.

The other important implication of the findings for WTO policy is that there is an urgent need for WTO to convene an assembly with its member countries in order to review the outdated rulebooks. The thematic and content analysis insight indicated that there is a general concern among the international trade professionals and the WTO member countries that the existing WTO DSU are ineffective. For instance, Payosova et al. (2018) reported how the WTO DSB is still relying on incomplete WTO rules as the basis for its rulings. As noted from the thematic analysis of the online survey and the systematic review design, there is an urgent need for the WTO DSB to review the efficacy of the WTO agreement on agricultural subsidies, anti-dumping agreements and the available remedial compensation provisions. These WTO provisions/rules were considered to be very prohibitive to African countries. The violation of the WTO anti-dumping agreements has mostly been blamed on continued reliance of the stated WTO provisions. For instance, the imposition of import duties has been attributed to the fact that majority of the African nations are taking such measures in order to protect their domestic industries from the practice of dumping.

An additional important implication of the findings for policy is that the WTO needs to review and enforce specific provisions that would prevent retaliatory attacks among its members. The threat of retaliation was noted to be very high among the poor developing African countries whenever the suspension of concession remedy is activated (Bacchus, 2004; Bown, 2004; Bronkers & Van den Brock, 2005; Johnson, 2020). This suggests that the WTO has a responsibility to implement appropriate mitigating measures in order to reduce the perceived threat of retaliation. For instance, the enactment of a counter provision that specifies further sanctions in response to retaliatory measures is likely to

create confidence among the developing nations that the WTO dispute settlement system is effective.

The other efficacious implication of the findings is that despite the fact that the developing nations are overrepresented as member countries in the WTO, the existing trade and agricultural policies are less favourable to African nations. The implication of the stated insight for policy/practice is that WTO needs to review its current practice and incorporate many developing countries as active participants in the formulation of the relevant WTO trade rules and legislations. According to Kim (2008), the adoption of this strategy is expected to encourage the developing nations to own the dispute settlement process. The expectation is that a greater number of African countries, especially from the sub-Saharan region would actively partake in the dispute settlement process (Bown & Hoekman, 2005; Naif, 2015; Babatunde, 2020).

5.4 Conclusion and Recommendations

The main aim of the research thesis was to examine the challenges faced by African nations, which in turn have adversely affected their participation in the WTO dispute settlement process. The research thesis concludes and acknowledges that developing countries, especially from the Africa region face psychological challenges associated with the unfair structure of the WTO DSM proceedings. The perception of unfairness is strengthened by the outcome of the previous WTO precedent rulings and the skewed WTO rules. The other challenges that were noted from the research thesis include limited financial/human resources by the African countries, excessive litigation costs, delays in the resolution of the WTO cases (although a considerable portion of that

could be blamed on the parties), complex and outdated WTO rules as well as less effective WTO provisions.

The secondary aim of the research thesis was to examine the specific WTO DSU provisions, which are prohibitive to African nations' participation in the dispute settlement process. The thesis acknowledges that other than their complex nature, some of the restrictive WTO DSU provisions include s. 21.5 and s. 22.2, which have made it difficult for African nations to pursue alternative remedial measures without the fear of retaliation. Besides, the thesis also concludes that the agricultural subsidies under the WTO Agreement on Agriculture have mainly contributed to the fact that the main dispute in majority of the 13 WTO cases involving African nations pertains to the alleged violation of the WTO anti-dumping regulations.

The thesis developed several evidenced-based recommendations for policy action by the WTO in order to provide incentive for African nations to participate in the WTO dispute settlement process. The proposed recommendations were guided by the SMART decision criteria model (matrix), which is presented in Table 5.1. Firstly, the analysis of the SMART strategic decision criteria indicates that priority should be assigned to the formation of an independent African trading bloc such as the African Continental Free Trade Area (AfCFTA) given its highest total weight of **795** compared to the other options. The proposal to form an independent African trading bloc as part of the reform proposal is enhanced by its high efficacy (9/10), ease of implementation (9/10) and reasonableness (8/10). The stated recommendation is informed based on the insightful suggestion by Mutume (2005) who argued that Africa should rebuild its domestic industries by forming its own independent trading bloc with stronger negotiating powers. However, the main

challenge with such a radical proposal pertains to the fact that at the moment, no African nation has indicated its willingness to exit the WTO. The stated insight highlights a fundamental problem associated with lack of unity among African nations. Nevertheless, if the AfCFTA idea is actualised, there is a growing expectation that it would strengthen the continent's bargaining power in WTO.

The SMART strategic decision-making tool also indicates that the option of exiting the WTO due to politicisation and bias against African countries was assigned the second highest total weight (**720**). The justification for the proposed recommendation is based on the fact that the option of exiting the WTO scored the highest in terms of its ease of implementation (8/10) and cost-effectiveness (7/10), which are two of the most important key success factors in the reform proposals. The option of exiting the WTO by African countries was mostly supported based on the insight from the article by Chemutai and Low (2017) who contend that African countries stand to benefit by exiting the WTO due to its numerous challenges.

The amendment of the existing WTO rulebook was also assigned the third highest total weight of **710** based on the SMART strategic decision-making tool in Table 5.1. The main reason for its high ranking is because amendment of the WTO rules has the second highest efficacy rating (8/10) and the highest reasonableness rating (9/10). Therefore, the WTO should focus on reviewing and possibly amending the restrictive WTO rules. The proposal to amend the WTO rules should be prioritised due to its greater efficacy, cost-effectiveness, ease of implementation, and reasonableness. The urgent nature of this proposal is because majority of the current WTO cases are settled using outdated and incomplete WTO trade rules (Payosova et al., 2018; Adekola, 2019).

Additionally, the thesis recommends that the WTO has a duty to establish a formal **capacity building program** targeted towards the developing African countries with a total weight of **605**. This **capacity building program** is expected to inculcate relevant knowledge and awareness to African countries, which would enable them to appreciate their duties and obligations as WTO members. The involvement of African countries in the WTO decision-making coupled with the depoliticization of the WTO proceedings (**570**) was also recommended as part of the reform proposal. The depoliticization of the WTO DSB as part of the reform proposal is expected to start with the creation of an independent WTO Dispute Settlement Board. Finally, the resourcing of the WTO DSB (**500**) should also be prioritised to enhance its capacity to review and resolve the active WTO cases in the most efficient manner.

Table 5.1

SMART Strategic Decision Criteria Tool for the Recommendations

Key Success Factors	**Weight**	**Amend WTO Rules**	**Capacity Building Program**	**Resourcing of WTO DSB**	**Depoliticization**	**Exiting WTO**	**Formation of African Trading Bloc**
Efficacy	30	8 = 240	6 = 180	6 = 180	5 = 150	7 = 210	9 = 270
Cost Effectiveness	25	6 = 150	4 = 100	2 = 50	6 = 150	7 = 175	6 = 150
Ease of Implementation	20	6 = 120	7 = 140	5 = 100	4 = 80	8 = 160	9 = 180
Reasonableness	20	9 = 180	8 = 160	7 = 140	8 = 160	7 = 140	8 = 160
Comprehensiveness	5	4 = 20	5 = 25	6 = 30	6 = 30	7 = 35	7 = 35
Total Weighted	**100**	**710**	**605**	**500**	**570**	**720**	**795**

NB: Scores (Ratings) out of 10

5.5 Strengths, Limitations and Suggestions for Future Research

The main strength of the research thesis is that it effectively addresses the existing research gap on the challenges and the reform proposals to enhance participation of African countries in the WTO dispute settlement process. Prior studies on the same topic (Alavi, 2007 and Naif, 2015) had mainly focused on the administrative and structural challenges faced by African countries but not the legal aspects and the reform proposals. The other strength of the research thesis is that its findings are likely to be substantially valid and reliable given that it relies on a mixed research design approach encompassing the insight from the online surveys, systematic review and content analysis of the sampled WTO cases involving African nations as either litigants or respondents. Creswell (2014) observes that the advantage of the mixed research design approach is that it allows triangulation of data/information from various sources. For instance, the challenge pertaining to the delays and high costs of legal proceedings was evidenced by the consistent insight from the online surveys, the systematic review as well as the WTO case analysis.

Despite its strengths, there are several limitations of the research thesis. Firstly, the primary surveys with the international trade professionals, academicians and ministry of trade professionals relied on the views drawn from a small sample of the international trade professionals (N = 10). The implication of the stated limitation is that it's highly unlikely that the views accurately capture the perceptions from the entire population of the international trade professionals. However, this limitation was addressed by incorporating findings from the systematic review and the content analysis of the case laws. The implication is that the limited reliability of the online survey insight was

supplemented by the results derived from the review of existing literature and the nature of the WTO cases involving African countries as litigants or claimants. Furthermore, both the systematic review (N = 12 articles) and the WTO cases (N = 3 cases) were also limited in terms of the sample size, which could affect their overall representativeness.

Finally, the other limitation of the research thesis is that the findings were mainly supported by qualitative insight, which can be very subjective and highly biased. For instance, there is a risk that the views of the primary respondents in the surveys could have been subjectively influenced by the use of leading questions by the interviewer. The ineffective design of the interview/survey questions that incorporate leading questions is one of the factors that contribute to biasness in the interview/survey responses (Creswell, 2014).

A suggestion for prospective future studies is to examine the extent to which the challenges currently faced by African nations in their involvement with the WTO DSM is attributed to legal, structural or procedural bottlenecks. This research thesis addressed the existing research gap by incorporating a legal perspective into the challenges faced by African nations, which have restricted their active participation in the WTO dispute settlement mechanism. However, future studies can extend the knowledge by synthesizing the extent to which these challenges are procedural, structural, or legal in nature. The research thesis also proposes that future studies should rely on a fairly large sample of the participants when conducting interviews to improve overall representativeness of the findings.

6.0: Conclusion

The thesis examines the challenges faced by African nations, which have limited their participation in the WTO dispute settlement process. The research thesis acknowledges that since the inception of the WTO in 1995, there are only four (4) African countries (Egypt, Morocco, South Africa, and Tunisia), which have participated in the WTO dispute settlement process as either respondents or litigant in the case of Tunisia. The thesis employs a mixed-research design approach using evidence from the primary interviews, systematic literature review, and WTO case law analysis to examine the factors, which have restricted the active participation of African countries in the WTO dispute settlement mechanism.

The main conclusion from the thesis is that financial/human resource challenges faced by sub-Saharan African countries coupled with excessive litigation costs are the main factors, which have discouraged most African countries to participate in the WTO dispute settlement process. The high litigation costs are also driven by the fact that most countries from the sub-Saharan African region lack sufficient legal expertise in WTO DSU issues, which force them to outsource legal expertise from other foreign countries. The delay in resolution of WTO cases, which take a considerable time was also acknowledged as a challenge based on the WTO case law insight although a considerable portion of the blame could be attributed to failure by the participating parties to initiate a panel request early and therefore, turn the case to the adjudication phase. The thesis also acknowledges that complex WTO dispute settlement rules and ineffective WTO DSU provisions (i.e., Article 21.5, Article 22.2 and Anti-dumping provisions) have also discouraged the active participation of African countries in the WTO dispute settlement

process. The thesis concludes that although there was a perception, especially among the primary interview participants that the WTO dispute settlement process is unfair, there is a strong counterargument that other advanced nations such as the U.S. have also not had favourable WTO rulings.

The thesis develops a number of recommendations based on the SMART strategic decision criteria to address the stated challenges, which have restricted the active participation of African nations in the WTO dispute settlement process. First, based on the findings, priority should be given to the establishment of an independent African trading bloc [i.e., African Continental Free Trade Area (AfCFTA)], which is expected to strengthen the bargaining power of African nations in the WTO. However, the thesis notes that lack of unity, especially among African nations is a key challenge that could hinder the formation of an independent trading bloc. Secondly, based on the findings, the thesis also suggests that African countries need to advocate for amendments in the current WTO rules, which are considered highly complex and outdated. The investment in a capacity building program to raise awareness among African nations on their duties and obligations under the WTO dispute settlement mechanism is also suggested as an approach to address the challenges faced by African nations. The thesis also concludes that depoliticization and exiting the WTO should also be considered as options to encourage more African nations to participate in the WTO dispute settlement process. The systematic adoption of these suggestions, which are fairly efficacious, reasonable, cost-effective, and easily implementable could ensure that more African countries are able to engage the WTO DSM to resolve their trade disputes.

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Epilogue

During my research the World Trade Organization (WTO) appointed as Director-General, **Ngozi Okonjo-Iweala** as the seventh Director-General of the WTO. She took office on 1 March 2021, becoming the first woman and the first African to serve as Director-General.

The question becomes, will she be able to address some of these process short comings and close the trajectory between developed nations and those experiences by African nations.

In my opinion it is too early to form any firm and conclusive judgements. But it is my contention that Dr. Okonjo-Iweala can be successful to Africa and the rest of the third world if she follows through her pledge to advance an important concept she termed “trade finance.” Getting the industrialized nations to provide financial and technical support to least developed nations to export agricultural and fisheries products and other non-traditional export products as enshrined in the US – African Growth and Opportunities Act (AGOA) could advance both trade and development. This is certainly uncontroversial like the intellectual property rights. The realization of this, in addition to the agricultural and fisheries subsidies, will be the incremental progress that will spur Africa into boosting its share of global trade and reducing poverty.

For many on the African continent, Dr. Okonjo-Iweala honouring her promise on this trade finance concept, particularly in an uncertain post-pandemic world trade environment, will be the kind of reforms that would make multilateral cooperation a win-win for all parties either in the global north or south. Thus, the mere honour of one of its most illustrious

daughters will be meaningless unless and until it is linked to an incremental progress of note to Africa’s cause and struggle for reforms of the existing WTO architecture.

Appendices

Exhibit 1: Participant Consent Form

RESEARCH CONSENT FORM

My name is Abdul-Latif Iddrisu, a student in the School of Interdisciplinary Studies at Royal Roads University. I would like to invite you to participate in my research project, [Africa and the WTO Dispute Settlement Mechanism: Underlying Challenges and Reform Proposals].

The project is fully self-funded by the student, Abdul-Latif Iddrisu. You may verify the authenticity of this project by contacting [Dr Terry Power, Professor of Strategic and Advanced International Studies at School of Business & Academic Supervisor for this study].

The purpose of my research is to highlight the challenges facing developing nations, particularly African ones under the existing WTO regime and could inspire the urgent calls for reforms. The project is fully self-funded by the student, Abdul-Latif Iddrisu. You may verify the authenticity of this project by contacting [Dr Terry Power, Professor of Strategic and Advanced International Studies at School of Business & Academic Supervisor for this study].

Your participation will consist of interviews and your involvement is foreseen to last [1] hour depending on the nature of the responses and possible follow ups. The questions will refer to the challenges which obstruct African nations from participating in the WTO Dispute Settlement Mechanism and possible proposals for reform. In addition to submitting my final report to Royal Roads University in partial fulfillment for a [master's degree], I will also be sharing my research findings with some institutions whose missions are in this subject area.

The research results will be published in public outlets, including [thesis/doctoral dissertation] that will be published in RRU's Digital Archive, Pro-Quest and Library and Archives Canada. The results might also be disseminated at public and academic conferences and presentations. I could give every participant a soft copy of my final work at participant's indication.

It is my considered view that the outcome of the research might be helpful to most of you the participants who have spent most of your careers in diplomatic and civil society fighting for equity for developing countries under the WTO regime. So, the outcome of this study would further inform your own aspirations and approaches to the unending struggles to renegotiate reform proposals for a fairer dispute settlement mechanism under the WTO. However, there is an anticipated risk of your views and identities being revealed/shared/published or exposed to third parties like thesis supervisor, committee members, ethical committee members, etc.

There are no actual incentives beyond sharing research findings from my research with participants.

Interview will be digitally recorded and summarized, in anonymous format, in the final report. Your comments will remain anonymous unless you agree to be identified. All documentation will be kept strictly confidential.

The data gathered will be retained for a period of 8 months to a year after, which it will be destroyed. Data will not be retained pertaining to an individual who has withdrawn at any time.
The only possible conflicts of interests that needs disclosure is that some participants have been direct superiors in various international institutions that we both worked. The best possible ways to manage this relationship is to keep every conversation professionally beyond these acquaintances.

Your participation is completely voluntary. If you do choose to participate, you are free to withdraw at any time [unless in the event of a survey the data becomes part of an anonymized dataset]. Similarly, if you choose not to participate in this research project, this information will also be maintained in confidence.
This research project has been approved by the RRU Research Ethics Board. If you have any questions regarding your rights as a research participant, please contact the Office of Research Ethics at RRU.

By signing this letter [by replying affirmatively to this email], you are indicating your agreement to participate in this project. In doing so, you are not waiving any legal rights.

Name: (Please Print): _____

Signed: _____

Date: _____

Exhibit 2: Questionnaire

QUESTIONNAIRE

Participant:

Topic: Africa and the WTO Dispute Settlement Mechanism: Underlying Challenges and Reform Proposals

SECTION A: BACKGROUND INFORMATION

1. Please **INDICATE** your gender
    1. Male
    2. Female
2. Please state your age (**20-40; 40-65 etc.:**
3. State your country of residence
    3. Egypt
    4. Morocco
    5. South Africa
    6. Tunisia
4. PROVIDE your designation (Position):
5. PROVIDE the number of years of working experience.
    7. 0-5 years
    8. 6-10 years
    9. 11-15 years
    10. 16-20 years
    11. Over 20 years
6. What is your highest educational attainment?
    12. Certificate
    13. Diploma
    14. Undergraduate Degree
    15. Postgraduate degree

SECTION B: CHALLENGES OF AFRICAN COUNTRIES UNDER THE WTO DSM

1. Have you ever been involved in any WTO dispute settlement process?

☐Yes ☐No

If yes, in what capacity?

☐Respondent ☐Complainant

2. What are the main challenges facing African countries under the current WTO dispute settlement?

(Please rank all that apply in order of priority with 1 being the most important and 7 less important).

- ☐ Litigation costs,
- ☐ Lack of Legal expertise
- ☐ Trust in the process
- ☐ Lack of transparency
- ☐ Perceived unfairness,
- ☐ Perceived delays in the WTO DSM process, and
- ☐ Others

COMMENTS………
……
……

3. From your own perspective;

Do you feel that the current litigation costs are too expensive for African? countries to pursue litigations at the WTO DSM.

With 1 being ‘too expensive’ and 5 being ‘not too expensive’?

☐1 ☐2 ☐3 ☐4 ☐5

4. Does the duration of the WTO DSM proceedings restrict African countries from participating in the WTO dispute settlement process with 1 being 'duration is too long and restrictive' and 5 being 'duration is not too long and not restrictive'?

☐1 ☐2 ☐3 ☐4 ☐5

COMMENTS………
……
……

5. Do you feel that the WTO DSB's precedent rulings have been fair to African countries?

☐ Fair ☐ Unfair**COMMENTS…**……
……
……
……

6. To what extent have do you think WTO DSB's precedents play in restricting African countries' participation in the WTO dispute settlement mechanism?

☐ Major ☐ Not Major

COMMENTS………
……
……

7. What is your perception on current level of authority of the WTO DSB to enforce its rulings under the WTO Dispute Settlement Understanding?

☐ Strong Authority ☐ No Authority

COMMENTS………
……
……

SECTION C: WTO DSM PROVISIONS AND LEGAL PROCEDURAL ISSUES

1. Are the existing WTO DSU provisions sufficiently comprehensive?

☐Yes ☐No

COMMENT………

……

……

2. To what extent have they restricted participation of African countries in the WTO dispute settlement process? (1 being 'not highly restrictive' and 5 being 'very restrictive').

☐1 ☐2 ☐3 ☐4 ☐5

COMMENTS………
……
……

3. Do you feel that the current WTO DSU provisions are restrictive with 1 being 'too restrictive to pursue litigation' and 5 being 'not a problem to pursue litigation'?

☐1 ☐2 ☐3 ☐4 ☐5

4. Do you believe that the existing remedies under articles 21.5 and 22.2 of the WTO DSU, especially those related to compensations, concession or withdrawal of remedies have addressed the threat of retaliation among African countries?

☐Yes ☐No

COMMENTS………
……
……

5. Do you feel that the current lack of collective or cross retaliatory regime under the WTO's

DSM inhibits African Countries' motivation to pursue cases against developed nations?

☐Yes ☐No

COMMENTS………
……
……

6. Are you aware of any WTO DSU legal provision and, or clause, which is likely to restrict participation of African countries in the WTO dispute settlement process?

☐Yes ☐No

If yes, any specific provision /clause?**COMMENTS…**……
……
……
……

7. Please offer recommended strategies/solution related to the WTO DSM that might increase the participation of African countries in the WTO dispute settlement mechanism.

COMMENTS………
……
……

Could you indicate whether or not you are willing to accept a short telephone call if I need to explore an observation further? ☐Yes ☐No

Thank you very much for your precious time filling this out for me. I am grateful!

Exhibit 3: Sample Letter of Invitation

Dear Participant,

I would like to invite you to be part of a research project that I am conducting. This project is part of the requirement for a Degree in [Master of Interdisciplinary Studies], at Royal Roads University. My name is [Abdul-Latif Iddrisu] and my credentials with Royal Roads University can be established by contacting [Dr Terry Power, Professor of Strategic and Advanced International Studies at School of Business & Academic Supervisor for this study].

The objective of my research project is to highlight the challenges facing developing nations, particularly African ones under the existing WTO regime and could inspire the urgent need for reforms. The study is fully self-sponsored with no third party [individual and/or organization] contribution either in part or in whole. In addition to submitting my final report to Royal Roads University in partial fulfillment for a [Master of Interdisciplinary Studies].

My research project will consist of interviews to assess the views of international trade professionals in Africa. The primary interviews will involve participants who will offer their opinions on the current challenges facing African countries' participation in the WTO dispute settlement proceedings. The interview questions would be tailored for each interviewee and centered on their experience and perceptions of the trade negotiation processes.

The foreseen questions will include:

1) What are the challenges facing African countries under the WTO dispute settlement mechanism?

(a) Are the litigation costs and duration of DSB proceedings so expensive for African countries?

(b) Are the DSB's precedent rulings deterrent enough?

(c) Does the DSB have the power and authority to enforce its own rulings?

(d) How effective are the remedial measures provided for under the WTO regime in favour of plaintiffs and against defendant parties?

2. What are the specific provisions of the WTO's legal regime that restrict African countries' participation in the WTO dispute settlement mechanism?

3. In what ways are the WTO's DSU provisions biased African countries and other developing nations?

4. Which provision under the WTO's DSU mechanism should be a source of concern for African countries and other developing nations.

Your name was chosen as a prospective participant because of your career expertise in African and global trade diplomacy and related issues.

Attached is a consent form for your perusal and making an informed consent decision, and the survey questionnaire for your consideration, please. If you would like to participate in my research project, I would appreciate your acknowledgement and responses by filling out both documents accordingly. You can kindly contact me at the details below:

Name: Abdul-Latif Iddrisu

Your very kind consideration and cooperation would be highly appreciated, please.

Sincerely,

Abdul-Latif Iddrisu.