

HAS THE UNITED STATES KILLED THE WORLD TRADE ORGANIZATION? EVIDENCE FROM BEYOND THE DISPUTE SETTLEMENT MECHANISM

Luiz Antonio Camilher¹

Abstract: The US' boycott of the WTO's Appellate Body has been extensively analyzed by the literature. The authors have sought to understand its motivations and implications by investigating the recent American behavior toward the Dispute Settlement Mechanism. By doing so, this literature has neglected other facets of the WTO and has attributed a disproportionate relevance to the boycott, which was interpreted as a complete disengagement from the system, and a death sentence for the WTO. In this paper, we aim to address this gap by investigating American behavior in the WTO as a whole. As a result, it has become evident that the US, despite criticisms of the DSM, has kept engaged in the WTO. Thus, we conclude that its commitment to rules-based trade is stronger than portrayed, promoting an optimistic outlook on WTO's future.

Keywords: American Trade Policy. International Trading System. World Trade Organization. WTO Crisis. WTO Reform.

Resumo: O boicote dos Estados Unidos ao Órgão de Apelação da OMC tem sido amplamente analisado pela literatura. Os autores buscaram entender suas motivações e implicações investigando o comportamento recente do país em relação ao Mecanismo de Solução de Controvérsias. Ao fazê-lo, essa literatura negligenciou outras facetas da OMC e atribuiu uma relevância desproporcional ao boicote, interpretando-o como um desengajamento completo do sistema e como uma sentença de morte para a OMC. Neste artigo, buscou-se abordar empiricamente essa lacuna, analisando o comportamento americano na OMC como um todo. Como resultado, tornou-se evidente que, apesar das críticas ao DSM, os EUA mantiveram-se engajados na OMC. Assim, concluiu-se que o seu compromisso com o comércio baseado em regras é mais forte do que o retratado, possibilitando uma perspectiva otimista sobre o futuro da OMC.

¹ Undergraduate student at the Institute of International Relations of the University of São Paulo (IRI-USP). His research agenda focuses on the international trading system and the crisis of multilateralism, and he has participated in the research projects "Political Determinants of Assertiveness in the World Trade Organization (1995-2023)", and "Brazil and the Multilateral Trading System".

Palavras-Chave: Política Comercial Estadunidense. Regime Internacional de Comércio. Organização Mundial do Comércio. Crise da OMC. Reforma da OMC.

1. Introduction

The perception that a dense fog of crisis hovers over the international trading system is unequivocal both in the media narrative and in the literature of International Relations and Political Science. This understanding, already prompted by the failure of the Doha Round in 2008, was definitively crystallized due to the boycott perpetrated by the United States against what is considered the central pillar of this system: the Dispute Settlement Mechanism of the World Trade Organization (DSM-WTO). This US movement froze the multilateral dispute resolution system by blocking the appointment of new members to the Appellate Body (AB). As a result, on December 10, 2019, this body, which integrates the DSM as an appellate structure, ceased its activities, preventing the continuation of ongoing trade disputes and discouraging members from initiating new disputes at the WTO.

This action, taken during the Donald Trump administration, was quickly interpreted by the specialized media as a sign of the United States' lack of commitment to the principle of rules-based trade and as a death sentence for the WTO. Various articles published at the time of the blockade highlighted the popularity of this pessimistic perspective and reinforced the perception that the United States, once a bastion of the multilateral trading system, had become one of its greatest threats.

This view resonated in the literature, which, although more cautious in establishing the reasons for the boycott, endorsed the media view regarding its implications for the future of the multilateral trading system. Most authors, considering the DSM as the main pillar that has sustained and explained the success of the system, saw the US frontal attack on the AB as a clear sign of its disengagement from the WTO and, consequently, from the idea of a rules-based trading system. The view of the future of the WTO remained pessimistic, as the loss of support from one of its main champions projected the organization's future as uncertain.

However, it is possible to identify a significant gap in this view, as it concentrates its analysis solely on the DSM, neglecting other facets of the organization, such as the Specific Trade Concerns (STCs) and trade remedies arenas. Consequently, the boycott is examined through an excessively narrow lens, with the US stance towards the international trading system being measured only by its interaction with the DSM.

In this context, analyzing its behavior concerning other arenas of the WTO is vital to fully grasp its recent stance in the organization and its implications for the system. This article reflects such an effort and seeks to answer the following research questions: Does the US boycott of the AB signify a total disengagement of US trade policy from the organization? How does the US stance within the WTO as a whole reinforce, or not reinforce, its discontent with the rules-based international trading system?

In an effort to answer these questions, the article proceeds in five sections. The next one presents an overview of the literature on the recent behavior of the United States at the WTO. Then, the gap in this literature, as well as how a minor subset of the literature has attempted to address it, will be presented. Section 4 will present the contribution to be made by this article, showing our hypothesis and methods. Subsequently, the empirical results will be presented, followed, finally, by a section with concluding remarks, which will discuss the implications of the article for the debate on the future of the international trading system.

2. Literature overview

The US boycott of the AB, materialized with the paralysis of the body in 2019, has been one of the most discussed events in the literature on the WTO in the fields of Political Science and International Relations in recent times. In this context, several authors have sought to understand the reasons that led the US delegation to take this obstructive decision and the implications of this for the multilateral trading system and the stability of its primary organization, the WTO.

Following the narrative that dominated the specialized media at the height of the events, the first reason suggested by the literature centers on the figure of President Donald Trump and his foreign policy. In this context, his populist political project is marked by the fight against globalization on the external front, with the WTO becoming a priority target². The rhetoric was vocally against this institution, with the president wrongly³ asserting that the WTO was “good for China and terrible for the United States” and that, therefore, the country

² JONES, K. Populism, Globalization, and the Prospects for Restoring the WTO. **Politics and Governance**. Lisbon, v. 11, n. 1, p. 181-192, Mar. 2023.

³ LI, X.; ZHANG, X. Is the WTO Dispute Settlement System a Disaster for the US? An Evaluation of US–China WTO Disputes. **Journal of Chinese Political Science**, Houston, v. 27, n. 3, p. 567-584, Jan. 2022.

should “leave [the WTO] if we have to”⁴. Thus, the obstruction of the Appellate Body would be the materialization of this aggressive rhetoric of the president towards the WTO.

However, despite this explanation being quite popular in journalistic and academic circles, it has not been able to structurally explain the genesis of this crisis. This explanation is insufficient as it is possible to observe that US discontent with the WTO not only predates⁵ but also precedes⁶ the Trump administration, being a trait that has united both parties since George W. Bush’s administration. In this context, the AB’s performance is criticized because of the perception that it overstepped its mandate by defining the prohibition of zeroing, something not provided for in the WTO agreements⁷. Moreover, there is also a perception that the AB has underperformed by not regulating non-market economies, especially the Chinese ones⁸. In this context, the US sees that, in the absence of greater substantive agreements on both problems, the AB takes different routes with different actors: overstepping in the case of zeroing, harming the US, and underperforming in cases of subsidies to companies in non-market economies, benefiting China. Therefore, this motivates its blockade in defense of its sovereignty and long-term commercial interests.

Finally, the literature also expresses that the very institutional design of the WTO would be one of the reasons that led the US to take this aggressive position. According to this line of thought, the US only reached this point of dissatisfaction with the multilateral trading system due to the organization’s systemic failures in dealing with

⁴ THE WHITE HOUSE. **Remarks by President Trump in listening session with representatives from the steel and aluminum industry**. Washington D.C., 2018. Available in: <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-listening-session-representatives-steel-aluminum-industry/>. Access in: 10 July 2024. p. 1.

⁵ HOPEWELL, K. When the Hegemon Goes Rogue: Leadership amid the US Assault on the Liberal Trading Order. **International Affairs**, London, v. 97, n. 4, p. 1025-1043, July 2021.

⁶ MENISHIKOVA, A. M. Position of Joe Biden’s Administration on the World Trade Organization. **Herald of the Russian Academy of Sciences**, Moscow, v. 92, n. 6, p. S529-S533, Sep. 2022.

⁷ MARUYAMA, W. H. Can the Appellate Body Be Saved? **Journal of World Trade**, London, v. 55, n. 2, p. 197-230, Mar. 2021.

⁸ BOWEN, T. R.; BROZ, J. L. The Domestic Political-Economy of the WTO Crisis: Lessons for Preserving Multilateralism. **SSRN Scholarly Paper**, Rochester, p. 1-38, Oct. 2022.

contemporary issues. In this context, the WTO's negotiating paralysis, which prevents it from updating its treaties to encompass issues such as the regulation of zeroing or non-market economies, would be a result of the organization's institutional design failures, especially its consensus rule⁹. Thus, with the path of dialogue and negotiation blocked, the US had no choice but to launch a frontal attack on the organization in defense of its commercial interests.

The second relevant topic analyzed by the literature on the WTO Crisis and its relation to recent US behavior is the implications of the US boycott of the organization. In this context, the first implication observed by the literature is that this movement makes evident the US's lack of commitment to the rules-based multilateral trading system. However, before understanding this implication, it is necessary to point out that much of the literature considers the DSM the nerve center of this system, with any malfunction in it compromising the integrity of rules-based trade¹⁰. Understanding this is fundamental to comprehending the pessimistic view of the literature regarding the consequences of the US movement, as it underscores its gravity. Thus, undermining the main pillar of this system has the obvious implication of showing the US total lack of commitment to rules-based trade. By launching this "attack on the rule of law in world trade"¹¹, the US broke with its historical position of defending multilateral institutions and promoting a trade liberalization system that dates to the Bretton Woods negotiations. This attack would also highlight the deep, bipartisan trend of skepticism and disengagement with trade liberalization¹². In summary, by placing the DSM in a position of centrality, part of the literature sees the US movement to paralyze the AB as clear evidence of disengagement with the international trading system as a whole, denying its most basic principles, especially that of rules-based multilateral trade.

⁹ BOWEN, T. R.; BROZ, J. L. The Domestic Political-Economy of the WTO Crisis: Lessons for Preserving Multilateralism. **SSRN Scholarly Paper**, Rochester, p. 1-38, Oct. 2022.

¹⁰ HOPEWELL, K. When the Hegemon Goes Rogue: Leadership amid the US Assault on the Liberal Trading Order. **International Affairs**, London, v. 97, n. 4, p. 1025-1043, July 2021.

¹¹ BACCHUS, J. Might Unmakes Right The American Assault on the Rule of Law in World Trade. **CIGI Papers**, Waterloo, n. 173, p. 1-40, May 2019. p. 1.

¹² LINCICOME, S.; OBREGON, A. C. **The (Updated) Case for Free Trade**. Washington, 2022. Available in: <https://www.jstor.org/stable/resrep40429>. Access in: 10 July 2024.

Finally, the other implication of this movement described by the literature is the implosion of the WTO as the central institution of this system. Following the same view already explored, that of the essential role of the DSM for the functioning of the WTO as a whole, it is observed that its blockade by the US would have the ultimate implication of leaving the organization “at risk of falling into oblivion”¹³. Given the centrality of the US to this system, as well as the organization’s institutional design based on consensus, it was able to “on its own, attack the fundamental institutional principles of the WTO system itself”¹⁴. From this attack, the WTO would have a nebulous future, running the serious risk of becoming obsolete in a context dominated by the rise of protectionist practices and trade regulation carried out outside the organization’s arenas¹⁵. Thus, the literature considers that the movement perpetrated by the US constitutes one of the greatest risks to the WTO in recent times, casting great uncertainty over the future of the rules-based international trading system.

In this context, it is possible to conclude that the theme of the WTO Crisis and its relationship with the United States is the subject of intense analysis by specialized literature, which tries to understand the reasons that led the country to block the WTO’s dispute resolution pillar and its consequences for the multilateral trading system, adopting a pessimistic perspective.

3. Going beyond DSM

Although the literature on the subject under analysis is extremely prolific, it has a significant gap. These articles center their analyses on US behavior towards the DSM and, considering it the central pillar of the multilateral trading system, establish that this isolated behavior is a satisfactory proxy for the US stance on the international trading system as a whole. However, this system is more complex and includes other relevant elements for analysis, which should be included in an investigation on the proposed topic to avoid distortions in interpretation.

¹³ MARUYAMA, W. H. Can the Appellate Body Be Saved? **Journal of World Trade**, London, v. 55, n. 2, p. 197-230, Mar. 2021. p. 198.

¹⁴ JONES, K. Populism, Globalization, and the Prospects for Restoring the WTO. **Politics and Governance**. Lisbon, v. 11, n. 1, p. 181-192, Mar. 2023. p. 184.

¹⁵ PETERSMANN, E. U. How Should WTO Members React to Their WTO Crises? **World Trade Review**, Geneva, v. 18, n. 3, p. 503-525, May 2019.

However, going beyond the DSM in analyzing a topic related to the WTO is still an uncommon practice in International Relations and Political Science literature on the subject. Therefore, it is observed that the gap identified in this article is not exclusive to the analyzed theme but is a common problem in the literature on the WTO in general. Despite some progress in this matter in recent years, especially given the need for a deeper understanding of the other WTO arenas after the crisis in its dispute resolution arena, it is also possible to point out some innovative works from the early 21st century.

The first approach to be observed in this section focuses its analysis on the arena of Specific Trade Concerns (STCs) of the Sanitary and Phytosanitary Measures Committee (SPS) and the Technical Barriers to Trade Committee (TBT). This mechanism allows Member States to raise specific concerns regarding a wide range of commercial and regulatory matters of other Member States, enabling the request for information and alignment of practices¹⁶. Although STCs are not formal disputes between Member States, they play an essential role in resolving specific trade conflicts between members, resulting in fewer disputes related to the TBT and SPS agreements escalating to the DSM. In an innovative work, Horn, Mavroidis, and Wijkström¹⁷ first proposed this thesis, shedding light on the centrality of other WTO arenas in the dispute resolution process and the relevance of this mechanism in the context of the proper functioning of the rules-based trading system. Since then, various authors have corroborated and expanded this view, demonstrating the relevance of this arena in a context of high non-tariff barriers to trade and empirically quantifying the importance of mobilizing STCs in de-escalating conflicts in the DSM¹⁸, for example. It is also relevant to mention that this research agenda was further propelled by the DSM crisis, with the centrality of STC mobilization being reiterated as an essential arena in analyzing Member States'

¹⁶ THORSTENSEN, V.; VIEIRA, A. C. WTO Case Law on TBT and SPS: It Is Time to Review Some Concepts. *In*: AMARAL JÚNIOR, A.; PIRES, L. M. O.; CARNEIRO, C. L. **The WTO Dispute Settlement Mechanism: A Developing Country Perspective**. New York: Springer International Publishing, 2019. p. 99-126.

¹⁷ HORN, H.; MAVROIDIS, P. C.; WIJKSTROM, E. In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees. **Journal of World Trade**, London, v. 47, n. 4, p. 729-760, Jan. 2013.

¹⁸ HOLZER, K. Addressing Tensions and Avoiding Disputes: Specific Trade Concerns in the TBT Committee. **Global Trade and Customs Journal**, Washington, v.14, n.2, p. 102-116, Jan. 2019.

behavior within the WTO¹⁹. Thus, these works categorically indicate the importance of this arena within the WTO's institutional design and reinforce the need to include it in the analysis that this article proposes to undertake.

These other multilateral trade policy mechanisms available within the WTO system also encompass the extensive area of trade remedies. This arena involves enabling the imposition of measures that allow the temporary and conditional application of tariffs on imports that are causing harm to domestic industries²⁰. In this context, countervailing measures, anti-dumping measures, and safeguards are flexibility measures provided for in WTO agreements and follow an internal process until they are legally imposed under the organization's oversight. Although this is a less explored topic in the specialized literature, commonly treated in a subordinate manner to the DSM, some works refer to the centrality of these measures *per se* in analyzing Member States' behavior within the WTO. Notable is the work of Bohanes²¹, which offers a comprehensive overview of the use of anti-dumping measures during the WTO's existence, highlighting their high relevance not only for developed countries but increasingly for developing countries. In this context, the author underscores how anti-dumping measures have become an integral part of the international trading system, equally relevant within the WTO framework. A similar conclusion can be drawn regarding the safeguard mechanism, which, although used less frequently over the years, also proves to be an essential trade policy tool for States within the WTO, especially for developing ones²².

Then, the relevance of these other arenas within the international trading system becomes evident, and consequently, the need to include them in the analysis when dealing with topics related to Member States' behavior within the WTO. Aware of this circumstance and

¹⁹ WOLFE, R. Reforming WTO Conflict Management: Why and How to Improve the Use of 'Specific Trade Concerns'. **Journal of International Economic Law**, Oxford, v. 23, n. 4, p. 817-839, Dec. 2020.

²⁰ BOWEN, T. R.; BROZ, J. L. The Domestic Political-Economy of the WTO Crisis: Lessons for Preserving Multilateralism. **SSRN Scholarly Paper**, Rochester, p. 1-38, Oct. 2022.

²¹ BOHANES, J. Developing WTO Members as Users and Targets of Anti-dumping Policy. **Global Trade and Customs Journal**, Washington, v. 16, n. 10, p. 551-536, Jan. 2021.

²² AHN, D. *et al.* An Empirical Analysis on the WTO Safeguard Actions. **Journal of World Trade**, London, v. 52, n. 2, p. 4155-459, May 2018.

attempting to address the DSM-focused bias in the Political Science and International Relations literature, Carneiro, Nogueira, and Rezende coined the empirical concept of assertiveness²³. Assertiveness aims to innovatively measure the active behavior of members within the WTO as a whole and, therefore, encompasses not only Member States' behavior in the DSM via consultation requests but also the raising of STCs in the SPS and TBT committees and trade remedies measures (anti-dumping, safeguards, and countervailing measures). By doing so, it provides a comprehensive and in-depth notion of how members behave towards the international trading system, allowing for a more accurate assessment by researchers.

In this context, the enormous value of this literature for the in-depth exploration of topics related to the WTO and the international trading system as a whole is acknowledged. The objective of this article, which is to analyze the issue of the US boycott beyond the DSM, can only be achieved by utilizing this theoretical framework. How this was done will be detailed in the next section, which will highlight our approach to this topic.

4. Our contribution

4.1. Our objective and hypothesis

Considering the previous two sections, this paper aims to address the gap in the specific literature on recent US behavior and its relationship with the WTO crisis considering the literature's subset that goes beyond the DSM. By doing so, it will be possible to satisfactorily answer our research questions: Does the US boycott of the AB signify a total disengagement of US trade policy from the organization? How does the US stance within the WTO as a whole reinforce, or not, its discontent with the rules-based trade system?

It is expected that by empirically measuring US participation in the various WTO arenas, we will obtain a panoramic view of its engagement with the organization and, consequently, its commitment to the multilateral rules-based trading system. Reflecting on the previous literature on the subject, it is possible to predict that the US, as it did with the DSM, will remain disengaged from other WTO arenas. This

²³ CARNEIRO, C. L.; NOGUEIRA, T.; REZENDE, F. C. Political Determinants of Assertiveness in the World Trade Organization (1995-2014). *In: ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION*, 112., 2016, Philadelphia.

would show consistency with its apparent conflicting position towards the system as a whole, confirming the pessimistic view of the literature regarding the implications of the AB boycott. However, it is also possible, as a second hypothesis, to observe the opposite: the US maintaining assertive positions in other WTO arenas. In this context, breaking the premise of the centrality of the DSM would add a layer of complexity to the analysis of the implications of the US delegation's conflictive move toward the AB. This would reveal a greater US commitment to rules-based trade than previously anticipated, as the country would continue to use and endorse the trade regulation structures. Therefore, a certain optimism about the future of the WTO would be possible, as it would remain a fundamental organization in the multilateral framework, even if it requires reforms in specific areas.

4.2. Research Design

In order to measure the behavior of the United States in the WTO as a whole, we will use the previously mentioned concept of assertiveness, which will be applied in the three main WTO arenas. Assertiveness 1 will indicate US engagement in the DSM by measuring their "requests for consultations" each year. This is the initial step of any formal dispute in the WTO, marking the first stage of a long adjudicatory process. Assertiveness 2, in turn, will measure US engagement in the SPS and TBT committees through the raising of STCs each year. Finally, Assertiveness 3 will quantify the initiation of investigations within the WTO for the imposition of trade remedies measures, whether they are anti-dumping measures, countervailing measures, or safeguards each year.

To place the data on US behavior in a fair perspective, US assertiveness will be compared with that of other relevant members in the analysis. In this context, three actors were chosen: the European Union (EU), the BRICS, and a group we call the "OECD 5," consisting of the five most assertive OECD countries (namely, Australia, Canada, Japan, Mexico, and South Korea). To make this comparison fair and feasible, the assertiveness value presented will be adjusted by the trade flow of the player in question. Thus, the adjusted assertiveness will be the result of the simple division between the pure assertiveness each year and the actor's export flow in that same year, measured in trillions of dollars.

These variables will be analyzed separately from a historical series that compiles assertiveness from 1995, the founding year of the WTO, to 2020. In this context, the evolution of US behavior in the WTO will

be analyzed over the period in comparison to other actors, to observe its behavior pattern and determine whether it has changed in light of the country's confrontational stance towards the AB. For this purpose, the period starting from 2011 will receive special attention in the analysis, as this marks the beginning of the US delegation's openly obstructionist stance towards the DSM, being the first time a new member for the AB was vetoed²⁴. Therefore, continuities or ruptures in US behavior during this period will dictate the relationship between the aggressive rhetoric towards the DSM and the actual behavior of the country in other arenas of the organization.

5. Empirical evidence

5.1. *Assertiveness 1: DSM*

Although the analysis of Assertiveness 1 is not the primary focus of this study, which aims to examine US behavior beyond the DSM, it is necessary to present some relevant results.

Overall, the data show that the US has drastically reduced its interaction with the DSM in recent years. Considering pure Assertiveness 1, the US averaged 6 cases per year from 1995 to 2010, with this figure dropping to only 2 cases per year from 2011 to 2020, a period marked by heightened aggressiveness towards the DSM. This *de facto* disengagement becomes even more evident when we observe, using preliminary data from 2021 and 2022, that the US has not initiated any cases since 2019, the point at which the AB became fully paralyzed. It is important to highlight that this exceptional disengagement is confirmed when analyzing the stance of other actors, who, although they have reduced their participation in the system, have remained significantly active in the mechanism.

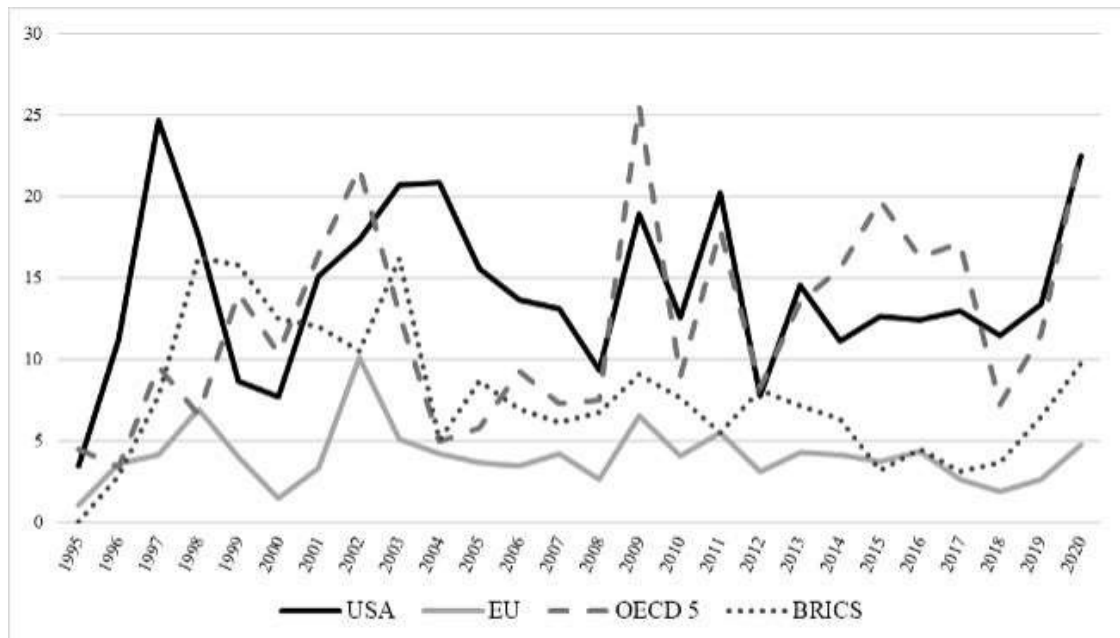
5.2. *Assertiveness 2: STCs*

Unlike their stance towards the DSM, the data indicate that the US has remained equally assertive in the arena of STCs in the TBT and SPS Committees, even during the AB crisis period. This counterintuitive

²⁴ DAUGRIDAS, K.; MORTENSON, J. D. Contemporary Practice of the United States Relating to International Law. *American Journal of International Law*, Washington, v. 110, n. 3, p. 554-595, July 2016.

conclusion can be drawn from the analysis of the evolution of adjusted US assertiveness shown in Figure 1.

Figure 1 – Evolution of adjusted assertiveness 2, measured in number of STCs per 1 trillion dollars of exports (1995-2020)



Source: Own preparation (2024).

As is graphically evident, the AB crisis and the aggressive stance of the US towards the DSM did not negatively impact the US government's raising of STCs. This behavior remained stable and consistent with the historical series. This is clear from the high similarity between the slope coefficients of the trend lines for the periods 1995-2010 and 2011-2020, both indicating a slight increase over the years.

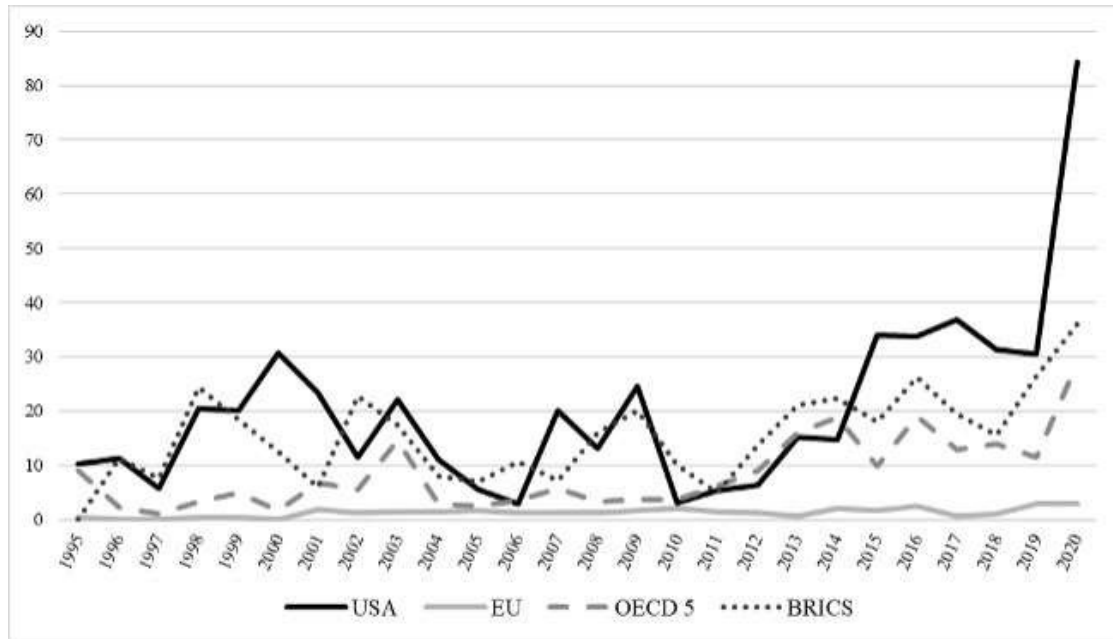
Additionally, this behavior aligns with that of other actors, showing a correlation coefficient above 0.6 for all cases. Therefore, the perspective that maintaining stable pure assertiveness in the STC arena would indicate US disengagement is eliminated, considering the reality of possible exponential increases in the assertiveness of other actors during the period 2011-2020.

5.3. *Assertiveness 3: trade remedies*

Finally, the last variable to be analyzed is assertiveness 3, which pertains to the behavior in the Trade remedies arena. Unlike the STC arena, the result, in this case, was even more surprising, as there

was a significant increase in US adjusted assertiveness in this arena, concurrent with the disengagement from the DSM.

Figure 2 – Evolution of adjusted assertiveness 3, measured in the number of trade remedies measures per 1 trillion dollars of exports (1995-2020)



Source: Own preparation (2024).

This increase, evident from the graphical analysis, is also revealed by the significant change in the trend line for 1995-2010 compared to 2011-2020. While the first period shows a slight upward trend over time, with a slope coefficient of 0.37, the second period reveals a strong upward trend, with a slope coefficient of 9.24. Thus, it is observed that after the onset of the confrontation between the US delegation and the DSM, there is not, as expected, a disengagement from this other WTO arena, but rather a significant increase in participation.

As seen in the figure, this increase, although shared with other actors, occurred on a much more significant scale for the US. While the EU, the OECD 5, and the BRICS observed respective increases of 93%, 372%, and 641% in their assertiveness 3 between 2011 and 2020, the US experienced an increase of 1460%. Therefore, unlike the STC arena, which saw the maintenance of a constant behavior and on a similar scale to other actors, the Trade remedies arena indicates a significant increase in adjusted assertiveness at a higher rate than the others.

6. Final remarks

The discontent of the United States with the WTO Appellate Body is a fact that is explicitly demonstrated by the blockade of new appointments to the AB. The literature on this topic identifies a strong disengagement of the US from the multilateral rules-based trading system represented by the WTO as a direct implication of this move. Consequently, a bleak future is projected for the organization, which would have lost the support and participation of its most significant player and a historical proponent of the free trade and rules-based trade principles that underpin the organization. However, a gap in this literature has been identified. By considering the DSM as the focal point of the multilateral trading system, it overlooks the other WTO arenas and assumes that US behavior in this Body is a true reflection of its stance towards the WTO and the system as a whole. To address this gap, the present study sought to analyze US behavior beyond the DSM, aiming to determine whether disengagement from this arena is replicated in others and what the implications of this might be for the international trading system. This was only possible through a solid foundation in a literature's subset that highlights the need and relevance of addressing WTO issues beyond the DSM, which provided the empirical tools necessary to achieve the objectives of this article.

As a result of applying these tools, it was observed that, despite a significant decrease in US assertiveness in the dispute settlement arena - consistent with what the literature predicts - there is persistence in assertiveness in the other arenas. With a maintained assertiveness in the STC arena of TBT and SPS and an increase in assertiveness in the trade remedies arena, a rather counterintuitive trend emerges compared to the literature, which anticipated widespread criticism of the WTO by the US and disengagement from the organization.

Thus, the confrontational position adopted by the US delegation over the past two decades regarding the WTO dispute settlement pillar should not be read as an ideal proxy for its behavior towards the system as a whole. Consequently, it cannot be affirmed that the US is entirely disengaged from the rules-based trading system it helped build. In this context, while the crisis at the DSM is extremely serious and indicates strong US discontent with an important pillar within the WTO's institutional design, it cannot be concluded that this implies a frontal attack on the institution's basic principles, such as the promotion of rules-based trade. This is because the US continues to use the mechanisms provided in WTO agreements in its trade policy, not abandoning them completely as a result of potential disengagement from the WTO.

This conclusion allows us to question the second implication that the literature points to regarding the DSM crisis: the virtual condemnation of the WTO, which would have lost one of its main supporters. By observing the US's continued support for the other WTO arenas, we can affirm that the US has not killed the WTO and that a more optimistic view of the organization's future emerges, with the possibility of viable reform.

In this context of relative optimism, three conclusions about WTO reform can be drawn. The first concerns its viability, which was considered uncertain in the context where the US was viewed as disengaged from the future of the rules-based trading system. The results indicate that the country remains engaged in the other WTO arenas, which consequently demonstrates its approval and interest in maintaining these institutionalized tools in the international context. This view is corroborated by US Trade Representative Robert Lighthizer's statement, who, in a Senate hearing in 2019, declared that the WTO is a "valuable institution" and that "if we didn't have the WTO, we would have to invent it while also outlining the main points of US criticism"²⁵. Lighthizer's statement, as one of the strongest proponents of the US aggressive stance towards the DSM, clearly indicates the US's willingness to maintain the WTO as the central organization in the multilateral trade system and its commitment to its reform.

This comment also highlights our second conclusion: that WTO reform should be specifically targeted. This is evident in the Trade Representative's advocacy for addressing only the "main points of criticism" in a potential reform. This conclusion is supported by the results of this study, which reveal that contrary to what the literature suggests, the WTO is not in total crisis, with several arenas operating normally within the context of implementing multilateral agreements. It is prudent, therefore, to apply the classic saying: "Don't throw the baby out with the bathwater." In other words, a complete overhaul of the WTO is not necessary, given that the problem is in specific areas, namely the DSM and the consensus rule²⁶, and that resolving these

²⁵ US SENATE COMMITTEE ON FINANCE. **Testimony of Robert E. Lighthizer Before the US Senate Committee on Finance – March 12, 2019**. Washington, 2019. Available in: <https://finance.senate.gov/imo/media/doc/ARL%20Finance%20Testimony%20March%202019%203.12.2019%20FINAL.pdf>. Access in: 10 July 2024. p. 2.

²⁶ BOWEN, T. R.; BROZ, J. L. The Domestic Political-Economy of the WTO Crisis: Lessons for Preserving Multilateralism. **SSRN Scholarly Paper**, Rochester, p. 1-38, Oct. 2022.

issues does not require compromising other healthy structures of the organization.

Finally, the last conclusion regarding WTO reform that can be drawn from the results of this study is that it should further strengthen the other arenas of the organization, particularly the STCs. Consistent with the literature, it is observed that the STC arena in TBT and SPS has proven essential in the informal dispute resolution and de-escalation of trade tensions between members. As our results clearly show, this is an arena that has remained relevant among the analyzed actors even during the DSM crisis, demonstrating its unequivocal importance for the effective functioning of the multilateral trade system. Therefore, strengthening this arena appears to be a natural path for reinforcing the WTO. As an efficient tool for conflict management, it is necessary to further enhance its operation and export best practices from the most efficient committees, such as TBT and SPS, to other WTO committees²⁷. By doing so, it is hoped to further strengthen the importance of this arena, notably more accessible to members, in regulating international trade and ensuring the predictability of the application of its rules.

These conclusions about WTO reform clarify the main result of this article, which was to integrate the literature on the WTO crisis and US behavior from an uncommon perspective, thereby allowing for a different conclusion from that anticipated by this literature. Although the impact of the US boycott of the DSM is significant, it was possible to understand that it cannot be taken as the sole reflection of US behavior towards the WTO. Expanding the picture has allowed us to observe the US's commitment to rules-based trade, which opens the door to a more optimistic and comprehensive conjecture about the WTO's future and its reform.

It is important to note that this paper does not have an end in itself, as several topics can be developed because of the results presented here. Since its analytical focus was on presenting this behavioral overview and analyzing its implications, it is evident that there is room for future research on the reasons behind this dual stance of the US delegation. It is possible to explore, for example, the perspective that the increased assertiveness in other arenas happened to replace the role previously played by the DSM. Thus, the results of this article invite the literature to a broader investigation of the topic, promoting academic debate and fostering new perspectives on the international trading system.

²⁷ WOLFE, R. Reforming WTO Conflict Management: Why and How to Improve the Use of 'Specific Trade Concerns'. **Journal of International Economic Law**, Oxford, v. 23, n. 4, p. 817-839, Dec. 2020.

References

AHN, D. *et al.* An Empirical Analysis on the WTO Safeguard Actions. *Journal of World Trade*, London, v. 52, n. 2, p. 4155-459, May 2018.

BACCHUS, J. Might Unmakes Right The American Assault on the Rule of Law in World Trade. *CIGI Papers*, Waterloo, n. 173, p. 1-40, May 2019.

BOHANES, J. Developing WTO Members as Users and Targets of Anti-dumping Policy. *Global Trade and Customs Journal*, Washington, v. 16, n. 10, p. 551-536, Jan. 2021.

BOWEN, T. R.; BROZ, J. L. The Domestic Political-Economy of the WTO Crisis: Lessons for Preserving Multilateralism. *SSRN Scholarly Paper*, Rochester, p. 1-38, Oct. 2022.

CARNEIRO, C. L.; NOGUEIRA, T.; REZENDE, F. C. Political Determinants of Assertiveness in the World Trade Organization (1995-2014). *In: ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION*, 112., 2016, Philadelphia.

DAUGRIDAS, K.; MORTENSON, J. D. Contemporary Practice of the United States Relating to International Law. *American Journal of International Law*, Washington, v. 110, n. 3, p. 554-595, July 2016.

HOLZER, K. Addressing Tensions and Avoiding Disputes: Specific Trade Concerns in the TBT Committee. *Global Trade and Customs Journal*, Washington, v.14, n.2, p. 102-116, Jan. 2019.

HOPEWELL, K. When the Hegemon Goes Rogue: Leadership amid the US Assault on the Liberal Trading Order. *International Affairs*, London, v. 97, n. 4, p. 1025-1043, July 2021.

HORN, H.; MAVROIDIS, P. C.; WIJKSTROM, E. In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees. *Journal of World Trade*, London, v. 47, n. 4, p. 729-760, Jan. 2013.

JONES, K. Populism, Globalization, and the Prospects for Restoring the WTO. *Politics and Governance*. Lisbon, v. 11, n. 1, p. 181-192, Mar. 2023.

LI, X.; ZHANG, X. Is the WTO Dispute Settlement System a Disaster for the US? An Evaluation of US–China WTO Disputes. *Journal of Chinese Political Science*, Houston, v. 27, n. 3, p. 567-584, Jan. 2022.

LINCICOME, S.; OBREGON, A. C. The (Updated) Case for Free Trade. Washington, 2022. Available in: <https://www.jstor.org/stable/resrep40429>. Access in: 10 July 2024.

MARUYAMA, W. H. Can the Appellate Body Be Saved? *Journal of World Trade*, London, v. 55, n. 2, p. 197-230, Mar. 2021.

MENISHIKOVA, A. M. Position of Joe Biden's Administration on the World Trade Organization. *Herald of the Russian Academy of Sciences*, Moscow, v. 92, n. 6, p. S529-S533, Sep. 2022.

PETERSMANN, E. U. How Should WTO Members React to Their WTO Crises? *World Trade Review*, Geneva, v. 18, n. 3, p. 503-525, May 2019.

THE WHITE HOUSE. Remarks by President Trump in listening session with representatives from the steel and aluminum industry. Washington D.C., 2018. Available in: <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-listening-session-representatives-steel-aluminum-industry/>. Access in: 10 July 2024.

THORSTENSEN, V.; VIEIRA, A. C. WTO Case Law on TBT and SPS: It Is Time to Review Some Concepts. *In: AMARAL JÚNIOR, A.; PIRES, L. M. O.; CARNEIRO, C. L. The WTO Dispute Settlement Mechanism: A Developing Country Perspective*. New York: Springer International Publishing, 2019. p. 99-126.

US SENATE COMMITTEE ON FINANCE. Testimony of Robert E. Lighthizer Before the US Senate Committee on Finance – March 12, 2019. Washington, 2019. Available in: <https://finance.senate.gov/imo/media/doc/ARL%20Finance%20Testimony%20March%202019%203.12.2019%20FINAL.pdf>. Access in: 10 July 2024.

WOLFE, R. Reforming WTO Conflict Management: Why and How to Improve the Use of 'Specific Trade Concerns'. *Journal of International Economic Law*, Oxford, v. 23, n. 4, p. 817-839, Dec. 2020.