CHAPTER TWO

PARTICIPATION – THE CAPACITY FACTOR

1. INTRODUCTION

At the coming into force of the WTO and up until the launch of the Doha Round in 2001, African Members of the WTO maintained the position that they had not participated in the Uruguay Round with full knowledge. They took the position that trade policy technical skill levels had been and were low. As a consequence, the Organization had to focus on implementation, training and developing the trade policy capacity levels of African WTO Members. They conditioned agreement on any new round of trade negotiations to significant investments in training and capacity building.\(^1\) In summary, the rudimentary capacity question raised by African countries in 1995 was that they had neither fully understood the Uruguay Round Agreements they had signed, nor the complex functioning of the rules-based system in its initial years.

The capacity question researched in this study related to the existence of expert and specialized skills of African delegations to operate skilfully and competently in the rules-based multilateral trading system. Specifically, it related to the development and presentation of proposals in regular work or negotiations; request for consultations in the dispute settlement system, establishment of dispute settlement panels, drafting submissions and sustaining arguments, and serving as panellists or Appellate Body Members. In regular committee work and negotiations, skilled capacity was linked to sustaining negotiations for building consensus on proposals; systematically analysing proposals of counter-parties; and, sustained engagement throughout the informal and formal process.

This chapter examines the "capacity-factor question" in relation to African Members’ WTO participation. Specifically, it reviewed the capacity factor question of African Missions to the WTO, from 1995 to 2010. The following questions were examined:

- In relation to other regions, what was the average size of African Missions to the WTO in the period examined? Where these based in Geneva?

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• Did legal capacity for WTO work exist? In what ways did the level of legal capacity affect use of the DSU?
• What measures were taken to offset or compensate for insufficient levels of WTO capacity?
• In what ways has the African Group, or its individual Members endeavoured to address the question of analytical capacity?
• In what ways has the level of capacity affected systemic WTO participation?

The broad question of the level and quality of participation of developing countries, including African countries, in the GATT/WTO system, has been linked to capacity constraints, unaffordable costs and human resource limitations in capitals and Geneva missions of these Members (Croome, 1995; Blackhurst, Lyakurwa and Oyejide, 2000; Ohiorhenuans, 2005; Low et al., 2006; Nordstrom, 2007; Wilkinson and Scott, 2007). On the basis of evidence, it is argued in this study that weak institutional capacities, in the public sectors of developing countries, explain only in part, and only in the “start-up” years of the WTO, the nominal, minimal and largely ineffective participation of African countries as a sub-set of the developing country group in WTO negotiations, regular committee work and dispute settlement. It is to be noted however that the existence of non-resident delegations in Geneva which was acute in the early years of the WTO compounded the factor of capacity constraint. It has been argued in this study that physical establishment of trade policy negotiators, on site, at the WTO in Geneva carry effects for the effectiveness and quality of legal and institutional participation/engagement in the rules-based multilateral trading system.


It is suggested that the specific years of 1995, 2001, 2005 and 2010 are important milestones for reviewing the evolution of the “capacity factor constraint” and its robustness as an explanation of the effectiveness and quality of African WTO Members’ engagement/participation in the rules-based multilateral trading system. Evidently, the capacity factor exercised a significant influence in 1995. The question remains the degree of influence this factor continued to exercise 15 years later in 2010.

(a) The State of Play in 1995

With the establishment of the WTO in 1995, half of the 33 African WTO Members had representation in Geneva. However, the 50 per cent Geneva-based representation was the lowest in comparison with Members in other regions. For example, representation for North America and the Middle East were 100 per cent of their WTO Members; 96.5

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2 1995 marked the establishment of the WTO; the DDA negotiations were launched in 2001; 2005 was original mandate to conclude the DDA; 2010 reflected the 15 year end period of this study.

3 About 30 per cent of African WTO Members had representation in Brussels; 13 per cent were represented directly through their capitals and 7 per cent in other locations, mostly in other European cities – Bonn, London, and Paris.