AFRICA IN THE FIRST DECADE OF WTO DISPUTE SETTLEMENT

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"... We are distrustful of any rules and institutions which operate in a way to keep Africans perpetually as primary producers..."
Sir Abubakar Tafawa Balewa, Prime Minister of Nigeria (1962).

"... For you know as well as we do...that right, as the world goes, is in question only between equals in power, while the strong do what they can and the weak suffer what they must...."

1. Introduction

The conclusion of the Uruguay Round of multilateral trade negotiations was a turning point in the history of global economic relations.\(^1\) Besides ushering in the

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WTO, whose Members agreed to fourteen substantive agreements, many of which specify the coverage and application of the more general provisions in the initial General Agreement on Tariffs and Trade (GATT), it brought about a certain momentum to the process of further economic liberalization that reverberates to date. Whereas the GATT covered trade in goods and only applied to a very limited extent agricultural and textile products, the WTO covers trade in services and intellectual property rights, as well as trade in all goods, including agricultural and textile products. In addition, there have been intense efforts to extend the WTO’s reach into other areas such as investment, government procurement and trade facilitation. Although with the exception of trade facilitation over which WTO Members have already agreed to negotiate, proposals for negotiations in the other areas have met with stiff resistance from developing countries, the jury is still out as to how long such resistance will last.3

Over the past decade, there is evidence that international trade relations have indeed become much more legalized under the WTO, pursuant to the adoption of the Uruguay Round agreements and, in particular, the Dispute Settlement Understanding (DSU). The DSU introduced a variety of reforms to the old GATT system, including greater clarity of rules, binding decisions, and a standing Appellate Body.4 This highly legalized and judicialized WTO system applies to a much broader membership and subject coverage.5 From the 23 original members under the GATT,

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5 Article 1.1 of the DSU spells out the reach of the dispute settlement system stating that the DSU “shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the “covered agreements”).” The Appellate Body in