REVISITING THE NON-PARTICIPATION OF AFRICAN COUNTRIES IN THE WTO DISPUTE SETTLEMENT MECHANISM: DOES IT STILL MATTER?

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1. Introduction

Perhaps the most important feature of the World Trade Organisation (WTO) today is the multilateral trade dispute settlement mechanism that it instituted. Unlike what previously obtained under the General Agreement on Tariffs and Trade (GATT), which had

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been heavily critcised for being political and power-based, the WTO introduced a rule-based adjudication system that was expected to be fair, transparent, and power-blind. The Understanding on Rules and Procedure Governing the Settlement of Disputes (DSU) implemented a system with a number of novel features aimed at ensuring that its utilization and effectiveness were greatly enhanced, and promised substantive justice for stronger and weaker countries alike. Significantly, the DSU instituted a “negative consensus” voting mechanism for the adoption of panel reports, as well as an Appellate Body. The DSU prescribed fixed time limits for disputes unlike what previously obtained under the GATT. In addition, the DSU created a detailed procedural system divided into the pre-panel consultations or mediation phase, the panel (and Appellate Body) phase and the post-ruling and remedies implementation stage, each with stipulated timelines.

As a result, the WTO Dispute Settlement Mechanism (DSM) has been widely commended as a success as evidenced by the unprecedented level of cases that have been litigated since the advent of the WTO. Developing countries, in general, have become increasingly active in utilizing the system. However, although

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3 For instance, under Article XXII and XXIII of GATT ‘47 Contracting Parties were to engage in consultations for the settlement of disputes, and if such consultations proved unsuccessful, the entire GATT membership were to consult with the disputing parties to resolve the issue. Furthermore, a party to a dispute was able to block the process at any stage and there were no clear deadlines for the dispute settlement process, all of which led to questions about the quality of decisions and enforceability issues. Amin Alavi, African Countries and the WTO’s Dispute Settlement Mechanism, Development Policy Review 25 (2007) 1, p. 26.

4 Id.


6 Andrew Guzman & Beth Simmons, International dispute resolution: power play and capacity constraints: the selection of defendants in World Trade Organization disputes, Journal of Legal Studies 34 (2005), pp. 557, 559. (Guzman and Simmons assert that developing countries now litigate, both as