



Reforming the WTO Dispute Settlement Mechanism: Challenges and opportunities for developing nations

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Abstract

The General Agreement on Tariffs and Trade (GATT) and the International Trade Organization (ITO) were founded in the 1930s at the Bretton Woods Conference, which was a response to the enduring presence of disputes in human civilization. But because to its flaws and shortcomings, the GATT's regulations fell short for the member states that are still young. It's mostly about how to make the World Trade Organization's Dispute Settlement System more effectively. The World Trade Organization's Dispute Settlement Mechanism (DSM) is looking for a quadripartite mercantilism system that is more dependable and secure. is run by a deal called the Dispute Settlement Understanding (DSU). Dispute Settlement Understanding (DSU). Looking at the Public-Private Partnership (PPP) approach and making it better within the framework of developing nations is the primary goal of this research.

Keywords: General agreement on tariffs and trade, world trading organization, dispute settlement understanding, dispute settlement mechanism, director-general

Introduction

In 1995, The WTO came into being. The Marrakesh Agreement set it up. The General Agreements on Trade and Tariffs (GATT), the World Trade Organisation (WTO Agreement) took its place. The legal and political cornerstone of the international trading system is the WTO Agreement. The WTO is an international organisation in contrast to GATT group. In any case, the GATT is part of the WTO Agreement. Since result, GATT became a document without any organization to administer it. Before the GATT, there was the International Trade Organization. 6. The terrible effects of World War II made world leaders start to think about the idea of a global trade group. While negotiations were underway to establish the International Trade Organisation, the GATT was signed in Geneva in 1947. GATT was intended to be a short-term arrangement until the ITO became a legally recognized organization, and it was intended that GATT would be incorporated into the ITO. Some nations decided to implement GATT provisionally as of January 1, 1948, since they were unable to wait for the various permission from

governments needed for the ITO to go into effect. 10.

It is the "unique contribution to the stability of the global economy" and the cornerstone of the international trading system, according to the World Trade Organisation (WTO), which also refers to dispute resolution as the dispute settlement system (DSS). A dispute arises when a member nation implements a trade policy measure or takes another action that some other members believe violates WTO regulations or fails to fulfil its responsibilities. When nations sign up for the WTO, they agree to use the global conflict settlement process instead of going after other members individually if they think those other members are breaking trade rules. This means following what the protocols, such as the Dispute Settlement Understanding, and honouring rulings, particularly those made by the WTO body in charge of dispute resolution, the Dispute Settlement Board (DSB). According to one According to the past Director-General of the WTO, the WTO's conflict settlement method is "the world's busiest international court system right now." Gaspar Mavroidis from Columbia Law School and the dispute settlement system is "going strong" and "there is no

sign of weakening" on its twentieth anniversary, according to Chad P. Bown of the Peterson Institute for International Economics. The WTO's dispute is one way to increase commerce. resolution process.

The justices selected for the WTO's Supreme Appellate Body were disliked by the United States. effectively paralyzed the organization's dispute resolution process since 2019. No final decisions can be made without an Appellate Body that works. The WT's have been hurt by this since then. efficacy. Many nations, notably China, Australia, and Mexico, have criticized this decision. In 2022, they pushed for a plan to start nominating judges again. but the United States vetoed it once again.

In addition to There may be a conflict settlement process that includes the WTO Secretariat, the Judges, independent experts, the Appellate Body, the DSB panels, and other specialised groupings. In a case, parties and third parties could also be involved. Through the Dispute Settlement Body (DSB), the General Council carries out its duties under the DSU. Like the General Council, the DSB is composed of representatives from each WTO member. The DSU must be administered by the DSB, which is in charge of managing the dispute resolution procedure as a whole. Additionally, it has the authority to establish panels, authorise panel and appellate body reports, monitor the implementation of rulings and recommendations, and permit the stopping of tasks under deals that are covered. The DSB meets as many times as needed to meet the goals set out in the DSU.

Literature Review

Bahri, Amrita. (2016) ^[1]. Managing WTO Conflicts with the Private Sector: Brazil's Successful Story. 10.54648/TRAD2016027, Journal of World Trade, 50. 641-674. In order to successfully and economically traverse The WTO's Dispute Settlement Understanding (DSU) approach requires developing country members to enhance their dispute resolution capabilities, according to a number of academic studies. Participating in WTO agreements and being familiar with WTO regulations is one thing; understanding how to use and benefit from those agreements and regulations in real-world situations is quite another. The current study aims to do a thorough analysis this last one, with an emphasis on extensively examining PPP (public-private partnership) tactics that could aid in growing nations make efficient use of WTO DSU rules. In order to do this, the paper looks at how Brazil, one of the developing nations that uses DSUs the most, has increased its involvement in DSUs by including its private sector in the way that WTO issues are settled. Once the PPP strategies used by Brazil's businesses and government are known and evaluated, they might help other growing countries choose their own PPP strategies. resolving WTO disputes.

Inam Ul Mansoor, Sheikh et al. (2022) ^[8]. WTO and Developing Countries: Inequalities in the WTO Dispute Resolution Process. 10.9756/INT-JECSE/V14I2.490, 14. 4441-4449. Changes to the old way of settling disagreements set up by GATT 1947 were promised by the Uruguay Round of Agreement. According to the WTO, sanctions imposed under the former GATT were guaranteed to be ineffective and could no longer be unilaterally

rejected. WTO 1995 also promised to be impartial toward all member countries, founded on a more legalistic strategy to safeguard the negotiating strength of member nations, which was determined by the size of each member nation's market. LDCs, rising nations, and wealthier nations were all anticipated to gain as a consequence. Despite the fact that WTO data indicates that the US, with the assistance of many developing nations, was the one who succeeded in getting the GATT's veto provision removed, the dispute resolution agreement was thought to be in favour of developing nations. A small number of developing nations initially embraced the new DSU system, but the majority opposed it because they demanded preferential treatment. 2 Most Least-Even as third parties, developing nations are hesitant to approach the DSM because affluent states often treat their governments unfairly. (Those who are impacted by the infraction but are not directly engaged in the matter that a nation submits to the DSM as a complaint are regarded as third-party WTO members. In order to assist the plaintiff's cause, third parties participate in a judicial process by acting as the complainant's "next friend." It is unfortunate that the poorer developing countries do not use the DSM more, since this strategy may often lead to more success than the negotiated consensus approach.

Lopes, Jacqueline. (2019) ^[11]. The method for settling disagreements at DSS, the World Trade Organisation (WTO), has shown its worth in fostering nations over the course of more than two decades. When compared to other international law instruments, the DSS offers a number of advantages, including the ability to enforce its regulations by retaliation. Rules are crucial for ensuring fair play in global commerce, but they must be upheld in order to produce the desired results. Developing nations might utilize the rule-oriented DSS to increase their negotiating position, despite the fact that it still confronts obstacles. Developing nations that experience imbalance in WTO disputes must look for other ways to demand fair trade since economic power is important in talks. This essay attempts to demonstrate how developing nations might utilize the DSS to counteract economic challenges from an interdisciplinary standpoint. This kind of study takes into account how international talks are affected by WTO rulings and regulations.

Lekgowe, Gosego. (2012) ^[10]. Developing nations (along with the least mature) have a unique place in the WTO multilateral system because of their degree of development and the issues that arise from it. The WTO's constitution acknowledges this and urges constructive steps to guarantee developing nations' access to the trade advantages inside the international WTO framework. To ascertain in order to determine whether there are sufficient and practical constructive actions to assist developing countries in asserting and defending their trade rights in the WTO Dispute Settlement System (WTO DSS), this article examines the WTO Understanding on Dispute Settlement (DSU) from their perspective. According to the study, the majority of WTO DSS initiatives intended to aid developing nations are meaningless and have no real advantages for such nations. They're hardly 'positive measures.' Additionally, it is said that impoverished nations cannot afford the WTO DSS remedies. In order to consider the concerns and requirements of developing nations, the study

makes the case for reforming the WTO DSS.

Xiao, Ruyi. (2022) ^[15]. A new era was ushered in by global commerce January 1, 1995. The World commerce Organisation (WTO) was established to create, modify, and implement regulations for global commerce ^[1]. With 164 members as of right now, the WTO is the biggest international economic organisation in the world. The WTO addresses a wide range of topics, including intellectual property, trade in products and services, and other sectors ^[3]. The intricate trading process would inevitably lead to a variety of trade disputes, and consequently, one of the WTO's primary functions is dispute resolution. One of the WTO's distinctive contributions to international economic stability The mechanism for resolving disputes (DSM) is made up of is considered the organization's main tenet ^[4]. In general, DSM is successful and of high quality. It guarantees the free, equitable, and predictable flow of commerce and offers a dependable trading platform to all people worldwide ^[5]. However, nothing is flawless, and the DSM has its share of flaws. Additionally, people with varying degrees of development are treated somewhat differently. Even though the DSM was created by the WTO to help the weaker nations, developing nations continue to face disadvantages in reality. This essay will examine the benefits and drawbacks of the DSM.

GATT: Predecessor of WTO

Even while the US has always engaged in international commerce, only during the Great Depression did it start to play a major influence in determining global trade policy. One explanation for this This is because the US Constitution says that the executive body is in charge of foreign policy and Congress is in charge of trade policy and regulation. So, there was a tug-of-war between the groups over trade policy., and they sometimes disagreed on how best to balance trade promotion and protection. The Reciprocal Trade Agreements Act of 1934, however, was an experiment that the US started in 1934. Congress consented to allow the executive branch to negotiate bilateral trade agreements with the intention of increasing employment. (A bilateral agreement is one that is made between two parties, such as the United States and another nation.)

Bilateral negotiations under this statute were somewhat restricted throughout the 1930s, and in actuality, it accomplished little to increase both internal and international commerce. But the Second World War prompted more extensive experimentation by policymakers. In order to increase and regulate international commerce, In the 1940s, the US and the British government worked together to make two inventions. These sets of rules were known as the International Trade Organisation (ITO) and the General Agreement on Tariffs and Trade (GATT). A short-term agreement between several nations to establish regulations and discuss removing trade barriers was known as the General Agreement on Tariffs and Trade (GATT). The Reciprocal Trade Accords Act provided the executive with the concept. branch temporarily talk to Congress about trade deals accords.

Furthermore, it seems that American corporate executives have taken the lessons from the demonstrations in Seattle in 1999 to heart. As stated by the CEOs of America's biggest and most prominent corporations who are members of the

Business Roundtable, "we must first build a national consensus on trade policy." It is imperative that international labour and environmental concerns be carefully considered in order to build this agreement. The Roundtable noted in its conclusion that the question is not whether these concerns are related to trade policy. They emphasized that both supporters and opponents of trade must come up with a plan-a trade policy method that helps officials solve these issues in a good way (Business Roundtable, 2001). For the most part, the Roundtable said that we need to identify areas of agreement and recognize how trade policy affects the accomplishment of other policy objectives.

Transition From the GATT to the WTO

At the 1944 Bretton Woods Conference, the General Agreement on Tariffs and Trade (GATT) was initially debated. It was here that the World Bank and the International Monetary Fund were founded, and the groundwork for the post-World War II financial system was laid. The third component of the device is the suggestion made by conference attendees to establish an additional organisation, which they named the International Trade Organisation (ITO).

When draughting a charter for the proposed ITO, the United States and the United Kingdom took the lead. UN, which was just formed. When the Havana Charter was signed in March 1948, these talks came to an end. This is the main reason the Havana Charter never became law: the U.S. Senate did not agree with it. So, the ITO never came into being.

At the same time, talks were going on for an international deal to lower price barriers on both sides. Since these talks took place, the GATT was signed on November 30, 1947. The United States was one of the countries that agreed to the GATT. It went into effect on January 1, 1948, under a "Protocol of Provisional Application" while talks about the ITO charter were still going on. The people who were negotiating thought that the deal would fall The GATT survived the ITO's disintegration since it was within its control, but it lacked a rational institutional structure.

Dispute settlement in the WTO

A trade dispute arises within the WTO when one country enacts a trade policy measure or does anything else that another country feels is against the WTO agreements. The WTO's dispute resolution procedure in this instance was made to help poor countries grow in a way that is fair, equal, and long-lasting. The way conflicts are solved changed from based on power to base on rules, and from a diplomatic to a legalized one.

A crucial component of the global trading system and the WTO's special contribution to global economic security is dispute resolution. The WTO features a new body called the Dispute Settlement body (DSB), which is one of the main ways that it differs from the GATT. The DSB meeting is attended by all World Trade Organisation members. During the Uruguay Round of negotiations, this organisation was established to resolve any disputes arising from WTO agreements. The "Understanding on Rules and Procedures Governing the Settlement of Disputes," or DSU, served as the source of its regulations. Article 2.1 of the DSU gives

the DSB the authority to establish panels for dispute settlement, receive reports from panels and appeal bodies, monitor the use of the findings, and allow punishments if the decisions are not followed.

- **Talks and negotiations between parties:** In a WTO accord, a WTO member may request to speak with another member, and the other member may do so within 30 days. If the dispute is not resolved after sixty days, the member who is complaining may request a panel.
- **Conciliation:** Mediation, and good offices are voluntarily done things that are carried out when both parties to the conflict consent to them. The parties' position and the proceedings are secret and do not affect any party's rights in any subsequent proceedings.
- **Arbitration:** is a good way to resolve conflicts when both parties have properly specified the pertinent topics to be decided. 31 The parties to the arbitration choose the arbitrators, or the Director-General may choose one for them if they are unable to agree.
- **Panels and the Appellate Body's decision-making:** A written request for a panel must include the precise measure in issue as well as a succinct but understandable synopsis of the case that properly demonstrates the issue. Following its formation, the panel hears arguments from the contending parties both orally and in writing.
- **Implementing and following through on the DSB's suggestions and decisions:** As soon as Following approval of the panel report and any AB reports, the member is required to inform the DSB of its preparations in the event that a WTO judgement finds that a defence member violated a WTO agreement. You have 30 days to complete this. The participant will get a "reasonable period of time" to comply if it is "impracticable" to do so right away.

Participation challenges at WTO

1. Political scientists, economists, lawyers, and academics have all written extensively on the difficulties that different developing nations have participating in the WTO DSM. Monitoring international trade practices and finding or looking into trade obstacles have proven difficult for poor nations. They have had difficulty reaching an agreement or holding fruitful bilateral or multilateral discussions. Additionally, they have encountered challenges while attempting to challenge trade restrictions in WTO DSU. Furthermore, even as soon as the Panel or Appellate Body (AB) has rendered a positive decision, developing nations have often struggled to maintain compliance. The following are the main causes of these barriers that have prevented developing nations from accessing WTO DSU:
2. First and foremost, developing nations lack the monitoring capabilities needed to keep an eye on international trade practices, spot trade restrictions, and make sure violating Member States comply.
3. Their effective access to WTO DSU is further hampered by a lack of internal legal and economic expertise as well as familiarity with WTO regulations, because these are the things that are needed to look into a trade barrier, hold discussions, and make a decision in

a WTO case.

4. Their ability is further limited by a lack of funding, which may be necessary to hire economic and foreign trade experts to help with planning, lawsuits, and putting the plan into action phases (particularly when domestic knowledge and experience are lacking).
5. The government's lack of political, diplomatic, and subject-matter competence is another notable limitation. This is because Coordination of duties and information gathering with the affected industry, foreign governments, and other WTO departments can be required. Effective bureaucracy and political expertise are also necessary to make the best choices on the bilateral or multilateral actions that need to be taken in cases of infringement.
6. It is difficult to get supporting documentation on trade obstacles, their consequences, the kind and degree of damage they inflict, and their contradiction with the WTO due to inadequate information routes and inefficient governance systems.
7. After the Dispute Settlement Body (DSB) adopts a positive finding, insufficient powers of retribution and bargaining cause problems during discussions or in guaranteeing compliance.
8. The governments' apprehensions of unfavorable diplomatic and economic reprisals from more powerful market forces and influential trading partners further encourage them to avoid any conflict via official discussions or legal action.
9. Developing nations' capacity to man oeuvre and use the DSU provisions for their valid trade interests is further limited by the fact that business companies and government officials don't know about or understand the benefits of WTO DSU provisions.

Functions of WTO

Although the WTO serves several purposes, its main objective was to address the prisoner's dilemma. It gives people a way to get together and talk about the plan of the list of things in order to facilitate trade and communication and settle disputes. Some of the WTO's noteworthy roles are covered in this paper.

- **Administration of agreements:** In addition to many additional agreements reached after the Uruguay Round, The WTO is in charge of making sure that the 29 deals that were made during the Uruguay Round in 1994 are carried out properly. The WTO is involved in the running of the agreement and its subsidiary accords, such as the market access and tariffs committees, which have regular meetings in Geneva. These committees support the General Council of the WTO.
- **Implementation of lowering trade barriers:** The countries that took part in the Uruguay Round chose to lower taxes and other trade barriers; and oversees their implementation.
- **Examination of member's trade policies:** To make sure that WTO rules are followed by member countries' trade practices, the WTO frequently reviews them. It was believed that the Uruguay Round was a single endeavour. In other words, every participant of the trade discussions round would need to approve every side agreement between countries. This is because any

agreement reached during a round of trade talks is binding on all parties. However, the Uruguay round ended with issues with the side agreement, thus additional agreements were made. Plurilateral agreements were the name given to these accords. In other words, only the participating nations were permitted to continue them. Among these agreements are those pertaining to government procurement, civil aviation commerce, dairy goods, and cattle products.

- **Collection of foreign trade information:** The WTO gathers data on member countries' export-import commerce, different trade policies, and other trade statistics.
- **Settlement of disputes:** The WTO offers conciliation procedures to help member countries resolve trade disputes amicably. The WTO typically deals with three primary kinds of disputes. These include complaints, situation conflicts, and disputes involving violations and non-violations. The WTO uses the two primary dispute resolution methods-rule-based and power-based modes of government system-to decide all of these conflicts.
- **Consultancy services:** The WTO monitors global economic developments and offers advisory services to its member countries.
- **Forum for negotiation:** Member countries of the WTO engage in ongoing negotiations to swap trade concessions. In other words, via rounds of trade talks, the WTO offers a means for individuals to swap promises, and concessions. Among other topics, the member countries talk about trade barriers pertaining to products, services, and intellectual property.
- **Assistance of IMF and IBRD:** Additionally, the WTO helps the IMF and IBRD provide consistency in the execution of universal economic policy.
- **Code of conduct:** Rules are established by the World Trade Organisation for business around the world.

Accession and Membership

In order to start the WTO membership procedure, Article XII says that an official written request for entry must be sent. The General Council thinks about this idea and sets up a Working Party to look over the request for admission and make suggestions to the Council of the General, which can include a Protocol of entry. All WTO members are welcome to join the Working Party.

According to established protocols, the applicant government must provide a memorandum outlining every facet of its legal and commercial framework to members of the Group of Worker. This report is what the Working Party used to do their thorough fact-finding. After looking at every part of the new government's trade and law systems, the Working Party moves on to the more important part of the international talks that involve entry, which is deciding on the admission terms and conditions. These terms and conditions will ultimately be included into the Protocol of Accession and the Working Party's Draft Report. They include promises to follow WTO rules and regulations after joining, as well as any transitional periods that may exist. Concurrently, the applicant government negotiates concessions and obligations about Access to markets for goods and services through two-way talks with Working

Party members who are interested. What are the particular advantages of allowing the applicant to join the WTO for WTO members are decided by this bilateral procedure.

Following completion and approval of the Working Party's Draft Report, Protocol of Accession, and market-access guarantees for goods and services, the "accession package" is sent to the General Council or Ministerial Conference for approval. are happy with them. Once the Protocol has been accepted, the application can sign it. The applying government joins the WTO thirty days after telling the WTO Secretariat that the approval process is complete process.

The question of whether a country enters the WTO as a developed or developing nation, as well as when it may join, are often posed. Every WTO accession negotiation includes these issues. In essence, this entails allowing for some latitude in applying WTO regulations and sanctions, a decision that is made during the negotiating process. The applicant government's ability to swiftly adapt its commerce and legal system to the demands of WTO regulations and standards is crucial, even if accession procedures might take years to complete.

Conclusion

One pillar The World Trade Organisation remains a key component of the global economic system. Its function in promoting international commerce, settling conflicts, and promoting economic cooperation is more important than ever as the global economy becomes more complex. The World Trade Organisation must implement the necessary changes to handle new trade concerns and guarantee that the advantages of international trade are distributed fairly. The World commerce Organization facilitates commerce between nations. 164 nations are part of the WTO. All three international trade regulatory organizations—the ITO, WTO, and GATT-sought to control and liberalize trade systems in the global economy. As previously stated, The US Congress couldn't agree to the Havana Charter in 1948, so the ITO from being established.

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