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WTO DISPUTE SETTLEMENT SYSTEM AND DEVELOPING COUNTRIES:

AN OVERVIEW

Prerna Tiwary
Assistant Prof. of law
Jharkhand Rai University

ABSTRACT

The World Trade Organization's (WTO) Dispute Settlement System (DSS), which was established in 1995, is used to resolve trade-related issues between WTO member nations. The World Trade Organization's (WTO) dispute settlement system (DSS), which is known as the "Jewel in the Crown" of the WTO, is also the busiest of its type. While this indicates its success, the system is far from ideal, and it has received criticism from both within and outside its user base. Developing countries are increasingly assuming a considerably larger proportion of global production, trade, and investment, as they should. Their amount of participation in the conflict resolution system, on the other hand, is an important feature of academic research. There are various causes for developing countries' lack of participation, but the major issue is a lack of confidence. The developing countries' division put them in a more vulnerable position. The aim of this research paper is to identify the member countries participating in it and whether the developing countries have a disadvantage position in WTO Dispute settlement system.

Keywords: Developing countries, WTO Dispute settlement mechanism, Least developed countries

INTRODUCTION

The World Trade Organization (WTO) is an international organization founded in 1995 with the goal of liberalizing trade by removing any trade barriers and assuring a level playing field. It establishes a legal and institutional framework for enforcing and monitoring agreements, as well as resolving disputes over their interpretation and application. The Dispute Settlement Mechanism (DSM) is often referred to as the "crown jewel" of the world trade organization (WTO). The Dispute Settlement System (DSS) is a forum for resolving trade issues between member nations, and it employs both political dialogue and adjudication.. Even though it is a noteworthy achievement of the

WTO, it has been claimed that the DSU is biased towards developed nations, which have far more resources and an army of staff lawyers to prosecute trade disputes, which is difficult, expensive, and time-consuming for developing nations and least developed nations.

Prior to the DSU, trade-related disputes were regulated by the General Agreement on Tariffs and Trade, 1947 (GATT). GATT also provided a platform for dispute settlement for the resolution of trade disputes, but it had no flaws. It basically permitted member states to pick and choose which judgments to implement because the regulations were contradictory, there was no opportunity to appeal, and there were no teeth to enforce rulings.[1] Due to this scope of improvement in GATT dispute settlement practice it resulted in a paradigm shift from a system based on economic power and politics to the one based on the rule of law. Steger and Hainsworth has point out that this new rules and procedure is "especially favorable for smaller countries", because they would not have the requisite negotiating strength in regarding to larger powers. [2]

STATEMENT OF THE PROBLEM

Despite their ostensible advantages, the great majority of developed nations have remained passive participants in the WTO dispute settlement mechanism. This raises a concern that they aren't getting the most out of the WTO legal system. On the other hand India was one of the founding members of both GATT and WTO, and it follows WTO standards carefully while conducting international trade. When most of the developing nations were hesitant to approach the DSU to determine their rights due to the high costs and lack of technical and associated expertise, India was an early adopter of the DSU at both the GATT and the WTO. Since 1995, out of the 164 member states India has been the 5th most active participant in cases before the DSU.[3]

RESEARCH QUESTION

A question here arises: if India, as a developing country, can engage actively, what is the issue that other developing countries experience that prevents them from doing so? Is it the inadequacy of dispute settlement procedures, or are there other shortcomings faced by developing countries?

OBJECTIVES OF THE RESEARCH

In view of these issues, the object of this research paper is to address following questions:

1. Who are the participants in the Dispute settlement system? Is it equally used by developed, developing and least developed nation?

2. Evaluate the participation of developing countries and what are the reasons behind lack of engagement by the vast majority of developing countries?

SCOPE OF THE RESEARCH

There is an area of scope of research through which the paper will provide suggestions and recommendations that would allow the DSS to achieve its purpose while also meeting the expectations of its member states.

METHODOLOGY

The suggested study used qualitative and quantitative research methodology. The information presented here was gathered from secondary sources, corroborated with reports published by government organizations, as well as reviewed newspaper articles, journals, various websites, research papers, thesis, and case laws. Qualified journals, research paper and thesis are only reviewed.

LITERATURE REVIEW

The WTO was established in 1995 with the goal of facilitating trade, providing a platform for trade talks, resolving disputes. The Uruguay Round discussion, which lasted eight years from 1986 to 1994, led in the founding of the DSU.[4] The aim of the 1995 DSS was to solve these flaws by enacting a slew of reforms, including practically automatic adoption of DSS judgment, the right to a panel, the potential of punishment in cases of non- compliance, and stricter deadlines. [5] These improvements were crucial for developing countries and least developed countries because they helped establish a rule- based government rather than a power- based one. The "negative consensus method" replaced the consensus- based approach for establishing panels and adopting and appellate body findings, for example. This means that unless a decision is unanimously opposed, it is automatically adopted and regarded binding. Despite the fact that it is mainly a theoretical option, negative consensus ensures the almost unavoidable implementation of DSS judgment and recommendations.[6] The DSS has received 586 complaints[7] in its 24 years 14 of operation. Over 350 rulings[8] have been issued as a result of the complaints, and there has been compliance rate of 90%[9]. This is a large number of cases if compared with other major international adjudicatory bodies like the International court of justice (1945), the International Tribunal for the law of the sea (1982), and the international criminal court(2002) which have received only 177[10], 27 [11], and 27 [12] cases respectively. Comparing the WTO DSS with former WTO 1947 which have been in existence for 48 years only received 127[13] complaints. The increase in frequency of cases indicated that there was a growing confidence in the mechanism to resolve trade dispute and ensured the protections of rights and obligations of member states.

- **PARTICIPANTS IN THE DISPUTE SETTLEMENT SYSTEM**

Weiler[14] noted that after the shift of attention towards compulsory adjudication, binding outcomes and creation of Appellate Body, this will advantage especially for the meek economically and politically unequal.

But in contrast **Hunter Nottage (2009)[15]** in his working paper mentioned that participation of developing countries in dispute settlement mechanism is highly concentrated with a few main users. Only five emerging countries are responsible for 60% of all the activities. 90% of the activity is covered with the help of eight other developing

countries. While this practice shows that certain developing countries, especially Brazil and India, are making efficient use of the system, this concentration of activity by few developing countries underscores the fact that the vast majority of developing countries are not present in the process. This is especially true for LDCs, with Bangladesh now being the only LDC to initiate negotiation in a dispute. **Aarshi Tirkey (2019)[16]** the above claims were validated by the author in her research paper. In the table complied by author had India as 5th active participant and Brazil as 6th active member. The table also reflected that four out of the top 10 users of dispute mechanism are categorized as developed countries i.e. Unites state, European Union, Japan and Canada. The research also pointed out that even though the developed countries account for only 25% of the WTO membership, they have initiated nearly 60% of the dispute. The figures on related to participation of LDCs are worse; they represent 1/5th of the membership of the WTO, but constitute less than 1% of participation in the DSM.

- **IS IT THE INADEQUACY OF DISPUTE SETTLEMENT PROCEDURES, OR ARE THERE OTHER SHORTCOMINGS FACED BY DEVELOPING COUNTRIES?**

There is a special and differential treatment provided to developing countries and least developed countries. Due to legal, economic and political barriers that developing least developed nations experience in filing dispute, the WTO provides for " special and differential" for these nations to ensure that they have a level playing field. These include, for example, "special attention" to developing nations' specific concerns and interests, [17] as well as adequate time to prepare and present their defense[18] and the ability to request a faster DSS procedure.[19] **Anabel González, Euijin Jung** (2020)[20] in their research paper stated that now developing countries are emerging as an important actors in global trade, since 200. The export has increased from $2,239 billion in 2000 to $8,477 billion in 2017. This rapid trade growth has resulted in bringing prosperity across the world. **Johannesson and Mavroidis (2016)[21]** in their research paper pointed out that the 15 largest developing countries have a higher record of "winning" when they are complainants than when they are respondents. This confirms that if a country likely to feel that they are potential winner they file a case.

In contrast to this **Nottage**[22] has identified a number of issues that prevent poor countries from participating in WTO dispute resolution proceedings. He also observed that developing- country trade is occurring in high proportion under preferential rules that are not part of enforceable WTO dispute settlement proceedings. According to him, one key stumbling block is that poor countries lack competence in WTO law as well as sufficient financial resources to hire external WTO lawyers. **Bown**[23] agrees, arguing that the WTO DSS is unnecessarily technical and costly, making it extremely difficult for developing nations to overcome the human and financial resources required to complete the procedure. Another major issue with the WTO DSU is that it is unable to properly enforce judgments through retaliation. According to keen observers, developing nations with limited domestic markets are unable to impose substantial economic or political penalties on larger WTO members to provide the necessary pressure to encourage compliance.

The majority of developing nations lack local systems to identify and report trade impediments to WTO lawyers, therefore they are discouraged from using the WTO DSS.[24] to correct this anomaly, and Shaffer proposes that emerging countries seek support from development agencies and foundations.[25]An independent Special Prosecutor or Advocate, according to another notable academic, may be hired to identify alleged WTO infractions on behalf of poor nations. Another factor for poor countries' reluctance to launch WTO disputes is their fear of political and economic pressure from developed countries, according to some. They are mainly unable to fight threats to withdraw preferential tariff benefits or foreign aid due to their vulnerability in areas like as development assistance and preferential market access. Although it is impossible to predict how these pressures would manifest, many developing nations believe that they will as a result of their decision to file a WTO challenge.[26]

Lekgowe further claims that the clause in Article 12 (10) DSU that allows developing countries to extend their period has overriding restrictions. He claims that the benefit it confers is only available to a developing country that is a defendant; a developing country that is a complainant is not eligible for the extension of time. Furthermore, the provision only applies to time extensions for consultations, not for time frames at the implementation stage. [27]

CONCLUSION

There is no generic answer to the question whether it is the developing countries lacking in resources or the WTO dispute system has been inadequate in resolving the trade dispute. According to some analysts, the DSS has failed developing countries, while others claim that participating in the WTO DSS has benefited some developing countries. In addition, when compared to other similar international organizations, the WTO's dispute resolution system might be regarded successful.

This research examined such notion, focusing on the fact that the vast majority of developing nations have not actively participated in the WTO dispute resolution system. It examined the many factors typically cited as reasons for low involvement, noting that some are no longer relevant, while others, while crucial when they emerge, may not occur frequently in actuality. At the same time, many developing countries face severe limitations due to a lack of domestic systems to identify and disclose trade impediments to WTO lawyers, which looks to be a top priority for help. Other key obstacles identified in the report include the fact that a significant share of developing-country trade occurs under norms that are not part of enforceable WTO law and the time it takes to complete proceedings, both of which have gotten little attention to far.

The analysis in this paper leads to certain conclusion; it was observed that increase in developing nations' involvement in WTO dispute settlement necessitates a shift in attention away from some critical, but often overlooked, obstacles. It is also noted that addressing these constraints will frequently necessitate solutions other than those discussed in the current DSU review negotiations, such as assistance in developing domestic mechanisms to identify and communicate trade barriers, as well as incorporating the rules under which the poorest trade into enforceable WTO law. Certain limits can be partially alleviated by employing existing DSU procedures, such as the ability to expedite hearings under Article 3.12 of the DSU and the 1966 Procedures.

There have been opportunities and challenges for developing countries. The DSS will become more appealing for poor nations to engage actively if serious initiatives to change the process are taken in the ways described above.

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