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Analysis of International Trade Practice and WTO regime

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ABSTRACT

The main purpose of this research paper is to look into the International trade practice with reference to the World Trade Organisation as a predecessor of the General Agreement on Tariff as WTO plays a major role in the transformation of trade. This paper contains the analytical issues related to international settlement undertaking which helps to understand the role played in preventing this trade issue. However, what government takes initiative for these related issues and what objectives are behind this. Regarding the developing countries what these countries are facing to balance that what measure those countries could take so that equality must be maintained and the contribution from the part of WTO for gaining in trade and to release from those obstacles. So, there is a pre-issue related to trade practice which is complex in nature and difficult to understand by countries, further with reviewed literature knowledge the research is well equipped in the area.

Keywords: *International Trade Issue, GATT, WTO Regime, Dispute Settlement Undertaking.*

I. INTRODUCTION

The World Trade Body (WTO) is an international organisation that oversees the implementation of trade rules and agreements negotiated by its 164 members in order to remove trade barriers and provide transparent and non-discriminatory trade standards. It's also a key venue for resolving commercial disputes. The United States was a driving factor behind the creation of the World Trade Organization (WTO) in 1995, as well as the rules and agreements that came out of the Uruguay Round of multilateral trade talks (1986-1994). The World Trade Organization (WTO) incorporated and enlarged upon the pledges and institutional functions of the General Agreement on Tariffs and Trade (GATT), which was founded in 1947 by the US and 22 other countries. The United States and others worked to construct a more open, rules-based trade system in the postwar era through the GATT and the WTO, with the goal of increasing global economic cooperation, stability, and prosperity. The World Trade

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Organization (WTO) now accounts for 98 percent of global trade. Congress has been interested in the progress of US leadership in the WTO, as well as the institution's future agenda. The majority of U.S. trading interactions are governed by the rules of WTO agreements. The majority of US worldwide commerce is with countries with whom the US does not have a free trade agreement, such as China, the European Union, India, and Japan.[2] Within U.S. trade policy, Congress has designated the World Trade Organization (WTO) as the "basis of the global trading system," and it has direct legislative and oversight authority over WTO agreements[3]. FTAs between the United States and other countries are based on basic WTO accords as well. While the United States is represented at the World Trade Organization (WTO) by the United States Trade Representative (USTR), Congress has constitutional authority over foreign commerce and sets US trade negotiating objectives and priorities, as well as enacting legislation to implement major US trade agreements. Since 1974, trade promotion authority (TPA) legislation has reflected U.S. interests and objectives for the GATT/WTO. The USTR and other executive branch agencies that attend WTO meetings and execute WTO obligations are likewise subject to congressional accountability. The WTO's effectiveness as a negotiating body for broad-based trade liberalisation, as well as its role in resolving trade disputes, has come under increased scrutiny. WTO members have failed to establish an agreement on issues that pit rich and developing countries against each other (such as agricultural subsidies, industrial products tariffs, and intellectual property rights protection). Newer trade barriers, such as digital trade prohibitions and the role of state-owned firms in international trade, have become more major challenges in recent years, and the institution has failed to address them. Global supply lines and technological advancements have altered global commerce, but trade laws have lagged behind; WTO members have been unable to agree on a new comprehensive multilateral agreement since 1995. As a result, many countries have begun negotiating free trade agreements (FTAs) with one another outside of the WTO in order to supplement fundamental WTO agreements. Newer norms may differ dramatically in some of these bilateral and regional accords, such as those pursued by the US and EU. Plurilateral negotiations, which involve subgroups of WTO members rather than all members, are also becoming a preferred venue for addressing emergent trade issues.

[2] The United States has a partial trade agreement with Japan covering some goods liberalization and digital trade rules

[3] Section 102(b)(13), Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I, P.L. 114-26).

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II. BACKGROUND

Following World War II, countries all over the world, led by the United States and several other industrialised countries, tried to construct a more transparent and non-discriminatory trading system with the goal of improving the economic well-being of all nations. The countries who convened to debate the new trading system recognised the importance of tit-for-tat trade obstacles stemming from the United States' Smoot-Hawley tariffs in deepening the 1930s economic slump, including substantial declines in world trade, global production, and employment.[4] These negotiators wanted to create an International Trade Organization (ITO) to address not only barriers to trade, but also concerns like employment, investment, restrictive business practices, and commodity agreements that aren't directly related to trading. They negotiated a preliminary agreement on tariffs and trade rules, known as the GATT, in 1948[5], after failing to obtain support for such a complete deal. After numerous rounds of trade liberalisation negotiations, this interim agreement became the primary set of rules governing international trade for the next 47 years, until the WTO was established.

III. WHAT IS A DISPUTE SETTLEMENT UNDERTAKING?

During the Uruguay Round, as part of the WTO agreement, the current dispute resolution system was established. It is expressed in the comprehension of the rules and procedures that govern dispute resolution. The agreement aims to prevent unilateral determinations of trade rule violations by stating that members will not determine whether a breach has happened unilaterally, but will instead seek a remedy through the WTO's dispute settlement rules and processes. The agreement includes specific provisions to safeguard the interests of developing and least-developed countries. The DSU has a variety of special measures for the settlement of disputes involving developing and least-developed nations, including procedures, time frames, legal advice, and support. Special provisions in the DSU include requesting compensation and requesting authorization for retribution.[6]

Because the possibility of procedure blocking has been removed, this improvement considerably boosts the confidence of all trading nations, large and small, in the multilateral trade system. The Importance of Rules and Recommendations Being Followed The timely adoption of the Dispute Settlement Body's rules and recommendations is critical to the

[4] Barry Eichengreen and Douglas A. Irwin, "The Slide to Protectionism in the Great Depression: Who Succumbed and Why?" The Journal of Economic History, vol. 70, no. 4 (December 2010), pp. 871-897.
[5] One major reason the ITO lost momentum was the U.S. government's announcement in 1950 that it would no longer seek congressional ratification of the ITO Charter, due to opposition in the U.S. Congress. WTO, "The GATT years:
[6] Arts: 3.12,4.10, 8.10, 12.10-11, 21.2.7, 24.1-2, 27.2 of the DSU.

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credibility of the WTO's dispute resolution apparatus. How are the DSB's regulations and recommendations implemented?

WTO standards are enforced through a WTO-specific Dispute Settlement System, which is defined by the Multilateral trade Dispute settlement system, one of the founding documents of the WTO in 1994.[7]

- **Implementation of rules and their importance:**

One of the most notable developments of the Uruguay Round is the dispute resolution system's remedies, specifically the DSU. Articles XXII and XXIII of the GATT have procedural flaws, and the DSU is an antidote to them.[8] The Member concerned shall inform the DSB of its intentions for the implementation of the recommendations and rules at a meeting of the DSB held within thirty days following the adoption of the panel or Appellate Body report.[9]

IV. DEVELOPING COUNTRIES AND THEIR SETTLEMENT

Developing countries with small markets are unlikely to be able to induce compliance in larger trading Members. As one commentator stated, retaliation through the suspension of tariff concessions 'cannot offer a realistic option to enforce WTO obligations if performed against considerably larger economies.[10]Others have pointed out that the WTO's penalising power favours major economies over small ones.[11] adding that trade restriction "can probably only be undertaken by advanced emerging countries" as a practical matter.[12] The World Trade Organization's Dispute Settlement Mechanism has been hailed as the cornerstone of the Uruguay Round Agreements' rule-based multilateral trade system. While this approach has acquired some traction among developing countries, it has not changed the fact that the system's primary users are some developed countries. This is an important element to keep in mind when the Disputes Resolution Understanding is improved to guarantee that developing countries benefit from the system and that it does not harm their interests.

The developing countries number of problems such as The cost of access to the dispute

[7] P. C. Mavroidis, and A. C SETTLEMENT, 425 (2005) P. C. Mavroidis, and A. O. Sykes, THE WTO AND INTERNATIONAL TRADE LAW/ DISPUTE

[8] M. Matsushita et at, THE WORLD TRADE ORGANIZATION -LAW, PRACTICES AND POLICY, 80 (2003).

[9] Art. 21.3 of the DSU.

[10] H. Grosse Ruse-Kahn, 'A Pirate of the Caribbean? The Attractions of Suspending TRIPS Obligations' 2008 JIEL 11(2), 313-364, at 332

[11] Charnovitz, 'Should the Teeth Be Pulled? An Analysis of WTO Sanctions', in D. L. M. Kennedy and J. D. Southwick, Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec (Cambridge, Cambridge University Press, 2002) 602-35 at 625.

[12] Y. Renouf, 'A Brief Introduction to Countermeasures in the WTO Dispute Settlement System', in R Yerxa and B. Wilson Key Issues in WTO Dispute Settlement (Cambridge, Cambridge University Press, 2005) at 118

settlement process;

- Issues of implementation of decisions and compensation.
- The effective implementation of provisions regarding special and different treatment in favour of developing countries.

Developing countries are less active traders, they are less likely to be repeat players in WTO litigation. Because of their less repeated recourse to and use of the WTO system, their incapacity to benefit from international trade, which negatively reflect imbalances in the development of legal means, when required, for dispute settlement. Furthermore, the cost of litigation is indeed very high, reducing developing countries' motivation to participate actively in the WTO's legal system. Because they do not develop specialist lawyers in the field of the WTO system, developing countries lack legal professionals in the field of WTO law. On the other hand, in response to rising demand, the number of law professors teaching WTO law in rich countries has expanded considerably, particularly in the United States. When a developing country brings a matter to the WTO's DSB and lacks national legal competence, it is necessary to hire legal specialists to defend its rights before a panel and an appellate body. As a result of the rising expense of litigation, the WTO system needs to teach law specialists to help developing countries distinguish between rights and duties, as well as any violations. This is necessary in order to lower the high cost of litigation and to encourage more active participation in the WTO dispute settlement system.

(A) Statement of Problem :

The study indicates that the dispute resolution process, particularly the enforcement mechanism, is ineffective in ensuring that recommendations and judgements are followed. This is especially true when the complainant is from a poor or developing country. To put it another way, the WTO's DSU system makes it impossible to put regulations and recommendations into practice. The developing and least developed countries are unable to make use of the international dispute resolution system, as well as the particular and differential treatment that has been provided to them. Furthermore, the failure of the enforcement mechanism must consider the interests of emerging and least developed countries.

(B) Research Question:

1. What do the findings of the research show about the WTO's overall effectiveness in resolving disputes? Is it possible to make changes to the process?
2. How can poor and least-developed nations participate more fully in WTO dispute

resolution processes?

3. Is it is possible to improve resolving disputes systems so that developing and least developed countries benefit?

(C) Objective of the research :

1. To critically examine the WTO's dispute resolution systems.
2. Examine and determine the working methods of the appellate board review, as well as the legislative framework for implementing and enforcing DSB recommendations and verdicts.
3. To evaluate the special and differential treatment granted for developing and least developed countries, and focus to create new strategy for strengthening the dispute settlement system.
4. To propose recommendations for Dispute Settlement Undertaking reform with respect to the dispute resolution mechanism, namely the implementation and enforcement system of Dispute Settlement Body rulings and recommendations.

(D) Scope of the Research :

The research field under investigation is quite large. As a result, the focus of the research will be on conflict resolution processes, with a particular emphasis on the execution of recommendations and judgments and how these systems might be improved. However, under the WTO's dispute settlement mechanism, developing and least developed nations can have effective remedies and resolve their difficulties. This study of the system of dispute settlement and the problems that developing nations experience in enforcing DSB recommendations and judgements is important, especially as more developing countries participate in the WTO dispute settlement system as complainants, defendants, and third parties. These issues necessitate effective reforms so that all WTO members can benefit equally from the WTO system.

(E) Methodology Adopted :

The technique used in the study is doctrinal in nature. Keeping in mind the research objectives, data and information were gathered from both primary and secondary sources, including online college library, website, and world trade organisation publications. All available literature is reviewed, including textbooks, commentaries, WTO publications, research articles and treaties. Various case laws study methods are used in research. I followed the research by conducting a critical examination of the GATT and WTO dispute settlement systems, as well as related

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topics.

(F) Literature Review:

EC Banana Case[13] : The banana war is the longest-running trade dispute in the world. The conflict centers on bananas that are imported to the European Union. In the 1950s and 60s European colonies in Africa, the Caribbean, and the Pacific region (ACP) became autonomous. In the 1970s the European Union started to let the Caribbean countries export bananas to EC with low tariffs. This was supposed to help these countries with their economies. While the EU imposed a high tariff on bananas that came from other countries, including the large banana-producing countries of Central and South Preference for banana importation in the EC is long-standing. They caused problems between France and Germany during the negotiation leading to the creation of the EEC in 1957-Germany had a free trade regime for banana and imported from Latin American countries, while France maintained high barriers to support producers in overseas territories and former colonies. Thus, the differences led to the imposition of infra-EC trade barriers, basically reserving the UK, French and Spanish markets for ex-colonies.

The European Union has decided to gradually lower tariffs on bananas from Latin America. In the coming years, these countries will only have to pay 114 Euros per tonne of bananas sold to the EU, instead of 176 Euros per tonne.[14]

Kodak Fuji Films[15]**:** The tribunal decided to consider all US-imposed measures, including rulings by Japan's competition authorities, as potential grounds for complaint. As a result, the panel stated that Kodak (US) could only dispute Japanese government measures, not market restrictions that could have emerged as a result of them. When this information is considered, it is determined that the actions in question did not reduce access to markets. As a result, the panel found no evidence in Japanese distribution structures that foreigners are being excluded as a result of government policy. They found that single-brand international distribution is the most typical market structure in big national cinema markets, such as the United States.

V. CONCLUSION

The security and predictability of the multi trading system in the dispute settlement system of the WTO. The interpretation of public international law the covered agreement and the

[13] Bernard. M. et at, THE POLITICAL ECONOMY OF THE WORLD TRADE TRADING SYSTEM THE WTO AND BEYOND, 101 (3'"edn., 2009).
[14] R. BhaJa and D. Gantz, WTO CASE REVIEW 2009, Arizona Journal of International & Comparative Law Spring, 93 (2010)
[15] Bernard. M. et at, THE POLITICAL ECONOMY OF THE WORLD TRADE TRADING SYSTEM THE WTO AND BEYOND, 108 (3'"edn., 2009).

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provision under GATT with customary rules clarify the huge barrier. The recommendation made by the dispute settlement body is to aim at achieving a satisfactory settlement with certain rights and obligations in the directed agreement. In the light of various cases the aim of the dispute settlement system it's positive to resolve the dispute during trade practice. It shows the present reality while enforcing the system and provides a remedy for the backlog points in this system. However, dispute settlement bodies overseas call for dispute settlement procedures with various authorities which plays a vital role in the process to strengthen the system.

The rule and recommendations are for effective implementation. And developing countries that face difficulties the WTO help the dispute settlement system can work properly.

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