



## Navigating challenges and crafting solutions: A critical examination of the WTO dispute settlement system's influence on developing economies

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### Abstract

The World Trade Organization (WTO) deals with the provision and regulations of commerce between nations. It is the only global international organization which looks after the cross-border trade matters. The purpose of my paper is to discuss about the obstacles that limit the participation of developing countries in the World Trade Organization's (WTO) Dispute Settlement Body (DSB). Though Bangladesh is a least developed country it is also facing the same barriers like the other developing countries. As I am from Bangladesh, it is also a reason to research on the topic. I have discussed various things that will show the limitations of developing countries in some critical ways. In the first part of my paper, I will try to give a basic idea through the introduction, the historical overview about the international trade laws and also try to give the idea about developing country. You will find my research questions and objectives in the first part of my paper. Hopefully this will make you understand about my research searching. After that the second part will cover the constraints that limit the participation of developing Countries in WTO Dispute Settlement Proceedings, then possible solutions for the constraints and at the end recommendation will be discussed according to my topic. In the second part of my research, I will elaborately discuss the most serious limiting factors indicated and exercised by developing countries in the DSB. To implement the DSB decisions on procedural matters of the DSU (Dispute Settlement Understanding) the developing countries need more money and licit powers. Likewise, there are various critical procedural changes that the DSU dispute settlement framework should consider. The most recent legal and monetary obstacles for developing countries under the DSB have been discussed. This paper regulates the most effective solutions to handle the obstacles of developing country participation in WTO dispute settlement proceedings. If the WTO really consider the solutions, I have given through the paper the framework of WTO will be more beneficial for developing countries in settlement disputes. It will help the developing countries to have a better trade relation with the world and have a better future which leads to better life. Likewise, it attempts to show the importance of changing the DSU. Additionally, it will also attempt to make progress for developing country utilization of the WTO DSB. So, in the recommendation section I will make some suggestions if we can set them up in the DSB and practice it in our real life, hopefully developing countries and least developed countries can overcome their problem (Alotaibi, 2011; Bown & Hoekman, 2005; Brewster, 2011; Davey, 2000; Footer, 2001; Hudec, 1993) [4, 5, 11, 12, 19, 25, 32]. I had divided the paper in six-chapter, chapter One: Introduction, second: Historical Review of World Trade Organization, third: An Overview of Developing Countries, four: The constraints that limit the participation of developing Countries in WTO Dispute Settlement Proceedings, five: Possible solutions for the constraints that limit the participation of developing countries in WTO Dispute Settlement System, and Six: Conclusion and Recommendation

**Keywords:** WTO, disputes, developing countries, limitations, solutions

### Introduction

Globalization is an important element that increments exchange and monetary improvement, and it proves its worldwide dominance and ensures the global economy is the most important factor to the countries across the world to maintain stable position in the world trade. Participation in world trade is obvious for any country to stabilize its economy and maintain a healthy national GDP. The International Trade mechanisms is much different and convoluted compared to a national economy; rather, it is interconnected with all other country's economy and among all the topics international trade is consider the most important topic for the progress of an economy. In 1944 several nations sat on conference on economy to form and expand world trade in Bretton Woods, New Hampshire. All the members who are taking part were accordant on shortening the tariff and reached to General Agreement on

Tariffs and Trade (GATT) by 1947. In the next conference World Trade Organization (WTO) in the Uruguay round, it was going to be the place in which members can request for shortening the tariff and also request for lessening the barrier in world trade (The World Trade Organization, 2021) [49]. The WTO agreement was adopted by the GATT members on 1st January 1995, and then an international organization was built in the agreement. This organization contains a legitimate identity, legitimate capacity, benefits, resistances and a more ground framework for settling dispute for all members (The World Trade Organization, 2021) [49]. There is a very important sub organization of the WTO's which is called Dispute Settlement Body (DSB) has built up a system for dispute settlement (The World Trade Organization, 2015) [50]. Since then, the dispute settlement sub body has become very important and centralized system for the WTO (The World Trade Organization, 2015) [50].

The reason behind the establishment of this organization is to settle trade dispute between WTO member states. It is known as the Dispute Settlement Understanding (DSU) as it has been built in the Understanding on Rules and Strategies. In which we can find the method for dispute settlement (The World Trade Organization, 2015) <sup>[50]</sup>.

The DSB and DSU are considered as the very basic and ground with enough power to settle dispute between countries arises with reference to WTO agreement (The World Trade Organization, 2015) <sup>[50]</sup>. By considering present challenge and new situation DSU needs some immediate change. The developing countries around the world face more problems in international trade than the developed and face some limitations in the dispute settlement system. I am going to discuss the limitations and constraints faced by the developing countries in WTO dispute settlement system. To reach that conclusion, this research will examine the current ambition of the people of the WTO. This thesis will also analyze the reasons for low participation in the WTO which has been suggested by both developing and developed countries. This is also going to describe and analyze about existing referendum system that can recall and discuss about the developing countries limitation within DSB and DSU of the WTO. Perhaps my solutions and recommendations that I will test at the end of this paper, if it is really possible to practice the solutions in real life, can help developing and least developed countries like Bangladesh to develop their economies.

### Research problem

The cooperation between developed and developing countries is a significant issue within the WTO dispute settlement system, where violations of rights often occur (Footer, 2001) <sup>[25]</sup>. From the start, the WTO's dispute resolution has been a standard approach for member countries, regardless of their development status. However, developing nations face limitations that make their participation costly and ineffective. Recent reforms aim to address these challenges, and analyses have evaluated their impact on dispute resolution. This includes examining proposals from countries like Cuba, Paraguay, Haiti, Jordan, and the African Group (Starshinova, 2018). The paper will assess the main obstacles for developing nations in the dispute settlement process, such as lack of financial and legal resources, litigation costs, enforcement issues, and the lengthy DSB cycle. Ultimately, it will evaluate whether the DSU effectively meets its goal of fair dispute resolution.

### Research questions

- What are the primary obstacles faced by developing countries in the WTO dispute settlement process?
- How do costs associated with litigation affect these countries' participation?
- Are WTO rulings and procedures biased or restrictive against developing countries?
- Does the WTO's retaliation mechanism serve the interests of developing countries effectively?
- Is there bias in the legal framework of the WTO's DSB against developing countries?
- Objective of the Study: The objectives are:
- To analyze the current level of developing countries' participation in the WTO's DSB.
- To identify and evaluate the constraints hindering their involvement.

- To propose legal and procedural changes that would allow more effective participation and improve the overall fairness of the WTO dispute settlement framework.

### Literature review

The WTO dispute settlement system (DSU) is crucial for resolving international trade disputes, but its accessibility for developing countries is controversial. Key challenges and measures include:

1. **Accessibility issues and resource constraints:** Developing countries face financial and legal hurdles in accessing the DSU. High litigation costs and limited legal expertise discourage participation (Bown & Hoekman, 2005; Nordström & Shaffer, 2008) <sup>[11, 46]</sup>.
2. **Special and Differential (S&D) treatment:** S&D provisions aim to offer flexibility to developing countries, but their practical application often falls short due to resource constraints and procedural inefficiencies (Ezeani, 2010; Mukerji, 2000; Peters & Kumar, 2006) <sup>[24, 45]</sup>.
3. **Advisory Centre on WTO Law (ACWL):** The ACWL provides legal assistance to developing countries, reducing financial burdens and improving legal preparedness. However, its limited scope and availability mean many countries still struggle to secure adequate representation (Shaffer, 2009; Bohi, 2009).
4. **Retaliation mechanisms:** WTO's retaliation rules are ineffective for developing countries, as smaller economies lack the economic clout to leverage retaliatory measures effectively. Alternative dispute resolution methods, such as mediation and negotiation, could reduce costs and enhance efficiency (Brewster, 2011; Pham, 2004) <sup>[12]</sup>.
5. **Reform proposals:** Scholars agree that substantial reforms are needed to make the DSU more inclusive for developing countries. Recommendations include cost reductions, streamlined processes, and enhanced financial and technical support (Alotaibi, 2011; Shaffer, 2009; Choukroune, 2012) <sup>[4, 5, 16]</sup>.

Despite existing measures, the gap between resources available to developed and developing nations remains significant. A comprehensive reform agenda focusing on reducing litigation costs, simplifying procedures, and enhancing capacity-building measures is necessary to create a more equitable platform for developing countries in international trade disputes.

### Methodology

The methodology employed in this study is designed to explore the participation and challenges faced by developing countries in the WTO Dispute Settlement System (DSU). It employs a qualitative, mixed-method approach, focusing primarily on the analysis of secondary sources while integrating limited primary data where feasible.

**Research approach:** The study adopts a qualitative research method, which emphasizes understanding the complexities and underlying issues within the DSU as it

pertains to developing nations. Qualitative research is particularly suited for this context as it allows for an in-depth exploration of concepts, regulatory frameworks, and experiences that cannot be fully captured through quantitative measures. By analyzing legal texts, journal articles, and WTO documents, the research aims to uncover patterns, biases, and systemic barriers faced by developing countries.

**Data Collection:** Data for this study are drawn from secondary sources, including:

**Academic journals:** Relevant articles discussing the participation of developing countries in the WTO's DSU, such as the "Journal of World Trade" and "International Economic Law".

**Books:** Comprehensive studies on international trade law and the functioning of the WTO provide foundational knowledge.

**WTO documentation:** Official publications from the WTO, including legal texts, reports, and dispute records, form a substantial part of the research materials.

**Online databases:** Resources like WTO's online dispute archive and scholarly databases such as JSTOR and Google Scholar are used for access to relevant cases and commentaries.

Limited primary data collection was undertaken through consultations with subject-matter experts, including discussions with my thesis supervisor via email and WeChat.

**Analysis method:** The data were analyzed using a thematic approach, where information was categorized according to recurring themes such as "legal barriers," "financial constraints," and "procedural biases." This approach allowed for a structured examination of the challenges and potential solutions specific to developing countries. In particular, the study focuses on real-life case studies within the DSU to illustrate the disparity in participation and outcomes between developed and developing nations.

**Limitations of the study:** Despite the rigorous methodological approach, several limitations impacted the research:

**Time constraints:** The paper was prepared within a limited timeframe, which restricted the depth of data collection and analysis. A longer research period could have allowed for a more extensive investigation of additional cases and interviews with a broader range of experts.

**Access restrictions:** Access to relevant study materials and institutional databases was restricted. This affected the ability to utilize certain online resources.

**Limited primary data:** The study relied predominantly on secondary data due to the logistical challenges of collecting primary data. Although expert opinions were sought through digital communication, the scope was limited to a few consultations, which may not fully represent the broader spectrum of stakeholder views within the WTO framework.

**Rationale of the study:** This study is essential for understanding the structural challenges within the WTO's dispute resolution system that hinder developing nations. The rationale is to suggest possible reforms that can empower these countries to participate fully and equitably in international trade, thus supporting their economic growth and stability.

**Findings of the study:** The study reveals that the high costs, legal complexities, and biased procedures within the WTO's DSB discourage and limit the participation of developing countries. These findings suggest that the current system requires significant adjustments to be more inclusive and supportive of these nations.

### Conclusion

This study is the initial step of a complete investigation of developing countries involvement and interest in WTO dispute settlement procedures. We need to see the degree of the hierarchical elements that impact that interest. While the methodology provides a comprehensive understanding of the challenges faced by developing countries in the WTO's DSU, the study's limitations indicate that further, more extensive research could enhance these findings. Future research could benefit from broader access to institutional resources and the inclusion of additional primary data sources to provide a more representative analysis. It is trusted that the output of this study will be beneficial to every interested individual while simultaneously adding to information upgrade inside the scholastic world. Hope from the solution my country also can overcome its barriers towards the WTO disputes settlements and I can be a part to help my country's economic development.

### Historical review of World Trade Organization

#### Summary of WTO

**Introduction:** Historically, countries relied on tariffs to protect local industries, but the 19th and 20th centuries saw a global shift toward reducing tariffs and promoting free trade. This chapter provides an overview of the World Trade Organization (WTO), its origins from the General Agreement on Tariffs and Trade (GATT), and its role in supporting developing countries.

**Formation of the WTO:** The WTO was established in 1995 after the Uruguay Round negotiations, which highlighted the need for a strong dispute resolution system (Alotaibi, 2011) <sup>[4, 5]</sup>. It expanded GATT's scope to include services, intellectual property, and investment policies, providing a framework for international trade cooperation and dispute resolution.

**Present members:** The WTO has 164 members, representing about 92% of the global population and 95% of world trade (The World Trade Organization, 2015) <sup>[50]</sup>. Membership includes developing countries, which self-designate their status, and Least Developed Countries (LDCs), which receive additional support.

**Association within WTO:** Members are categorized into developed, developing, and least-developed countries, often forming alliances like ASEAN and the G-20 to protect their rights (Broude, 2008) <sup>[13]</sup>. Major Powers shape WTO agreements, impacting global trade policies.

**Observing members:** Observer states must initiate accession talks within five years, though this status can be contentious, as seen in the cases of Iraq and Iran (Broude, 2008) <sup>[13]</sup>.

**Dispute settlement framework:** The WTO's dispute settlement system, introduced in 1995, is more structured and less politically influenced than the GATT system (The World Trade Organization, 2015) <sup>[50]</sup>. The Dispute Settlement Understanding (DSU) ensures compliance with trade rules and aims to balance power among nations (Van den Bossche & Zdouc, 2021) <sup>[51]</sup>. It promotes transparency and quick resolutions, enhancing global trade stability.

**Current reputation of developing countries:** About two-thirds of WTO members are developing or least-developed countries, self-designating their status (World Trade Organization, 2021b) <sup>[52, 53]</sup>. Many are increasingly active in the WTO, benefiting from rules that support their development and ensure fair participation (World Trade Organization, 2021a) <sup>[52, 53]</sup>.

**Extraordinary arrangements for developing countries:** The WTO's DSU offers Special and Differential (S&D) treatment to developing countries, providing extra benefits during dispute resolution (Ezeani, 2010) <sup>[24]</sup>. Key articles allow for flexibility and additional support for LDCs, though implementation remains inconsistent.

## Conclusion

This overview highlights the WTO's development, membership processes, and the role of developing countries. It addresses key articles related to member participation and emphasizes the need for clear definitions and effective application of provisions that support developing nations within the WTO framework. The next section will further define "developing countries" and their benefits.

## An overview of developing countries

**Introduction:** Clear definitions of "developing country" are vital for ensuring that developing nations benefit from GATT/WTO concessions and protections against unjust claims. This chapter examines various definitions based on theoretical insights and classifications from organizations like the World Bank, UN, and IMF.

**Definition under GATT:** While GATT 1994 lacks a classification for "developing countries," GATT 1947 recognized their need for support in Article XVIII (Choukroune, 2012) <sup>[16]</sup>. An interpretative note emphasized assessing overall economic conditions. The failure of a formal definition led to a self-declaration system, highlighting the necessity for clearer criteria based on trade participation.

**Definition under WTO:** Most WTO members are designated as "developing" or "least developed countries" (LDCs), but precise definitions are unclear. Self-identification can result in disputes. A 1999 Seattle conference proposed categorizing countries by trade share and income per capita, revealing ambiguity, as seen in debates over China's status during accession (World Trade Organization, 2013) <sup>[54]</sup>.

**Definition under World Bank:** The World Bank classifies nations based on gross national income (GNI) per capita into low-income and middle-income groups. Critics argue this method is limited and may not accurately reflect overall development, with countries able to reject these classifications (World Trade Organization, 2021) <sup>[52, 53]</sup>.

**Definition under United Nations:** The UN does not have a formal classification system, typically designating countries like Japan and Australia as developed, while categorizing former Soviet states as transitional economies. Its focus is primarily on developed nations (World Trade Organization, 2021) <sup>[52, 53]</sup>.

**Defining developing countries:** The IMF classifies countries as advanced or emerging based on economic indicators. Developing nations face industrialization challenges, with classifications often influenced by GDP, life expectancy, and literacy rates. The term varies by organization, with LDCs requiring significant support (World Trade Organization, 2021) <sup>[52, 53]</sup>.

## Conclusion

Although developing countries gain benefits from WTO provisions, the ambiguous term "developing country" complicates membership and compliance. The WTO should clarify its criteria by considering existing classifications, particularly those from the UN, to ensure fair treatment for developing nations (World Trade Organization, 2021) <sup>[52, 53]</sup>.

## The constraints that limit the participation of developing countries in WTO dispute settlement proceedings

### Insufficiency of monetary and legal resources

**Introduction:** Developing countries face significant challenges in participating in the WTO's Dispute Settlement Body (DSB), primarily due to insufficient financial and legal resources. This chapter explores these challenges, including limited funding, lack of legal expertise, and weak decision-making capabilities (Bohi, n.d.; Footer, 2001) <sup>[25]</sup>. High costs associated with dispute settlements deter developing countries from pursuing claims, especially when their GDPs are much smaller. For instance, a one-million-dollar dispute is negligible for developed countries but burdensome for agriculture-dependent economies (Bohi, n.d.; Footer, 2001) <sup>[25]</sup>. The Advisory Centre on WTO Law (ACWL) seeks to address these financial and legal limitations, enabling developing countries to better engage with WTO provisions through the DSU (Advice, support and training to developing and least-developed countries, 2021) <sup>[2]</sup>.

### Insufficiency of monetary and legal resources

**Internal Resources (Internal Trade):** Developing countries often find the costs of DSB settlements overwhelming compared to developed nations. The cost of dispute resolution varies with the size of the dispute; therefore, countries with smaller disputes are often reluctant to incur high costs. For developed countries in Europe and North America, a one-million-dollar dispute is minor, while for agriculture-dependent nations, it's a significant budgetary burden. This disparity influences developing countries' willingness to engage in dispute resolution, as their economic sensitivity to smaller imports further complicates their participation in the DSB (Brewster, 2011) <sup>[12]</sup>.

**Table 1:** The relative importance of USD 1 million of exports (2003)

Rang	Member	Share of exports (0/0)	Share of GDP (0/0)
1	Burundi	1.47	0.17
2	Gambia	1.45	0.27
3	Guinea Bissau	1.43	0.42
4	Solomon Islands	1.01	0.41
5	Rwanda	0.86	0.06
6	Dominica	0.84	0.38
7	Djibouti	0.80	0.16
8	Central African Republic	0.79	0.09
9	Saint Kitts and Nevis	0.66	0.27
10	Sierra Leone	0.63	0.09
11	Saint Vincent and the Grenadines	0.60	0.27
12	Grenada	0.57	0.27
13	Mauritania	0.28	0.09
14	Burkina Faso	0.27	0.03
15	Belize	0.27	0.11
16	Saint Lucia	0.26	0.14
17	Niger	0.24	0.04
18	Antigua and Barbuda	0.22	0.15
19	Haiti	0.22	0.03
20	Lesotho	0.19	0.09
21	Malawi	0.18	0.05
22	Maldives	0.17	0.14
23	Chad	0.15	0.04
24	Guinea	0.15	0.03
25	Togo	0.15	0.06

**Notes:** Calculations based on data from the WTO and UNSTAT

The previous segment highlights that the cost of pursuing a claim under the WTO's DSB is high and does not

differentiate between small and large trading nations. Below is the trade data for various WTO members.

**Tabel 2:** Table Data

Country	Export by \$ million
Europe and Central Asia	
Albania	4,33
Armenia	539
Bulgaria	6,368
Croatia	4,708
Georgia	262
Iceland	2,308
Republic of Kyrgyz	370
Liechtenstein	NA
Macedonia	1,044
Moldova	365
East Asia and Pacific	
Brunei Darussalam	4,136
Cambodia	2,075
China	418,786
Chinese Taipei	138,602
Fiji	443
Hong Kong	226,710
Indonesia	59,780
Japan	444,195
Republic of Korea	181,653
Macao	2,536
Sri Lanka	4,528
Middle East and North Africa	
Bahrain	1,849
Djibouti	11.2
Egypt	7,045
Jordan	1,894
Kuwait	19,513
Malaysia	101,510
Mongolia	567
Myanmar	2,764
Papua New Guinea	996

Philippines	35,994
Singapore	135,138
Solomon Islands	122
Thailand	75,381
South Asia	
Bangladesh	5,639
Maldives	113
Nepal	651
Pakistan	11,898
Morocco	8,444
Oman	2,826
Qatar	12,415
Saudi Arabia	86,185
Tunisia	6,544
United Arab Emirates	42,321
Sub-Saharan Africa	
Angola	9,304
Benin	394
Botswana	2,016
Burkina Faso	318
Burundi	62.2
Cameroon	2,608
Republic of Central African	64.8
Chad	97.5
Congo	2,671
Côte d'Ivoire	4,673
Democratic Rep of the Congo	1,036
Gabon	303
Gambia	4.8
Ghana	2,286
Guinea	702
Guinea-Bissau	76.2
Kenya	2,035
Lesotho	433
Madagascar	471
Malawi	488
Mali	222
Mauritania	505
Mauritius	1,838
Mozambique	1,011
Namibia	1,208
Niger	207
Nigeria	23,833
Rwanda	50.2
Senegal	982
Sierra Leone	217
Swaziland, kingdom of	562
Tanzania	1,203
Toga	485

From the table it is clear the high cost of the proceeding a case at the DSB will hamper many small countries to claim their legal and basic demand under WTO. For instance, filing a claim can cost nearly one million dollars, which poses a substantial challenge for many island nations with small economies. Additionally, the complex legal system often works against developing countries. With tight budgets and uncertain outcomes, these nations are unlikely to invest heavily in lengthy WTO legal procedures, making DSB rulings a barrier to effective dispute resolution (Hudec, 1993) <sup>[32]</sup>.

**Internal expertise (Human Resources):** The WTO's high costs and complex legal system make it largely inaccessible to developing countries. For example, African nations find the legal procedures overly complicated and expensive,

often taking up to three years to resolve a case (Hudec, 1993) <sup>[32]</sup>.

While developed countries leverage their legal resources effectively, many developing countries lack the expertise and must hire costly external lawyers, straining their budgets. Dispute costs can escalate to hundreds of thousands or millions of dollars, making it difficult for these countries to pursue complaints against wealthier nations. This financial disparity leaves developing countries hesitant to engage with the WTO's dispute settlement system (Bown & Hoekman, 2005) <sup>[11]</sup>.

#### **Lawsuit costs**

The WTO's dispute settlement system poses significant challenges for developing countries due to its complexity and high costs. With WTO law expanding to around 26,000

pages since 1995, even experienced lawyers struggle to navigate it. Developing nations often lack the financial resources and expertise to gather necessary evidence, forcing them to hire external experts, which adds to their expenses (Hudec, 1993) <sup>[32]</sup>.

Article 27.2 of the Dispute Settlement Understanding (DSU) aims to provide technical assistance to these countries but only offers general guidance without active advocacy, leaving many feeling unsupported. This has led to the establishment of the Advisory Centre on WTO Law (ACWL) in 1999, which offers training and representation for developing countries. While ACWL subsidizes legal assistance, it still requires fees that some nations find difficult to meet and can only assist with ongoing cases due to limited resources (Advice, support and training to developing and least-developed countries, 2021) <sup>[2]</sup>.

Overall, despite the progress made by ACWL, significant barriers remain for developing countries in navigating the WTO dispute settlement system (Brewster, 2011) <sup>[12]</sup>.

### Conclusion

The previous section discussed the main constraints hindering developing countries' participation in WTO proceedings, primarily the lack of monetary and legal resources. The costly litigation processes are often unaffordable for these countries, leaving them vulnerable in protecting their rights. While Article 27.2 and the Advisory Centre on WTO Law (ACWL) have alleviated some issues, they have not fully resolved the challenges faced by developing nations (Bown & Hoekman, 2005) <sup>[11]</sup>.

### Retaliation

Retaliation in the WTO dispute system is challenging for developing countries, as their limited economic power often makes it ineffective against wealthier nations. While retaliation, such as removing tariff concessions, is a tool to ensure compliance with rulings, enforcement is weak since the WTO lacks mechanisms to compel powerful economies to comply. From 1995 to 2012, developing countries initiated 180 cases but could rarely enforce retaliation due to economic disparities. Although Article 22.3 allows cross-retaliation under agreements like TRIPS, the impact remains limited as it can harm the retaliating country more than the target (Bacchus, 2004) <sup>[8]</sup>. Stronger, enforceable retaliation rules could potentially improve outcomes for these nations, but current mechanisms remain inadequate for ensuring compliance against developed countries (Lawrence, 2003) <sup>[40]</sup>.

### DSB proceeding time frame and reparation

DSB proceedings and compensation practices are often ineffective for developing countries due to prolonged timelines and limited reparations. Dispute cases undergo a 60-day consultation period, followed by up to six months in panel review, and often exceed the DSB's nine-month limit, taking around 15 months or more. Appeals and compliance delays can extend cases further, sometimes beyond three years, as some members exploit these delays to their advantage. Developing countries face added burdens as the DSU lacks provisions for compensating time or economic losses, discouraging their participation in the dispute settlement system. Experts suggest faster appeal times and closer compliance monitoring to address these challenges (Davey, 2000) <sup>[19]</sup>.

**Reparation:** Developing countries see reparation as crucial in the WTO dispute settlement framework. However, issues arise when developed countries fail to comply with DSB rulings, discouraging developing countries from participating. The process starts with discussions, but if unresolved, moves to a panel. Despite this, securing reparation is challenging, especially since DSU's 1995 inception (Hudec, 1993) <sup>[32]</sup>.

For developing countries, securing reparation in WTO disputes is critical but challenging. Key issues include:

- 1. Lengthy process:** Disputes often take around 15 months, which is costly and impacts export-dependent economies (Davey, 2000) <sup>[19]</sup>.
- 2. Export damages:** Prolonged proceedings harm economies without WTO-provided compensation for export losses (Davey, 2000) <sup>[19]</sup>.
- 3. Dependence on developed nations:** Economic and political dependencies deter many developing countries from seeking reparation (Davey, 2000) <sup>[19]</sup>.

Reparations, as outlined in Article 22 of the DSU, are voluntary, temporary, and require mutual agreement, often making them ineffective. Developing nations face additional obstacles in enforcing reparations, as they struggle to retaliate effectively against developed countries. Proposed solutions include making reparation automatic, providing regular compensation, and covering past damages, but these remain unimplemented (Davey, 2000) <sup>[19]</sup>.

### Conclusion

The lengthy dispute timeframe is a major barrier for developing countries in the WTO system, discouraging their participation. This section outlines dissatisfaction with DSU limitations, including the voluntary reparation process, need for mutual agreement, lack of regular payments, and inability to address past damages factors that collectively reduce developing countries' engagement in WTO dispute settlement (Davey, 2000) <sup>[19]</sup>.

### Possible solutions for the constraints that limit the participation of developing countries in WTO Dispute settlement system

#### Boosting of monetary and licit resources

**Introduction:** This chapter examines the challenges developing countries face in the WTO dispute settlement system and proposes solutions. It reviews WTO efforts toward equal trade rights, past judicial attempts, and failures. A timeline of the dispute settlement system is provided, along with suggestions for increasing participation through funding, fixed legal fees, and reforming Article 27.2 to help offset legal costs (Alotaibi, 2011; Brewster, 2011) <sup>[4, 5, 12]</sup>.

**Boosting of monetary resources:** High costs in DSU proceedings limit the participation of developing and least-developed countries. WTO monetary support could enable them to hire skilled legal experts, build domestic expertise, and manage complex documentation without relying on costly private firms. Increased funding for evidence and groundwork would further empower these countries to present cases effectively, fostering greater participation in the dispute settlement system (Bown & Hoekman, 2005) <sup>[11]</sup>.

**Boosting of licit resources:** High legal fees deter developing countries from pursuing cases against developed nations in the WTO. Mandating that the losing party reimburse legal fees could help, along with proposals to cover fees for all participants or adjust costs based on financial capability. To improve fairness, the WTO should ensure guaranteed legal support, establish fixed attorney fees for developing nations, and require defendants to pay legal fees if a developing country wins. Setting a start date for fee compensation could also encourage compliance and reduce the length and cost of proceedings (Hudec, 1993) <sup>[32]</sup>.

**Boosting of Article 27.2:** Developing and least developed countries face challenges accessing the WTO dispute settlement system due to limited legal expertise. Although the Advisory Center on WTO was established to help, Article 27.2 on legal assistance needs updating. Currently, experts aren't required to assist these nations before proceedings, hindering evidence gathering. Additionally, there are only two part-time legal advisors available, highlighting the need for more support. Proposals include creating a permanent defense council to bridge the expertise gap and using WTO funds, supported by member state contributions, to assist these countries (Advice, support and training to developing and least-developed countries, 2021) <sup>[2]</sup>.

**Boosting of the ACWL:** The Advisory Centre on WTO Law (ACWL) should improve its role in training legal experts and assisting developing and least developed countries. Given the complexity and cost of preparing cases for the Dispute Settlement Understanding (DSU), ACWL aims to reduce these burdens. Currently, ACWL can represent cases involving only developing countries. To bridge the expertise gap, it should hire more full-time experts and broaden its support. To keep Dispute Settlement Body (DSB) costs manageable, permanent donor countries should fund ACWL and create a defense council, promoting greater participation from low-income nations in international trade (Advice, support and training to developing and least-developed countries, 2021) <sup>[2]</sup>.

#### **Boosting of discussions and negotiations**

**Boosting of discussions:** The DSU provides an alternative dispute resolution system through mandatory consultations, allowing for mutual settlements before formal proceedings. This stage is particularly beneficial for developing countries, as it offers special attention and helps mitigate diplomatic pressures from developed nations. Discussions start within 60 days of a request, enabling these countries to resolve issues quickly and cost-effectively. A notable example is Bangladesh's successful resolution of its trade dispute with India over anti-dumping duties, aided by ACWL assistance, which led to India's withdrawal of the duties before reaching the panel stage. This highlights the potential of the discussion stage to save resources for all parties involved (Advice, support and training to developing and least-developed countries, 2021) <sup>[2]</sup>.

**Boosting of negotiations:** The WTO's DSU encourages developing countries to resolve disputes through negotiation, providing a cost-effective, confidential alternative to formal litigation. Article 5 of the DSU allows any disputing party to initiate negotiations at any dispute

stage, facilitated by the WTO Director-General, who acts as a neutral mediator. Although supported by both developed and developing nations, negotiations are underused. Negotiation benefits developing countries by conserving resources and enabling faster resolutions. The DSU permits other mediators if agreed upon, which could include organizations like the UNDP or World Bank to offer additional expertise. Article 3.7 emphasizes mutually satisfactory solutions, and increasing negotiation use could significantly benefit developing and least-developed countries by allowing fairer access to trade dispute resolutions (Davey, 2000) <sup>[19]</sup>.

#### **Conclusion**

This chapter focuses on improving access for developing countries to the Dispute Settlement Understanding (DSU) by amending WTO rules to remove barriers to participation. It advocates for a better jurisdictional system for effective dispute resolution and consultation. To support developing and least developed countries, the WTO could establish funding and reduce attorneys' fees. Enhancing Article 27.2 and promoting negotiation and discussion methods would provide these countries with greater leverage, helping them overcome challenges within the WTO (Davey, 2000) <sup>[19]</sup>.

#### **Cumulative retaliation**

**Introduction:** The Dispute Settlement Body (DSB) fails to support bilateral retaliation by developing countries, leading to protests against legal discrimination. While retaliation is possible, developing nations often avoid it due to trade disparities. Cumulative retaliation is needed to hold developed countries accountable (Lawrence, 2003) <sup>[40]</sup>.

**Cumulative retaliation rules:** All WTO members must adhere to obligations and can raise disputes for violations (Lawrence, 2003) <sup>[40]</sup>.

**Cumulative retaliation proposition:** Developing countries find it hard to impose effective sanctions through the DSU. Individual sanctions against larger economies often backfire. A collective approach is proposed to strengthen sanctions against major markets like the USA and Europe (Lawrence, 2003) <sup>[40]</sup>.

#### **Fortify the dispute resolution process and monetary reparation**

**Introduction:** Participation of developing and least developed countries in the DSU adjudication process is low, limiting their engagement in trade issue resolution. This chapter explores potential WTO law changes and reviews past efforts by these countries (Davey, 2000) <sup>[19]</sup>.

**Improving participation through WTO DSU:** The WTO has made strides in supporting transitioning economies, but further adjustments to laws are needed to enhance access. Both adjudicative and non-adjudicative processes have evolved (Davey, 2000) <sup>[19]</sup>.

**Proposals for DSU Reforms:** This section discusses various proposals from WTO members, assessing their compatibility with existing laws and exploring improvements in adjudicative and non-adjudicative steps (Davey, 2000) <sup>[19]</sup>.

**Reinforcing consultations:** Mutual consultations are the most effective way to resolve disputes, saving time and resources. Article 3.7 highlights that the benefits of consultation often outweigh judicial proceedings, especially for developing countries (Davey, 2000) <sup>[19]</sup>.

#### **Strengthen DSU's adjudicatory phase process**

**Introduction:** Delays in the DSU's adjudication process harm parties involved in disputes due to the lack of monetary compensation. Current compensation methods, like tariff reductions, often fail without mutual agreement, causing ongoing economic damage. To address this, the WTO should implement strong rules requiring offending countries to provide retrospective compensation (Davey, 2000) <sup>[19]</sup>.

**Proposition for monetary reparation:** Developing countries propose introducing monetary reparations to expedite decisions and minimize delays in the DSB process. If a developing country wins a dispute, the developed country should provide compensation (Davey, 2000) <sup>[19]</sup>.

**Reparations under the DSU:** The current system focuses on market access rather than direct compensation, leading to economic exploitation of developing nations. Proposed reforms include retroactive monetary compensation based on economic capacity, ensuring equitable reparation methods. Determining amounts may be contentious, requiring input from economic experts (Davey, 2000) <sup>[19]</sup>.

#### **Conclusion**

This chapter examines obstacles limiting the participation of developing and least developed countries in the WTO dispute settlement. It highlights the need for efficient reparation methods, streamlined proceedings, and enhanced discussion methods to improve participation and effectiveness (Davey, 2000) <sup>[19]</sup>.

#### **Conclusion and recommendation**

##### **Conclusion**

The primary reason for the lack of participation in the WTO's dispute settlement system by developing countries is discussed in this section. These obstacles prevent developing countries from achieving equity in international trade. Possible solutions to this problem are also suggested. The formation of the WTO, its environment, and a brief chronological overview, along with key articles regarding the accessibility of countries to its legal and proceeding system, are assessed (Alotaibi, 2011) <sup>[4, 5]</sup>.

The term "developing countries" is analyzed in chapter three, with definitions provided by GATT, WTO, the World Bank, the United Nations, and the IMF (Choukroune, 2012; World Trade Organization, 2013) <sup>[16, 54]</sup>. Chapter four describes the constraints and limitations faced by developing countries and LDCs, particularly regarding the WTO dispute settlement policy. The lack of monetary and legal resources is highlighted, along with possible solutions to overcome these constraints (Ezeani, 2010) <sup>[24]</sup>.

The internal financial resources of member states are compared to the litigation costs under the DSU, which hinder countries with limited resources from participating in the DSB. The shortage of internal legal expertise is also analyzed. The WTO law and provisions need to be upgraded to provide legal expertise training and financial support for these countries (Van den Bossche & Zdouc, 2021) <sup>[51]</sup>.

The ACWL and Article 27.2 alleviate some constraints, but many shortcomings remain. The retaliation processes discourage developing countries from using the dispute settlement body. The possibility of successful retaliation is also analyzed. This section reviews the activities of developing countries with the WTO retaliation rules, disclosing statistical data and outcomes (Broude, 2008) <sup>[13]</sup>. Timeframe and reparation systems are discussed, noting that prolonged proceedings increase litigation costs, making the DSB system unfavorable for countries with weak economies (The World Trade Organization, 2015) <sup>[50]</sup>.

#### **Recommendations**

In chapter five potential solutions towards the problem regarding participation in the dispute settlement system of WTO are discussed. The suggestions are objected to amendment of existing WTO Articles to make it friendlier toward developing countries. The suggestion in this chapter five should take serious consideration by the WTO member. Though several systems seem to become favorable towards developing countries, some serious reforms of rules must be considered by dispute settlement body. Chapter five consists of three-part solution. The lack of monetary and licit resources is addressed in the first part. Second part consists of collective retaliation and the third part discuss about the time required to case and reparation system. These are fundamental constraint to country toward the entry in dispute settlement system of WTO. Few methods are suggested to overcome these constraints. By employing these methods developing countries may enjoy better access to DSB. 97 Developing countries should form an alliance and sign-up agreement to successfully employ this proposal into WTO system. However, several constraints remained intact regarding developing countries is dispute settlement system. Developing countries should enforce and pressure in WTO to reform dispute settlement system toward their interest. The whole thesis intended to addresses constraints faced by developing countries in dispute settlement system of WTO. Possible solution of these problems has been discussed in order. In this section some obstacles are addressed in the WTO for developing countries in the jurisdiction and consultations level. WTO members previous attempt to solve these problems also been discussed in this section. These combined effects of member state had smoothened the way of developing countries and LDCs in the dispute settlement system of WTO. This part discusses about the financial and legal resources problem faced by developing and less developed countries. A fund should be raised by member state for the developing and least developed countries. The fess of the lawyers of developing nation ought to be changed from litigant country if developing nations win preliminary. The reform and development of ACWL would help to minimize the legal assistance cost developing countries from the consultation or discussion stage. Mediation or negotiation and discussion or consultation are also discussed within this section. These two tools provide excellent leverage to developing countries in the negotiation with powerful developed countries. Moreover, these methods are proven to be cost and time effective in many angles. The proposal of member state to smooth the jurisdiction system for the developing countries has been successful in some manner. The time stage and settlement system improvement are discussed in the section and subsequent development of the system is very necessary

for more access. The monetary compensation would work very effectively to protect the interest of developing countries while providing an encouragement to practice dispute settlement system. If these proposals are applied effectively, the developing countries will enjoy as much power as the developed countries. Thereby an environment of equity will work in the DSB

### References

1. AH. Dispute settlement in the WTO, developing countries, and India. ICRIER, 2002.
2. Advice, support and training to developing and least-developed countries. [Internet], 2021. Available from: <https://www.acwl.ch/>
3. Al Bashar. How to make the WTO dispute settlement system work for developing countries: Some proactive developing country strategies. Shaffer G, editor, 2009.
4. Alotaibi N. The WTO (DSU) and developing countries: Problems and possible solutions. University of Essex, 2011.
5. Alotaibi NN. The WTO's dispute settlement body and its impact on developing countries: Problems and possible solutions, 2011.
6. Analysis T. The WTO dispute settlement system: Issues to consider in the DSU negotiations. South Centre, 2005. Available from: [https://www.southcentre.int/wp-content/uploads/2013/07/AN\\_DS1\\_WTO-Dispute-Settlement-Issues-to-consider-in-DSU-negotiations\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2013/07/AN_DS1_WTO-Dispute-Settlement-Issues-to-consider-in-DSU-negotiations_EN.pdf)
7. Babu RR. Special and differential treatment under WTO agreements: A study. Asian-African Legal Consultative Organization; n.d. Available from: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=887860](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=887860)
8. Bacchus J. Lone star: The historic role of the WTO. *Texas International Law Journal*, 2004, 39.
9. Bohi K. Problems of developing countries' access to WTO dispute settlement. n.d.
10. Van den Bossche P, Zdouc W. The law and policy of the World Trade Organization: Text, cases and materials. n.d.
11. Bown CP, Hoekman BM. WTO dispute settlement and the missing developing country cases: Engaging the private sector. *Journal of International Economic Law*, 2005;8:861.
12. Brewster R. The remedy gap: Institutional design, retaliation, and trade law enforcement. *George Washington Law Review*, 2011;80:102.
13. Brode T. The World Trade Organization: Law, practice, and policy. *European Journal of International Law*, 2008;19(3):447-466.
14. Buterbaugh K, Fulton R. The WTO primer tracing trade's visible hand through case studies, 2007.
15. Carmody C. WTO obligations as collective. *European Journal of International Law*, 2006;17:419.
16. Choukroune L. China and the WTO dispute settlement system. *China Perspectives*, 2012, 49.
17. Clough M. WTO dispute settlement system—A practitioner perspective. *Fordham International Law Journal*, 2000.
18. Correa CM. Intellectual property rights and the use of compulsory licenses: Options for developing countries. Trade-related agenda, development and equity, 1999.
19. Davey W. The WTO dispute settlement system. *Journal of International Economic Law*, 2000.
20. Davey WJ. The WTO: Looking forwards. *Journal of International Economic Law*, 2006;9:3.
21. Demaret P. The metamorphoses of the GATT: From the Havana charter to the World Trade Organization. *Columbia Journal of Transnational Law*, 1995.
22. Eastern Europe group, 2011.
23. Evans JW. The General Agreement on Tariffs and Trade. *International Organization*, 1968;22:72.
24. Ezeani EC. The WTO and its development obligation: Prospects for global trade. Anthem Press, 2010.
25. Footer ME. Developing country practice in the matter of WTO dispute settlement. *Journal of World Trade*, 2001;35:55.
26. GATT document cited in WTO, 1995.
27. Gleason CP, Walther PD. The WTO dispute settlement implementation procedures: A system in need of reform. *Law and Policy in International Business*, 2000;31:714.
28. Horn H, Mavroidis PC. Remedies in the WTO dispute settlement system and developing country interests. Institute for International Economic Studies, Stockholm University Centre for Economic Policy Research, 1999. Available from: [https://www.iatp.org/sites/default/files/Remedies\\_in\\_the\\_WTO\\_Dispute\\_Settlement\\_System\\_.htm](https://www.iatp.org/sites/default/files/Remedies_in_the_WTO_Dispute_Settlement_System_.htm)
29. Hoekman BM, Mavroidis PC. WTO dispute settlement, transparency, and surveillance. n.d.
30. Horlick G, Coleman J. The compliance problems of the WTO. *Arizona Journal of International and Comparative Law*, 2007;24:142.
31. Hudec R. The adequacy of WTO dispute settlement remedies: A developing country perspective. n.d.
32. Hudec RE. Enforcing international trade law: The evolution of the modern GATT legal system. Butterworths, 1993.
33. Hylton KN. Fee shifting and incentives to comply with the law. *Vanderbilt Law Review*, 1993.
34. ICTSD Project on the WTO Dispute Settlement System and Developing Countries. n.d.
35. Ierley D. Defining the factors that influence developing country compliance with and participation in the WTO dispute settlement system: Another look at the dispute over bananas. *Law and Policy in International Business*, 2002.
36. IMF—International Monetary Fund Home. [Internet], 2021. Available from: <http://www.imf.org/external/index.htm>
37. Kaplow L, Shavell S. Economic analysis of law: Damage measures for breach of contract. *Handbook of Public Economics*, 2002.
38. Kugler K. European communities and certain member states—Measures affecting trade in large civil aircraft (EC and certain member states—Large civil aircraft) (DS316). *World Trade Review*, 2018;290:700.
39. Law SD. Developing countries and the WTO dispute resolution system: A legal assessment and review. *Journal of Sustainable Development Law and Policy*, 2013;2:121.
40. Lawrence RZ. Crimes and punishments? An analysis of retaliation under the WTO. Institute for International Economics, 2003.

41. Lester S, Mercurio B, Davies A, Leitner K. World trade law: Text, materials and commentary. Hart Publishing, 2008.
42. Mavroidis P. Remedies in the WTO legal system: Between a rock and a hard place. *European Journal of International Law*, 2000.
43. McRae D. What is the future of WTO dispute settlement? *Journal of International Economic Law*, 2004;7:3.
44. Millennium Development Goals. [Internet]. n.d. Available from: [https://www.wto.org/english/thewto\\_e/coher\\_e/mdg\\_e/development\\_e.htm](https://www.wto.org/english/thewto_e/coher_e/mdg_e/development_e.htm)
45. Mukerji A. Developing countries and the WTO: Issues of implementation. *Journal of World Trade*, 2000;34:33.
46. Nordström H, Shaffer G. Access to justice in the World Trade Organization: A case for a small claims procedure? *World Trade Review*, 2008;7:587.
47. Novel AS, Paugam JM. Why and how differentiate developing countries in the WTO? Theoretical options and negotiating solutions. Paris: IFRI, 2006.
48. Nottage H. Evaluating the criticism that WTO retaliation rules undermine the utility of WTO dispute settlement for developing countries. *The Law, Economics and Politics of Retaliation in WTO Dispute Settlement*, 2010, 319.
49. The World Trade Organization. The WTO, 2021. [Internet]. Available from: <http://www.wto.org/index.htm>
50. The World Trade Organization. Dispute settlement, rules of conduct for the understanding on rules and procedures governing the settlement of disputes, 2015. [Internet]. Available from: [http://www.wto.org/english/tratop\\_e/dispu\\_e/rc\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/rc_e.htm)
51. Van den Bossche P, Zdouc W. The law and policy of the World Trade Organization: Text, cases, and materials. 5th ed. Cambridge University Press, 2021.
52. World Trade Organization. Millennium development goals, 2021. [Internet]. Available from: [https://www.wto.org/english/thewto\\_e/coher\\_e/mdg\\_e/development\\_e.htm](https://www.wto.org/english/thewto_e/coher_e/mdg_e/development_e.htm)
53. World Trade Organization. Understanding the WTO: Developing countries, 2021. [Internet]. Available from: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/d ev1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/d ev1_e.htm)
54. World Trade Organization. Who are the developing countries in the WTO?, 2013. [Internet]. Available from: [http://www.wto.org/english/tratop\\_e/devel\\_e/d1who\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/d1who_e.htm)