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РАЗВИВАЮЩИЕСЯ СТРАНЫ В СИСТЕМЕ РАЗРЕШЕНИЯ СПОРОВ ВТО

DEVELOPING COUNTRIES IN THE WTO DISPIT SETTLEMENT SYSTEM

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Аннотация: В Преамбуле ВТО говорится о необходимости обеспечения того, чтобы развивающиеся страны, особенно НРС, разделяли рост международной торговли в соответствии с потребностями их экономического развития. Эта статья начинается с краткой истории членства развивающихся стран как в ГАТТ, так и в ВТО. Много говорят о развивающихся странах и системе разрешения споров ВТО. Значительные оценки текущих и

потенциальных преимуществ участия развивающихся стран в ВТО сосредоточены главным образом на недавних событиях. В этой статье рассматривается особый аспект участия развивающихся стран в системе разрешения споров ВТО. Система разрешения споров ВТО предоставляет определенные преимущества развивающимся странам, и развивающиеся страны также пытаются повысить свой статус, что является основной причиной для участия в системе разрешения споров ВТО.

Abstract: The WTO Preamble states that there is a need to ensure that developing nations, particularly LDCs, share growth in international trade in accordance to their economic development requirements. This article opens with a brief history of developing nations' membership in both GATT and the WTO. There is a lot of talk regarding developing nations and the WTO dispute resolution system. Significant assessments of the current and potential advantages of developing country participation in the WTO focus mostly on recent developments. This article looks at a distinct aspect of developing countries' involvement in the WTO dispute settlement system. The WTO dispute system provides certain specific benefits to developing nations, and developing countries are also attempting to raise their standing, which is the primary rationale for participating in the WTO dispute system.

Ключевые слова: мировая экономика, ВТО, мировая торговля, право, развивающиеся страны.

Key words: world economy, WTO, world trade, law, developing countries.

Introduction

The role of emerging nations has altered as their membership numbers have increased. Developing countries took on fewer obligations than the industrialized world in the early years of GATT, and thus played a less dynamic role. However, as part of the Uruguay Round, developing countries made extensive commitments in a number of areas, including binding more tariffs and signing on to new intellectual property and services agreements. Emerging economies are given the opportunity to compete with economically powerful states in global trade debates and multilateral

decision-making. Trade between states is increasingly handled by the World Trade Organization's (WTO) dispute resolution process, which assists LDCs who are frequently at a disadvantage in trade disputes with larger, more powerful nations.

DEVELOPING COUNTRIES AND WORLD TRADE ORGANISATION

1.1 Developing Countries as a Participant

Many African nations do not participate in the WTO, countries like Egypt, Thailand, India, and Brazil are extremely engaged. A small group of emerging countries, including India, Brazil, Argentina, Chile, Mexico, and Korea, started the majority of the litigation. The Marrakesh Accord, "There is a need for an efficient manner intended to ensure that developing countries, particularly the least developed among them, secure a share of the increase in international trade directly correlated with the needs of their economic development," the World Trade Organization's founding document states. The employment of broadly applicable principles in cases involving developing countries is regulated by the DSU to ensure that developed and developing countries are treated fairly [1].

The World Trade Organization's (WTO) Dispute Settlement Mechanism has three key implications for developing nations [2]. It is, first and foremost, a rights guarantor. Second, it works as a check on economic hegemony, and third, it assures that systemic changes resulting from WTO jurisprudence do not jeopardize the interests and concerns of developing countries. Emerging members' participation as complainants has mostly been restricted to a few active players, especially the main trade developing members, Brazil, India, Korea, Mexico, and Thailand. Textile trade, agriculture, and dispute resolution procedures were the top priorities for developing countries.

The major aims of the DSU were to create a more equal system in which any member may register a complaint, have it properly investigated, receive a judgment on the assessor's or practice's conformity with WTO criteria, and – more commonly – 'have its day in court.' A number of sections in the DSU deal with how disadvantaged countries are treated differently in dispute settlement. Some of these

are deemed 'operational needs,' while others are deemed 'best attempts.' If a complaint is filed against them, Article 3.12 of the DSU gives developing countries the ability to apply the conditions of the so-called "Decision of 1966.

The DSU's most prominent features include stricter procedure restrictions, the right to panel, automatic acceptance of conclusions unless by negative consensus, and review by the standing Appellate Body. For complainants from poor countries, this means a faster trial, without the risk of a defendant preventing or considerably delaying a case's hearing. The option of appellate review allows for more uniformity across decisions, resulting in a more well-informed body of case law from which to ex ante consider the merits of a case. This move encourages poor countries to submit more claims with the World Trade Organization (WTO). 20 The benefits of the WTO's dispute settlement procedures have not been completely realized by developing countries.

The WTO addresses developing nations' specific requirements in three ways:

1. The World Trade Organization Agreement includes unique measures for developing nations.

2. The WTO's primary body concentrating on work in this area is the Committee on Trade and Development, with several others dealing with specialized themes such as trade and debt, and technology transfer.

3. The WTO Secretariat offers developing nations with technical support.

Issues that third world countries are facing for instance in Africa.

With regard to the WTO, as well as broader issues of global governance and the currently dominant global economic system, African governments, non-governmental organizations, policy and research institutions, and other related entities are now confronted with some significant short, medium, and long-term strategic challenges and tactical options. This requires a thorough examination of current difficulties as well as developing or prospective future processes, to the extent that they can be predicted, in order to make judgments (at first experimental and always subject to change) on strategy prioritizing and sequencing.

It is critical to identify all feasible possibilities without any a priori exclusions early on in the process, in order to have the most complete picture possible from which to analyze all potential present and future issues. Failure to thoroughly investigate all of the possibilities frequently reflects and reinforces predetermined biases - already decided, knowingly or unknowingly - toward some techniques and the exclusion of others. Without proper study, intentional assessment, and clear discussion, such decisions are frequently founded on implicit assumptions or prejudgments that some possibilities are not 'possible,' or are 'irrelevant,' and so on. Specific choices' feasibility, better value, or immediate relevance, on the other hand, may only be determined after a thorough and detailed examination of all possibilities. This must be the foundation for more comprehensive and successful holistic strategy. Furthermore, even if certain possibilities are first regarded as not immediately relevant or practicable as a result of this process of analysis, they must all stay within the general framework of the whole array of theoretical options, prospective future choices, or longer-term goals.

1.2 The Role of Dispute Settlement within the Countries

Developing countries play an essential part in the World Trade Organization's (WTO) dispute resolution mechanism. Developing nations are frequent users of the system, accounting for around a third of all compliments and increasingly employing WTO proceedings against one others. International relations have been increasingly driven by economic reasons, and the WTO system has adopted rule-oriented procedures and impartial dispute resolution in place of its earlier, more power-oriented diplomatic approach to trade interactions. There is a considerable trend for democracies to be targeted more often, allowing for the proportional size of trading countries and one country's dependency on trade with the other. The DSU's first 'best endeavor' provision pertaining to developing countries and dispute resolution is Article 4.10. During WTO discussions, this article urges members to utilize their best achievements to give special attention to the concerns and interests of developing nations. Second, when considering the implementation of a ruling in a case brought by a developing country Member under Articles 21.7, 8, Article 21.2

requires WTO Members to pay attention to issues that concern developing countries in their monitoring of DSB recommendations, and third, the DSB must consider additional action appropriate in the situation when considering the implementation of a ruling in a case brought by a developing country Member under Articles 21.7, 8. Finally, the conditions must be addressed when an LDC is involved in a dispute.

The WTO Dispute Settlement System is crucial to the relationship between the two countries. In this context, a discussion between two adjacent countries on the subject would be desirable. In most cases, a country will decline to participate in a trade dispute with a country with whom it trades heavily.

Roessler, on the other hand, is concerned about the idea of developing-country negotiating procedural privileges that haven't been used in GATT and WTO dispute resolution procedures, which might threaten the legitimacy of the proceedings. The collective trade stakes of a Member countries are also a good measure of how much a developing country uses the dispute resolution process. When the stakes are high, members are more likely to amass the resources necessary to defend their rights through WTO lawsuit.

2. DEVELOPING COUNTRIES' OBSTACLES

Developing countries have a complex and interconnected set of challenges when it comes to participating in the WTO dispute settlement system, and these difficulties include a wide variety of flaws that developing countries will need to address holistically. Although it is commonly expected that the legitimacy of the dispute resolution system will benefit poor countries, the truth is more difficult. The DSU developed a dispute resolution process, but it is not a substantial source of power for developing countries; in fact, the system may favor affluent countries disproportionately. The WTO's rule-based dispute resolution system was said to be better than the GATT's method. However, several empirical studies of its operation suggest that under the new system, impoverished countries may face difficulties in asserting their rights. As a result, it has been argued that the WTO's dispute settlement system fails to deliver on what was promised to developing countries, and that instead of creating a system that allows for dispute resolution based on the rule

of law rather than economic power, the system would be more expensive, more composite, and more mechanical. Many developing-country problems stem from underdevelopment, such as low participation, legal competency, trade structure, and power issues, and so on.

Five developing countries account for 60% of developing country complaints, and thirteen developing countries account for 90% of them, according to Hunter Nottage. In all, 95 of the 120 non-OECD members of the WTO had never lodged a complaint, and 62 had never even engaged as a third party. None of the African and Middle Eastern countries have ever filed a complaint with the WTO. No other country in the region has reacted except Egypt (four times) and South Africa (three times)[3].

2.1 The WTO System's Obstacles

A few new phases of legal proceedings per dispute have already been imposed, such as appeals, compliance evaluations, and recompense arbitration; the reforms have raised the hurdles that developing countries face when contemplating litigation by putting a premium on sophisticated legal argumentation rather than informal negotiation, and by potentially adding two years to defendants' legally allowed delays in complying with adverse rulings.

Companies who desire to participate successfully in the WTO dispute settlement procedure encounter three major obstacles. These are the challenges:

1. A comparative lack of legal knowledge in WTO law and the ability to organize information in relation to trade barriers and opportunities to challenge them;
2. Limited financial resources, including the hiring of outside legal counsel to effectively use the WTO legal system, which has become progressively more expensive;
3. Fear of political and financial pressure from market power members, particularly the United States [4].

The new World Trade Organization (WTO) dispute settlement system has increased the transaction costs of resolving disputes, an unintended consequence of

the much-touted transition toward a more rule-based system [5]. The DSU's elements that are sensitive to, and informed by, the 'power ratio' among participants; impose inequitable burdens in the dispute settlement process; obstruct worldwide predictable rights of access to the judicial process; and generate financial distortions and inefficiencies are among the concerns of developing countries.

For most advanced industrial nations, the DSU's stronger focus on legal capacity will be easier since the transition from a power-oriented to a more rule-oriented system contains some more haziness for them, but for destitute countries, such a transformation will simply replace.

2.2 The Development Country's Own Obstacles

Developing countries would be unable to engage in dispute resolution because they lacked the legal expertise and human resources necessary to assess if a claim may be filed and to successfully prosecute the claim to its end. Despite the fact that each country has a seat at the WTO, the discussions, consultations, and conversations that take place under its auspices seldom receive much attention in capitals[6]. Geneva-based delegates may be disillusioned because of a lack of home support, restricting their motivation to participate in the dispute resolution mechanism. If a major trade dispute arises, putting the country on the defensive, the mission's understanding of dispute settlement might be completely lacking. Representatives are not engaged in the formation of domestic policy and are permitted to work without direction. As a result, there may be a disagreement between the views taken by WTO delegations and the trade and investment policies pursued by a country.

Smaller countries may need a financial incentive to seek redress. The degree of development of a country continues to have a considerable influence on the resolution of conflicts prior to litigation, and the enforcement of agreements is contingent on designing retributive measures that impose large costs on a non-complying country [7]. The ability of a member to process information on trade injuries, their causes, and their relevance to WTO rights will be a function of its participation in the system of the WTO. Due to a lack of legal and financial

resources, the absence of unique legal rights such as those conferred under the Generalized System of Preferences (GSP), and the lack of effective' sanctions capability, LDCs continue to be disadvantaged in the WTO dispute settlement system. Affluent countries' political pressure also acts as a deterrent for impoverished countries deciding whether or not to bring the case. Rich nations threatened to remove special tariff advantages or foreign aid if a developing country attempted to challenge a trade policy. The threat of retaliation in the form of diminished preferential access under the GSP or another preferential trade agreement adds to the fears of developing countries.

The ability of a country to assemble legal and human resources in order to participate in the dispute resolution system is referred to as legal capacity. The basic obstacle constraining access to dispute resolution, according to Busch, Reinhardt, and Shaffer, is a lack of legal competence. Members with a lack of legal ability have greater latitude since the move from consultation to comprehensive conflict resolution is not seen as a negative outcome. The lack of legal expertise in developing countries may make it difficult to identify illicit activities, and their lack of "power" may make enforcing favorable judgments difficult. It might also lead to punitive measures such as the loss of preferential trade treatment (or the imposition of more onerous origin standards) or a reduction in foreign aid. For rising nations, institutional weakness is also a big challenge. The Uruguay Round agreements, which contain a provision for SDT, have institutionalized the institutional weaknesses of impoverished countries.

Furthermore, one of the most common criticisms of the DSU is that it is ineffective for developing countries; this criticism is broken into two components. To begin with, some argue that developing countries lack the people and financial resources necessary to participate effectively in conflict resolution. Second, some argue that the dispute resolution norms favor impoverished countries because any retribution carried out in compliance with the DSU has a limited impact. Apart from that, developing nations' lower frequency of involvement in GATT and WTO dispute settlement processes was due to their lesser proportion of global trade, the

perishable character of many of their exports, and other factors. Their reliance on the GSP and other special systems, the exceptional role of the Textiles Surveillance Body (TSB) in resolving disputes relating to textiles exports from developing countries; as well as the numerous GATT exceptions are indicative of a lack of internal legislation and inter-agency coordination promoting public-private partnerships between exporters and trade ministers in developing countries, in addition to a lack of active participation of developing countries in the WTO dispute settlement process. Emerging nations' punitive actions, on the other hand, might be weaker and less persuasive. Members must preserve the fairness of the system that they have negotiated.[1]

If the activity in issue is found to be in breach of WTO rules, there are essentially no options for compensating developing countries for considerable export losses suffered during the dispute settlement process. Smaller developing nations that rely significantly on a small number of export commodities and markets may be particularly harmed by this circumstance.

Conclusion

Understanding and participation in the dispute settlement system by developing countries may have a substantial impact on their overall ability to profit from their WTO rights and obligations. In its less than two decades of existence, the WTO has settled 400 claims, half of which were resolved without the need for litigation through the WTO's statutory consultation processes. Unlike common opinion, developing countries have made efficient use of the organization's broad dispute resolution instruments, filing complaints in over 45 percent of cases and participating as responders in over 42 percent.

According to this viewpoint, developing nations' limited involvement reflects their lesser trade flows, notably in LDCs. Another difficulty is that poor nations do not file complaints because they lack the institutional and judicial competence to

[1] Ernst-Ulrich Petersmann, “The Doha Development Round Negotiations on Improvements and Clarifications of the WTO Dispute Settlement Understanding 2001-2003: An Overview” Federico Ortino and Ernst-Ulrich Petersmann (eds), The WTO Dispute Settlement System 1005-2003 (KLI, 2004) p 13.

detect and pursue violations of the law, as well as the financial resources to hire legal firms to do so. A WTO member must develop cost-effective techniques to detect harm to its trade prospects, determine who is to blame, and mobilize resources to file a legal claim or negotiate a favorable settlement in order to successfully use the WTO system. The WTO dispute settlement system should be reinforced by all Members' real determination to execute its judgments and commit to executing its recommendations, large and small.

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