Publisher homepage: www.universepg.com, ISSN: 2663-7820 (Online) & 2663-7812 (Print)

https://doi.org/10.34104/cjbis.022.01000111

Canadian Journal of Business and Information Studies

Journal homepage: http://www.universepg.com/journal/cjbis

Challenges for the Developing Countries and the LDCs in the DSU: Strengthening the Dispute Settlement System of the WTO

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ABSTRACT

The World Trade Organization (WTO)'s Dispute Settlement Understanding (DSU) has obligations to protect the contractual rights of developing countries against the power politics of developed countries. Although the dispute settlement system gives special economic security to developing and the least developed countries (LDCs), there are complains that developed countries have still influence in the DSU due to lack of balancing political and economic power among members. Many members proposed to strengthen the consultation and mediation processes of the DSU system in the interest of developing countries and the LDCs. The paper examines the constraints and challenges faced by developing member countries against developed countries regarding lodging complaints in the DSU. The paper argues that the DSU should take developing countries' complaints and proposals to strengthen the dispute resolution processes such as mediation and consultation into consideration for the betterment of the world economy and trade. The paper analyses that the trade liberalization and special but differential treatment for developing and least developed countries can balance the power and economic politics among all members of the WTO.

Keywords: Challenges, Developing, Countries, LDCs, DSU, Dispute, Settlement system, and WTO.

INTRODUCTION:

Dispute settlement is one of the major bugbears for the developing and Least Developing Countries while dealing with the trade related issues for agreement with developed countries under World Trade Organization (WTO). 'The WTO was born out of negotiation and everything the WTO does is the result of negotiation' (WTO Information and External Relations Division, 2015). Inspired by this fundamental theme, among 164 Members[i], about two-third of the developing countries and 30 from the Least Developed Countries (LDCs) joined as the Member of WTO. The ultimate cost-benefit analysis by individual or by a group of countries results complementary and conflicting interests, leading to an agreement or dispute. After the Uruguay Round, the principles of indiscrimination, freer, predictable, competitive, and most importantly, privileges for less developed countries have drawn the attention developing and LDC, increased their trade bindings and made them more attracted in the multi-lateral trading system. Despite encouraging development and economic reforms, the conflicting interests in trade relations and misinterpretation of the negotiation or agreement requires solid foundation of the dispute settlement mechanism to look after all the issues legally, peacefully and neutrally. However, the dispute settlement mechanism still suffers several major imperfections. Since its entry in the new world trading system in 1995, LDC and developing countries had

been considered as the most beneficiary group by getting preferential treatment under different special and Differential (S&D) treatment provisions. On the contrary, the developing countries consider that the benefits received by them are still disproportionately less beneficial in comparison to that received by the developed countries. This inverse interpretation of 'the Uruguay Round[ii]' lead number of development in Doha Development Agenda (DDA) or the 'Doha Declaration'[iii] (WTO: Doha Declaration, 2003) focusing more on developing countries' concerns and policy objectives (Sohn, 2009). To this effect, Doha declaration agrees on negotiation on improvements and clarifications of the Dispute Settlement Understanding (DSU) (WTO: Doha Declaration, 2003, p. 13), recognizing the needs of developing and least development countries for enhanced support on technical assistance and capacity building including policy analysis and development (WTO: Doha Declaration, 2003, p. 10).

These include conciliation and mediation with a view to assisting parties to settle the dispute as well as restraining developed countries to seek compensation from the right of retaliation. Not with standing, the dispute settlement mechanism needs further refinement with doubtless interpretation to resolve all discrepancies and proceedings for the interest of the developing countries and the LDCs as well as for common benefit of the multilateral trading system under WTO. Under these backdrops, this paper will put an endeavor to analyze the present status of developing countries and the LDCs in and under the dispute settlement mechanism of the WTO. This will also examine the challenges for developing countries and the LDCs in the WTO dispute settlement system. Finally, the papers will conclude by illustrating the reform proposals submitted by some developing countries and the LDCs to strengthen the current dispute settlement process of the WTO.

Developing Countries, the LDCs and the DSU

The Dispute Settlement mechanism, the central pillar of multilateral trading system works for the advancement of all WTO Members for the stability of the global economy (WTO Information and External Relations Division, 2015, p. 55). DSU (Dispute Settlement Understanding) addresses issues of the developing and least development countries taking a procedural form by providing enhanced substantive rights, granting transitional period, longer or accelerated deadlines, technical and consulting assistance etc (Legal Affairs Division, Rules Division of WTO, Appellate Body Secretariat, 2017, p. 20). The system offers an opportunity for economically weak countries to challenge developed countries while providing security to developing countries and the LDCs who, in the GATT (General Agreement on Terrif and Trade) system, lacked the political and economic power to enforce their rights and to protect their interests (Bossche, 2003, p. 5). In fact, developing countries were very much conscious that the WTO dispute settlement system should be more active which would commence far reaching obligations to protect their contractual rights and protecting them against developed countries' power politics. Their proposals include many provisions which recognize their special interests; allow them to meet fewer obligations; provide a longer timeframe for the implementation of certain obligations; or provide for technical assistance. Furthermore, there are also provisions specifically related to the LDC Member countries of the WTO with special considerations under various special situations of the LDCs. In dispute settlement cases involving an LDC member, other members of the WTO are to exercise due restraint.

When a satisfactory solution has not been found through consultations on a dispute settlement case involving an LDC, upon request by the LDC member country, the Director-General or the Chairman of the Dispute Settlement Board (DSB), before a request for panel is made, offers their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute (Article 24.2 of the DSU) (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 373). Summarily, the fundamental objectives of the Dispute Settlement Mechanism emphasized to enhance the opportunities and facilities for the developing and LDC, in order to minimize the differences and make it viable organ of the world business forum (Mujeri *et al*., 2022).

Provisions Relating to Developing Countries and the LDCs in the DSU

The rules governing dispute settlement in the WTO are, in large part, set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes, commonly found in Annex 2 of the WTO Agreement,

the DSU builds on rules, procedures and practices developed over almost half a century under the GATT 1947 (Legal Affairs Division, Rules Division of WTO, Appellate Body Secretariat, 2017, p. 4). The DSU contains number of special provisions setting forth procedures and time frames relating to the disputes involving developing countries. The 'general provision' of the DSU provides a standing legal advantage in paragraph 12 of the Article 3. A developing country bringing a complaint against a developed country may invoke alternative provisions in four DSU Articles relating to consultations (Article 4), good offices, conciliation, and mediation (Article 5), panel establishment (Article 6) and panel procedures (Article 12), and also based on the Decision of 1966 on Procedures under Article XXIII (14S/18)[iv]. Article 4.10 of the DSU states that members should give special attention to the particular problems and interests of developing countries during consultations (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 358). To maintain equilibrium in the panelist, Article 8.10 provides legal benefits to include at least one panelist from the developing country (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 361). Article 12.10 of the DSU states that the periods for consultations involving measure taken by a developing country may be extended (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 363). A panel examining a complaint against a developing country shall afford sufficient time for the developing country to prepare and present its argument (Article 12.10 of the DSU). Article 12.11 states that in disputes involving a developing country, the panel's report shall explicitly indicate how S & D treatment provisions, raised by the developing country, have been taken into account (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 364).

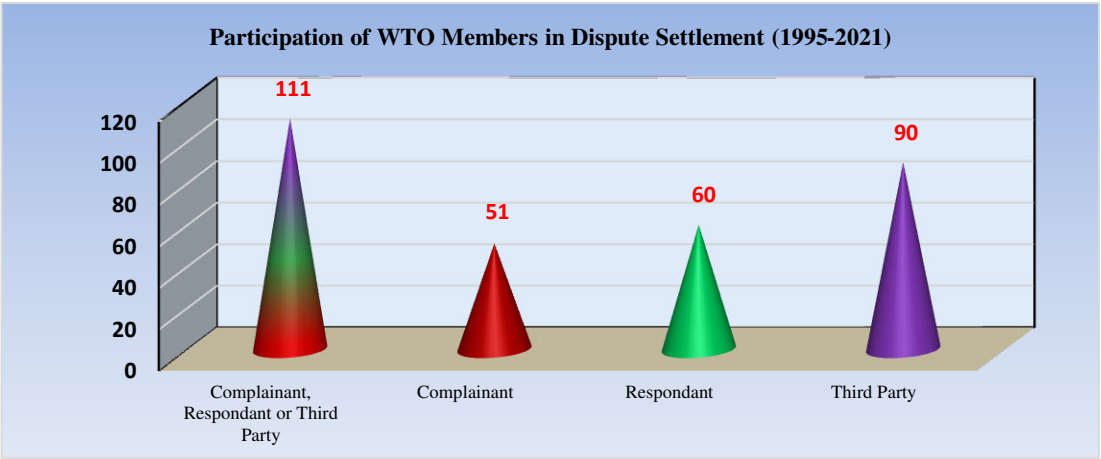
More specifically, it states, "When keeping the implementation of adopted recommendations and rulings under surveillance, particular attention should be paid to matters affecting the interests of developing countries." If the case has been brought by a developing country, the DSB shall consider what further action might be taken. Furthermore, Article 27.2 states that the WTO shall make available a qualified legal expert to provide legal advice and assistance for developing countries in WTO dispute settlement proceedings (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 375). If the dispute involves an LDC, considerations should be given to the special situation of that country. A specific Article has also been kept in the DSU on Special Procedure Involving Least-Developed country Members to build an attention of the considerations provided for LDCs (The Results of the Uruguay Round Multilateral Trade Negotiations, 1999, p. 373).

Participation of Developing Countries and the LDCs in the DSU

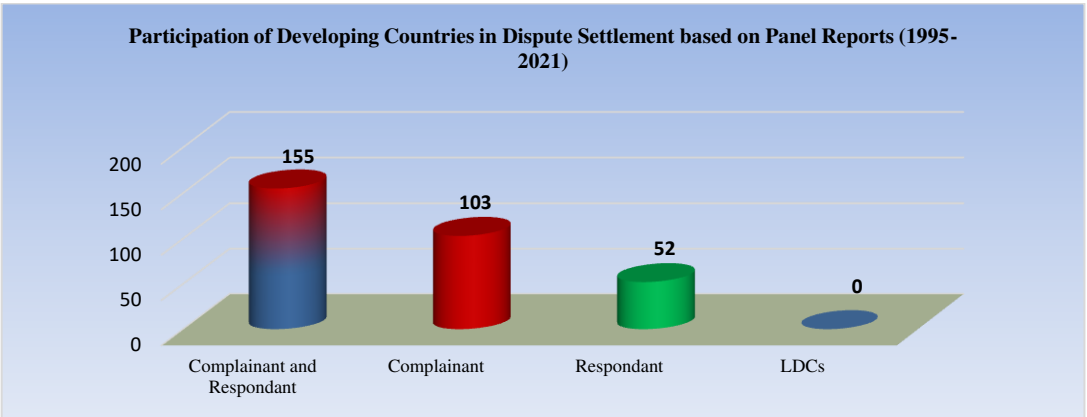
The very existence of the 'Rules and Procedures Governing the Settlement of Dispute' is a fundamental benefit for the developing and least-developed country including small members. The developing countries have had access to that system by way of challenging trade measures of developed countries. This is used to settle their trade disputes with other developing countries. Participation of developing country Members as complainants has been confined to some larger trading developing nations, such as, Brazil, India, Korea, Mexico, Chile, Indonesia, and Thailand. Developing Members have attributed as respondents both in the context of disputes with developed and developing Members. Many of the complaints against the developing Members have been brought by the major developed Member countries. Consequently, developing countries became the frequent users of the DSU whenever a new legal development in the WTO dispute settlement system came into force. Since 1st January 1995 till 31 December 2021, about 52 WTO members initiated and 61 members responded to at least one dispute[v]. Overall, a total of 111 members have been active in dispute settlement as a party or third party. Developing countries requested 13 out of 25 dispute settlement consultations under Article 4 of the DSU in 1995 (Petersmann, 1997, p. 202). In 2000 and 2001, developing countries brought more cases than developed countries in trade disputes. Brazil, Thailand, India, Mexico, and Chile were the most active users among the developing country Members in the dispute settlement system during this period.

Till October 2007, among 363 cases, developing countries were the complainants with 272 bilateral disputes or 31.8% and the LDCs have complained only 8 times

or 0.9% of all bilateral disputes (Centre for Policy Dialogue, 2008). As per the "WTO Dispute Settlement: One Page Case Summaries 1995-2020", about 23 developing countries were the complainants of 103 cases while 15 countries responded to 52 cases amounting the involvements in 155 Panel Reports.



Graph 1: Participation of WTO Members in Dispute Settlement[vi]



Graph 2: Participation of Developing country in Dispute Settlement Issues (Source: WTO Dispute Settlement: One-Page Case Summaries – 1995–2020 and summarized by authors).

Amongst smaller developing and LDCs, Angola, Barbados, Dominic Republic, Guatemala, Honduras, Panama, Thailand, Taipei, Venezuela, and Vietnam took part as the complainant. El Salvador brought a safeguard measures case on bags and tubular fabric against the Dominican Republic. Likewise, Vietnam, another developing country, also brought a dumping case on shrimp against the USA. Peru requested consultations regarding anti-dumping duties against Argentina. Ukraine, for the first time, requested to establish a panel against Armenia. However, developing countries were more involved as third parties than developed countries (Agah, 2011). Bangladesh is the first LDC Member who complained as a principal part. Bangladesh requested consultations with India concerning a certain anti-dumping measure imposed by India on imports of lead acid batteries from Bangladesh. Bangladesh settled her dispute through "mutually agreed upon understanding" notifications to the WTO before there was a need obtain a panel ruling (Bown, 2009, p. 160).

Importance of the DSU for Developing Countries and the LDCs

The DSU and the developing country/Least-developed country has interdependent reciprocity relations for the strengthening of the WTO and the enhancing the economy of the developing / least-developed nations. The dispute settlement system is the medium of raising the voice against the logical rights for developing countries. It thereby works as the check and balances

against economic hegemony and ensures the changes brought about through the WTO jurisprudence, which helps in stabilizing developing country's interests. For future, it may be the path of the assurance of the fair system for the least developed and smaller country within the competitive business gamut of the world. Presently, it recognizes and ensures the availability of additional or privileged procedures and legal assistance for developing and LDC Members. The second paragraph of the Doha Ministerial Declaration states:

> "We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. Most WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration."(WTO: Doha Declaration, 2003, p. 2)

The next paragraph states:

> "We recognize the particular vulnerability of the least - developed countries and the special structural difficulties they face in the global economy. We are committed to addressing the marginalization of least-developed countries in international trade and to improving their effective participation in the multilateral trading system. "(WTO: Doha Declaration, 2003, p. 3)

Both paragraphs of the declaration emphasize that special attention should be given for the interest of developing countries and the LDCs.

Challenges for Developing Countries and the LDCs with the DSU

The fundamental cause of the challenges for the developing country and LDCs with DSU lies with the principles upon which the agreements are based. As the creators of the systems, the rulers, and the organizers; the developed country possesses the knowledge, controlling instruments and resources to grasp the intangible benefits. While the limitations of the same put the developing and the least developed countries under long standing challenges. As a result, a group of developing countries raised their complaints and demanded the presence of full representation in the WTO in order the minimize their challenges (Pham, 2004, p. 336). The challenges faced by the developing and least-developed countries encompasses core issues knowledge, expertise, resources, power, and implementation in its boundary. The implementation of panel and appeal decision, lack of legal expertise in the WTO law and lack of opportunities to challenge, fear to initiate dispute against developed countries due to political and economic pressures, resource constraint affecting the hiring of outside legal counsel, and the issue of third-party participation are a few of the broad challenges being tackled by developing and least developing country.

Implementation of Panel and Appeal Decisions

On average, 37 panel and arbitral proceedings were ongoing each month. Members did not reach consensus on launching the selection process for the appointment of new Appellate Body members and no new appeals could be heard in 2020 (WTO Annual Report 2021, 2021, p. 138).

> "If you look at the [Dispute Settlement Body] agenda every month, there are issues in the agenda . . . that have been there for more than four years, or five years. After seven or eight years of dispute, we are - it looks as if we are almost at square one. Without any doubt, compliance is the toughest issue for the WTO. (Interview with official, Geneva, April 19, 2006)" (Conti, 2011, p. 133).

This interview reflects the fundamental challenge of the implementation or compliance faced by the developing countries. On the contrary, the DSU provides that the losing party proposes a time approved by the DSB, or the parties can agree on the period fixed by the provision, which is, forty-five days. Additionally, the time can be determined through binding arbitration, which is ninety days (Jackson, 192). Developing countries and the LDC Members are suffering serious harm in this timeline than developed countries (Pham, 2004, p. 354). Besides, lack of compensatory provision in cases of delayed implementation of panel reports is damaging small developing country Members and the LDCs (Mataitoga, n.d., p. 10). Another challenge for developing countries and the LDCs is the difficulty of enforcing the decisions of dispute settlements, particularly in the cases against developed countries. Enforcement through retaliation to the DSU to some extent is one-sided, difficult and detrimental to developing country complainants (Conti, 2011, p. 128) and they

will be more adversely affected by the cases where retaliation is self-defeating.

Resource Constraint and Technical Support

Developing countries and the LDCs raised the issues in the DSU regarding modifications of the provision of resource restraint and technical assistance for them. They have very limited national legal and financial expertise available and face difficulties to bring or defend cases before the DSB. For this reason, they must have to rely on expensive third - party expertise (Advisory Centre on WTO Law). A developing country could be in trouble for investing its scarce resources on international lawyers and not achieving the expected result (Alberto do Amaral Junior, 2019, p. 44). Besides, the legal provision of the qualified consultant for developing countries and the LDCs are available; but most of the cases, because of the lack of national legal expertise, developing countries and LDCs cannot take this opportunity from the WTO (Pham, 2004, p. 356).

Lack of National Capital Support

Developing country missions working in the WTO can suffer from a lack of support from national capitals. For the cause of substantial complexity of rules and institutional structures of the WTO, a developing country representative cannot follow all WTO developments. There are over seventy different WTO councils, committees, working parties and other groups involving over 2,800 meetings each year (Sampson, 2000). As developing country delegates often receive little support, most developing countries cannot manage to pay for fly from the capital for specific WTO meetings.

Compensation Requirement

Since developing countries are more dependent on the developed country markets, developing countries cannot protest developed countries' inconsistent initiatives of the WTO rules. The non-existence of the compensation requirement leads to abusive use of contingency protection by developed countries, which is of special interest to developing countries (Sohn, 2009, p. 15). As a result, the developing countries become the victims of the weaknesses of the DSU.

Lack of Bureaucratic Co-ordination

Many developing countries require the approval of the attorney general's office of their national courts to file a claim or a third-party submission in a dispute under the DSU. This process involves multiple ministries in the home country and these ministries may be subject to external pressure when a powerful developed country is a party to a dispute. Such pressure can create so much delay that the delegate or representative in Geneva is sometimes unwilling to participate effectively in a dispute. Such bureaucratic difficulties also cross the stipulated deadline.

Lack of National Legal Expertise

Many developing country delegates suffer from a lack of national legal expertise in the rules and obligations of the WTO because these delegates are non-lawyers. Most developing countries have only one or two lawyers to address WTO matters.WTO law has not traditionally been taught in developing countries and in the LDCs, they have become dependent on education in law schools in the United States and Europe to develop local talent - provided that talent returns home (Shaffer, 2006, p. 6).

Language Disadvantage

Most developing country representatives must work in a foreign language in the WTO. English prevails in the WTO dispute and other proceedings, though English, French and Spanish are the three official languages of the WTO. Thus, French and Spanish-speaking delegates are facing the linguistic disadvantage (Shaffer, 2006, p. 6). Delegates speaking other languages are even worse. Some developing countries' representative showed dissatisfaction about their language disadvantage in dispute settlement procedures (Shaffer, 2006).

Legal Assistance from WTO Secretariat and Advisory Centre on WTO Law

Though, the WTO Secretariat assists all Members in respect of dispute settlement when they so request, the DSU recognizes that there may be a need to provide additional legal advice and assistance to developing country Members. Article 27.2 of the DSU provides that if so requested, the WTO Secretariat will appoint qualified legal experts to help any developing country Member. The experts cannot act in favor of a developing country Member in a dispute with another Member and their assistance is necessarily limited to the preliminary phases of a dispute (UNCTAD 56). On the other hand, the membership fee that the Advisory

Centre on WTO Law (ACWL) charges for access to its services may be too high for most of the LDC Members that have more pressing matters for them. At the same time, as the lawyers at the ACWL are admired for their experience and competence, there are not enough of them to cover all the developing country cases. Furthermore, there may be conflicts of interest in cases involving opposing developing countries (Pham, 2004, p. 357)

Development & Equity Principles

There is an observation that the obligations of the WTO can go against economic development principles and policies which may affect developing countries and the LDC Members' interests in the DSU. The African Group has commented that the development and equity concerns of Members of the African Group have not been considered in assessing the operation and the call for improvement of the DSU. However, the DSU expressly asks for special attention to the problems and interests of developing country Members in consultations, panel reports, and in the surveillance of implementation. The problem is that, beside these special and differential provisions of the DSU specifically favoring developing countries, very few of this clauses has ever been reflected by a WTO panel or the Appellate Body (359).

Barriers to Consultation and Mediation

Problems with Consultation

The WTO dispute settlement process starts when a member formally requests for consultations with another Member. Disputing Members shall enter into consultations in good faith and should attempt to obtain a satisfactory adjustment of the matter during the consultation stage (Article 4.3 and 4.5 of the DSU). Article 4.10 states "during consultations, the Members should give special attention to the particular problems and interests of developing country Members."However, the condition for good faith and special and differential treatment for developing countries in consultations are often ignored (Pham, 2004, p. 373). The effectiveness of consultations fully depends on the compliance with the compliment of the parties to enter consultations in good faith. It is observed that not all the WTO Members showed the same importance to this commitment. Since the DSU imposes very few obligations on the consultation process, many countries abuse the flexibility inherent in the system to avoid real consultations (Bordght, 1999, pp. 1233-34). Consultations are confidential and there is no detailed record of the consultations of the Members. There are a few questions came up. Such as, whether the consultations were undertaken in good faith or which method of evaluation of consultation stage contributed to settling the dispute. Again, many consultations of the WTO involve only the complaining and responding parties. Therefore, the formal consultations of the DSU follow unsuccessful efforts to resolve a dispute through usual bilateral diplomatic efforts. It can be said that consultations are ineffective for developing countries and the LDCs (Pham, 2004, p. 373).

Problems with Mediation

The non-utilization of the provisions of Article 5 of the DSU dispute settlement have been strongly encouraged and supported by the Director-General for developing countries and the LDCs. They have unequivocally proposed to use more good offices, conciliation, and mediation (Pham, 2004, p. 379). However, there are a number of difficulties with mediation which developing countries and the LDCs are facing. Developing countries have expressed their anxiety about having a mediator by the Director-General (Pham, 2004, p. 380) and mediation process is not being sufficiently transparent. Professional diplomats in Geneva working in their countries respective of the WTO delegation may not consider that good offices, conciliation and mediation are required and developing countries and the LDCs may be confused for requesting mediation with receiving advisory opinions (Pham, 2004, p. 380). Because of a lack of precedents, developing countries and the LDCs feel uncertainty about what mediation would actually involve.

For this reason, many parties might consider mediation to be an unnecessary procedural barrier. In addition, developing countries may be more unwilling to ask for the help of a third-party and they may hesitate to bring complaints against developed countries (Pham, 2004, p. 380).

Proposals Submitted by Developing Countries and the LDCs to Reform the DSU

A number of developing countries submitted proposals for the changes of the DSU during the comment stage

for reforming the DSU to correspond with their traditional complaints. They submitted proposals reforming the liberalization of third-party rules and for restrictions on *amicus curiae* briefs (Pham, 2004, p. 361). However, some of the most powerful proposals by developing countries and the LDC Members dealt directly with other problems.

Strengthening Implementation and Enforcement

There are several concerns of developing country proposals that directly relate to the fundamental problems developing countries face with trying to enforce the DSU decisions. Brazil and Uruguay proposed for greater technical assistance in disputing, third-party rights, and the strengthening of compliance remedies by permitting financial compensation and collective retaliation (Conti, 2011, p. 40). However, such claims met strong resistance from Europe and the United States, and the proposals failed (Conti, 2011, p. 40).

The LDC Members' proposal suggested that collective countermeasures should only be used in cases where the complaint has been brought by an LDC Member against a developed-country Member. According to the LDCs, the level of nullification or impairment should be determined by the arbitrators 'considering the legitimate expectations of the LDC (Article 22.6 of the DSU). For developing country complainants, compensation should be calculated from the date the measure was taken or the date consultations were requested, or the date of establishment of a panel. The compensation should be effective in order to reduce the need for retaliation. It may always be applied on a most favored nations (MFN) protection basis. If a developed country violates WTO obligations, monetary compensation to developing countries should be continually paid and should be withdrawn only after the dissenting measure is removed (Brown, 2009, p. 25). In cases with developing country respondents, reports should be obtained from international organizations such as UNCTAD and the UNDP that would ensure promotion of the development prospects of concerned developing countries (Brown, 2009, p. 26). Many developing countries have proposed that the monetary compensation as a potential remedy instead of having to rely on retaliation through suspension of concessions. The African Group has proposed that all WTO Members shall be authorized collectively to suspend concessions to a developed Member that adopts measures in breach of WTO obligations against a developing Member (Pham, 2004, p. 364)

Member's Control

Some developing countries submitted that Members collectively have lost control of the dispute settlement system. One proposal suggested introducing an interim report stage in the appeal process so that the parties could comment on the analysis. Another submission from developing countries proposed that the principal disputing parties have the capacity to suspend operations of a panel or the Appellate Body, at any stage, in order to facilitate them to work on finding a mutually agreeable solution.

Resource Constraint and Technical Assistance

WTO's dispute settlement mechanism was inadequately accessible to developing countries. Several proposals suggested easing this problem, including the creation of an Advisory Centre on WTO Law (ACWL) (Parlin, 1999-2000, pp. 6-8) for effective legal assistance to developing countries and the LDC Members (UNCTAD 56). After creation of ACWL, legal assistance was given directly by the Centre to seven developing countries concerning 12 complaints (Brown, 2009, p. 35). Cuba submitted that despite the presence of the ACWL, the cost of litigation before the WTO panels and the Appellate Body is prohibitively high.

Kenya proposed to establish a fund financed from the WTO budget for developing countries' legal costs and the cost of technical assistance to reduce the burden of the costs of the dispute settlement process and to enable developing countries with a strong case to pursue disputes or proceedings against a developed country (Pham, 2004, p. 364). As a matter of special and differential treatment, Jamaica, Cuba, China have submitted that in disputes involving developed and developing country Members, mainly where the dispute was initiated by the developed country, that developed country should pay the costs of the developing country if the latter is successful in the dispute before a panel (Brown, 2009, p. 28).

Special and Differential Treatment

A few Members proposed that the obligation for panels and arbitrators to take account of developing country interests and the impact of the measures in dispute on

their development programs be strengthened. Such obligation should also extend to the Appellate Body (Brown, 2009, p. 28). At least two submissions proposed to increase the use of developing country panelists so that, if there is a developing country party or an LDC party to a dispute, then the panel would include, respectively, a developing country panelist or an LDC panelist. Another submission proposed that if the developing country or the LDC party so requested, the panel would include an additional developing country or LDC panelist. One large developing country proposed that the "due restraint" that is to be exercised by developed countries in bringing complaints against developing countries should be interpreted to mean that developed countries collectively will not bring more than two disputes against any developing country within the same calendar year (Brown, 2009, p. 29).

Development and Equity Principle

Many developing countries' proposals suggested that the WTO dispute settlement process inadequately considers the special problems of developing countries by giving insufficient attention to their development and equity concerns (Pham, 2004, p. 364). Cuba and Haiti proposed to strengthen the effectiveness of the current special and differential provisions in the DSU stating that Members merely 'should' favor developing countries in certain areas by substituting a more obligatory 'shall' requirement.

Transparency

Some developing countries proposed that all substantive stages of panel, appeal and arbitral proceedings should be open to the public, with appropriate measures to protect the confidentiality of the principal and third parties' submission. Another developing country proposed that there should be procedures in panels to decide whether all or any part of the proceedings will be open to the public (Brown, 2009, p. 27). Most of the developing countries' proposals regarding transparency agreed that the documents of the proceedings and final reports should be public as soon as they are issued to the parties to the dispute.

Strengthening Consultation and Mediation

There are several submissions proposing more use of consultation and mediation for reforming the DSU by setting reasonable time frames, which might be extended to contain needs of developing country parties and the LDC Members.

Proposals for Consultation

The consultation process should be dissociated from the panel and the appeal process. Certainly, if there are improvements to be made in the case of consultations, they should be in the direction of improving the possibility of mediation by a third-party during the consultations in order to promote settlements (Brown, 2009, p. 49). For the purpose of the improvement of the consultation stage, the WTO Members, especially, developing countries have submitted proposals to make the DSU better for them. Jamaica moves forwards Members to respect their commitment to strengthen the consultation stage as embodied in Article 4.1. The rest of the proposed changes to the consultation process do not address ways of promoting settlement and they cover technical modifications to the consultation process. They include Guatemala's proposal to permit consultations on prospective measures (Parlin, 1999-2000, p. 6). Some submissions from developing countries also proposed greater use of consultations and 'good offices' by setting reasonable time frames, which might be extended to accommodate the needs of developing country parties. Other proposals were made with respect to opportunities for complainants or the parties to a case to withdraw requests for consultations or for a panel or to terminate or suspend proceedings (Brown, 2009, p. 24). At least ten proposals were submitted concerning the participation of third parties to disputes. They disagreed about the possibility for third parties to join consultations without first getting the agreement of the principal parties (Brown, 2009, p. 24).

Proposals for Mediation

A proposal for mediation is that, if good offices or mediation have not succeeded within the set time frame, they may continue during the panel stage, if both parties agree (Brown, 2009, p. 29). Developing countries would be satisfied if someone other than the Director-General could serve as the mediator. One proposal suggested that in cases involving developing countries, the developing country could request a mediator from international development organizations, like UNCTAD or the UNDP (Pham, 2004, p. 384). Paraguay, Haiti, Jordan and the LDC Group have

submitted official proposals to change the DSU to make mediations mandatory, referring to Article 24.2, in disputes involving developing countries and the LDCs (Pham, 2004, p. 365). Accordingly, an LDC Member can unilaterally request good offices, conciliation, or mediation.

CONCLUSION:

Developing countries are the most important part of the WTO dispute settlement mechanism. After the Uruguay Round negotiation, this group of the world trading system became the core focus in every proceeding of the WTO. This paper examined the status of the developing countries and LDCs under the overall backdrop of the procedural and legal frame-work, and their participation in DSU. Both DSU and the developing and least-developed country have inter-dependent reciprocity relations for strengthening WTO and enhancing the economy of the developing and least-developed nations. Their complementary relations have the outcome of retarding imperium hegemony of developed country while assuring legal assistance and increased opportunities for developing and least developed countries and promoting the fair system of competitive business in the multilateral trading system. Recent increase of participation and initiation by developing and least developed countries to bring the dispute before the DSU against the developed and developing countries reflects their enhanced understanding and positive commitments for refine-ments. However, the challenges lie in the backbone of fundamental principles upon which DSU is still weak in implementation of the panel and appeal decisions compel to accept barriers to consultation and mediation and dependent on the controlling nations for resources and assistance. As a result, developing and least developed countries are wrestling for the legal authorities and rulings of the DSU to use the dispute settlement system in favor of them and submitted different reform proposals for strengthening the DSU for all WTO Members. Experiencing the long-standing challenges and overall spectrum of the DSU, the reform proposals manifested the parleys of strengthening the implementations, concerted control and reviving the regulatory obligations to facilitate consultation and mediation while emphasizing on the resource and technical constraint of all members in order to ensure smooth, transparent, and equal trading rights under the stipulated mechanism. These reform proposals may not resolve all the challenges of DSU but will ensure greater coherence in dispute settlement, unveiling the path of effective rules-based economic system for secure and predictable trading system for the developing and least developed countries.

ACKNOWLEDGEMMENT:

We take this opportunity to express our profound appreciation and deep regards for kind guidance and support offered by Prof. Dr. Farhana Helal Mehtab and Dr. Omor Faruk Munshi as our advisor for this paper. Her invaluable ideas on the topic as derived from her wisdom and an experience has assisted us a lot in designing the work. Finally, valuable opinions and inputs of all colleagues at different times were the ultimate foot hold, indirect support of this article. We wish to thank our families for their sacrifice, indirect support, and unswerving encouragement.

CONFLICTS OF INTEREST:

There are no conflicts of interest.

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ENDNOTES:

[i]https://www.wto.org/english/tratop_e/tratop_e.htm

[ii]The Uruguay Round was the 8th round of multilateral trade negotiation organized within the framework of the General Agreement on Tariffs and Trade (GATT) embracing 123 countries as "contracting parties".

[iii]https://www.wto.org/english/res_e/booksp_e/ddec_e.pdf

[iv]WTO | Disputes - Dispute Settlement CBT - Annex II - Decision of 5 April 1966 on procedures under article XXIII - Page 1

[v]WTO | dispute settlement - Dispute settlement activity — some figures

[vi]WTO | dispute settlement - Dispute settlement activity — some figures

Citation: Barai S., and Sultana KS. (2022). Challenges for the developing countries and the LDCs in the DSU: strengthening the dispute settlement system of the WTO, *Can. J. Bus. Inf. Stud.*, **4**(5), 100-111. https://doi.org/10.34104/cjbis.022.01000111