International Journal of Law
ISSN: 2455-2194
Impact Factor: RJIF 5.12
www.lawjournals.org
Volume 3; Issue 6; November 2017; Page No. 92-98

Concers of developing countries in dispute settlement mechanism of WTO

Dr. Humayun Rasheed Khan
Additional District & Sessions Judge (F.T.C.), Kaushambi, Uttar Pradesh, India

Abstract
A critical part of any enforcement mechanism is an effective system to resolve disputes over what the rules mean and whether they have been broken in a specific case. Whether there is equitable participation of strong, weak, big, small, northern and southern member countries or not? Whether the mechanism is able to inspire confidence of all member countries or not? The history of dispute settlement system of WTO shows that although there has been considerable participation of developing countries in the dispute settlement during last more than two decades of its functioning yet there are several reasons causing obstruction to greater participation of some of the developing countries and least developed countries, prominent amongst them are high litigation cost, instances of bias and failure in implementation. This paper raises key questions as to the failure in implementing decisions and its effect on the institutional mechanism, examines the causes for lower participation of developing countries and proposes measures to bring necessary equilibrium in the adjudicatory body of World Trade Organization.

Keywords: adjudication, dispute settlement, legalization, marrakesh agreement, unilateralism

1. Introduction
The present world is changing very fast providing strong support to the fact that change is an inalienable part of the law of nature making institutional dynamism an inescapable reality. Every institution has to develop and change in the face of conditions and circumstances not originally conceived when the institution is established. This is certainly true about the original GATT and now about WTO (B. N. P. Panda, 2013). In this fast changing globalized world, the WTO and its dispute settlement mechanism have got a new meaning and position in global trade and investment.

A convincing and effective enforcement mechanism is critical for any institutional structure as it inspires confidence of member countries in its strength and stability. This is essential to promote compliance with those rules and in the absence of such a system, an elaborate structure of rights & duties means little (William. J. Davey, 2003).There is no denial of the fact that the efficiency and effectiveness of any Organization depends upon the strength and weakness of its judicial or adjudicatory wing. Since Dispute Settlement Body is the adjudicatory branch of World Trade Organization (WTO), its attitude towards developing countries is significant and a subject matter of critical analysis.

There is no doubt that Dispute Settlement Process (DSP) of World Trade Organization has worked more successfully during last twenty-one years than any other Dispute Settlement System in the history of international dispute resolution. Most of the commentators agree that the WTO's Dispute Settlement Process (DSP) has recorded an unforgettable success in various fields (William J. Davey, Gregory Shaffer, Chad P. Bown, Debra P. Steger, Amrita Narlikar, and E. U. Petersmann *et al*). Statistics may also prove such a remarkable success, as until March 2017, 524 disputes in more than 228 different subject matters from WTO members have been brought under the system which shows how confident the member countries are about the system (World Trade Report, 2016).

Despite enormous success which the Dispute Settlement mechanism of WTO has achieved over last more than two decades, the system has certain problems of its own nature. Most observers have emphasized the fact that various GATT reforms were intended to help developing countries to insulate them from 'power politics' of the system (Gregory Shaffer, William J. Davey, Chakravarti Raghavan). The Dispute Settlement Understanding (DSU) introduces greater 'legalism' and provides a more 'rule-oriented' system relative to the 'power-oriented' one of the GATT. The 'rich man's club' (GATT) has now been transformed into a largely 'democratic-participative-adjudicatory body'. Although such system should encourage more participation by developing countries and establish harmonized and equitable relationships between member states, the Dispute Settlement Procedure (DSP) seems to show bias against developing countries (David Evans & Gregory Shaffer, 2010).

The WTO Dispute Settlement Understanding (DSU) came as a major step towards establishing rule of law in the world trading order. It was also a beginning of the debate over the issue of the applicability of different principles of law and justice in the Dispute Settlement Mechanism. In fact, the principles of natural justice require that all judicial, quasi-judicial and adjudicatory bodies must operate in such a manner that all the members must feel free to participate and must freely come to seek redress of their grievances. The successful implementation of WTO panel rulings has dropped in the first decade. This decreasing implementation rule was caused by a large number of delays or disputed implementation case in which the implementation period was continuously extended or adequate compliance was disputed.

It is significant to point out that if any institution, purporting to be functioning on principles of law and justice, fails to encourage equitable participation it would become a coveted body only for some as was the case with GATT which was often referred to as a 'rich man's club' and gradually the institutional mechanism would become vulnerable. Unfortunately, the level of participation of member countries in the WTO Dispute Settlement System had been quite uneven in case of developing countries, which is not a healthy sign for the Dispute Settlement System of World Trade Organization. The low level of participation of developing countries has gradually started moving upwards yet it is only in the context of Asian and South American Countries while Africa still remain a bystander in the dispute settlement system. Let us now move to discuss and analyze continent- wise participation of developing countries in the system.

2. Continent Wise Participation of Developing Countries in Dispute Settlement of WTO

Most of the developing member countries are located in South America, Asia and Africa and consequently the level of participation of developing countries in these continents is examined in this paper. Developing countries of South America are found to be most active in the developing world. Let us now discuss the level of participation of developing member countries of South America, Asia & Africa over last two decades.

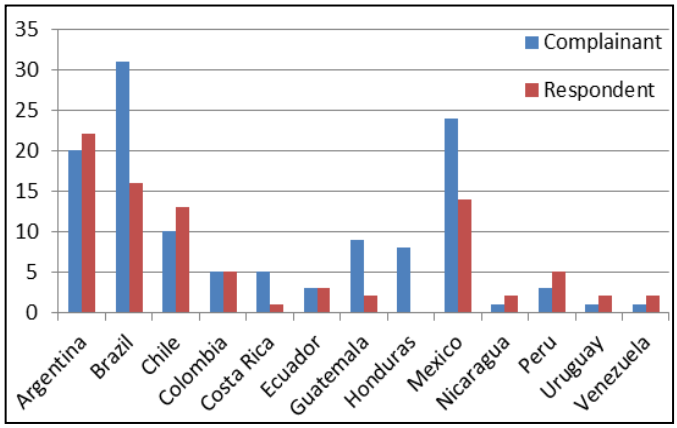
2.1 Active South America

South American countries have been active users of dispute settlement under the WTO. One hundred twenty-one complaints have been initiated by South American nations during last 21 years. Brazil alone accounts for thirty-one of these, making it the most active developing country user of the DSU, and the fourth most active user overall, after the US, EC, and Canada. Mexico, Argentina and Chile have also been frequent users, initiating twenty-four, twenty and ten disputes respectively, and together with Brazil, account for nearly forty-five per cent of the complaints originating from South America [1]. It is surprising to note that nearly thirty per cent of the cases initiated by South American countries have been against other countries in the region. Argentina, for example, has initiated six cases against Chile, while five of Chile's ten disputes are directed at the trade practices of other South American countries. The United States and the European Communities have also regularly targeted, and been targeted by, countries in South America [2]. The following table as well as figure would present the participation level of South American countries in a much better manner.

Table I: Participation of South American Countries in WTO Dispute Settlement from January 1995 to March 2017

S. No	Member Country	Complainant	Respondent
1	Argentina	20	22
2	Brazil	31	16
3	Chile	10	13
4	Colombia	05	05
5	Costa Rica	05	01
6	Ecuador	03	03
7	Guatemala	09	02
8	Honduras	08	00
9	Mexico	24	14
10	Nicaragua	01	02
11	Peru	03	05
12	Uruguay	01	02
13	Venezuela	01	02

*****Prepared by author on the basis of information posted on the official website of WTO **(**www.wto.in).



***Source*:** Prepared by author on the basis of information given in WTO Annual Report 2016 &WTO Official website (www.wto.in).

Fig I: South American Member Countries in DSU

The above data shows that Brazil has been a complainant in thirty one disputes, as a respondent in sixteen. Moreover, Brazil has largely prevailed in each of its complaints, and the settlements that it obtained have been largely to its satisfaction. In fact, Brazil's approach to WTO dispute settlement is placed within the context of a broader shift from inward (import substitution) to outward (export-oriented) economic policies. Brazil has reorganized itself both within government and through more effective public-private coordination to take advantage of the DSU. At the highest level, an inter-ministerial body has been created to investigate, prepare and approve the filing of WTO disputes [3]. In addition, a "three pillar" structure has been developed starting with the establishment of a specialized WTO dispute settlement unit in the capital in Brasilia (the first pillar), coordination between this unit and an expanded Geneva Mission (the second pillar), and coordination between both of

these entities and Brazil's private sector and law firms (the third pillar).

Next to Brazil, comes Argentina in the continent of South America as far as participation in the dispute settlement of WTO is concerned. Argentina's early experiences of the DSU were also primarily as a respondent in cases involving sensitive sectors. First the United States challenged Argentina's minimum specific import duties on textiles and clothing *(Argentina – Textiles)*, and then in a related case the EC challenged Argentina's safeguard measures on footwear (*Argentina-Footwear*). Although Argentina had no "specific structure" in place, and "responsibilities" for dealing with WTO disputes were blurred, the requirement to defend these cases "triggered a capacity building process in human resources devoted to WTO litigation." As the private sector interest was low, the public sector had to rely on in-house lawyers [4]. But Argentina needs to develop a support base from private sector groups as well in future as it would strengthen its position in the dispute settlement system of WTO.

In fact, a high number of ongoing cases and staff continuity established a solid basis to turn the nature of Argentina's participation in dispute settlement so that the country has also taken the offensive. Three major cases were initiated and had been complemented by the involvement of private law firms, academia, and industry groups. Argentina had initiated six cases against Chile, whereas Chile has brought five cases (out of ten) against the trade practices of other South American countries which show that South American countries are fighting more amongst themselves than against economic giants [5]. However, it is the capability of developing countries to challenge the economically powerful member countries whenever and wherever required that will actually determine the real position of these countries in the DSB.

Mexico acceded to GATT arrangement in 1986 and used the multilateral forum (thirty-eight cases under GATT/WTO) significantly more than the regional country v. country for a (four cases under NAFTA/ other PTAs). Although Mexico won most of the claims in the three cases under the GATT-50% of the findings in two cases and 100% in the third case – it did not manage to secure implementation in all of them. Only one case (US- Superfund- L/6175-34 DS/136) was adopted and implemented, and this one was not initiated by Mexico alone, but along with Canada and the EC. The other two cases were neither adopted nor implemented by the United States. It could easily be assumed that Mexico could get the case implemented when it was a co- complainant with strong partners such as Canada and the EC but could not secure implementation when it was a case against economic superpower such as US. It was, indeed, the bargaining power considerations which proved crucial and not the considerations of justice and fairness [6]. It is this unfortunate fact that still questions the element of 'legalism' in the dispute settlement system of WTO.

2.2 Reluctant Asia but Pro-active China

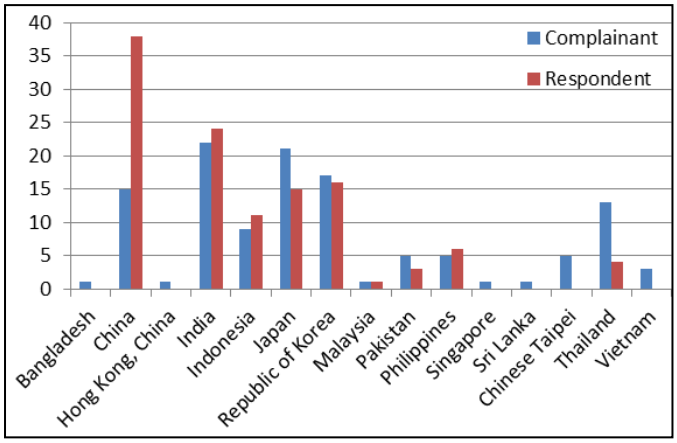
Asia is home to a diverse range of experiences regarding the use of DSU. China has been complainant only fifteen times till date, but a respondent thirty-eight times. It has also been a third party more than ninety times, clearly evidencing a strategy of capacity-building and "learning by doing" through third party participation. India's twenty-two complaints make it the sixth most frequent user of the DSU, and the second most frequent developing country user just behind Brazil. Korea and Thailand have also made significant use of the DSU, while the Philippines, Indonesia, Chinese-Taipei and Pakistan have been more moderate users [7].

However, a number of Asian WTO Members have initiated only one or two cases (Bangladesh, Hong Kong-China, Malaysia, Singapore, Sri Lanka), while others have not been directly involved in WTO dispute settlement at all (for example, Brunei and Myanmar). Only about six per cent of cases have been initiated by Asian developing countries against other developing countries in the region, which contrasts with patterns in South America [8]. The following table would make the level of participation of Asian countries much more clear.

Table 2: Participation of Asian Countries in Dispute Settlement of WTO from 1995 to March 2017

S. No.	Member Country	Complainant	Respondent
1	Bangladesh	01	00
2	China	15	38
3	Hong Kong, China	01	00
4	India	22	24
5	Indonesia	09	11
6	Japan	21	15
7	Republic of Korea	17	16
8	Malaysia	01	01
9	Pakistan	05	03
10	Philippines	05	06
11	Singapore	01	00
12	Sri Lanka	01	00
13	Chinese Taipei	05	00
14	Thailand	13	04
15	Vietnam	03	00

*****Prepared by author on the basis of information posted on official website of WTO (www.wto.in).



*** *Source*:** Prepared by author on the basis of information given in WTO Annual Report 2016 & Official website of WTO (www.wto.in).

Fig 2: Asian Member Countries in DSU

Since China has become the most active user of DSU in Asia in recent past, some detail discussion requires to be made on

Chinese participation in DSM. China has long been rejecting the jurisdiction of international judicial adjudication as protecting its national sovereignty has long been its most sacred foreign policy goals [9]. A Chinese diplomat Liyang Jiang attributes China's negative attitude towards international dispute settlement to three factors: (i) China's suspicion of the impartiality of the international judicial bodies, (ii) the threat to its sovereignty, (iii) the conflict between international dispute settlement and the Confucius culture that promotes a state of harmony rather than litigation [10].

China joined the WTO in November, 2001 and initially proved itself to be a conciliatory defendant and reluctant complainant. However, China has recently become more active in dispute settlements [11]. Some scholars have suggested that increased proactive activity of China in the WTO dispute settlement shows, that it is on the path of 'aggressive legalism as was Japan sometimes back [12]. It is, indeed, remarkable to note that from a totally rejecting involvement in international adjudication, China has now started to exhibit new willingness to accept the authority of WTO panels [13] and its increasing engagement in WTO dispute settlement indicates socialization in China's behavioral change unknown to Chinese communist regime [14]. Moreover, acceptance of the authority of international tribunals such as WTO panels demonstrates Chinese faith in western legal norms and institutions as well as respect for international rules.

In its first experience as defendant, in a complaint by the United States initiated in early 2014 [15], China settled the dispute through consultations before a panel had even been established [16]. Soon after; it revoked the inconsistent measure (VAT on integrated circuits). China's quick settlement, only two months after the US request for consultations, is a clear sign of its reluctance to go through WTO adjudication. China, in fact, got puzzled at the United States taking the dispute to the WTO while consultations were taking place. It has been suggested that China was not puzzled but embarrassed because Confucian philosophy calls for using litigation only as a last resort [17].

Auto Parts case is the first case where China took a calculated decision to fight to the finish and it was the turning point in China's behavior in WTO dispute settlement. In addition, it signified a dramatic jump in the level of China's engagement in WTO dispute matters. The auto parts case is when it started to view WTO litigation as a normal way of resolving disputes and this case is also an instance when its engagement with the WTO dispute system started to escalate dramatically. From then on, it would also become easier for China to challenge allegedly WTO – inconsistent foreign measures hurting its exports in the WTO dispute settlement system. China's profile vis-à-vis WTO dispute settlement has changed from one of reluctant participant to that of a proactive participant. It is taking a first step in redefining its identity in the global community as China has now become more and more an integral part of the system making it harder for China to backtrack.

The main reason for China has becoming a major player in the WTO is basically on account of the size of its trade. It has, accordingly, become an increasing target of WTO complaints, and was the most frequent target over the three-year period ending in December 2016. China, however, has also gone on the offensive bringing a number of complaints against the most frequent users such as US and EU [18]. It is remarkable to note that China has invested a great deal in developing WTO-related legal capacity. The government has sponsored significant legal-capacity training for Chinese officials, as well as the private sector, and WTO law has become an increasing subject of research and teaching in Chinese universities.

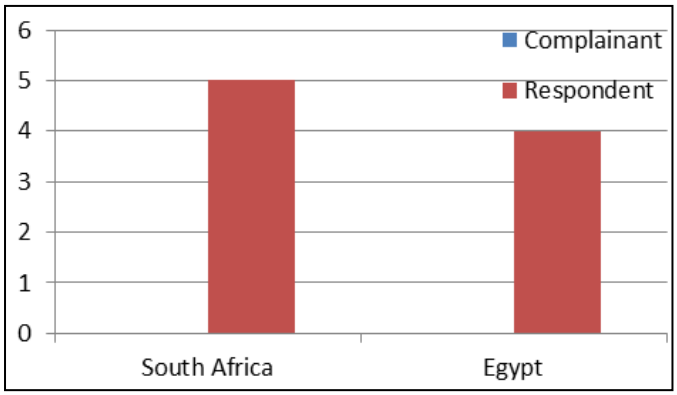
2.3 Challenges in Africa

It is the African countries which are almost non-users of the WTO dispute settlement primarily because of their weak economic position and frequent domestic politico- economic problems. The only use of the system they have made so far is as respondents or as third party. There have been no complaints initiated by African countries and only two African nations have been respondents so far, Egypt four times, and South Africa five times. African nations have, however, made their presence felt in DSU proceedings through third party participation in two noteworthy cases. In *US-Cotton Subsidies Case*, Benin and Chad supported Brazil's challenge as third parties, in an effort to secure a more level playing field for a crucial export sector [19].

Table 3: Participation of African Countries in Dispute Settlement System of WTO from 1995 to March 2017

S. No.	Member Country	Complainant	Respondent
1	South Africa	00	05
2	Egypt	00	04

*****Prepared by author on the basis of information posted on the Official website of WTO (www.wto.in).



******Source***:** Prepared by author on the basis of WTO Annual Report, 2016 &information posted on the official website of WTO (www.wto.in).

Fig 3: African Member Countries in DSU

In the other case, *EC- Sugar Subsidies*, seven African countries exercised third party rights, in support of EC as respondent, to try to preserve their preferential access into the EC market which was threatened by the complainants' challenge. These two cases demonstrate that dispute settlement cases can have major implications for African nations, both positive and negative, and that these implications arise irrespective of whether they are directly involved in the proceedings. These cases highlight both the opportunities and

the risks of WTO dispute settlement for the region, and underline the need for African countries to be able to effectively advance and protect their interest in that forum [20].

3. Some Case Studies involving Developing Countries

In fact, the actual position of the developing countries vis-à-vis developed countries in dispute settlement cannot be properly discussed unless and until some important cases involving, the developing countries as either complainants or respondents are mentioned. One of the important cases, which needs to be mentioned here relates to the countervailing duty in *Argentina Foot Wear Safeguard* [21] and *Korea Dairy safeguard* [22]. In these cases, the Appellate Body interpreted 'unforeseen development' as developments which leads to products being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers which must have been unexpected.

The Appellate Body laid down that unexpected circumstance must be demonstrated. The competent authority report must give a finding on this. The Appellate Body ruled in these cases that the expression 'as a result of unforeseen development in the first clause in Article XIX.1(a) must be demonstrated before the safeguard measure is applied as such, the USITC report must contain a 'finding' or 'reasoned conclusion', 'on unforeseen development'.

It is, indeed, unfortunate to note that 'time limits' are often not adhered to when a dispute involves a powerful country as one of the parties. For instance in *EC Bananas case* [23] the time limits were not adhered to. This case illustrates how in a complaint even eventual success in a dispute before the Dispute Settlement Body (DSB) has become meaningless for developing countries, when the parties on the other side are powerful and developed countries. The former European colonies in the Caribbean/Latin America and the poor farmers are not really the beneficiaries in this long drawn out battle. Even though the US sided with these former colonies in the battle against the EC, it is the big marketing companies like Chiquita of U.S.A. and Noboa of Ecuadour, who are the ultimate beneficiaries, by virtue of licenses to export bananas to Europe. Eventually, the consultation process failed and the first Panel on Bananas was established [24].

Then there was *Bananas II* in which the complaint was made by Equador, Guatemala, Honduras, Mexico and the U.S. The complainant alleged that the EC's regime for implementation, sale and distribution of bananas is inconsistent with the GATT Article I, II, III, X, XI and XIII as well as provisions of Import Licensing Agreement, the Agreement on Agriculture, the Trade Related Investment Measures (TRIMS), and the General Agreement on Trade in Services (GATS).The Panel found that the EC's banana regime, and the licensing procedures for the importation of bananas in this regime, is inconsistent with the GATT Article XIII, but not inconsistent arising from the licensing system. On appeal by the EC, the Appellate Body mostly upheld the Panel's findings, but reversed the Panel's findings that the Lone Ware waives the inconsistency with the GATT Article XIII and the certain aspect of the licensing regime violated Article X of the GATT and the Import Licensing Agreement [25].

In fact, a critical analysis of the *Bananas case* shows that Chiquita, the U.S. exporting agency which export bananas after buying bananas cheap from poor farmers in Africa or Latin America and reap huge profit selling them in European markets. The United States, indeed, acted at the behest of Chiquita Brand International. At one stage in the dispute, Chiquita sued the EC for $ 525 million as damages which it claimed to have suffered as a result of the EU import restrictions. This case brings forth into prominence the lobbying power held by the intermediates involved in the export of bananas to the EU. The United States has not acted in its national interest, as it does not produce bananas rather it simply acted at the behest of Chiquita [26].

The dispute and its outcome in *Bananas Case* had raised some important questions for the consideration of developing countries, which are as under:

1. Is there a need to define clearly, which WTO members have the right to bring the dispute before the Dispute Settlement Body?
2. Who has the right to decide whether the measures adopted by the losing party are in conformity with the DSB recommendations?
3. Is retaliation really an option for developing countries? All the co-complainants in Banana dispute were developing countries.

The next prominent case is *EC Imposition of Anti-Dumping Duties on Imports of Cotton yarn from Brazil* [27], where the Panel noted that the application of Anti-Dumping measures would affect the essential interests of developing countries, the obligation that arose then was to explore the possibilities of constructive remedies. It was clear from the word 'possibilities' and 'explored' that the investigating authorities were not required to adopt constructive remedies merely because they were proposed. It does, however, impose an obligation to actively consider, with an open mind possibility of such remedy prior to imposition of Anti-Dumping measure that would affect the essential interest of developing countries [28].

In fact, a critical analysis of the findings of the Panels and Appellate Body in the cases discussed above shows that the Penal/Appellate Body often engage in substantial interpretation of the provisions of WTO Agreements which is not the function of Panel/Appellate Body because such a function belongs to General Council. By co-incidence or otherwise, it has so happened that in a large number of cases these interpretations have enhanced the obligations which are of the developing countries and enhance the rights which are mostly exercised by the developed countries. In some cases, the Panel and Appellate Body have gone to the extent of adjudicating as between two conflicting provisions of agreements. The Panel/Appellate Body has not even hesitated in pronouncing which one should be operative in preference to the other [28].

It is beyond doubt clear that the bargaining power is at work in shaping north south free trade agreements in favor of the larger northern countries. Bargaining power also remains in play in dispute resolution context between a strong and a weak state. Therefore, possible ways to minimize the problem of non- implementation could be sought from a more effective, specific and fair implementation mechanism, focused on

enhanced retaliation [29].

It is, indeed, the enforcement of laws which gives them meaning and instills life into them. Since major problems have been noticed with regard to implementation of not only some provisions of DSU but also implementation of the findings of DSB. Hence, it is very necessary that the Dispute Settlement Understanding (DSU) should be reformed to remove the existing deficiencies in it.

4. Improving the Operation of the DSU

The developing countries have to take some actions on their own to utilize the system in a more effective way. There are a number of proposals which are based on the experiences of developing countries and if these proposals are implemented, they will greatly improve the relevance and effectiveness of the DSU from a developing country perspective. The following is a brief summary of these proposals:

1. Private Counsels should be permitted to participate in panel proceedings so that smaller countries that lack the adequate local expertise are better able to represent their case.
2. All documentary evidence should be submitted no later than the time when the second written submissions are due so as to avoid unnecessary delays.
3. Creating a procedure for remand of the case to the panel if it is found that the panel has failed to make adequate findings on facts, to ensure that the Appellate Body does not become a fact finding Body and its review, as intended, is restricted to legal questions only.
4. Reconsidering the provision regarding cross retaliation that allows for retaliation in one sector (goods) for a perceived lapse by the losing party in another sector (services or intellectual property), as this provision is more likely to work against developing countries.
5. In cases when implementation is questioned by a developing country that has won a case against a developed country, compliance issues should be resolved by the original panel within 30 days, instead of 90 days, and without any further procedural requirements.
6. A monitoring mechanism should be developed to check 'whether special and differential treatment provisions in the DSU are being implemented, as many of these provisions have not yielded concrete benefits to developing countries.
7. Extending the "reasonable time" granted for implementation of the DSB recommendations from 15 to 30 months for developing countries.
8. Selection of panelists should be done from a fixed pool of candidates to ensure that the panelists have the necessary knowledge and expertise. There is a need to lay down certain ethical standards for panelists so as to avoid conflicts of interests.
9. There is a need to provide 'technical assistance' to developing countries by increasing the number of consultants to five, setting up an independent legal unit within the secretariat to provide legal advice to all members, establishing a permanent Defense Counsel to help developing and least developed countries.
10. 10. The developing countries should enhance their domestic legal capability to handle the dispute settlement process in the WTO on their own without having to call upon the assistance of lawyers of the major developed country centers. In some cases, it may also be appropriate to build up regional capability to be utilized by a set of developing countries. The domestic legal capacity-building in Brazil & Mexico is a good example for the rest of the developing world.
11. The General Council should give guidelines to the Panels and Appellate Body in respect of the interpretations of the agreements. There should be specific instruction that the Panels and Appellate Body should not undertake substantive interpretations. If a conflict between two provisions of the agreement is noticed, the Panel/Appellate Body should refer the matter to the General Council for an authoritative interpretation rather than itself undertake the exercise of determining which provision is more binding.
12. When a developing country's stand has been found to be correct and the other party in a dispute is a developed country, the Panel should be asked to determine the cost to be paid to the developing country by the developed country. The General Council should have a general decision for the payment of such costs to the developing country.
13. There is an urgent need to rethink about the utility and desirability of having a standing Appellate Body. A continuing body of this type is bound to develop and perpetuate certain leanings and orientations, which may not be a healthy practice, given the fact that its recommendations are in the nature of final pronouncements on the issue in question.
14. There is a need to develop a system of compensation. When the Panel/Appellate Body has found that the action of a developed country has brought harm to a developing country, the erring developed country should give compensation to the developing country for the loss suffered by the latter from the time offending action was initiated by the developed country.
15. In case a developing country has to take retaliatory measures against a developed country, there should be a mechanism for joint retaliation by all the Members. There is an urgent need to rethink about the utility and desirability of having a standing Appellate Body.
16. Undoubtedly a lot of economic harm had already been caused to developing countries by substantive interpretations of various WTO agreements. The developing countries should move to undo the harm done so far by the substantive interpretations of the Panels and Appellate Body (AB). The General Council should be requested to pronounce that these interpretations would not guide the future work of the dispute settlement process

5. Conclusion

Dispute Settlement Understanding (DSU) provides an enforcement mechanism, with the aim of guarantee that the WTO members follow the trade rules agreed upon. In a clear sense it implies that the rule of law is the bedrock of dispute settlement mechanism of WTO. But the Dispute Settlement System is uniquely technical in nature and the comparative advantage in legal skills held by countries such as United States or the European Union may further aggravate the

disparity in power resources. The economic strength or weakness of member countries still plays a vital role in the level of participation of countries in the dispute settlement mechanism. It has consistently been observed that stronger a member country or a group of countries in terms of economic power; greater is its level of participation in the system. The Dispute Settlement Understanding seems to fail due to power play to offset differences in legal capacity in spite of legal provisions specifically intended for developing countries.

It is, indeed, the enforcement of laws which gives them meaning and instills life into them. Since major problems have been noticed with regard to implementation of not only some provisions of DSU but also implementation of the findings of DSB. In fact, sanctions have little role in putting required pressure on defaulting party if it is a developed country and the consequent imbalance shows that winning a case before the Dispute Settlement Body (DSB) can be meaningless for developing countries, leaving them unable to defend their trade rights. Unfortunately, non-implementation of the reports of the Panels and Appellate Body is a big problem for developing countries and countries- in- transition.

The developing countries have to take some actions on their own to utilize the system in a more effective way. The problem with the developing countries is lack of representation in Geneva and legal resources to adjudicate cases. The increasing number of reviews under the strengthened procedures of the new WTO places a premium on sophisticated legal argumentation that may work against developing countries. However, the 'rule oriented' nature of the dispute settlement process requires that the Panel and Appellate Body must act independent, impartial and fair adjudicatory institution so that the confidence of member countries increases in future.

The real purpose of the rule-based multilateral trading system as aspired by WTO can only be achieved when there is equitable participation of 175 Member Countries of the WTO, transparency in its working and strong legal mechanism with an improved operation of DSU. If the WTO fails to do that, it is bound to be marginalized in future seriously disturbing institutional integrity and multilateral strength. The loss of trust in multilateral system, if unfortunately it happens, would certainly push nations to solve their problems through regional arrangements, bilateral arrangements, and even unilateral actions. Although the journey towards such an ideal situation appears a long haul given the failures from Seattle to Bali through Doha yet all hope is not lost.

References

1. David Evans and Gregory C. Shaffer: The Developing Country Experience in WTO Dispute Settlement, University of Minnesota Law School, Legal Studies Research Paper Series Research Paper. 5, 11-03.
2. Ibid.
3. Ibid, 6.
4. Ibid, 5
5. Ibid.7
6. Jorge A. Huerta- Goldman, 'Mexico in the WTO and NAFTA in a Nutshell: Litigating International Trade Disputes', Journal of World Trade. 2010; 44(1):173-202.
7. Op cit, note,6, p.7
8. Ibid. 8.
9. Carlson, The Impact of International Regimes on Chinese Foreign Policy- Making: Broadening Perspectives and Policies but only to a point, in the Making of Chinese Foreign & Security Policy in the Era of Reform 1978 - 2000, ed Z. N. Cass (Stanford, California: Stanford University Press, 2001, 232-233.
10. Jiang L. WTO Dispute Settlement Mechanism and China's Participation, eds H. Gao & D. Lewis (London: Cameron May. 2005, 303-314.
11. Marcia Don Harpaz, 'Sense and Sensibilities of China and WTO Dispute Settlement', Journal of World Trade 44, no. 2010; 6:1155.
12. Pekkanen SM. 'Aggressive Legalism: The Rules of the WTO and Japan's Emerging Trade Strategy', The World Economy. 2001; 24:732.
13. Marcia Don Harpaz, op cit, 1156
14. Ibid
15. WT/DS 309/7, 2014.
16. On 14 July 2004, China and United States notified the chairman of the DSB that it had reached an agreement on the matter. China- Value-Added Tax on Integrated Circuits, Joint Communication from china and the United States. This communication includes the Memorandum of Understanding (MOU) between china and the United States
17. Marcia Don Harpaz, op cit, 1170.
18. David Evans and Gregory C. Shaffer, op cit, 11
19. Ibid. p.12
20. Pilav Zejan and Frank L. Barteles; 'B. Nice and Get Your Money, An Empirical Analysis of World Trade Dispute and Aids', Journal of World Trade. 2006; 40(6):1021-1047. Kluwer Law International.
21. WT/DS123/AB/R, adopted on 25 Sept. 1997 / Retrieved from http//www.wto.org
22. WT/DS27/AB/R. / Retrieved from http//www.wto.org
23. WT/ DS32/R., 5th February 1996-Unadopted, Retrieved from www.wto.org
24. Pradeep S. Mehta, Pranav Kumar and Olivia Gensen; 'Who own the Banana Dispute,' Financial Express. 2001, 7.
25. Das BL. 'WTO Defective Dispute Settlement', The Hindu, 1999, 15.
26. Ibid.
27. WT/ DS116/R
28. William J.Davey, 'The WTO Dispute Settlement System : How Have Developing Countries Faired ?', Illinois Public Law and Legal Theory Research Paper Series, Research Paper No. 05-17, November 30, 2005,p.3.
29. Fernando Pierola and Gary Horlick; 'WTO Dispute Settlement and Dispute Settlement in (North South) Agreements of Americas: Consideration for choice of forum', Journal of World Trade 41(5), p. 900, 2007, Kluwer Law International.
30. Raghavan C. 'DSB special session discuses EC proposals for review'. Retrieved from http//:www.twn.in