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EVOLUTION OF INTERNATIONAL TRADE LAW

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1.1. INTRODUCTION

In order to foster domestic industries, during the eighteenth, nineteenth and twentieth century, many countries restricted the competitiveness of foreign goods by using “tariff” imposed on imported goods that raises their price so as to make similar domestically produced goods more economically attractive. These “tariffs” were the major source of income for many countries for a quite long period of time.

However, since the beginning of the nineteenth century many scholars and economists stressed the need for reduced tariffs. Consequently, realizing that the key to sustaining increased free trade is to maintain balanced benefit sharing, many of the countries started reducing their tariffs and opened up their national markets to foreign goods on the basis of the “doctrine of reciprocityⁱ.” With the goal of solidifying peace and distributing economic development across “national boundaries by means of multinational negotiations and agreements,ⁱⁱ” the increase of international free trade, that is, “liberalization of markets” has been encouraged.ⁱⁱⁱ

The present chapter traces out the evolution and development of international trade law. International trade law has begun with the emergence of the General Agreement on Tariffs and Trade (GATT). The present chapter further portrays an overview of the World Trade Organization (WTO), the environment that produced the WTO and the WTO articles that concern accession to the WTO, and therefore participation in WTO dispute settlement proceedings. A brief review of the development and functions of the GATT and WTO dispute settlement system has also been incorporated in the instant chapter.

1.2. THE EMERGENCE OF GATT

Since the end of the Second World War, the international environment was fashioned under U.S. management; and the General Agreement on Tariffs and Trade (GATT) has mainly been a part of the reformulation of such environment. Moreover, the plan was to append two more multinational agreements. The International Monetary Fund (IMF) and the World Bank were created as a result of these two agreements, considered as the Bretton Woods organizations. The mechanism that was to become the GATT was conceived at that time as an equal partner.

At that time, United States accounted for half of the world's total economy. America believed in free trade because of its need to keep European markets open to its goods, especially its agricultural goods. It is to be noted that the same interest persists in the U.S. policies even today. The trade environment was governed by direct policy. In the United States, the Reciprocal Trade Agreement Act, 1934 (RTA) gave the executive branch the right to increase or decrease tariffs by as much as 50%. In fact, this statute created an inter-departmental Committee on Trade Agreements (CTA) that managed a strategy of both bilateral reciprocal agreements and multilateral trade agreements.^{iv}

The CTA was considered the foundation of U.S. policy on trade, which created more flexible trade agreements and expanded into the sphere of free trade technicians. The CTA extended its agreements to apply to all trading States that did not discriminate against American products in each area of agreement. Therefore, the United States created multinational trade treaties with forty-eight nations.

1.3. The International Trade Organization

In 1944, the Bretton Woods, New Hampshire, conference on economic matters considered a major proposal to constitute an international organization to develop and organize international trade, while the particulars of such an organization were left for later. In 1946, the International Trade Organization (ITO) was created through several successive trade negotiations, which were negotiations, three goals were established:

- To draft an ITO Charter;
- To prepare schedules of tariff reductions; and
- To prepare a multilateral treaty containing general principles of trade called 'the General Agreement on Tariffs and Trade' (GATT)

In 1947, the work on the tariff reductions and the GATT were completed, while the final work on a charter for the ITO was postponed until 1948. However, the ITO Charter was not completed because of the lack of significant support from the United States. In 1950, the United States under President Truman proclaimed that it would no longer seek congressional approval for the ITO. The ITO was therefore dead.^v

In the absence of the ITO to be adopted, the GATT gradually began to fill up the void even though the GATT was intended as an interim body. The GATT was considered the primary document for international trade contact. On October 27, 1947, it had been signed as a brief measure, which would take effect on January 1, 1948. The ITO's Interim Commission became the GATT Secretariat. Therefore, it became an international organization, based in Geneva, and it took as its 'Charter' the GATT agreements and understandings.

The original documents of the GATT did not establish an organizational framework but did include the GATT principles and procedures. From 1951 to 1960, the GATT was a small organizational bureaucracy without any power to enforce tariff and nontariff barrier commitments within the document." The GATT's 'contracting parties' dealt with the processes of decision-making. The signatories themselves governed this structure because there was no formal process for a country to become a member.

In 1995, the GATT agreements became part of an international organization with a formal membership procedure only through the establishment of the WTO treaty. The GATT had accepted broad based principles of fair and free trade, as the founders had expected. The specific broad goals were tariff reduction and exclusion of discriminatory treatment in trade. The GATT agreement included two important points:

- (i) The agreement was to guide the contracting parties.
- (ii) The agreement included a series of specific rules to lower particular tariffs.

The core principles of the GATT agreements were four:

- Non-discrimination or the most favoured nation principle;
- Tariff reductions and binding;
- National treatment; and
- Prohibition of protective measures other than tariffs

The GATT held eight rounds of multilateral trade negotiations to reduce tariffs and other barriers to international trade. These rounds were held periodically and all were successful. Multilateral negotiating rounds have been named after the person associated with initiating the round or the place in which negotiations began.^{vi}

The early rounds of the GATT negotiations were just to reduce tariffs; whereas the stated objective of negotiations in the Uruguay Round was "primarily to reduce non-tariff barriers" it ultimately "culminated in the creation of an immense new body of international law relating to trade." Consequently, on 15 th April, 1994, in Marrakesh, Morocco, the World Trade Organization (WTO) was established as a fully-fledged international organization via the Final Act of the Uruguay Round of the GATT ^{vii}.

The GATT was applied provisionally for almost five decades, until the WTO came into force. In the GATT, the Protocol of Provisional Application (PPA) was applied as a temporary measure until the formation of the ITO. As this did not happen, the GATT members, known as contracting parties, had continued to adopt and apply trade rules on a provisional basis.

Twenty-three countries signed the GATT when the negotiations were completed and the Protocol of Provisional Application was applied provisionally until the ITO charter was complete. The original text of the GATT and the PPA were annexed as the Final Act. The status of the countries was stated under Article XXXII of the PPA, as follows:

The contracting parties to this Agreement shall be understood to mean those governments, which are applying the provisions of this Agreement under Articles XXVI or XXXIII or pursuant to the Protocol of Provisional Application.^{viii}

Moreover, the PPA stated that ‘the Protocol was open for signature by any government signatory to the Final Act, until June 1948 at the latest. 12 In October 1947, eight of the 23 countries applied the GATT provisionally; 13 In January 1948, fourteen more countries including India applied the agreement, which extended the membership under the provision. The only country missing from the list was Chile, an original signatory to the GATT. Therefore, these countries were the original contracting parties of the GATT.^{ix}

On 7th September 1949, these 22 countries made a decision on the Final Act. They agreed that “if the Final Act had not been signed by 30th June 1948 then they shall not be considered . . . contracting parties as detailed under Article XXXII.” Therefore, “If any such government wished to accede to the Agreement then they would have to do so under the accession provision of Article XXXIII.” Later, these 22 countries set out the trajectory of accession procedures under the GATT. One hundred twenty-eight members, including many developing countries, acceded to GATT 1974 under Article XXXIII which states:

A government not party to this agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the contracting parties. Decisions of the contracting parties under this paragraph shall be taken by two-thirds majority.

The above provision came to be enforced with the initial establishment of the GATT system and was considered as the formal provision for accession under the GATT. The GATT accepted the accession of non-market economies, which was possible due to the PPA, even though the GATT was a market-based institution for market economies. Also, the GATT included Article XVII, which was one of the three articles dealing with the subject of state trading “included in the ‘Suggested Charter.' It obligated state trading enterprises to

abide by the general principles of non-discriminatory behavior and was primarily drafted to regulate the market behavior of state owned monopolies and state trading countries.^x

Nevertheless, the provision was unclear and quite flexible in its application, which meant that it could later be used in relation to state trading countries. Since the GATT did not stipulate any membership criteria, the terms of accession were agreed between the contracting parties and a candidate state, the provisions of Article XVII could be used to admit non-market economies into the GATT system. And since the GATT related only to trade in goods, the main concerns of the negotiators were border measures. Such concerns could be accommodated without placing the demands on acceding countries to reform domestic economies. The PPA and Article XVII largely created flexibility to accommodate the accession of non-market economies at the GATT. However, accession experiences of non-market economies varied by the virtue of their state trading practices and often resulted in accession coming at a greater cost. GATT has allowed many ex-colonies (all developing countries) to accede automatically thus:

If any of the customs territories, in respect of which a contracting party, has accepted this agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of other matters provided for in this agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party.

Many countries took advantage of this clause when they obtained political independence. This clause had permitted ex-colonial nations an exception from Article XXXIII that meant they could by-pass the formal GATT accession process but still become contracting parties which allowed them to succeed to the GATT rather than accede by de facto status. During the Uruguay Round between 1986 and 1994, twenty six countries acceded under this clause. These countries joined the GATT as a result of the importance of the Uruguay Round as well as the fact that the accession provisions were creating changes to the multilateral trade system. The Uruguay Round accession statutes were entirely different from those of any previous GATT round; and one of the differences was the cost of entry.

1.4. THE LINK BETWEEN THE GATT AND WTO

The establishment of World Trade Organization (WTO) came gradually from various needs and suggestions. In negotiations during the Uruguay Round, negotiators and observers recognized that significant agreements would be needed to make better institutional mechanisms and a better system for resolving disputes. Therefore, one of the Uruguay Round of negotiations was about the 'Functioning of the GATT System' (FOGS).

In the Uruguay Round, one of its negotiators suggested founding a new World Trade Organization. Therefore, the main idea of a new world trade organization was taken up in the 'FOGS negotiation' of the Uruguay Round. The final draft act of the Uruguay Round included a proposal for a new 'Multilateral Trade Organization' (MTO) and the name was later changed to

the World Trade Organization.^{xi}

The final draft act of the Uruguay Round included agreements on the arrangements for subjects that were covered by new WTO Agreement. On 15 th April 1994, these agreements passed, so the WTO was opened for signatures at Marrakesh while the negotiators decided that the WTO would come into being on 1 st January 1995.^{xii} All agreements annexed to the WTO Agreement became binding on some Members as a single body of law.

Therefore, the birth of the WTO was in 1995. This organization, in the context of the contemporary international political economy, was the result of the Uruguay Round but also a result of almost twelve years of negotiations. Officially, the Uruguay Round was considered to be completed in 1990 but because of the disagreements between the EU and the United States it was extended four more years. However, the GATT was on the brink of failure that would affect not just the extension and reform of the GATT, but perhaps even to the GATT itself. Eventually, all members present devoted so much time, effort, and political capital to the negotiations.

It has been thought that the Uruguay Round was making a new system for international trade through the creation of the WTO. It expanded the coverage of the GATT in many ways such as services, intellectual property, and domestic policies of states affecting investment and agriculture. The most important result is that it formalized the WTO to help oversee and administer the GATT system.

As result of this, the WTO was given the power to settle disputes between parties to the agreement. Since the WTO's beginning, it has been considered that these changes were the beginning of a truly integrated world economy with the WTO as its linchpin. In fact, the WTO Agreement established the WTO as a new international organization, which means that it gave the WTO a legal personality and a legal capacity, as well as plenty of rights and immunities to carry out its role. It is believed that the WTO will continue to play a key role in the global economy of the twenty-first century if it keeps the support of its Members and gains public understanding.

Annex 1 of the WTO Agreement contained the GATT 1994 agreement and additional agreements like:

- The Agreement on Technical Barriers to Trade
- The Agreement on Trade Related Investment Measures
- The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Antidumping Agreement”)
- The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (“Customs Valuation Agreement”)
- The Agreement on Pre-shipment Inspection
- The Agreement on Import Licensing Procedures
- The Agreement on Subsidies and Countervailing Measures
- The Agreement on Safeguards

Similarly, Annex 2 of the WTO Agreement contained the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which established the procedures for

resolving trade disputes between WTO Members; and Annex 3 deals with the Trade Policy Review Mechanism which set up a periodic review of every WTO Member's compliance with WTO agreements and commitments.

The WTO Agreement legally replaced the GATT 1947. Indeed, the fundamental role of the WTO is to facilitate the implementation, administration, and operation as well as to further the objectives of the WTO agreements. In addition to this fundamental function, it has three strict tasks:

- To provide a forum for negotiations between Members as to current matters and any future agreements
- To administer the system of dispute settlement
- To administer the Trade Policy Review Mechanism and to cooperate with the International Monetary Fund 'IMF' and the World Bank

The WTO has two governing bodies: the first is called the Ministerial Conference and the second, the General Council. The Ministerial Conference is considered the supreme authority. It consists of representatives of all WTO Members and it meets at least once every two years. The General Council is considered to be the chief decision-making and policy branch. It is also responsible for two significant subsidiary bodies: the Dispute Settlement Body and the Trade Policy Review Body. The General Council is constituted by all the WTO Members and meets as appropriate.

The WTO membership is considered quasi-universal due to the fact that the major trading powers and most developing countries are members of the WTO. The membership of the WTO represents almost 92 per cent of the global population as well as 95 per cent of world trade. WTO Members can be States, separate customs territories possessing full autonomy in the conduct of their external commercial relations, and/or other entities that covered by the WTO Agreement.

Since the WTO has no definition of a 'developing country,' the standing of 'developing-country member' was selected by the countries themselves. Therefore, a member has to state whether it is a 'developing' or a 'developed' country. As a WTO member, all developing-countries can receive WTO technical assistance and they can also benefit from special and differential treatment under some of the WTO agreements.

Developing countries are playing a significant role in the WTO, not only because of their WTO membership but also due to the fact that they have rising importance in the global economy. In addition, they have been significantly increasing the size of their economies and they often act as spokespersons for other developing countries. For example, India without doubt is a powerful, activist and significant Member in the WTO.

WTO Members are not only classified as developed, least developed and developing country Members. There are other alliances, formal or informal, existing in the WTO. It has been observed that some of those groups were created to defend common interests and advance

common positions; they coordinate (or try to coordinate) positions and, when appropriate, speak in unison. These groups include:

- The Association of South East Asian Nations (ASEAN)
- The Caribbean Community (CARICOM)
- The African, Caribbean and Pacific Group (ACP)
- The Southern Common Market (MERCOSUR)
- The North American Free Trade Agreement (NAFTA)
- The Cairns group of nineteen agricultural-produce-exporting developed and developing countries 20

The new influential group of developing countries, including India, China, Indonesia, Brazil, Egypt, Argentina and South Africa, appeared in September 2003, in the Cancun Session. The group has been referred to as the 'G-20.' It has forcefully demanded the dismantling of the trade-distorting and protectionist agricultural policies of the European Communities, the United States and other industrialized countries. Moreover, in the Cancun Session, a new group known as the ACP/LDC/AU alliance (an alliance made up of the ACP countries, the least-developed countries and the countries of the African Union) became known as the 'representative' of the interests of the poorest countries.

1.5. THE GATT DISPUTE SETTLEMENT SYSTEM

The GATT 1947 Agreement contained some provisions for resolving any trade disputes among its contracting parties. The main goal of the GATT disputes settlement was to encourage freer international trade. Therefore, any contracting party could protest measures that had been taken by one or more of the GATT contracting parties which were allegedly in breach of their GATT obligations.

The dispute settlement system under GATT 1947 evolved quite remarkably over five decades on the basis of Articles XXII and XXIII of GATT 1947. Over the years, the GATT dispute settlement system principles and practices evolved codified in decisions and understandings of the contracting parties. However, the process was not either "judicialized" or "legalized." The initial stage of the GATT disputes settlement was the diplomatic phase and the process was referred to as "conciliation"

In GATT dispute settlement, the parties to the dispute could appoint three or five panelists. The panel's decision had to be referred to the contracting parties. Under the GATT 1947 dispute settlement system, if the panel's decision was accepted by the contracting parties, then it would be binding on them. Therefore, any decision needed a positive consensus before it could be adopted. However, the "Positive Consensus" was considered as the most significant weak point in the GATT 1947 dispute settlement system.

In order to refer a dispute to a panel, there needed to be also a positive consensus in the GATT Council. The positive consensus meant that there had to be no objection from any contracting party to the decision. Therefore, the parties to the dispute fully controlled the dispute settlement process. In addition, a positive consensus was required for the adoption of the panel report, and the authorization of countermeasures against a non-implementing respondent.

However, the respondent party was able to block the establishment of a panel and the adoption of the panel report either by a positive consensus rule or by refusing to assent to the report. Therefore, the losing parties could take an advantage by using the consensus rule to stop the establishment of a panel and to guard against unfavorable panel reports.

The other flaw in the GATT dispute settlement was that it had no fixed timetables for resolving disputes. The GATT dispute settlement system did not say much about disputes and the ways to settle them. The contracting parties had to rely on Article XXII. In fact, Article XXII organized the consultation process and “loosely asked Contracting Parties to defer ‘sympathetic consideration’ to others’ requests,” but it did not set rules or time limits.

The GATT dispute settlement system was criticized as an inappropriate system because disputes could only be resolved through negotiations. Therefore, the GATT 1947 contracting parties, both developing and developed countries, felt that due to the inherent problems in the GATT dispute settlement system which needed improving and strengthening. Therefore, one of the main points discussed in the Uruguay Round negotiations was the readiness of the contracting parties to implement some preliminary improvements to the GATT dispute settlement rules and procedures. Eventually, one of these negotiations was the creation of the WTO dispute settlement system.

1.6. THE WTO DISPUTE SETTLEMENT SYSTEM

The new dispute settlement system aimed to introduce a significant change in the way of settling the GATT 1947 disputes. Specifically, the “positive consensus” rule was reversed and the litigation process became more rules-based. These were the two principal changes which made the system more “predictable and less susceptible to power politics”. The WTO dispute settlement system was introduced in January 1995, and disputes brought to the WTO covered a wide range of economic activities.

The WTO Members established the current dispute settlement system during the Uruguay Round of Multilateral Trade Negotiations and highlighted the importance of compliance by all Members with their obligations under the WTO Agreement. The system was based on the principle that a stronger, more binding system to settle disputes would help to ensure that the WTO’s carefully negotiated trading rules are respected and enforced. Also, the system is referred to as the WTO’s unique contribution to the stability of the global economy.

Today, the backbone and the fundamental support of the multilateral trading regime is the WTO dispute settlement system. The current WTO dispute settlement system is referred to as the Dispute Settlement Body (DSB) which includes the Dispute Settlement Panels (DSP) and the Appellate Body (AB). The first phase of the DSB is the “consultations” phase which could be regarded as a political process within the WTO, while the DSP and AB are judicial-type institutions.

The DSB is embodied in the Understanding on Rules and Procedures Governing the Settlement of Disputes, commonly referred to as the Dispute Settlement Understanding (the “DSU”). The DSU provides rules and procedures for the dispute settlement system. It is the result of the evolution of rules, procedures and practices developed over five decades under the GATT 1947 building on the principles for the management of Articles XXII and XXIII of GATT 1947.

In the WTO DSU, a trade dispute arises when any of the WTO Members adopts a trade policy measure allegedly violating their WTO obligations, and one or more other Members takes action against this. In essence, disputes in the WTO are essentially about broken promises. WTO Members have agreed that “if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally.”

That means “abiding by the agreed procedures, and respecting judgments.” Also, the function of the DSU is the prevention of the detrimental effects of international trade conflicts and alleviation of the imbalances between stronger and weaker nations through having their disputes settled pursuant to DSU. Therefore, since the DSU entered into force, it has been a practical significant system as the WTO Members often use the WTO system to settle their disputes.

Moreover, the function of the DSU is providing security and predictability for the multilateral trading system, as businesses involved in international trade in goods and services need predictability and stability in the government rules, regulations and laws relating to their trade activity. Thus, offering a fast, effective, dependable and rule-oriented system to resolve disputes under the provisions of the WTO Agreement is the function of the DSU.

Strengthening the rule of law of the dispute settlement system eventually makes the trading system more secure as well as predictable. Further, the dispute settlement system facilitates a fast resolution of the matter through an independent ruling which must be applied promptly, or else the possible trade sanctions will be applied for the non-implementing Member.

The WTO dispute settlement system has been often praised as one of the significant innovations of the Uruguay Round. Compared to the previous system, the DSU provides more procedures for the various stages including specific time-frames for dispute settlement. The DSU is an integrated framework for all the WTO agreements.

It has departed from the GATT by eliminating the right of individual parties whose measure is being challenged, to block the establishment of panels or the adoption of a report. The DSB automatically establishes panels and adopts panel and Appellate Body reports unless there is a consensus not to do so. This negative consensus rule is in contrast with the practice under the GATT 1947.

The DSU also applies to the authorization of countermeasures against a party which fails to

implement a ruling. Besides, it authorizes the appellate review of panel reports and a formal surveillance of implementation of rulings and recommendations following the adoption of panel (and Appellate Body) reports. These rules also are incongruent with the practice under the GATT 1947. Hence, the DSU process has shifted from a diplomatic to a legalized process and from a power-based to rule-based procedure.

It has been classified as a “judicialized” method of trade dispute settlement. One of the GATT duties was resolving disputes between the parties by a friendly accommodation. Moreover, disputes were mainly treated as internal, to be resolved quickly within the organization. These features were approved by the DSU.

Prompt settlement is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.^{xiii} Hence, recommendations or rulings shall be aimed at achieving a satisfactory settlement of the matter.^{xiv} The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable is clearly to be preferred.^{xv} In addition, only parties to the dispute, not third parties, may appeal a panel report.^{xvi} These provisions imply an intention to focus on the actual dispute itself and to ensure that it is resolved quickly and to the satisfaction of the parties.^{xvii}

The function of Panels and the Appellate Body is prompt settlement and a focus on resolving the dispute that are the essential aspects of their work. The obvious indication of this was in *US-Shirts and Blouses* dispute, the Appellate Body stated that “panels are not required to decide issues that are not necessary to dispose of a particular dispute; and that the basic aim of dispute settlement in the WTO is to settle disputes.”^{xviii}

The DSU is more than just a mechanism for the application of legislation to disputing parties. It is also a mechanism of governance and guidance. Some DSU provisions provide that the WTO dispute settlement system has a greater role than just resolving the dispute between the parties to disputes that, by its rulings “affect entities other than the main parties. For example, it provides that “the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system.”^{xix}

To ensure predictability under the DSU, it has to adopt well-reasoned rulings to make WTO Members learn what the provisions mean and how they should be applied. The aim of the DSU is to “preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions.”^{xx} It further provides that all “solutions shall be consistent with covered agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.”^{xxi}

It further requires that the mutually agreed solutions by disputants shall be notified to the DSB.^{xxii} It also provides rules for the multilateral surveillance of the implementation of DSB rulings and recommendations.^{xxiii} These provisions illustrate that dispute settlement reports are of interest to all the WTO Members. Indeed, some of the WTO case laws detected that the rulings and recommendations of the DSU may affect a much wider community than just the parties to disputes.^{xxiv}

In *EC-Bananas*, the Appellate Body approved the panel statement stressing that “increased

Inter dependence of the global economy means Members have a greater stake in enforcing WTO rules than in the past since any deviation from the negotiated balance of rights and obligations is more likely than ever to affect them, directly or indirectly.”³³ Moreover, a panel has clearly stated that the WTO disciplines have an impact not only upon WTO Member governments: “it would be entirely wrong to consider the position of individuals is of no relevance to the GATT/WTO. Many of the benefits to Members which are meant to flow as a result of the acceptance of various disciplines under the GATT/WTO depend on the activity of individual economic operators in the national and global market places. The purpose of many of these disciplines, indeed one of the primary objects of the GATT/WTO as a whole, is to produce certain market conditions which would allow this individual activity to flourish.

1.7. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

The majority of WTO Members are developing countries. They are grouped as “developing countries” and “least developed countries.” In this part, the term “developing country” will be used in the legal sense as it is used in the WTO Agreement. However, in the WTO, there is no exact definition of term “developing country.” Defining a country as developing depends on the country declaring itself to be so. Therefore, it is the WTO Members that can announce themselves either as “developed” or “developing” countries.”

Nevertheless, other members can challenge the decision of a member to be a “developing” country and can challenge such a member for using provisions available to developing countries. Chapter three of this thesis addresses and discusses the term “developing country” elaborately. Developing countries are about two thirds of the WTO Members. Due to their number, these countries play an important and increasingly active role in the WTO, and they increasingly view trade as a vital and significant tool in their development efforts. Consequently, they have varied increasingly and significantly in terms of the size of their economies.

The GATT 1994 was not trying to classify or explain the meaning of ‘developing country’ whereas the GATT 1947 did provide an explanation of ‘developing country.’ Article XVIII of GATT 1947 grants certain privileges to least developed and developing countries. Developing countries were referred to in the statement: The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting parties the economies of which can only support

low standards of living and are in the early stages of development.

This trend can be attributed to the fact that some of the developing countries had rapid growth and succeeded in varying their economies. This made them better equipped to be more participative in the WTO trading system and enhanced their interests in the WTO negotiations. Due to the fact that the majority of WTO Members are developing countries, the major focus of the WTO is to make sure that these developing countries are able to benefit from joining in international trade and from the multilateral trading system. Therefore, the Agreement establishing the WTO recognized that there is need for positive efforts designed to ensure that developing countries, and especially least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development. Accordingly, the WTO deals with the special needs of developing countries in the DSU. The DSU

contains several provisions that seek to improve the possibilities for developing countries to take advantage of the WTO system. Thus, under the current DSU rules, there are some special provisions which developing countries can benefit from. The DSU included some provisions concerned with developing countries' special needs. These provisions are referred to as Special and Differential Treatment (S&D) provisions and are recognized as the "integral point of WTO agreements." They give developing countries special rights in all stages of the DSB process. The Uruguay Round emphasized the basic conceptual premises related to Special and Differential Treatment which are:

- Developing countries are intrinsically disadvantaged in their participation in International Trade.
- Any Multilateral Agreement must take this into account when specifying a developing country's rights and obligations.
- Trade policies that maximize sustainable development in one country may not necessarily do so in another.
- It is in the interest of developed countries to assist developing countries in integration into the multilateral trading system.

ⁱ Buterbaugh & Fulton, *The WTO Primer: Tracing Trade's Visible Hand through Case Studies* (Palgrave Macmillan, New York, 2007), p.15

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v The trade negotiations of ITO were held in a series of stages: in Geneva in 1947; at Lake Success, New York, in 1947; and in Havana in 1948

^{vi} (i) Geneva 1947; (ii) Annecy 1947; (iii) Torquay 1950; (iv) Geneva 1956; (v) Dillon 1960-1961; (vi) Kennedy 1962-1967; (vii) Tokyo 1973-1979; and (viii) Uruguay 1986-1994.

^{vii} India (1948)

^{viii} Agreement 1947, at Article XXXII

^{ix} See, WTO, *Guide to GATT Law and Practice* (1995), pp. 1013-1014

^x See, Article XVII

^{xi} Officially, the WTO was created via Article 1 of the WTO Agreement, which became effective on 1 January 1995.

^{xii} Porges, "The Marrakesh Agreement Establishing the World Trade Organization," in Stewart, T. P. (ed.), *The World Trade Organization* (Cambridge University Press, Cambridge, 1996)

^{xiii} See, Article 3.3

^{xiv} Article 3.4

^{xv} Article 3.7

^{xvi} Article 17.4

^{xvii} Weiler, "The Rule of Lawyers and the Ethos of Diplomats Reflections on the Internal and External Legitimacy of

WTO Dispute Settlement” 35(2), Journal of World Trade, 191-207 (2001), p. 5

^{xviii} TRADE Analysis, The WTO Dispute Settlement System: Issues to Consider in the DSU Negotiations (2005); see also, ” US-Measure Affecting Imports of Woven Wool Shirts and Blouses from India” (WT/DS33/AB/R), p. 19

^{xix} Article 3.2

^{xx} Ibid.

^{xxi} Article 3.5

^{xxii} Article 3.6

^{xxiii} Article 21

^{xxiv} United States – Sections 301-310 of the Trade Act of 1974 (WT/DS152/R), paras 7.73

