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INTRODUCTION

Relevance of the research topic. There are several ways of looking at the WTO in this research. It could be seen as an organization for liberalizing trade. It can also be a forum for governments to negotiate trade agreements. It could be regarded as a place for them to settle trade disputes. WTO fundamentally operates a system of trade rules for all parties. (But they do not have any superficial powers like a Superman, just in case anyone thought they could solve or create all the world's problems regarding to trade. The WTO are in a complex dilemma in recent times and the crisis they face does not have a simple solution as the prospects for overcoming it has been a major challenge as an effective solution will lead the way to optimizing the regulation of International trade at the global level. Which the impasse in the World Trade Organization (WTO) over the appointment of new members of the Appellate Body is just one symptom of crisis in cooperation on trade. Driven by mere skepticism about multilateralism by a growing strategic and economic rivalry with China, and binding unrelated dispute settlement, and the previous US administration had upgraded longstanding US concerns on WTO dispute settlement to new heights. The inability or incapacity of World Trade Organization members to exhibit their collective authority to interpret and understand the meaning of their commitments regarding it's operation has meant that the glorious appellate body is an ineffectively subject to any checks and balances. The United States increasingly turned to unpopular unilateral mechanisms

as the majority WTO members blocked US efforts to negotiate unnecessarily more member control, adding in the current block on new appointments which they proposed as part of its more disruptive trade policy.

Assuming the rules-based trade is returned to by the United States, it will help restore the WTO dispute settlement system to full capacity and enhance its legitimacy and transparency as well. This might include narrowing the scope of adjudication, (in regards to Judgments from the outside) diverting the most sensitive issues from adjudication, improving the mechanisms for political oversight, improving the institutional support and providing all members more say over all procedures. Preserving the most compulsory, impartially and enforcing dispute settlement in the WTO with the interest of all at heart as it will require an accommodation of a more positive perspectives on how the whole system should function as a unit. Achieving the most, in any form, will mostly contribute to maintaining, balancing and even strengthening the multilateral cooperation among the unit on trade. Essentially, the Organization is indeed a place where all member governments commute, and try to settle out the trade problems they face with each other which is inevitable considering the different cultures they all come from. The initial step is to dialogue. The WTO was birth out of dialogues in solving international trade issues, and everything the WTO does is the result of dialogues. The basis of the WTO's current structure emanate from the 1986-94 dialogues which is also called the Uruguay Round and earlier dialogues

between them under the General Agreement on Tariffs and Trade (GATT). They have however created a new umbrella which is a host to new dialogues, under the “Doha Development Agenda” launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the dialogues have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease

The research object : The main objective of this study is to examine the participation of developing countries in WTO dispute settlement proceedings. In so doing, the study will have such **tasks :**

1) To investigate the extent to which countries are required by the WTO DSU to settle their disputes in line with the strategic framework of the WTO [1].

2) To identify the extent of participation of countries in dispute settlement proceedings [3].

3) To ascertain those factors that impede the participation of countries in those proceedings [5].

4) To see if the WTO’s agreements and its organizational structure have an impact on participation of member countries in those proceedings [8].

5) To highlight any other finding that is of interest and contributes towards the subject of the participation of member countries in those proceedings [9].

6) To provide a scientific framework for supporting the participation of countries in those proceedings [11].

7) To make concrete recommendations to ensure greater participation of developing countries in those proceedings[14].

The research subject. The findings of this research will add to the knowledge and understanding of the participation of countries in WTO dispute settlement proceedings and the ability of the WTO system to deal with them. The significance of this research is tied into the importance of the subject matter covered and the context in which it is applied [6]

Research methods. The methodology in this thesis is two folds. First, it is based on the existing literature; books, scientific journals and WTO official legal documentation and publications relating to the specialized subject area of participation in WTO dispute settlement proceedings, including the participation of member countries in such proceedings. Second, this knowledge is applied to real life cases for a greater comprehension of how the rules are actually affecting the members of the WTO. Also, this thesis will examine the WTO Members' proposals for evidence of perceptions regarding developing countries' participation in the WTO dispute settlement system. The WTO Members' proposals have been submitted to the WTO during the formal review process of the current WTO dispute settlement system, which aims to identify the difficulties and reform the system. Exploring these proposals is a valuable source of the positions of developing countries regarding the WTO dispute settlement system[12]. Knowing these positions has the

advantage of building the picture and providing rich information explaining what is actually happening in the WTO dispute settlement system. This is especially important in testing the research questions, not only theoretically but also practically, and is a vital factor in discovering the relationship between theory and practice. Statistical and economic-mathematical methods (in the analysis of import substitution processes by types of economic activity); correlation analysis method (to identify the relationship between import, export and GDP, import and exchange rate, foreign trade balance and external debt); generalization and synthesis (in determining priority directions of state incentives for import substitution production).

CHAPTER 1. CONCEPTUAL FRAMEWORK OF INTERNATIONAL TRADE REGULATION WITHIN THE WORLD TRADE ORGANIZATION REGULATORY SYSTEM

1.1 The main prerequisites for the formation of a multilateral system of international trade.

From the early days of the Silk Road to the creation and birth of the General Agreement on Tariffs and Trade (GATT) [Annex A] and the initiation of the WTO[2], trade has played an important role in supporting economic development in the world and promoting peaceful relations among nations. The ITO was first projected, along with the World Bank, the International Monetary Fund (IMF) and, as one of the prolific pillars of post-World War II, (after the second world war) there was the need for reconstruction and economic development across the world at large [6]. The early meeting took place in Havana in 1948, where the UN Conference on Trade and Employment made a conclusion on ITO and also a draft charter for it, known as the First Havana Charter, which would have provided extensive rules on governing the trades, investments, services, business and employment practices among participant. However, the United States unfortunately failed to clarify the very agreement. Meanwhile, the agreement to delete the use of import quotas between countries and to reduce overly priced tariffs on the merchandise trade, which was negotiated among 23 countries in Geneva in 1947, which came into force as the GATT on January 1, 1948 during their meeting.

In order find, develop and coordinate international trade solution, the conference which was on economic matters was held in 1944, in Bretton Woods in New Hampshire. Following that conference, the dialogues on tariff reductions and the General Agreement on Tariffs and Trade (GATT) was completed inadvertently in 1947. During the first GATT tariff negotiation rounds, which was specifically the Uruguay round of dialogues and concentrated on a reduction in tariffs and other restrictive barriers to international trade, the World Trade Organization (WTO) was mainly created to deal with the international economic issues. On the 1st January 1995, the GATT members unanimously adopted the WTO agreement, which became binding for all members, Annex A.

Although GATT was initially expected to be a mere provisional institution, it became the only major agreement governing the whole international trade until the new creation of the WTO. The GATT system, however evolved for over 47 years to become a DE FACTO organization which trades globally and eventually involved approximately 130 countries[19]. The GATT was extended and modified by numerous supplementary codes through various negotiating rounds, while reports by dispute-settlement panels, arrangements, interpretations, waivers, and decisions of its council were made during this time.

Objectives of GATT

The General Agreement on Tariff and Trade was indeed a normal multilateral treaty that enacted rules for conducting

international trade. The rarely preamble to the GATT can be linked to its objectives.

1. To raise and increase the standard of living of the people,
2. To really ensure full employment for all and a large steadily growing volume of real income and effective demand.
3. To increase the use of resources of the world fully.
4. To expand the overall production capacity and international trade for all member states.

Principles of GATT

For the above mentioned objectives to come into realization, GATT adopted the following principles. [12]

Non Discrimination,

Protection through tariffs,

A stable basis of trade, and;

Consultation

1. Non Discrimination

The international trade among member states should be conducted only on the basis of nondiscrimination. No country among the members shall discriminate between the members of GATT[17] in the conduct of international trade. On this score, the principle called “Most favored Nation” (MFN) was enunciated immediately. This also means that “each nation shall moreover be treated as good and as the most favored nation”. All parties involved should regard others as the most favorable while

administering import and export duties charges and and it's application. In event of quantitative restrictions, they must be administered without favor.

However, there are exceptions to the principle of non-discrimination: Furthermore, Certain exceptions to this basic rule must be allowed. There is indeed no objection in any form to formulate free trade areas or create custom unions. Such integration must facilitate consistent dialogue between the constituent territories. They should also not raise unnecessary barriers to the trade of other parties. GATT will only allow its members to follow measures which counter dumping and eliminate export subsidies. Such measures must be administered only to offending countries[21].

2. Protection through tariffs only

The GATT rules stops quantitative restrictions. Domestic industries must be protected only through customs duties and tariffs. Restrictions on trade must be limited to minimal rigid tariffs.

Exceptions: The only exception to this principle is to the countries which are affected by unfavorable balance of payments position. Developing countries should also enjoy this exception. Import restrictions should be applied to fishery products and agricultural sector if their domestic productions are subjected to equally productive restriction .

3. A stable basis of trade

The GATT also seeks to provide a more stable and predictable standard for trade. It however binds the tariff levels which were negotiated among the contracting countries. The binding tariffs help prevent the unexpected unilateral increase in tariffs, but there is also a provision for renegotiation of tariffs. A return to a higher tariff is always discouraged by the strict requirement that any impromptu increase is to be compensated for.

4. Consultation

The member countries should consult one another on trade matters and problems. The members who feel aggrieved that their rights under GATT are withheld can call for a fair settlement. The panel of independent experts was also formed under the GATT council. The panel members were drawn from countries which had no direct interest in the disputes which was under investigation. The Panel looked into the trade disputes among members. Panel procedure aimed at the mutually satisfactory settlement among member nations.

GATT bilateral negotiating material by Round

During the period of GATT (General Agreement on Tariffs and Trade) years, they had eight rounds of tariff dialogues which were held between the years 1947 and 1994: Geneva (1947), Annecy (1949), Torquay (1950-51), Geneva (1956), Geneva (1960-61) - They were also known as the almighty Dillon Round, and the Kennedy Round (1964-67), then the Tokyo Round (1973-79) and then finally the Uruguay Round (1986-94).

During the Initial rounds, dialogues were mainly conducted on a purely product-by-product basis which was also known as ("request/offer") approach. The GATT also contracted the parties involved to exchanged the lists of requests and offers which was on products of interest in order to reach the agreement on tariff concessions.

Main achievements of GATTs

The main key achievement of the GATT was the trade without much discrimination, where every signatory member of the GATT was also to be treated as equal to any other. It was known as the most-favored-nation principle. They had been carried through the WTO. There was a practical outcome in which the once country had negotiated a tariff cut between themselves (usually with its most important trading partners), these same cuts would immediately automatically apply to all GATT signatories achieved. The escape clauses however did also exist, where countries could also negotiate exceptions within their domestic producers and would however be particularly harmed by the tariff cuts.

Furthermore, most nations also adopted the most-favored-nation principle which setting tariffs, mainly largely replaced most quotas. The Tariffs (which is preferable to quotas but mostly regarded as a trade barrier) were in turn Incorporated steadily in this round of successive dialogues.

1.2 The essence, basic principles and functions of WTO system as the fundamental regulatory framework for the participation of countries of the world in international trade

The World Trade Organization (WTO) is a mandated intergovernmental system which regulates mostly international trade. The WTO however, officially, commenced on the 1st of January 1995 under the Marrakesh Agreement, which was signed by a total of 123 nations on 15th of April 1994, which replaced the General Agreement on Tariffs and Trade (GATT), that commenced in 1948. The WTO deals directly with the regulation of trade between countries that signed the constitution and providing a framework for dialogues that relates to trade agreements and also a dispute resolution processes which aimed at enforcing participants' adherence to the WTO agreements, that was signed by the representatives of member governments and also ratified by the parliaments of various countries. Most of the unresolved issues that the WTO focused on was derived from the previous trade dialogues, especially from the blueprint of Uruguay Round (1986–1994).

The General Agreement on Tariffs and Trade (GATT) which the World Trade Organization's preceded, was established immediately after the World War II in the wake of the other new

multilateral institutions which was dedicated to international economic cooperation also notably known by the Bretton Woods institutions was called the World Bank and the (IMF) International Monetary Fund .

The system was overriding the purpose and to help allow trade flow as freely as possible among member countries, so long as there were no undesirable side-effects. Which was because it was important for economic development and its well-being. They partly removed obstacles and this also meant ensuring that the individuals, companies and governments involved knew what that trade rules were around the world, and gave them that confidence where there would be no sudden changes of policies. The rules had to be “transparent” and predictable and also accepted by all parties.

The WTO has six main key objectives:

- (1) to make and enforce the rules for international trade,
- (2) to provide a clearer forum for a more comprehensive negotiation and also monitor trade liberalization,
- (3) to help resolve unnecessary trade disputes,
- (4) to help increase the transparency in decision-making processes,
- (5) to help cooperate with the major international economical institutions which were involved in global management
- (6) to assist developing countries benefit fully from global trading system.

Although they were shared by GATT, in its in-dept practices, these goals have been pursued more attentively by the WTO. For instance, while the GATT concentrated on almost exclusively on goods all though most of agriculture and textiles were not part, the WTO adds all goods, services, and even intellectual property, and some investment policies in addition. Furthermore, the most permanent WTO Secretariat, which was by replaced the interim GATT Secretariat, helped strengthened and standardize the mechanisms for reviewing the trade policies and settlement of disputes. Many more products are also covered under the umbrella of the WTO than under the first GATT, because the member countries and their participation has however grown steadily. Trading between the international community of WTO members now exceeds over 90 percent of the global total and they open access to markets has also increased substantially.

The rules governing both the GATT and the WTO serve at least three purposes. First, it attempt to protect, strengthen the interests of the developing countries against the discriminatory trade practices of the large and developed countries. The national-treatment articles stipulate the WTO's most-favoured-nation that each WTO member must be granted equally in market access and to all other members that trade in both domestic and foreign suppliers must also be treated equally. Secondly, they are required to limit the trade only through tariffs and to also provide market access to less favourable countries that specified in their schedules (i.e., their commitment agreed upon should be granted to WTO membership or

subsequently). Thirdly, the new rules were designed to assist governments resist the use of lobbying efforts most of the domestic interest groups were seeking special favours. Although there were some exceptions to these rules as their presence and replication which were in the core of WTO agreements were intended to make sure that the worst exceeded would be avoided. By this, bringing of increased certainty and predictability to the international markets, was thought, the WTO would however enhance the economic welfare and reduce the political tensions.

The national treatment is also regarded as one of the consistent cornerstones of the WTO. Most especially, the relevant to our purpose here is in the Article III.4 of the GATT 1994, which specifies the national treatment with respect to all other laws, regulations, and the requirements of affecting the internal sale, also offering for sale and purchase, the transportation, distribution, and the use of imported goods. Similarly, the national treatment is provided for in the same Article XVII of the GATS and also Article (3) Three of the TRIPs Agreement. However, with regards to GATS, the national treatment is really not an automatic requirement, but liberalization commitments in trade in services is contingent on concession of the Member making. The provisions for the national treatment are found in TBT Agreement, the Agreement on the Application of Phytosanitary measures and Sanitary ("SPS Agreement"), and Government Procurement Agreement. The national principle of treatment is also meant to maintain the

competitive equality between domestic products and the enterprises. However, those of other Members are on the other zone. The application of the national treatment principle do vary according to whether it applies to trade in services, or intellectual property or a normal conventional trading in goods. The national treatment is also meant to establish a very level playing field between foreign products and domestic and then enterprises. The spread of “laws, regulations and requirements” in the Article III.4 of the GATT 1994 has however been interpreted in broadly to include the regulations and laws which will adversely alternate the conditions of competition between imported and the domestic products in the internal market. This is noteworthy that the Article VIII of the GATS requires its members to make sure that any monopoly producer of a service in its territory, in the production of the monopoly product in the relevant market, neither acts or do anything in a manner that is inconsistent with member’s specific commitments business nor abuses its position as a monopoly to act in other markets in any manner which is inconsistent with its commitments. This provision is similar to “abusive control” which is exercised by the domestic competition law of authorities in some member countries.

The Most Favored Nation (“MFN”) principle mostly requires that any Member accord services and goods of another member, the treatment with no less favorable than it accords to the services and goods of all Members. This principle applies mostly in the vicinity of intellectual property. The principle is also

designed to safeguard equal competitive environment between the services provided and the goods produced of different foreign members. This applies to the universe with regards to the GATT in 1994, the original GATS, and TRIPs Agreement, even though the GATS somehow allows a Member to connect a reservation to the principle and exclude the application in most part or as a whole. MFN treatments provides for in the Article I of GATT 1994, Article II of GATS and also the Article 4 of TRIPs Agreement. Mostly likely the principle of national treatment, the equality of competitive conditions is also widely interpreted. In the Bananas case, for instance, the Panel of Judges and that of the Appellate Body held that the Article II of the GATS should also be given a broad scope.

The cornerstone of the WTO just is a two-part requirements of the transparency, which is also a the first part is the obligation imposed on Members of WTO to its published documents and make its publicly available for all relevant regulations before its original application. The right to review decisions taken under them requirements of impartial administration of such regulations. The next part is its requirement is that Members also give notice of the governmental actions to WTO and its other Members. This principle of transparency is actually provided for in the Article X of GATT 1994, and the Article III of GATS and the Article Sixty-three of TRIPs Agreement. The provisions of transparency are also included in the many other WTO Agreements which is in its Annex 1A. The principle also serves as a basis for the rule

oriented to foreign trade policy and also for the maintaining stability and predictability of trade the law regulations of the Members.

This requirement of the transparency of governmental processes is also an important process of the concept of the due process of most law. A more closely related to this principle is the procedural of the due process in the principle present in WTO's dispute procedures settlement. The dispute settlement procedure for the WTO are provided for in Understanding on its Rules and Procedures that is Governing the Settlement of the Disputes ("DSU"). The provision in DSU are also basically designed to take care of the due process in enforcing of WTO Agreements. Most especially the significant in the Article Eleven of DSU, which states that an objective assessment should be made for a panel and should make a matter before it, which includes an objective assessment of all facts of the case and apply to its conformity with regards to the relevant covered in its agreements. Even though there is no similar provision which exists for the Appellate Body, however, the sequence due process requirement also applies to its same procedures. All of its principles, the WTO discussed which is above are also designed to establish and maintain the conditions conducive to the competition among the enterprises of all different members of WTO in the trading of goods, services, and also, intellectual property. This is to ensure that the rules of the law which prevails in enforcing of the trade rules. It is also clear that

those principles very common to the WTO system and to the competition policy.

The decision of the Photographic Film case (Kodak/Fuji), with the Dispute Settlement Body (“DSB”) of 1998, they revealed the WTO was very ineffective in the dealing with the private restraints of all trades. In that case, U.S. government filed an important claim to the WTO regarding the measures were taken by the Japanese governments in the connection with its distribution of the film in Japan. The U.S. government had argued that actions by that firm constituted violation and a non-violation at the same time of the WTO Agreements. In reality, the U.S. government argued that the most restrictive features of this Japanese distribution system, allegedly had been constructed under the directives of the Japanese government, and had foreclosed that film market in Japan to a foreign-produced film. The United States also claimed that the Japanese authorities had imposed “liberalization countermeasures” in 1970s, when that film market in Japan was also liberalized in this order to the effect of the trade liberalization. The U.S. claim, under the auspices of the Japanese government, that the leading film manufacturer Fuji Film Company, had built an all exclusive distributorship in Japan and also excluded the Kodak films from the jurisdiction. The case involved a wide distribution system that was created by Fuji with a fine market share of about seventy percent of the majority, in which all four distributors of Fuji acted as its exclusive distributors of its products. The WTO Panel however, ruled that the United States had failed to provide

the Japanese authorities had in the construction of this distributorship agreement in a film industry in Japan. Because the U.S. government had decided not to appeal to the Panel's ruling, The almighty Panel Report was then adopted and that became final decision. Even though the U.S. government had its claim rejected by the Panel, the case raised also an important issue regarding the relationship between the WTO Agreements and it's competition policy.

The U.S. authorities tried to prove that, even though on the prelims, the exclusive distributorship might have been a normal private restraint, the Japanese authorities played a very decisive role in the upbringing of this issue into existence and, also, the restraints were essentially a normal governmental measure. The U.S. government had produced a very large volume of reports to prove that the heavy hand of the Japanese government was involved in the operation and the creation of that distributorship. The Japanese government, however, also produced a very large volume of information to also nullify that claim of the United States government. In that case, the U.S. action had failed, and that failure seems to have been due to the absolute fact that its aim was at the wrong target. In every aspect, the nature of the Japanese authorities "liberalization countermeasures" and that role of the government in this creation of all the exclusive distributorship was the main issue in the dispute that was of private conduct. The distribution philosophy of Fuji, was a private enterprise. it can manage directly with the issues of private conduct, that dispute settlement system with regards to

such conduct will remain largely ineffective in the WTO. The forgotten case showed that the Agreements of WTO only exist today are not of private restraint of international trade, efficient in dealing with issues , which also may be as damaging to the more free international trade system to its barriers. As a truly liberalized of trade as it progress through the dialogues and member government barriers to trade which are lowered and also eliminated, the WTO must however address these issues of the restrictive business practices of the private enterprises. When they restrained from the trading and they counteracted the liberalization achieved through the trade dialogues. At the long run, the WTO system will not be able to be completed without the all inclusion of the competitive policies that was within its framework in any form or another.

At the heart are the WTO agreements, which was negotiated and signed by most of the world's trading nations. The information provided the legal ground-rules for the international commerce. They were essentially contracted, by binding the governments to keep the trade policies within its agreed limits. Even though it was negotiated and signed by governments, their goal was to assist the producers of goods and the administers of services, their exporters, and its importers also conduct their businesses, meanwhile they were allowing governments to meet their social and environmental objectives within.

The agreements of WTO covered most goods, the provision of services and its intellectual property. They expressed the

principles of the liberalization, and also the permitted exceptions which were related to it. They even include individual countries' commitment which lowered customs tariffs and also trade barriers, even to start and maintain open services markets. They also set procedures for the settlement of disputes. They however prescribed the special treatment which was for developing countries. Furthermore, they required authorities to make their trade policies very transparent by always notifying the WTO about the new laws in force and their measurement adopted, through the regular reports by the secretariat on the various countries trade policies.

1.3 Scope of competences and peculiarities of decision-making within WTO multilateral system of international trade regulation

The World Trade Organization also provides a new forum for the negotiation of agreements which is aimed at reducing the obstacles to the international trade and ensuring that there is a level playing field for all countries, also contributing to the economic growth and the development. WTO provides a fundamental legal institutional framework for its implementation and the monitoring of those agreements, and also for the settlement of disputes which will arise from the interpretation and application. This body of agreements of the WTO consists of the 16 most different multilateral agreements and the two

various plurilateral agreements (only some of the WTO members were parties).

The WTO however, have a highly and a more democratic style of its formal decision making process. Peter Evans (2003) asserted that it is democratic more than the United Nations because this is no equivalent to that Security Council. Analyzing it critically from this angle, the WTO's claim that it is operated by its member government's truth. Even though, if we view that the politics of making decision and the related tensions and all contradictions which is between the formal and the informal realities in the terms of making decision that are found of a more completely different picture. This is the reason why the making of decision in WTO has become increasing one of the preliminary contentious and very controversial issues in recent international politics.

They also criticize from two fronts: in the view of the outcome of decisions and the very unequal decision making procedure in participation. Ever Since the WTO became the centrality of the economic global governance and being also the forum for central regulating trade internationally, they could be held responsible for growing in inequality over the ever present global political system. Which of course, the North-South division has always been an issue ever since the seventeenth century governance global can only not be blamed for the ongoing inequality. The issue is beyond the ongoing inequality and among the central and periphery but also the multiplying degree and as far as inequalities which is caused by uneven relationships and

also dependence-provoking communication between the South and North. For Example, there is a big gap between per capita income of the the poorest 20% and the top 20% of the world's population and this has even doubled since the 1965, which has widened according to (UNCTAD-1997) from the multiple of 30 to even 60. The bottom developed countries' case is still far worse. They are somehow being isolated from the global economy.

Since the early 1980s, most exports of the least developed countries (LDCs) has grown to only a quarter as compared to the developing country average. There is participation of the poorest nations in world which commenced in limited in scope scenario of World Trade If we look at the , as well as in depth. Having by and large the same policies, thus the WTO being the successor of GATT rules and decision making practices does not only seem to have a beautiful understanding in the decision making process participation of the majority of developing countries.

The democratic voting system which is based on the basis of one vote to one country. Decisions are taken by consensus as there hardly the need for this formal voting in practice. When no member who is present at their meeting formally object to the proposal, the consensus exists is used. It also indicates that consensus need active agreement, and not necessarily merely the absence of objection. The WTO usually consensus is also 'manufactured' in mini informal consultations. There are also no decision rules or specialty for consultation power and favor, even on the influential threat and the domination also plays a

vital role in decision making. According to Jeffrey Pfeffer's (1981) statement, the concept of power has been a central in the literature of the organizational decision which is making still more relevant in the case of the WTO.

The story is different for the developed countries as they are mostly fully represented in all informal group and there are consultations and negotiation. Openly, the developed countries (The US, the EU, Canada, Japan) are mostly present. Other countries like Switzerland as the host country is always usually invited. Aside that, in most case scenario, either Australia or New Zealand is included. Furthermore, there is a large number of other developing countries including some influential don't have the opportunity to even participate in the dialogues. There are also hardly from 5 to 10 developing countries that gets a place in the informal negotiation and discussions. The developed countries only invite a few of other vocal and influential developing countries to become the politically weak in most decision making process which matters much less because there will also be very little risk of holding up consensus by most of these countries. For example, some of the most influential developing countries such as Argentina, South Africa, India and Brazil are critically invited to their meetings. From this angle of the developing countries and most especially from the least developed countries point of view, the decision making process in the WTO is non-participant and much non-transparent. The unfortunate thing is that even though they are somehow allowed to partake in the meeting, they cannot actively participate.

First of all, there are constrained by lack of expertise and also low capacity to articulate their interest to either lobby for it or to be involved actively in these dialogues. The developing countries are admonished simply to lack the Geneva-based resources and staff for capacity building[22].

Furthermore, the other developed countries think they influence the developing countries in a different number of ways and also put a little pressure to the small developing countries to deny their stance or to nullify their possible opposition [25]. Very few amount in most of the developing countries budget are financed from the developed countries through their bilateral external assistance. The receiver that attends the developing countries also has created some kind of mindset which is reciprocal in both to move towards the original proposals donor and of the developed countries. Some of the other developing countries were also dependent somehow on the developed countries who are powerful to even protect their leadership[28]. For instance, Kuwait is very dependent to the US in the area of security. That is the reason why the tendency of most developing countries and their political leaderships are conformed with the global rules which is originally shaped by the developed countries rather towards than arguing with them.

One of those delegates to the WTO and Symposium of NGO (01 May 2002) which states, and in most cases scenario, the developed countries always attempt to overpass the delegates based in Geneva and to even create a conflict and misunderstanding which is between them and in their Capitals

(WTO-2002). There are participation also among unequal partners which can be effective and meaningful when there is a normal field for all parties. There is a stronger good which will go towards the weaker and should also be realistic in his/her propositions or demands. The evidence indicates that the few developed countries are often centered in the WTO dialogues. In actual sense, the base rule-making prioritize the intellectual property rights in the WTO regime and focuses on and trades in the service issues of the primary interest in first the United States, and other few advanced industrial countries (Evaus-2003).

This means that no decision has been made so far to favor the developing countries. Very few other decisions have been undertaken to favor the developing and also the least developed countries on special and a bit different treatment in the implementation of terms and conditions in decision making. For example, the decision to measure the favor the least developed countries to acknowledge that there is an effective participation of the least developed countries in the world system of trading which requires only improved opportunities for trading products of the interest to most of them. Even though the related decision to the General Agreement on Trade in Services states that the objectives of the participation of developing countries is increasing in both trade and services and also controlling their exports (Gallagher 2000). Neither the developing country nor the developing countries is always disfavoring. In other words, they are somehow providing both

technical and financial assistance to assist developing countries' effort so as to include them for an effective participation in the major decision making procedure in the WTO. The existing formula for making decision in practice in the WTO does really not reflect in theoretical the intent of the objectives and the rules in spirit of their decision making.

The WTO was established in 1995, but for the past 60 years, and its predecessor, the GATT have also helped to expand a very strong and a more prosperous international trading platform, and thereby contributed to the unprecedented the economic growth globally. Currently the WTO, has approximately 164 members, in which a whopping 117 are classified as developing countries or somehow separated in customs territories. The WTO activities are also supported by the Secretariat of about 700 staff, and led by the WTO Director-General. The Secretariat is situated in Switzerland, Geneva, and sits on an annual budget of around CHF 200 million (\$180 million, €130 million). English, French and Spanish are the three official languages of the WTO.

Most decisions in the activity of WTO are often taken by consensus and not democratic votes of the entire membership. The highest institutional body in the WTO is called the Ministerial Conference, which conveys averagely every two years. The General Council however conducts the business of the organization in the intervals which is between Ministerial Conferences. Both these bodies comprise all active members. However, specialized subsidiary bodies (Councils, Committees, Sub-committees), mostly comprising of all the active members,

administer and also monitors its implementation by the members of all WTO agreements.

Most especially, the WTO's core activities are as follows:

- either elimination of obstacles or negotiating the reduction to trade (import tariffs, other barriers to trade) and also agreeing on the rules that governs the affairs of the international trade (e.g. subsidies, antidumping, standards, product etc.)

- monitoring the application and administering of the WTO's agreed rules trade in services, for trade in goods, and intellectual property rights

- reviewing the trade policies of our members and monitoring as well as ensuring bilateral trade agreements and transparency of regional.

- application of the agreements, interpretation and settling disputes among our members regarding the

- building government officials in capacity of developing country international trade matters

- assisting the 30 members countries who are not yet of the organization process of accession

- conducting, collecting and disseminating trade data in support of the WTO's other main activities economic research

- explaining educating the public to and about the WTO, The WTO's founding and with adequate flexibilities, the guarantee of most-favoured-nation principle and non-discriminatory treatment by and among members, guiding principles remain the pursuit of open borders and a of its

activities. The opening of national markets to international trade, commitment to transparency in the conduct with justifiable exceptions or will encourage and contribute to sustainable development, raise people's welfare, reduce poverty, and foster peace and stability. At the same time, the however market opening must also be complimented by the sound domestic and equal international policies which attribute to the higher economic growth and individual member's needs and aspirations on development accordingly.

The World Trade Organization's most bodies that make important decisions are the General Council and the Ministerial Conference. Furthermore, there are some of its decision-making bodies made by subordinates. The Ministerial Conferences are it's apex decision-making body and also includes most of the WTO members, which are represented by their trade ministers respectively. They meets two years, at least once and make decisions on all other matters with respect to any of the multilateral agreements between its organization. There are more information on the WTO's website which allows access declarations being made and the decisions which has been taken during their past Ministerial Conferences.

The General Council, however, which also includes all the WTO members, are mostly responsible for the day-to-day decision-making in between ministerial conferences. Most members within the organization appoints a representative who is permanent or an ambassador to serve on the general council.

The General Council assemblies meeting is in three different capacities:

- To serve as the Body to Settle Dispute
- To Review the Trade Policy
- To serve as a General Council (on all matters even not directly related to the disputes or the trade policy)

The three subordinate councils has a responsibility for a broader area of trade and also report to the General Council:

The Goods Council stands for Trade in Goods (Goods Council)

The Service Council also for the Trade in Services (Services Council)

The Trips Council for Trade-Related Aspects of IP Rights (TRIPS Council) **CHAPTER 2. CONTEMPORARY REGULATORY SYSTEM OF WTO FOR INTERNATIONAL TRADE LIBERALIZATION**

2.1 Current structure of WTO regulatory framework within the international trade liberalization

The current membership of the WTO brings the coverage of the whole organization to at least 99.95 Annex D percent of the world trade and a minimum of 99.98 Annex E percent of world's GDP and more of about 99.35 percent of the world's population of all the international trade is also between WTO member- states Figure 2.1.

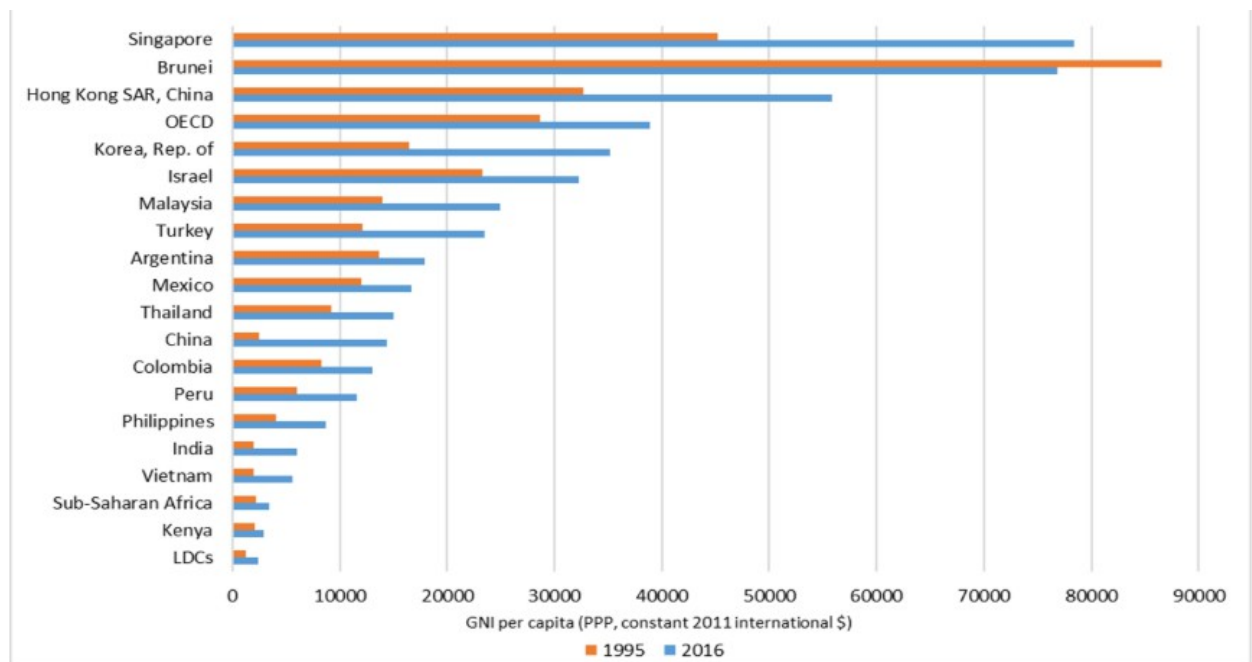


Fig.2.1. GNI Per Capita (PPP), Select WTO Members and Groups

Source: World Bank WDI, accessed on 1 January 2022. [2.1]

Figure 2.1 above shows the memberships groups within the WTO and their contributions over a period of time

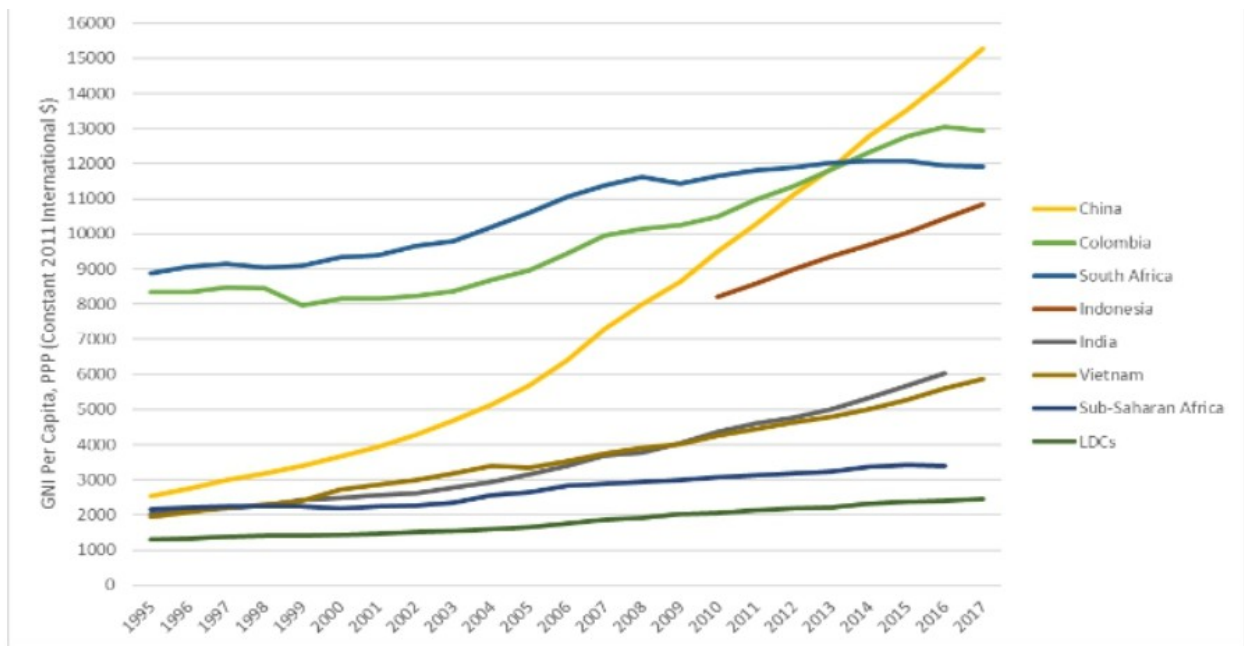


Figure 2.2. GNI Per Capita, Select WTO Members, 1995-2017 [3.1]

Source: World Bank WDI, accessed on 1 January 2022.

Figure 2.2. above shows the Gross National Income per capita of the WTO members from 1995-2017 when the last country joined. Trading among member states has been very successful.

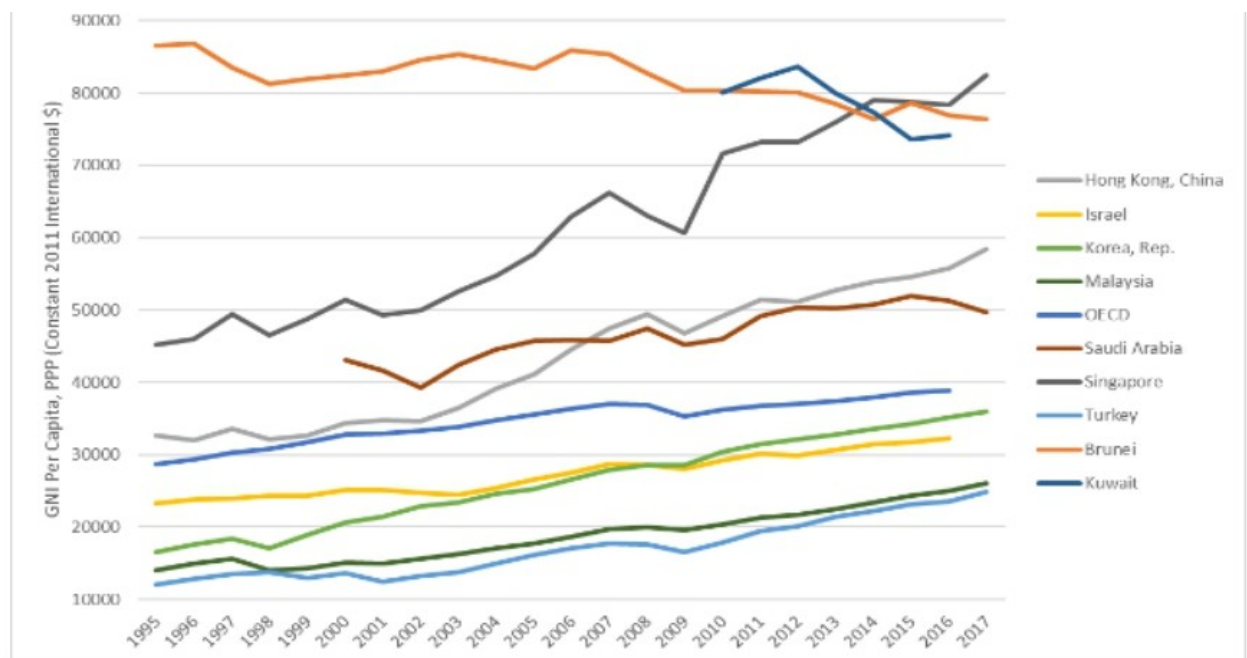


Fig.2.3.GNI Per Capita, Select WTO Members, [4.1]

Source: World Bank WDI, accessed on 1 January 2022.

Figure 2.3 Gross national Income per capita of a selected few and how they have grown over time while trading among themselves

All members in the organization have joined the standard as a result of the dialogues and are therefore there is a balance of rights and obligations. They also enjoy all the privileges that the member-countries give in to them and the most important, the security that trading rules provide within their circle. In return for this, they have also made a commitments to open their markets and to obey the rules that those commitments states as a result of the membership (or “accession”) dialogues. Countries that negotiate the membership are called WTO “observers”.

There are dialogues at the WTO which are mainly driven by the domestic constituencies and local governments. They indeed define most outcomes. The structure however, are instrumental to their goal, and do not in its entirety decide on outcomes. Nevertheless, the formation and operation of the WTO is really not without impact. The different ways by which most decisions are organized and done do affect the outcomes and results. This is very common to all other laws, that is either domestic or the international law. The process and its substance are inextricably intertwined. We term this the substance-structure pairing. An effective global governance also requires an open attitudes towards multilateralism, which is shared on perceptions in objectives, but mostly clear structures on the layers of

government, regional, global local and national. It is also equally true for the organization. While the regulation on international trade is exclusively treaty-based, the other process within the WTO is often the deviates from all written rules and is originally shaped by the custom and the diplomatic practices which is developed under the GATT 1947. Exception are for the dispute settlement, which is not clearly programmed in the institutional terms. The difficulties to achieve this agreement are made in progress among the 149 Members of WTO. They are partly due to these normal practices. Exception are for the General Council and also the Ministerial Conference, which nobody is equally mandated and then authorized to address processing of issues in a more comprehensive manner and coming forward with the newest of ideas and informed proposals. The WTO was established as an international organization in 1995. An agreement under the umbrella was added and also the honorable role of the Director-General (DG) and Secretariat were defined. This main structural of change was however, undertaken in the settlement of dispute. They also introduced the principle of consensus-minus-one (in other words, the reversed consensus) was introduced in this branch of the WTO. The GATT also system persisted: which was dialogues in rounds was based on the consensus of diplomacy and rested largely on informal negotiating structures which was to be defined for each round. A very much larger amount of portfolio, which dealt with the way beyond the border measures with several complex domestic policies were issued (That is the intellectual property, service

regulation, domestic support, the standards and various government procurement) has however been remained unaccompanied by normalcy structures of abundant dialogues, the commensurate with complexities of the obvious subject matter at hand. In between negotiating round and during rounds, legal developments are achieved mainly due to incremental clarification in dispute settlement, on a case-by-case basis. A substantial body of case law emerged and established WTO as an emerging field of international law. Progress in dispute settlement, however, created an imbalance with the political process. It needs to be thoroughly addressed and remedied. The Overall performance of the WTO suffers from complicated clashes of interests and a huge amount of attention to the process issues. Both issues above contributed to the current stalemate of the Doha Development Agenda.

Figure 4 shows the organizational structure and how various function with coordinate among themselves

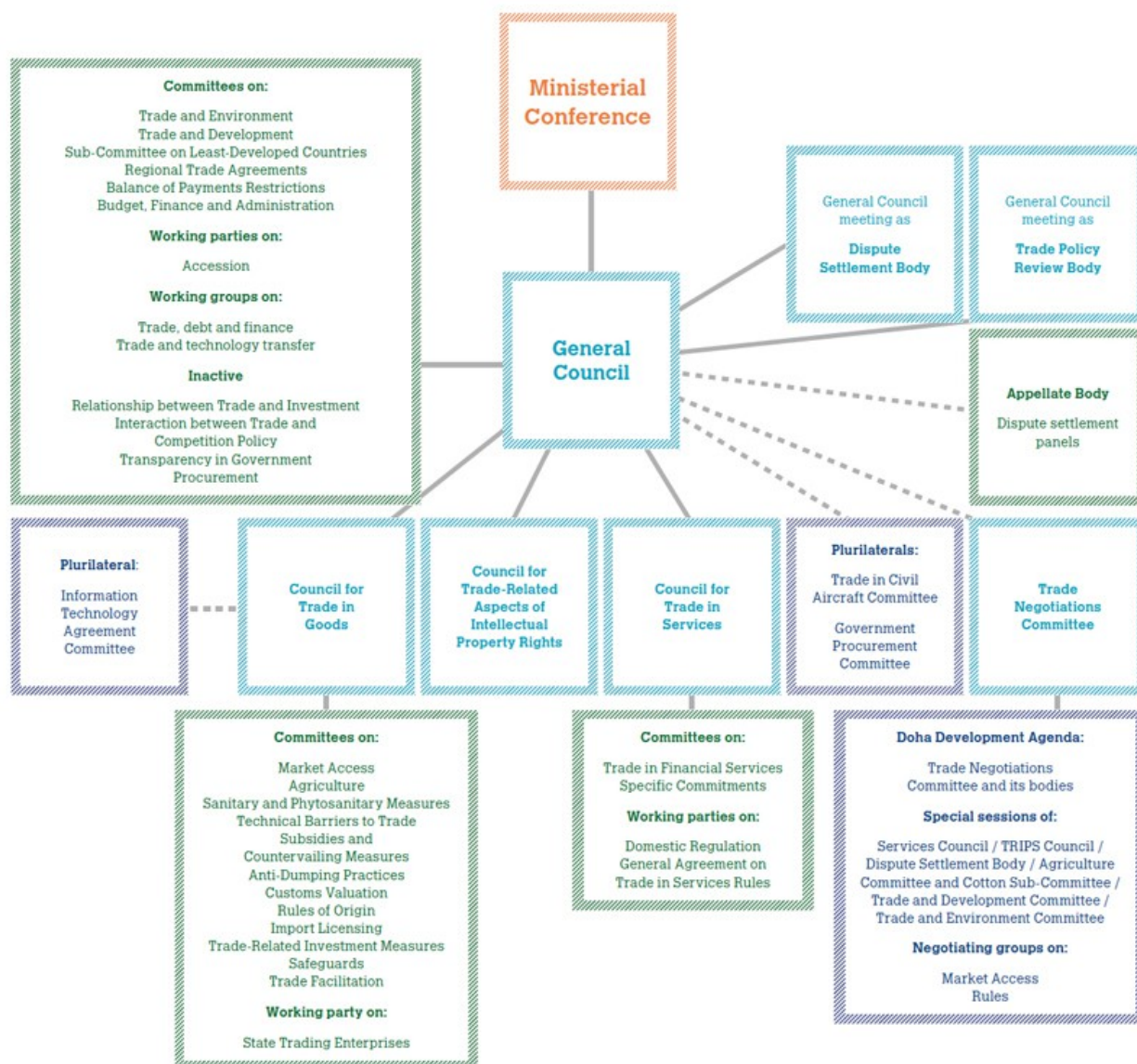


Fig 2.4. Organizational structure of WTO [3]

Source: WTO Official web page, accessed on 1 January 2022.

The work of the current WTO is mostly undertaken by the representatives of member governments but it has its roots in everyday activities of industry and commerce. The General Trade policies and friendly dialogues which are positioned and prepared in the capitals, usually recognizing the account advice

from various private firms, complex business organizations, simple farmers, confused consumers and other interest groups.

Most countries also have a more diplomatic mission in Geneva and sometimes is headed by a very special ambassador to the WTO. Every official from the missions also attend meetings within the many councils, noble committees, associate working parties and prying negotiating groups at WTO headquarters. Sometimes most expert represents directly from the capitals to put forward their governments' point of view on specific questions.

It is increasingly common that countries are getting together to form their groups and alliances within the WTO. In as many cases, they even communicate with one voice using just a single spokesman or a random negotiating team. For example, with the agriculture dialogues, there were well over 20 coalitions who submitted their proposals or negotiated on a common position, then most of them were still very active. There are increasing their number of coalitions were involved in most developing countries and reflects a more broader spread of their bargaining power within the WTO. While one of the groups is seen as a political symbolic of change, the G-20, which literal includes the likes of South Africa, China, Argentina, India, Brazil, Egypt and even Thailand and many others, but there are even others, which overlapped "Gs" too, and one "C" the Cotton Four (C-4), there is an alliance of the sub-Saharan countries which were lobbying for the trade reform in the sector.

There is a Coalition-building which is partly the natural results of the economic integration. It is more with the customs unions, the free trade areas and the common markets are also being set up around the very world. There is a means for smaller countries to also increase the bargaining power in the dialogues with its bigger trading friends and to make sure that they are represented when they consult among the smaller groups of their members. Most often when the groups of countries agree to a common consensus, they can be reached more easily. Other times these groups are specifically organized to compromise and crack a deadlock rather than to maintain to a common position. There are no difficult and sharp rules about the impact of the groupings in WTO.

The biggest and most adhesive group is the well known European Union and its allies. The European Union is indeed a customs union with a singular external trade tariff and policy. When there is coordination in position member states their in Brussels and Geneva, European Commission speaks alone for the EU at WTO almost all meetings. The WTO's membership includes the EU in its own right as are each of its member states.

A degree lesser of integration economic has so far been achieved by members WTO in the Association of South East Asian Nations (ASEAN). That is Cambodia Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore, Philippines, Thailand, and Viet Nam. (The other remaining member is Laos, is now applying to join the WTO.) However, they have common many

interests of trade and are more frequently and will be able to coordinate positions and will speak with just a single voice. The spokesman's role rotates among ASEAN members and can also be shared out topic accordingly. MERCOSUR, the South most Common Market (Uruguay, Argentina, Paraguay, Brazil, and Venezuela, with Chile, Colombia, Bolivia, Ecuador and Peru as associate members), have a similar set-up.

The Most recent efforts at economic regional integration have not also yet reached the pinnacle where their constituents are frequently with a single spokesman on the WTO issues. For instance, is a North American Free Trade Agreement: NAFTA (US, Mexico and Canada). Many among the other groupings present occasionally unified statements are also the African community, the very least-developed countries, the African Union, the Caribbean and Pacific Union (ACP) and System of Latin American Economic (SELA).

A popular alliance which is a different kind is also the Cairns Group which was created just before the common Uruguay Round which began in 1986 to help argue for the liberalization of agricultural trade. These groups became a very important third force in farm communications and still remains in operation. The members are mostly diverse, but shared a very common objective, that is agriculture has to be free and this common view made them lack the resources to fight with bigger countries in the export subsidies and domestic.

Currently there is no official forum within the Organization (except for the general Secretariat) which is mandated to create

and discuss into details, these horizontal controversial matters in a more comprehensive and a similar systemic manner. By Half, these issues are mostly dealt with in the specialized committees. For instance, the general Committee on which supervise the Trade and Environment must also deal with the relationship of law and MEAs in WTO ; another problem, which is equally in other areas of the law, for instance in the area of investment and trade, human rights and trade, or and culture. Another example, is about a Group which Negotiating deals with the reform of settlement of dispute, but however cannot sufficiently relationship to address to, and the interconnection, and the procedure that deals with dialogues. These Special and Differential Treatment is however, that deals with in the Committee on Developmental Trade, and affects all the field and the Committees within WTO. These pledges for cooperation in technical aspect that are made by the members, but still remain outskirts during discussions as this is how the Organization should be constructed to efficiently and effectively employ those funds. There are no other committee that deal in a more comprehensive manner with which relations with the other international organizations. These Committee that deals with the Budget, Finance and business Administration is always limited to the issues regarding finances and these does not assess the holistic operation and activities of the WTO.

These International Law Associations, which was reported in the early 2006 Report, recommended the establishing of an institutional committee or legal entity within the WTO which

would be appointed to deal with the structural and issues of horizontal of the type which is indicated above. It is also necessary to operate the structures which allow a more comprehensive discussion of these proposals which relates to the functioning of the WTO and its improvement. The days of Uruguay Round, was existed a Committee (FOGs), but was stopped under the new Organization. These serious shortfalls was partly explained in the difficulties which was encountered in the procedure for dialogues. The FOGs was inappropriate and not sufficient to deal with the innovation, this was not a coincidence as it was also discontinued upon the solution of that Round. This suggested to the design to just a two-tier structure. The first tier was operates as a thinking tank and a forum which had expertise, and there were information-exchange and there was non-hierarchical which was deliberately between the government and the academia. The was a second tier which would be entailed to also negotiate and the preparation of a political decision in the same field. This is important to differentiate these functions and also define their relationship.

There was another structural within the unit of WTO structure that kept the consultations with its member-states in a more Consultative Committee. This over the last recent few years, a very true and a more international community that deals with academic and the structural issued of the global governance, the role of constitutionalism of international law and international organization and this has emerged. There are detached point of view Problems discussed from and not driven

interest in the same way as processes of governmental. There are not discussions sufficient linkage between, Members and the WTO. These results of into dialogues in other than accidental ways conferences and academic work do not find their way. The thinking on structural issues and It is submitted that this community should be included in the process strongly support. This senior government can only be successful if academics WTO Secretariat from the very beginning closely work with officials and representatives:

1. The different Consultative Committee must be well structured in a way so as to permit dialogues and proposals which are made by both capitals and academia. It shall also be welcoming to make a group which is comprised of lawyers constitutional international ,political incline scientists, well known economists and several representatives of governmental dealing with the generic problems, which is of international governance in most capitals or at the Secretariat, Geneva missions. This Committee should also be made of a hard core group and should be able work with a more flexible membership and in working committee, which depends on the specific matter dealt with. A very innovative interface mechanism (e.g. exchange or forum) with the international or local parliaments and the non-governmental players must be a very important feature of such a Committee.

2. The broad mandate mixed thinking tank would operate under. Perfectly, it can be taken or decide upon the initiatives. Also, a more constructive mandates should entail a process for

decision-making. Possibly, there are different models which ranges from General Council to those granting powers to the DG and the mandates by the various Ministerial Conference.

3. Again, different options could be should be explored and considered. the Committee reports, should be discussed. They should obtain the right to make proposals and the Committee should report to the DG of his own to the General Council and the Ministerial Conference on the institutional matters which relates to the Organization and to the functioning. This idea which was expressed in the Consultative Group to open a senior official's consultative body and Report of the could be linked to the general idea which proposes by the various mixed institutional Committee and could also be documented to the group for discussion. The bodies of the WTO and DG would be suitable proposals into diplomatic channels entitled to process.

4. The NGs for advice and recommendation group could also take up matters submitted to it by WTO Committees.

5. The Members work on the Committee also is made available to, and retain the right to take matters up and, based upon the work of the Consultative group.

The DG and members alike must be entitled to Consultative Committee into the negotiating process and introduce recommendations. This committee on institutional matters NG or Standing should also be created. Assuming responsibility for all structural, this should be combined with the group negotiating dispute settlement, procedural matters and

horizontal. Different draft treaty texts must also be beneficial and encouraging for securing coherence .

The process of the WTO body is purely governmental and fully Incorporated into the regular decision-making. The horizontal structural issues would assume the responsibility to prepare treaty the texts and most decisions relating. Mutual interaction and consultation must be assured on matters pertaining to a special group which would remain with these bodies.

Geneva host the WTO Secretariat. Currently It has over 630 staff and is led by a director-general. The responsibilities include:

- Technical support for the WTO delegate bodies and Administrative issue (working parties, councils, negotiating groups, committees,) for he implementation of agreements and dialogues.
- Developing countries get technical support and most especially the least-developed.
- Trade policy analysis by WTO economists and the Trade performance and various statisticians.
- The resolution of trade dispute and other assistance from a legal staff which involves the precedents and interpretation of WTO rules.
- Providing advice to the various governments also considering membership and dealing with accession dialogues for its new members.

- Some of the responsibility for supporting the WTO's divisions committees: the Agriculture Division help the committees on both agriculture and on sanitary and then phytosanitary measures, for instance, the divisions provide wider support for WTO activities: there are technical cooperation, analysis on economic issues, and information. The budget of WTO is over 160 million dollars or Swiss francs with various individual contributions which is calculated on the normal basis conducted by WTO members shares in total trade. Other Part of WTO's budget is linked to the International Trade Centre as well.

The core areas of activity of the WTO's are dialogues on trade, implementation and monitoring of the multilateral trade agreements, settlement of disputes, building trade capacity and supporting development.

Table 2.1.

The WTO Membership Statistical Information (2021)

Category	Total Trade (US\$, million)	GDP (US\$, million)	Popu lation (tho usand)
1. Original WTO Members (128)			
Total (absolute)	22,247,651	39,771,400	4,246,640
Total (% world)	85.82%	89.44%	66.67%
2. Acceded WTO Members (23)			
Total (absolute)	2,633,500	3,213,328	1,543,146
Total (% world)	10.16%	7.23%	24.23%

1 + 2 Total WTO Members (151)			
	24,881,15	42,984,72	
Total (absolute)	1	8	5,789,786
Total (% of world)	95.98%	96.67%	90.90%
3. Acceders (32)			
Total (absolute)	1,029,421	1,470,156	538,602
	3.97	3.31	8.46
Total (% world)	%	%	%
1 + 2 + 3 Total WTO Members and Acceders (182)			
	25,910,57	44,454,88	
Total (absolute)	1	4	6,328,387
Total (% of world)	99.95%	99.98%	99.35%
4. Other UN Member States (13)			
	13,5	10,8	41,2
Total (absolute)	47	83	80
	0.05	0.03	0.70
Total (% world)	%	%	%
1. + 2 + 3 + 4 = World (195)			
	25,924,11	44,465,66	
Total (absolute)	8	7	6,369,668
Total (%)	100.00%	100.00%	100.00%

Source: The official website of the WTO [2]

2.2. Specificities of WTO legitimacy and effectiveness crisis Currently

Legitimacy is the crisis, the World Trade Organization is currently facing, and the necessary question of this institutional