Chapter 6

General Concluding Remarks of the Study

This chapter is aimed at summarising the various aspects of the study and inferences drawn from various analytical notes.

6.1. Status of Economic Development and Disputes

The status of economic development and the origin of disputes have significant correlation. While Developing Countries defended 142 cases, Developed Countries defended 240 cases (defendants). Thus 62% of the disputes were caused by the WTO-inconsistent policies of the Developed Countries. One important fact to be noted is that the Developed Countries are aggrieved parties (Complainants) for 251 cases which make up 64% of the total disputes. It can be concluded from these findings that disputes are predominantly affairs pertaining to the Developed Nations of the world. This finding has to be considered along with the fact that the volume of imports and exports is high for Developed Countries compared to that of the Developing ones. (http://comtrade.un.org/pb/) When the sectoral origin of disputes was examined along with the status of development it has been observed that the developed countries accounted for highest number of disputes in all the sectors and the subject matters. Thus the formation of the WTO and the dispute settlement mechanism has been a much awaited necessity for the developed countries to obtain remedies to their trade problems. At the same time, the mechanism has been not less important for the Developing Countries as it can be seen from the study that several disputes were contested by them against the Developed Countries and also between the Developing Countries themselves. Thus the WTO dispute settlement, mechanism has been acting as a platform for both Developing and Developed Economies to get their trade disputes raised, listened to deliberated and resolved.

6.2. Progression of Disputes and the Sectors of Disputes

There has been growing response on the part of the Member Countries regarding the participation in the dispute settlement system. The year of inception of the Organization (1995) has recorded 25 cases. Since then every year has produced a considerable number of dispute registrations within the system. The year 2005
has produced the least number of disputes. It is also noticed that a few years witnessed only less number of cases (2004, 2005, 2007 and 2008). **Primary sector has been the source of disputes in majority (36%) of cases followed by the industry sector (33%).** These sectors together accounted for around 70% of the disputes. Major products under disputes are included in the **Annexure 5.**

Service sector has accounted for comparatively less number of cases. Disputes relating to policy issues show growing trend in the recent years. Resolution to policy related issues necessitates greater efforts on the part of the corresponding parties. Issues of amending national laws and time taken for such amendments, act as hindrances to the dispute resolutions in these cases. In all the sectors the developed bloc i.e. EC, US & Canada are the major participants.

### 6.3. Country Regions and Disputes

The region of US & Canada has accounted for highest number of disputes both as complainants and defendants. The regions EC and LAC have been active parties to the disputes as defendants and complainants. From the Asian continent, **South Asia and South East Asia are the major parties to the disputes.**

So far only 53 countries have become parties to the disputes individually (either as defendants or as complainants) out of 157 Member Countries of the WTO. The western developed bloc i.e. EC, US, and Canada is the major participant in the dispute settlement system in all respects, be it the number of Disputes or the sectors of disputes. The findings signal certain aspects of the participation of the rest of the Member Countries. Among the members (104 members) who have not initiated any dispute cases, almost 75% is Developing Countries. These regions also may have several disputing issues. But their poor participation reveals that they are more hesitant to participate in the system, which may be due to the lack resources or the apprehension of contesting against big trade partners. **The developed regions have more faith in the dispute settlement system of the WTO.** Even though the WTO system has formulated measures to support the poor countries for participating in the dispute settlement system it has not produced results at the desired level. Hence the WTO has to work out alternative measures to ensure the participation of least Developed Countries in the DSB system. Strengthening of adjudication especially time span (Panel and Appellate
Panel Process) is an important measure that may increase participation of the so far non-participating members.

6.4. Agreements under Disputes

Provisions of GATT 1994 have been the basis of disputes for majority (78%) of cases followed by SCM, Antidumping and Agriculture. Government Procurement Agreement has been the least disputed Agreement of the WTO. Article 3 of the GATT has been the basis of disputes for 117 cases. Extensive usage of the provisions of GATT can be due to the reason that GATT 1994 has been the basis of all the other Agreements of the WTO.

6.5. Mutually Agreed Settlements

The basic purpose of the inclusion of ‘mandatory consultation’ as preliminary stage of the Dispute settlement is to provide the parties with a platform for deliberating their trade issues across the table and arrive at mutual settlements. Article 3.6 of the DSU provides for mutual settlements during any stage of the dispute settlement process. The study reveals that mutual settlements are arrived at for about 87 of 390 cases (22%). Parties who can arrive at mutual settlements tend to be more satisfied due to several reasons. First as decisions are arrived at mutually, the parties don’t feel the burden of decision thrust upon them. Second, as the solutions are arrived at mutually, both the parties will gain some sort of win-win solutions. Third, when the settlements are mutually arrived at the implementation of the same may be faster when compared to the implementation achieved through the process of litigation (adjudication). Analysis of dropped cases shows that large numbers of cases (41%) are settled outside the DSB system even though they are registered at the WTO DSB.

6.6. Adjudication

Except the time delay in the Panel process, the adjudication process has been very much effective in the WTO DSB system. The level of application of jurisprudence and unbiased approach has been commendable for the DSB process. This is evident from the fact that certain cases had been adjudicated against the complainants themselves (9% of total adjudication). This shows that the system operates in good faith and without prejudice.
6.7. Third Party Involvement

Involvement of third party shows that several disputed measures are not pertaining to one country alone but are affecting several countries.

6.8. Conclusions Drawn on the basis of Analysis of Hypothesis

The foremost issue under consideration was the effectiveness of the dispute settlement process. The study found that the WTO DSB process has worked effectively in each stage to bring in most satisfactory result for majority of the cases under study. Out of 390 cases, 163 cases were adjudicated which further led to complete implementation in 72 cases. Adjudication went against the claims of the complainant in 12 cases which shows that the adjudication has been done with utmost care and application of jurisprudence has been more prudent and transparent on the part of the Panels. Hence it can be seen that the system has produced results in favour of aggrieved parties and thus the process has brought in most satisfactory result. The cases which were settled without the process of adjudication are evidence of earliest settlement of the cases, as most them (227 out of 390) were settled during the consultation process itself. A few exceptional cases (17 cases were identified) which could not be handled in the intended manner are those which lead to the process of Retaliation and Compliance Panel Process. Thus it can be concluded that each stage of the dispute settlement process has been working effectively to produce most satisfactory result from the functioning of the Organization.

Issues related to adherence to the time frame has been studied in detail and the results indicate mixed conclusions. The time span has been studied separately for the Original Panel Process and Appellate Panel process. Time span specified by the DSU for original Panel Process is 1 Year from the date of receipt of request for consultation. Ideal time span prescribed for Appellate Panel process is 2 months with a maximum of 3 months. The study reveals that adherence to the prescribed time span is not satisfactory in the Panel Adjudication Process. Panels could not complete the work within the prescribed time span in most of the cases. Only 21% of the total adjudication was done within the desired time span. Regarding the Appellate Process, adherence to span is found to be much satisfactory. Appellate review process was completed within 3 months’ time for 84% of cases. In fact 14 out of 113 cases were handled by the Appellate Panels within 2 months period.
The study further examined the tools available for enFORCING implementation of DSB recommendations under the WTO system. Special focus has been devoted for the examination of effective usage of these tools for the complaints raised by Developing Countries. The study reveals that the Developing Countries are better voluntary implementers of the WTO DSB recommendations. At the same time the Developed Countries are equally good in producing amicable solutions to the disputes. Yet the performance on the part of Developed Countries in voluntary implementation has to improve much in order to better realise the WTO objectives. Developed Countries suffered with unsatisfactory implementation in more number of cases (3 out of 5 cases). Mutually Agreed Implementation after Panel Process (Original /Appellate Panel) has been very much effective in the cases which were contested between the Developed Countries (13 out of 16 cases of MAS). Retaliation has been resorted to for 3 cases by the Developing Countries. Developed Countries lost more cases as complainants (9 out of 12 cases) compared to the Developing Countries. The start of implementation is delayed in more cases in the cases of Developing Countries (5 out of 6 cases). Modalities on implementation are arrived or implementation is under progress for 12 out of 17 cases raised by Developed Countries and 5 cases raised by Developing Countries. Thus from the above discussion, it can be concluded that the chances of availing remedies through the litigation under the WTO DSB are equal for all the Member Countries irrespective of their Political or Economic power; or status of Development (being ‘Developed / Developing’)

A major point of examination that the study has carried out is how far the Member Countries are successful in respecting WTO Principles and their commitments to the WTO Agreements. The study tried to analyse whether the precedence of national trade policy has been hindering the settlement of disputes. A sample size of 17 cases identified for examining the causes of non-implementation reveals that the WTO DSB facilitations are limited by the precedence of national trade policies or Domestic Social-Political-Economic considerations in each of the 17 cases. Hence the WTO DSB system has to work on the area of enforceability of the DSB recommendations. This requires addressing the issues of harmonization of domestic policies of various countries and thereby making it more compatible with the WTO Agreements.
An interesting point of enquiry for this study is the implication of WTO DSB settlements on the trade policies of Member Countries. The study attempted to examine the extent to which the Settlements arrived at the aegis of the WTO through the DSB are serving as guidelines while formulating/reformulating the national policies of Member Countries. The study using a small sample size of 35 cases which were notified as completely implemented, pertaining to the US, the EC and India reveals that **the WTO recommendations are serving as guidelines for the trade policy formulations of Member Countries**. This conclusion is derived based on a sample study of 35 cases pertaining to select countries (US, EC and India) which produces evidences supporting this view (in about 29% of cases i.e. 10 cases). This is true especially in the context of cases of policy amendments necessitated for the implementation of DSB recommendations.

The present study has attempted to offer broad based comments on the functioning of the WTO and DSB. The study finally concludes that the very existence of an organization like the WTO offers a wider platform for the countries with different Social, Economic, Political and Resource strengths and varying philosophies to come together and exchange their trade policy regimes and thereby ensure complementary growth of the economies and the widen the scope of global trade. The WTO has been acting as a monitoring agent and promoter of new trade order across the globe.