

Chapter 3

Statement of Hypotheses

3.1. Need for the Study

Smooth flow of trade and commerce is vital for any economy which is looking for a sustainable level of growth. Blockage of trade in any form will prove to be injurious not only to the progress of the national economies of countries but to the complementary growth of the international trade and development also.

These blockages will create troubles for all the economies whether they are developed or developing. At the same time, these problems are more detrimental to the Least Developed (low income) and Developing (middle income) Countries. This is especially true in the case of economies which are dependent on others for large chunk of their productive means. Hence the trade disputes raised at the aegis of WTO are of great importance. The WTO has laid down principles and procedures for the settlement of trade disputes among the Member Countries. Unlike the GATT systems for trade disputes handling, the WTO system for dispute settlement is well knitted and is semi-automatic. This means the disputes settlement procedures, once started will take their turn automatically unless otherwise there is a deliberate effort taken by the parties to the disputes to stop it. There is a well defined Panel system and Appellate Panel system under the WTO-DSB. Additionally, there are provisions available for the weaker economies for seeking assistance of legal experts for participating in the dispute process and for training facilities for participating in trade deliberation.

Thus the dispute settlement system under the WTO attempts to provide a level playing field for all types of economies in the world.

Dispute settlement being one of the key focus areas of the WTO, the most satisfactory way of disputes handling is the acid test to determine successful functioning of the Organization. While 101 cases were brought to the GATT system from 1948 to 1994¹, the WTO has examined 390 cases from January 1995 to January 2009². Presently the dispute settlement system has received requests for 447 cases (as on 30 August 2012). These cases are contested between countries across the globe- both Developed and Developing. The subject matters under which the disputes arise are varied and the Agreements cited for the disputes are exhaustive. Hence it appeared desirable and even necessary to assess the extent to

which the WTO, function through its dispute settlement mechanism, has delivered its objectives and principles to its Member Countries in the intended manner.

The present study is an attempt to understand the various dimensions of disputes handling practices of the WTO in terms of the procedural effectiveness of dispute settlement, the nature of trade disputes, the repeatedly disputed trade topics/subject matters and the volume of trade disputes arising from different types of economics and geographies.

3.2. Objectives of the Study

The WTO has been functioning as a platform for leveraging the trade relations between its Member Countries for more than 17 years. Given the objectives and principles which underlie the working platform of the WTO, it is the primary responsibility of the Organization to deliver equity and justice to the member countries regardless of the power or capacity of these nations -being rich or poor. Hence the study is framed with a major objective to find out how far the WTO is effective in promoting free flow of trade transactions among the Member Countries. This is verified by considering one of the prime functions of the WTO: the Dispute Settlement Mechanism. Another objective of the study is to find out the impact of the WTO DSB recommendations on the domestic trade policy of member countries. In other words, the specific aspect of the study is to find out the extent to which Member Countries make use of WTO directives as guidelines in domestic trade policy formulations or reformulations.

3.3. Statement of Hypotheses

After examining the available literature and considering the objectives of the study, five hypotheses were identified to draw major conclusions of the study. These hypotheses are examined through the process of descriptive analysis.

Research Hypothesis 1: *The DSB process of the WTO has worked effectively to bring about most satisfactory results.*

Research Hypothesis 2: *The time frame for settlement of disputes laid down by the Dispute Settlement Body is overshoot in most of the cases.*

Research Hypothesis 3: *The instruments available for enforcing the DSB Reports are not effective for Developing Countries. (Ref: **Annexure 2**)*

Research Hypothesis 4: *Implementation of WTO facilitations is limited by the precedence of National Policies over the WTO Agreements (Commitments).*

Research Hypothesis 5: *Settlements arrived under the aegis of the WTO through the DSB serve as guidelines while formulating/reformulating national trade policies of Member Countries.*

3.4. Explanatory Notes on the Hypotheses

3.4.1. Research Hypothesis 1: *The DSB process of the WTO has worked effectively to bring about most satisfactory results.*

Effectiveness of the Dispute Settlement System can be gauged by the checking at what stage a dispute gets resolved. Thus if the process of consultation (first stage of the Dispute Settlement Mechanism- DSM) results in resolution of a dispute, then it is the **most effective** result. In the order of dispute settlement stages, if the dispute leads to the stage of retaliation (last stage of Dispute Settlement Mechanism), then it is to be considered as an ineffective result to the process of dispute settlement.

Here the level of satisfaction is viewed from the perspective of the complainant and this is judged by the decision going in favour of the complainant when a dispute is raised. It is also important at the same time, that the decision has to be based on the merit of the case and the legal terms of reference raised by the aggrieved party (here it is the complainant). '**Most satisfactory**' results mean a dispute getting settled in favour of the aggrieved party.

The studies of Davey, 2005(a), Stoler, 2006 and Latif, 2007 had considered various elements of the dispute settlement process of the WTO DSB. While Davey, 2005(a) tried to examine the effectiveness of Consultation and Implementation, Stoler, 2006 has considered the Appellate Panel Process. Latif, 2007 considered the aspects of retaliation. Waincymer, 2002 has mentioned the process of Panel litigation at some length. Compared to the preceding studies, the present study adopts a much wider approach in the analysis. The analysis in this hypothesis would cover all the stages of the dispute settlement process in order to obtain more detailed result, for the parties to the dispute as well as the WTO.

3.4.2. Research Hypothesis 2: *The time frame for settlement of disputes laid down by the Dispute Settlement Body is overshot in most of the cases.*

Davis, 2008 criticized the process as being “too slow”. Kennedy, 2011 conducted studies relating to delay in Panel Process within the purview of Articles 12.8 and 12.9 of the DSU by including the time elapsed between the date of composition of a Panel and the date on which the Panel issues its final Reports to the parties. The study places emphasis on to extreme cases which took more time for the issue of Reports. Stoler, remarked “a major weakness of the DSB process and Appellate Review is that things still take too long time”. (Stoler, 2006) Most of these studies have raised concerns on the unnecessary delay in the Panel Process. The present hypothesis is formulated from these findings and would check

- a) Delay in each stage of adjudication (original Panel and Appellate Panel Process),
- b) The correlation between the development status of countries and the delay, and
- c) Whether there is any trend in delay.

Inclusion of more cases can help in this analysis.

3.4.3. Research Hypothesis 3: *The instruments available for enforcing the DSB Reports are not effective for Developing Countries.*

The major tool available for the aggrieved parties in a dispute is the provision for mandatory initiation of implementation on the part of the losing defendant. Time delay in implementation, lack of satisfactory implementation and non implementation are the major impediments in the way of obtaining satisfactory results from the adjudication process. The tools available for the support of enforcement of the implementation are Compliance Panel Proceedings, Arbitration and Retaliation (Article 21 and 22 of the DSU).

Davey, 2005(a) has indicated that ‘the implementation varies across agreements’. Latif, 2007 has examined the authority of the WTO (DSB) to monitor compliance to make sure that defendants carry out their obligations within a reasonable period of time. So far the statistics on retaliation and also reports of noncompliance especially for cases pertaining to developing Countries has not been thoroughly examined in great length. The present hypothesis includes an exhaustive coverage of all these tools for implementation especially in the context of Developing Countries.

3.4.4. Research Hypothesis 4: *Implementation of WTO facilitations is limited by the precedence of National Policies over the WTO Agreements (Commitments).*

This hypothesis tries to relate non implementation of WTO decisions to the national trade policies. The purpose of this analysis is to find out the effectiveness of implementation of the WTO DSB recommendations. The aspects like satisfactory implementation, Unsatisfactory Implementation, Compliance Proceedings and Retaliation compose the major parameters of this hypothesis. The major emphasis is on enquiring whether precedence of National Trade Policies forms a limiting factor on the implementation of the WTO DSB Recommendations. This hypothesis is formulated out of readings in the literature (mentioned in the review of literature sections, also refer Alqadhafi³) that the problems of implementation of the WTO DSB Recommendations are associated with the domestic considerations of the Member Countries.

3.4.5. Research Hypothesis 5: *Settlements arrived under the aegis of the WTO through the DSB serve as guidelines while formulating/ reformulating national trade policies of Member Countries.*

Kelemen, has concluded that “the GATT, even though had a much longer period of existence than the WTO, resulted in very less policy amendment initiations on the part of the contracting parties”. (Kelemen, 2001) The WTO has been considered more efficient compared to its predecessor in producing policy initiatives on the part of the Member Countries. It is apparent that policy initiatives have to follow WTO guidelines not only for implementation of the recommendation but for preventing recurrence of the violation of the international commitments. Hence the present hypothesis is aimed at examining the instances of policy level changes initiated by the Member Countries by taking guide lines from the WTO directives.

