CHAPTER – IX

CONCLUSION AND SUGGESTIONS

9.1. Introduction
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9.1. Introduction

Developments in the WTO have been, certainty, eventful, but it is difficult to report that the improvements have taken it forward very much. There have been increasing tensions among the WTO Members, representing conflicting objectives obstructing its development.

The WTO dispute settlement system is a cornerstone of the Multilateral Trading System; it is also a market-opening instrument to warranty that WTO members respect their commitments and to guarantee equal treatment of all WTO Members; in short terms, it is a safety valve for maintenance, effectiveness and continuity of International Trade System.

The WTO dispute settlement system was established with the intention of establishing a multilateral legal framework for the efficient resolution of trade disputes between WTO Member governments in order to ensure the protection of the rights and obligations of members.

Therefore, The WTO dispute settlement system is less diplomatic and more legalistic than the old GATT 1947 was. It is clear and illustrated by the great expansion in the coverage of various agreements and their discipline, that reflect on
the increase in dispute settlement cases brought to WTO besides to the large number of formal notification requirements.1

For those purposes, in this final chapter researcher will use a combination of descriptive explanation review and conclusion along with providing identifying required dispute resolution reforms, and providing suggestions for reforming the system. Through this research, researcher has discussed many phases of the dispute settlement system with the view to assess whether the system brought benefit for all the WTO members, especially for the Developing Countries and the Least-Developed Countries. Research has taken place on why they are still less frequent users of dispute settlement procedures than developed countries, and on what could be done to improve their participation.

9.2. Conclusion

The dispute settlement system of the WTO is considered as a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.2 The recommendations or rulings made by the WTO DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.3

2 Art. 3 of the DSU (Paras. 2, 3, 4)
3 Art. 6. 4 of the DSU.
In my view, it’s fruitful that before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be productive. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements which is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements.

The WTO dispute settlement system is one of the most comprehensive in international dispute resolution; in fact the resort to political reality today indicates that there is still need to reinforce the enforcement mechanism and remedy of the weak points in this system. Therefore, it necessitates providing more collective implementation machineries.

Dispute Settlement Body (DSB) is the General Council, the supreme decision-making body of the WTO in the absence of the Ministerial Conference, which convenes to discharge the responsibilities provided for in the Dispute Settlement Understanding (DSU). The (DSB) developed working practices on order to handle practical matters such as submissions of notifications and circulation of dispute settlement documents at times when legal deadlines might fall on a WTO non-working day. However, it is important to note that the DSB’s main role is to provide a framework to enable WTO members to express their views and to provide their comments on the legal interpretation reasoning of panel and the Appellate Body.

4 Art. 3.6 of the DSU.
The Dispute Settlement Body (DSB) is composed of all the WTO Members. It provides a strong institutional mechanism for the parties to the dispute to resolve their trade differences.

The DSB is responsible for the application of the DSU; in other words, it oversees the entire dispute settlement procedure. It has the authority to set up panels, adopt panel and Appellate Body Reports, monitor the application of recommendations and authorize retaliatory measures when a Member fails to comply with rulings.

The DSB provides a strong institutional mechanism for the parties to the dispute to resolve their trade differences. The role of the DSB is vital at various stages of the process. In area such as implementation, there is need for that role of DSB could even be strengthened.

The WTO Dispute Settlement System aims to provide sufficient methods to settle the disputes brought before it. Hence, the system aims to secure a positive solution to disputes. A solution mutually acceptable to the parties to dispute and consistent with the covered agreement is clearly to be preferred. So, the preferred objective of the DSU is for the Members concerned to settle the dispute between them in a manner that is consistent with the WTO agreements.

The consultation stage is considered as compulsory requirement and important stage to settle trade disputes. The great importance of consultation stage for settlement of dispute because it enables the dispute parties to understand better the factual situation and legal claims in respect of the dispute; such understanding may allow them to resolve the matter without future proceeding.

Consultations help in increasing mutual information of the problem and understanding of the significance of challenging claims. It permits members to clarify
the fact of dispute, to dispel confusions and misapprehension to arrive at mutually satisfactory solution. The consultation can serve as an informal pre-trial tool to discovery mechanism.

Moreover, the alternative means to settle disputes as stated by Art.5 of the DSU as: good office, conciliation and mediation, so the DSU emphasizes on offer all efforts before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter voluntarily, if the parties of dispute agree to undertake it. These methods are taken as non-official methods to settle dispute among WTO’s Members. The flexibility of these procedures through they are requested at any time by any party to a dispute also terminated at any time as stated by Art.5:3 of the DSU.

Many proposals have been made on consultations, ranging from rather programmatic calls for strengthening the consultative process to suggestions for specific modifications. The different proposals from different Members are provided in the suggestions sections.

In general it is advantageous when the panel proceedings are to be codified and making provisions permanent which would increase and enhance the efficiency of panel. The panel is considered as one of the most important stages for considerations of cases before it; that is clear through DSU Articles. It started from Article 6 establishment of panel up to Article 16 adoption of panel reports with various sections under each Article. Thus, it is the major stage of dispute settlement process. The panel processes considered under the WTO’s DSU has unique features such as limited timeframe in order to perform its functions, formulation of panel and other procedures up to issuance of their reports.
The Panel stage is called upon to make an objective assessment of the matter before it, including an objective assessment of the facts of the case. WTO panels enjoy a broad margin of freedom of choice in the collection and appreciation of the evidence.

The impartiality of panels and their independence has been in the schedule of DSU reform. The improving of the independence of panelist is to create a class of law assistants who should assist in the judicial panels that are not regular to WTO officialdom.

The Appellate Body was the major change in the new system called WTO 1995 comparative with old system GATT1947; it was established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

The most important accomplishment introduced by the Uruguay Round negotiators is to ensure that the WTO dispute settlement process receives wide acceptance of appellate review.

The Appellate Body Process is the most visible institutional innovation in the WTO dispute settlement system. No such institution existed in the GATT system and does not exist in any other international legal context. The importance of Appellate Body Process aims to protect the interest of WTO Members by ensuring that the automatic dispute settlement system doesn’t produce unsound decisions that could upset the balance of rights and obligations under the WTO agreements.

It is a standing body of seven persons who listen to appeals from reports issued by panels in disputes brought by WTO Members. The Appellate Body may

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5 Art. 11 of the DSU.
6 P. Gallagher, GUIDE TO THE DISPUTE SETTLEMENT, 36(2002).
uphold, modify or reverse the legal findings and conclusions of a panel; Appellate Body Reports, once adopted by the Dispute Settlement Body are unconditionally accepted by the parties to the dispute.7

- Implementation of Rules and Recommendations

The credibility of the dispute settlement machinery of the WTO depends to a large extent on the prompt implementation of the rules and recommendations of the Dispute Settlement Body. The WTO’s dispute settlement understanding (DSU) arguably is the most significant achievement of the Uruguay Round; its provisions concerning adoption and implementation of reports arguably are the most significant parts of the DSU.

The GATT 1947, when they seek adoption and implementation of report, a consensus in favour of a report was required for its adoption. Dissatisfied party could block consensus and prevent adoption of report. But in the DSU, reports are adopted unless there is other means that “negative consensus” not to do so.8

For the effective implementations, the dispute settlement system, the Dispute Settlement Body keeps implementation process under their surveillance, furthermore, the DSU emphasis on the implementation processes shall be on “prompt compliance” to make sure effective and actual implementations that will benefit all WTO’s Members.9

The developing countries have difficulty realizing the benefit of the WTO dispute settlement system. They therefore rarely invoked such provisions in the DSU and the judicial organs have been hesitant to apply them. The elementary objective

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7 Article 17, 1, 13, 14 of the DSU, and See supra chapter 6.
8 Art.16.4.of the DSU.
9 See supra chapter 6.
should therefore be put to developing countries in the position to effectively protect their rights. DSU is a system in which essentially same procedures apply to all parties. So, the Special and Differential Treatment in the field of WTO dispute settlement should for these reasons take mainly treatment in the field of entrance of legal expertise in order to enhance their presence and active participations in WTO dispute settlement system.

The criticism of the WTO dispute settlement system is that the complexity of the DSP has made it inaccessible for most developing and developed countries. That the lack of experience is often mentioned as a reason why developing countries WTO Members refrain from bringing dispute Cases to WTO’s DSB.” Essentially, lack of experience and expertise in the WTO DSP and international trade law in addition to the high cost of attaining the relevant legal experience are frequently seen as causes for reluctance by developing countries to bring their trade disputes to the WTO.

The particular problems in the term of the DSU faced by developing countries may be found within the following:

I. Access to the WTO dispute settlement process “access to justice”.

II. Fairness in terms of the procedures afforded to prosecute and defend cases in the panel and appellate processes of the WTO “procedural justice”.

III. Fair and impartial panel and appellate decision “quality of justice”.

IV. Realizing the justice dispensed through the panel and appellate processes “implementing justice”. 10

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10 See supra chapter 7.
9.3. Suggestions

The Dispute Settlement Understanding that entered into force in 1995 has undergone several review efforts since 1998. The most important effort so far has been undertaken under the Doha mandate in 2002 and 2003. Suggestions on virtually all provisions of the DSU have been received, including suggestions on each stage of the process and on most horizontal issues. So far, all attempts to review and reform the system have failed as members were unable to reach consensus on a package of modifications.

The question of reform of the WTO dispute settlement system is very important to the WTO Members. The issue of strengthening the implementation and enforcement of Dispute Settlement Body recommendations and rulings directly affect the level of enforcement pressures which would be applied to governments in violation of WTO obligations.

The matters of reform in this system challenge the central issue of how strong the WTO Members want their legal system to be accepted regardless of legal particulars of the rules and recommendations to be taken by WTO DSB, the matter of reforming the DSU rests with the WTO Members who make their decisions by consensus, so the reforms should be acceptable to all WTO’s Members.

There are different streams of thought on the methods and nature of the DSU reforms relating to implementation and enforcement of DSB rulings and recommendations. Some view desire to preserve and strengthen the existing system, through development and expansion of the current system. And others view their opinions in proposing change of the whole system and starting an alternative system of implementation and enforcement.
It's noticed that second view seems to be difficult to change dispute system completely, but the first view, is considered more rational for improving the process of adoption of rules and recommendations.

The WTO dispute settlement system for resolving trade disputes between WTO Members has achieved remarkable success in many aspects during its operation.

It submitted that no working dispute settlement system is perfect; there are positive and negative aspects.

The weak points in the dispute settlement system, is especially the matter of time, in fact the full dispute settlement procedure still takes a great amount of time. That reflects on the complainant undergo economic damage if the contest measures is certainly inconsistent. The other point of weakness is the high cost of defense especially with developing and least developed countries.

In fact the contestant countries, especially developed countries have won the majority of WTO disputes. But in the case of developing and least developed countries (poor countries) don't resort to the dispute system because it is subject to threats of contest to their laws by richer members. The other weakness, refusal to comply with WTO rules and recommendations, is considered as the most serious problem effecting on the system.

Form other side the difficulties facing reforming dispute settlement system (DSU), that negatively reflect on active participations. Many developing countries and least developed countries do not use it through lack of confidence in its worth to invoke dispute settlement processes. A perception exist that awareness that recourse to dispute settlement will be viewed as an unfriendly act. Moreover most of the
developing and least developed countries lack courage and capability to handle trade disputes.

9.3.1. Suggestion for Reforming Consultations

There is a proposal on reforms in the DSU which includes a proposal by a number of countries to reduce the number of days from 60 to 30. The recommendation adds 30 days to post-panel procedures, perceived to be a more complex stage requiring more time to be dedicated by parties, without having to increase the total number of days for the dispute settlement process.

The argument posited is that it is possible to reduce the number of days for consultations without affecting the intent of this phase for parties to reach a mutually agreed solution since they are free to extend their consultations beyond the 60 day period, provided it is mutually agreed.

So strengthening of the consultations stage is expected to be more effective, through support participation of third parties in consultation stage through clarify of the Article 4.11 on who are the third parties, and eliminating the option to deny third parties by invoking consultations procedures under Article XXIII thus making the acceptance of third parties automatic, besides to resolve of third parties to be strictly based on substantial trade interest, and in specifying a general criteria for valuation of whether a such claim of interest is well-founded.

Flexibility in timetable for developing countries should be exercised. During consultations Members should give special attention to the particular problems and interests of developing country Members.\textsuperscript{11}

\textsuperscript{11} Art.4.10 of the DSU.
While consideration of particular problems and interests of developing countries are supposed to be given during consultations, representatives admit that this particular provision holds no legal meaning and thus, is not seriously observed.

If the dispute is between a developed and a developing country, it is now left to the developed country to adopt more flexibility at least in the procedures or the modalities of the consultations, e.g., deadlines for requests for information.

Also to extend the 30-day timetable for consultation for developing countries to 60 days with the right to maintain the provisions allowing the parties of dispute to mutually agreed time period.

9.3.2. Suggestions for Transparency, Participation of Third Party and others

9.3.2.1. Participation of Third Party

A diversity of proposals has been brought with a view of improving third party participation in DSU procedures. Strengthened third party rights increase internal transparency and may raise the costs of negotiated settlements. Potentially affected third parties will have better opportunities to oppose bilateral deals between the main parties to a dispute if such deals are at their expense, or if they include any other violation of the most-favored nation clause. In general, improved flexibility of the main parties to a dispute by reducing opportunities for settlements of those who are too far away from WTO principles. Third party rights impose limitations on negotiating.
9.3.2.2. Transparency and Participation of other Groups

Transparency and participation are different concepts. Transparency denotes the degree to which procedural and essential rules are knowable, in the sense of available to, and understandable by all interested members.12

There is growing public interest in the WTO, which needs to increase its transparency. The General Council has been conducting consultations on this, but progress is slow. WTO is an inter-governmental organization. Only governments can make decisions at the WTO and the private sector, non-governmental organizations and other lobbying groups do not participate in WTO activities except in special events such as seminars and symposiums. The way for them to exert their influence on WTO decisions is through their governments, which are in turn accountable to their parliaments.

Developed countries have called for increased transparency in dispute settlement. Similar to strengthen third party rights and strengthened notification requirements; external transparency sheds light on negotiations and therefore tends to “disinfect” bilateral deals from negotiated elements that are not necessarily in line with WTO provisions.

Transparency of the dispute settlement procedures is one of the points of discussion in which country positions differs the most. Proposal for early release of report or public access to party submission and Panel, Appellate Body hearing have been asked for in particular by the EC. In recent years WTO rulings have touched on sensitive public health and environmental concern.

There is semi-consent among WTO members that dispute system should continue the right of member’s governments. Giving private groups such as non-governmental organization NGOs, Consumer Associations and other interested groups direct access to the WTO is unlikely to improve the process or conclusions. Or maybe it causes extra complication for dispute system. In spite of this idea, when there are requirement for those groups, the WTO body asked for their opinion on particular point for example NGOs as in the Hormones case.

The hearings in the beef Hormone arbitrations were open to public. This practice of generating transparency by panel decisions granting a request by the parties might go beyond the ongoing negotiations on this particular issue and change the future dispute settlement practice.

In fact, the participation business, consumer and other groups should have access to mechanisms that allow them to have a voice in the formulation of national positions in WTO negotiations and trade policy more generally. All external participation in the WTO process, reflect on satisfactions and thus prompt compliance with WTO’s recommendation and rulings.

Suppose we support with the concept of participation, the important questions arises, who will represent in WTO dispute system? If the NGOs were certainly expressive of the needs and requirements of the voters, those who embrace their notions would be in power. The emphasis on important committee structure and associated frequent interaction between officials responsible for a given policy area that is covered by the WTO and the notification, publication and transparency requirements play an important role in resolving probable disputes before they happen.
In general, Transparency is important that all parties are clear that the accountability of intergovernmental organizations is through the governments and parliaments of their members. But greater transparency is necessary for proper accountability. The role of WTO Secretariat should increase transparency by increasing the availability of WTO documents to an external audience. The Secretariat has made good progress towards this aim by developing a document dissemination facility on its website. Though, a lot of documents are restricted from public access automatically for six months. Many members, including the EU, would like to see this time-lag cut. We also understand that the WTO suffers from a lack of translation resources, which means its documents are not always immediately available in its three official languages. That would improve the functioning of the WTO and the rules-based trading system so that they embrace the goals of sustainable development.

9.3.3. Professional and permanent panelists

The proposals for panel reform need to move to the use of standing panel body. Establishing a permanent system of panelists, similar to that existing in the Appellate Body. Permanent panel system could improve the efficiency, consistency and transparency of panels.

First, are there not benefits to the current system, whereby countries play an active role in the selection of panelists? Since parties to a dispute arguably bear some responsibility for the composition of panels, they may be less inclined to criticize particular panelists for bias, lack of qualifications to hear a particular matter.

Second, would a permanent body of panelists “put a face” on the panel system that is easier to attack by challengers. Under the current system, there is likely to be a greater diversity of panelists in terms of background, outlook, and experience as
parties to dispute seek to have panelists uniquely appropriate for their particular case, and perhaps favourable to a particular country’s outlook.

The permanent panel body would:

• Decrease the amount of time taken by the typical panel by two months (six weeks from faster compensation; two weeks by eliminating scheduling delay);
• Provide more experience panelists and probability better decision and
• Make procedural innovations, such as remand, much more practical.

The potential disadvantage would arise if the WTO members failed to appoint highly qualified individuals to the panel body.

9.3.4. Reduced timeframes taken by the panel proceeding

Several proposals have been submitted that aim at the explicit or implicit reduction of timeframes in the DSU. The “explicit” category includes reduced timeframes for consultations and for the determination of the RPT. The “implicit” category includes the removal of the requirement that panels are established only at the second meeting after the request has appeared on the DSB agenda, or the introduction of a provision that would mandate Members to submit their first written submission along with the panel request.

The use of permanent panel body could save eight weeks from the current average. In addition, the briefing schedule could be modified by cutting the time allowed for the filing of the complainant. The complainant can prepare that submission in advance of panel composition. Elimination of interim review process would save at least five weeks. Lastly, the time saves six weeks. Overall, those changes would save up to 22 weeks without cutting any time from panel deliberations.
and report writing. The savings would happen by cutting what is essentially time, during which nothing useful occurred.

9.3.5. Appellate Body and Implementation of the Rules and Recommendations

The terms of appointment of the appellate body, the EC proposed converting the Appellate Body mandate into full-time appointment. Regarding the terms of appointment, a group of developing countries suggested changing the terms of appointment for AB members into non-renewable six-year terms, a proposal also brought by the EC. Through this removing any potential considerations related to reappointment, the proposal could further strengthen the independence of AB members and their capability to focus solely on legal considerations in their decision-making. The suggestion that Panels and the Appellate Body make specific orders or recommendations, which are not broad. They should avoid orders that are too general and open to many interpretations, making it possible for developed countries to manipulate weaker countries concerning compliance.

The Panels and Appellate Body should make use of suggestions as provided in Article 19 of the DSU. This would give guidance to the parties on how best they can implement the DSB recommendations and rulings. In the event of a dispute over whether the measures taken by the losing defendant have led to full compliance with DSB recommendations and rulings, it is usually the original panel which becomes the compliance panel. Instead of waiting until a dispute arises, it is suggested that the panelists and the Appellate Body be proactive in giving suggestions on implementation. This may as well expedite the implementation process.

Moreover the suggestion on appellate body, in specific the scope to which it has gone beyond its mandate and undertaken the role to make rules through
interpretations of WTO agreement. The disagreement to such an interpretation is that essentially it is WTO member who should have the primary power to interpret, modify or change the WTO provisions including the DSU. Appellate body is taking these functions under the concept of interpreting law on the basis of contemporary development. Therefore, there is no scope for the Appellate body to take account undesirable information including Amicus Curie briefs from the private parties.13

9.3.6. Compensation

The WTO dispute settlement system should adopt financial compensation and the payment should be quantified from the date of the infringement. The key elements of this model are as follows:

I. There is need to amend the DSU to clearly include financial compensation as one of the remedies. This new remedy should co-exist with current remedies, namely compensation and retaliation.

II. Retroactivity should be in the WTO dispute settlement system. This would mean that financial compensation, compensation and retaliation should be quantified from the time of infringement, or at least from the date of commencement of dispute settlement proceedings.

III. Financial compensation should be awarded to developing and least developed countries only.

IV. There should be a transparent mechanism on how such financial compensation should be distributed in the receiving countries in order to benefit the affected industries, otherwise that money may be diverted for

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13 WT/GC/W/162.
other use and this would erode the benefit of this remedy and would also hinder and affect international trade.

V. Where a developing country is a losing defendant, it should not be expected to give monetary compensation to developed countries.

VI. Use of trade compensation and financial compensation should be encouraged.

VII. This remedy should co-exist with other remedies which are already in place of the WTO dispute settlement system.

The weaknesses of this model are that financial compensation cannot replace the withdrawal of an offending measure.

9.3.7. The Suspension of Concessions or Retaliations

9.3.7.1. Suspension of Concessions

The effectiveness of countermeasures, far-reaching proposals advocate collective pressure, improvement in particular for developing countries member that lack sufficient retaliatory power, and measures that hasten the implementation of adopted panel reports. Mexico proposed to introduce the possibility of transferring an authorization to retaliate to other WTO members. Thus the remedies would become negotiable.

Moreover, Mexico favoured retroactive calculation of the level of the suspension of concessions from the date of imposition of illegal measures. This proposal intends to render the use of possibilities to retard the implementation of rulings less attractive for the defendant.
Regarding the least-developed countries; Haiti proposed that if LDCs is complainant, and compensation cannot be agreed upon, the dispute settlement body shall grant authorization to all WTO members to suspend concession in order to promote the effective implementation of rulings made in favour of LDCs.¹⁴

9.3.7.2. Authorisation of the Retaliation

For the reason that the dispute settlement system achieves several functions, thus most reform that would develop performance in one domain may worsen it in other side.

For example removal of the provision for retaliatory rise of tariff in case of non-implementation would avoid the more of protectionist strategies; however, it reduces motivation for compliance resulting in removal of retaliation measures. So, the collective retaliation considered as active means for enforcement of DSB rules, could realize further compliance, but on the other side it has the cost of decreasing the prospects for more motivation for collaboration between WTO Members.

Agreeing to replace retaliation with compensation is clearly welfare enhancing in principle, but difficult to implement in a credible manner.

However, a number of proposals have been made that could, with political will, be feasible. An example is the compensation fund idea. This would improve on the status quo for small developing countries in particular.

The shortcoming of these systems is clearly seen in the incompatibility of one on one sanction retaliation with the realities presented by free trade.

Free trade is a theory that leads to interdependence. This interdependence is needed to making efficiency within the countries which are willing to make economic

¹⁴ TN/DS/W/37.
integration. However, national politics still plays a central role in formation of international politics and those who will be hurt by the free trade policies will fight to be protected from international market competition.

The free trade notion to be real and more efficient with the national politics of the smaller country then produces a justified hesitation toward further free trade integration. So, the benefits of free trade are limited by the issues of asymmetrical power.

Therefore, third party retaliatory sanction reform (collective retaliations) has the potential to aid in the further development of free trade integration.

9.3.8. Reform of the difficulties faced by the Developing Countries

The matter of compliance with international trade agreement is very important to motivation for more reform through negotiation amongst WTO Members. Especially for developing and least developed countries, because they are not capable to challenge against major players in WTO, when there is noncompliance with DSB rules and recommendations.

The important points for the effectiveness of countermeasures against non-compliant member, through collective pressure to incentive for complying with WTO's rulings in particular for the developing and least developed countries because they lack sufficient retaliatory power and hasten the implementation of adopted report.

Moreover, the enhanced reliability through consistency, transparency and participation are realized through more external transparency and public participation
in the dispute settlement mechanisms. This suggestion aims to strengthen the diplomacy model of dispute settlement.\textsuperscript{15}

Furthermore, the flexibility and state control and rule-based system encourage developing and least developed countries to have recourse to dispute settlement system for resolution of their disputes with other Members.

The other inherent weakness which is not peculiar to this remedy is that the developing country would be at a loss if the developed Member does not have the political will to pay financial compensation. The developing country would be back to square one.

However, the strength of this remedy is that it is less trade restrictive and has the potential of compensating for injury incurred if compensation is granted retroactively.

Moreover, there is need for clarification on how the interests of the developing countries are to be taken into account in terms of Article 21.7 and 21.8 of the DSU. Such clarification should make a special and differential provision legally binding, justiciable and enforceable.

Most of the developing countries hesitate to bring cases to the dispute settlement body because of the uncertain benefits of joining the dispute settlement mechanism. Therefore a number of developing countries (India, Cuba, Dominican Republic, Egypt, Honduras, Jamaica and Malaysia) suggest that developing countries must have the right to suspend concessions in sectors of their choice in their disputes.

\textsuperscript{15} The EC wants greater weight to be given to consultations through more flexibility in the determination of the reasonable application period according to Art. 21.3 of the DSU. And through new rules on determination of compliance. Moreover the EC sought to give more flexibility by permitting the complainant to withdrawal request for consultation, or for the institution panel at any point in time before the issuance of the final reports.
with developed countries. This suggestion enables choice of cross-retaliation for developing countries. This suggestion was likely motivated by arbitration in the Bananas case where the EC accused Ecuador of not having properly followed the rules on cross-retaliation as specified in Article 22.3 DSU.17

Consequently, for improving of the position of the developing countries and the LDCs, there are suggestions as follows:

a. to urge the WTO to commit itself with the rest of the international community in achieving the International Development Targets;

b. to work to make the next multilateral Trade Round a Development Round – that brings real development benefits to developing countries, across a wide range of issues;

c. to press for significant reform of the EU’s Common Agricultural Policy

d. to work within the WTO to ensure much greater account which is taken of the circumstances of the developing countries in rule-making;

e. to press for trade policy and complementary economic, social and political policies to be built into developing countries poverty reduction strategies; and

f. to work with others to strengthen the capacity of developing countries to participate in international negotiations.

9.3.9. Collective Retaliation

Arguing that individual developing countries can hardly use the suspension of concessions as an enforcement device against developed countries, the African Group suggests that all WTO members shall be authorized to collectively suspend concessions to a developed member that adopts measures in breach of WTO

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16 See the proposal for a new Article 22.3 in TN/DS/W/47 (India, Cuba, Dominican Republic, Egypt, Honduras, Jamaica and Malaysia).

17 Ecuador had, inter alia, requested authorization to SCOO under the TRIPS.
obligations against a developing country, notwithstanding the requirement that the suspension of concessions is to be based on an equivalent level of nullification and impairment. The LDC Group basically echoes this call, arguing that under a 'principle of collective responsibility', all WTO members would collectively have the right and the responsibility to enforce recommendations of the DSB. Collective retaliation should therefore be available automatically where a developing country or a LDC has been a successful complainant, as a matters of Special and Differential Treatments. In determining whether to authorize collective retaliation, the DSB should not be constrained by quantification on the basis of the rule on nullification and impairment.18

To achieve reform DSU through an agreement between WTO Members may add or change the text of the DSU to seek and requires strengthen DSS. But dispute settlement is a continuous experiment conducted in a context where solutions have to be found. Therefore an absence of agreement will not stultify the dispute settlement system. Therefore, the dispute system is progressing and will continue to develop in future as a result of increasing use it.

Lastly, in theory, the WTO is a democratic organization, based on the principles of consensus and one member one vote, supported by a neutral Secretariat and its purpose is to prompt trade policies at the WTO member to raise standard of living for their members. In the practice, the Doha Ministerial Conference and the Geneva Ministerial clearly prove, it is not. There is disparity between the theory and the practice of WTO policymaking.19

18 See TN/DS/W/17, no 15 (LDC Group).
In this research the analysis of statistics provided by WTO and other International Organizations and Research Centers has clearly indicated the imbalance between and amongst WTO members.

It is high time WTO starts a new round of negotiation to bring together all the important matters, which effect developing Countries and LDCs. These negotiations should be given utmost importance and priority. Otherwise, WTO may lose image and value in the long run.

In case of the new round of negotiations developing countries and LDCs should also work collectively to put forward their problems and economy. Moreover DSU reform must be done with the collective efforts of Developing and LDCs to be more effective.