

Development Initiatives and the Viable Procedural Reforms in the Dispute Settlement System in Response to the Special Needs of Developing Countries

Nelson Sitonik

P.O. Box 87171-80100, Mombasa, Kenya

Abstract

International trade relations are now more legalised under the World Trade Organization (WTO) than under the former international trade system created pursuant to the General Agreement on Tariffs and Trade (GATT). The Dispute Settlement Understanding (DSU) of the WTO clearly represents a shift toward a rule-oriented, legalistic and adjudicative approach, which is intended to enhance the status of, and confidence in the WTO dispute settlement system. The approach is likely to ensure greater stability and predictability in the system by encouraging precise decisions on the merits of disputes and discouraging infractions. This paper illustrates the lack of clear procedures to support the application of the provisions of the Special Differential Treatment (SDT) and the ultimate failure by the System to regulate the behavior of the Developed Countries as they relate with the Developing Countries (DCs). The paper will also present some of the reforms that can be included to enhance the ability of the Developing Countries (DCs) to rely on the provisions laid out in the DSU. This will be achieved by emphasising on proper guidelines that will assist in clarifying the same. Among these reforms discussed are the consultation processes, participation of third world countries, cost effectiveness that also includes timing and the panel/ Appellate Body (AB) processes.

Key words: Reforms, Dispute Settlement System, World Trade Organization, Procedures.

1. Introduction

This paper uses the *United States – Subsidies on Upland Cotton* to attempt to demonstrate the lack of clear procedures to support application of the provisions that ultimately fails to regulate the behaviour of the developing countries as they relate with the developing countries in a dispute. The discourse of the case herein will emphasise on the procedural aspect and the application of the SDT provisions rather than the substance of the case. The chosen case is relevant specifically due to the fact that the case involved the U.S. which is a developed country and Brazil which is ostensibly considered as a Developing Country (IMF, 2010).

2. Literature Underpinning

2.1 The Development Initiatives in the DSU

The system appreciates the fact that there is economic disparity between its members and in that spirit provides for SDT designed to enhance the effective participation of the DCs within the system. SDT can be logically defined as, the policies that appreciate the prevalent resource inequalities and takes into consideration the aspect of development (Ewelukwa, 2003).

The effectiveness in application of the provisions of the SDT is subject of debate (Alavi, 2007). It has been argued that there is a strong indication that there has been a poor application of the provisions greatly due to their inherent vagueness and uncertainty on specifics as to ‘who is entitled to get what from whom, when and how?’ (Alavi, 2007, p. 320). In a nut shell the application of the SDT lacks any procedures. This has effectively discouraged their use since they tend to fail the party invoking the same (Alavi, 2007, pp. 341-342). It has been argued that the discouraging failure of the provisions is due to the fact that:

...in eight rulings the invoking party had relied on the wrong provision...in four rulings the invoking party provided insufficient information to support its claims...and the judiciary failed to interpret the provisions in a development-friendly fashion (Alavi, 2007).

The absence of guiding procedures greatly undermines the spirit of the provisions of the DSU that are designed to preserve the interest of the DCs.

2.2 Special and Differential Treatment Provisions

The DSU in appreciation of the special needs of the DCs provides for special consideration favouring these countries to some extent. The DSU made noble attempts at balancing the existing resource disparity and litigation capabilities between the members by enumerating several SDT provisions.

A complaining Developing Country is permitted at its own option to invoke the provisions of the GATT Decision of 1966 which serves as a partial alternative to the provisions of the DSU (DSU, 1997). It is a conciliation procedure adopted on 5, 1966 under the auspices of specifically covering disputes involving DCs and developed countries. The use of the same automatically extinguishes the application of the provisions of Articles 4, 5, 6 and 12 of the DSU as well as a DC has access to the 'good offices' of the Director General (DG) and a fast-tracked Panel Proceeding (PP).

There is a call for special attention to the particular problems and interests of the DCs during the CP (DSU, 1997). The presence of a DC as a party in a dispute calls for an inclusion of at least one member in the panel membership (Article 8.10, DSU, 1997). The selection of such a member is in accordance with the wishes of the DC. The DCs are further entitled to extended time frames during consultations (Article 12.10, DSU, 1997). In the event that parties cannot agree on the extension then the matter is referred to the chair of the Dispute Settlement Body (DSB) who shall make the final decision in that regard. Similarly, a DC is entitled to sufficient time for preparation of its argument in the PP.

The Panel reports are required to explicitly highlight the form in which it has taken account of the relevant provisions relating to the SDT as enshrined in the Covered Agreements (CAs) and as canvassed by the DC in the PP (Article 12.11, DSU, 1997). The rules require that on the basis of the subject matter of the dispute, particular attention be accorded to all matters affecting the interests during the implementation phase (Article 21.2, DSU, 1997). The DSB in considering whether a dispute involving a DC requires further action shall take into account both the subject matter of the dispute and the potential economic impact on the developing country (Article 21.7 and 21.8, DSU, 1997).

The DSU even accords additional SDT provisions to the least-developed countries by providing for the special consideration of the special situation of the least-developed countries and calls upon all Members to exercise 'due restraint' in raising matters against such countries (Article 24.1, DSU, 1997). The DSU further embodies an explicit pledge from the WTO Secretariat to provide assistance to DCs in matters regarding legal and technical assistance (Article 27.2, DSU, 1997). The Secretariat is mandated, upon a request from a DC, to avail a qualified legal expert to advise the DC. It should be noted that the assistance accorded by the assigned expert is limited since the assistance cannot purport to compromise the impartial aspect of the Secretariat. The secretariat is further mandated to provide special training sessions covering the DSU procedures to DC (Article 27.3, DSU, 1997).

These provisions from a distance collectively appear to be noble and properly in favour of the DC. It should be noted that these provisions were previously embodied within the GATT and the DSU has instilled some sufficient force behind the same. It has been strongly argued that the wording of the provisions fairly demonstrate that they are not obligatory in nature but only constitute guidelines or suggestions. This fact is well demonstrated by the fact that the provisions specifically making reference to the favourable treatment of DCs are phrased in terms of 'should' and not 'shall' thus making them merely permissive and not mandatory in nature.

This has led to some African Countries to strongly argue that the provisions in the DSU have not 'fully and coherently addressed the core difficulties developing country members face in seeking to use the WTO dispute Settlement system and that the difficulties relate *inter alia*, to the shortage of human and financial resources (Mosoti, 2006).

There has been great debate in regard to the DCs' effective access to the dispute process and the apparent absence of clarity regarding the 'manner in which the special and differential treatment provisions are implemented (Ewart, 2007, pp. 42-43). In a nutshell the intent and purpose of the SDT is the safeguarding the interests of a DC involved in a dispute with a developing country. However, these provisions are dependent upon 'either positive action from the developed member countries, actions for them to avoid, or a favourable interpretation by a WTO body' (Ewart, 2007) to ensure protection of such interests.

2.3 Case study: United States – Subsidies on Upland Cotton

The discourse of the case will emphasise the procedural aspect and the application of the SDT provisions rather than the substance of the case. The Case is relevant specifically due to the fact that the case involved the United States which is a developed Country and Brazil which is ostensibly a DC.

The dispute process was initiated by Brazil on the 27 September 2002 in accordance with the provisions of the DSU rules (Article 4.4, DSU, 2002); vide a request for Consultations with the United States (WT/DS, 2002). Brazil's concerns were centred on some U.S. subsidies for domestic production of upland cotton (WT/DS, 2002). In its request, Brazil was strongly challenging the United States commodity programs for cotton covering the year 1999 to 2002 including the 2002 Farm Bill (WT/DS, 2002).

The Consultation process failed to bear any fruits and Brazil proceeded to request for the establishment of a Panel on 6 February 2003 (WT/DS, 2003). The creation of the Panel was initially deferred by the DSB pursuant to the provisions of Article 6.1 of the DSU. Brazil subsequently put in a second request for a Panel on 18 March 2003 eventually compelling the DSB to form a panel (WT/DS, 2003). The requests for consultations and subsequently a panel were premised on the same issues.

In its requests to the DSB, Brazil raised a strong concern in regard to some certain subsidies granted by the United States to the growers, exporters and users of upland cotton allegedly contrary to the clear provisions of the WTO (Brazil Panel request). In addition Brazil raised concerns against the US use of the FAIR Act and the 2002 Act to extend domestic support which consisted of direct payments, counter cyclical payments, crop insurance, marketing loans, loan deficiency payments, export subsidies, the encouragement of use of domestic cotton by introduction of subsidies contingent on that use and the use of the Step 2 marketing payments and certificates.

On the 8 September 2004 the decision of the Panel was circulated almost 18 months after the initial request for its establishment and six months after its due completion date (WTO, DS 267). In its finding, in favour of Brazil the Panel concluded that export subsidies on upland cotton in issue were contrary to the direct provisions of articles 8 and 10.1 of the Agriculture Agreement and that the same 'resulted in circumvention of United States' export subsidy commitments (Cotton Panel Report, Article 10.1).' The Panel further found that the subsidies that were contingent on export performance were contrary to the provisions of Articles 3.1(a) and 3.2 of the Subsidies and Countervailing Measures Agreement (SCM Agreement).

The payments received by domestic exporters and users of upland cotton under the Step 2 payments were found to be in violation of the provisions of Articles 3.1 and 3.2 of the SCM Agreement (Cotton Panel Report, Article 8.1). Accordingly, the Panel proceeded to make recommendations for the prompt withdrawal of subsidies that had been found to be in violation of the provisions of the SCM Agreement (Article 8.3).

The Panel further concluded that Brazil's interests had been occasioned on serious prejudice by certain price-contingent subsidies that were in force that posed the risk of suppressing prices contrary to the provisions of Article 6.3(c) of the Agriculture Agreement and that the adverse effects of those subsidies warranted prompt removal (WTO, 2005). In determining the significance of the suppression, the Panel considered the 'relative magnitude of U.S. production and exports in the world of cotton market...general price trends in the market for the subsidized products and...the nature of the challenged subsidies (Buhi & Kwan, 2010, pp. 245-246).' In finding that the nature of the subsidies was price contingent concluded that the same were actionable due to the fact that they were in place to 'insulate the U.S. production from the effects of the global market (Buhi & Kwan, 2010, p. 246). The Panel further concluded that the price suppression were occasioned by the price contingent subsidies in form of market loans, market loss assistance payments, Step 2 Payments and counter cyclical payments (Panel Report, par. 8.1). Accordingly the panel summed up on the same by stating that 'the United States was under an obligation to "take appropriate steps to remove the adverse effects or...withdraw the subsidies Panel Report, par, 8.3)'. The United States subsequently appealed against the Panel's report and called upon the Appellate Body to reconsider the issues that were canvassed before the panel (WTO, DS/267). The final report of the AB was released on the 3 march 2005 (WT/DS, 2005, Appellate Body report, pp.763-764). The DSB effectively adopted the Recommendations and ruling.

The adopted recommendations and ruling that had an effective date of July 2005 prompted a positive response from the United States Department of Agriculture to adopt a new fee structure for the GSM 102 program and eliminated the remaining programs in line with its initiative of amending its export credit guarantee programs (Karen, 2009). A further response came into being in 2006 by the repeal of the Step 2 Program by the Congress

but without altering the Marketing loan and countercyclical programs (Karen, 2009).

Brazil eventually invoked the provisions of Article 21.5 of the DSU by requesting compliance proceedings in September 2006. The Report of the Compliance Panel was circulated in December 2007. The Compliance in its report found that despite the new fee structure implemented, all the export credit guarantees put in place after July 2005 were export subsidies and were contrary to the U.S. export subsidy commitments for unscheduled products in accordance with the Agreement on Agriculture. The panel further found that all the payments made to cotton producers after September 2005 under the marketing and countercyclical programs occasioned significant price suppression in the world market hence causing great prejudice to Brazil contrary to the previous recommendations and rulings of the DSB (WT/DS, panel report, 2008).

The AB ostensibly concurred with the findings of the compliance panel including the finding that there was a 'present' serious prejudice occasioned upon Brazil by the marketing loan and countercyclical payments implemented after 2005. The AB further concurred with the ruling that despite the change in cotton production and exports upon the termination of the effects of the Step 2 program in 2006, the subsidy payments did cushion cotton producers from market changes (Appellate report, par. 437). The AB further approved the reliance on the findings of the original panel by the compliance panel on the ground that the marketing loan and countercyclical programs remained in principle unaltered by the United States (Appellate report, par. 397). It also found that despite consideration of fresh evidence tendered by the parties the compliance was within its mandate to find that the subsidies effectively insulated the market for cotton over time. In this regard it was found that the compliance panel's action of considering the evidence contrary to the United States' expectation could not be deemed as a significant error or failure to make an objective assessment pursuant to the provisions of the DSU (Appellate report, par. 404-406).

2.4 Panel Process

The DSB agreed to establish a panel on 18 March 2003 on the basis of Article 7 of the DSU which provides for 'standard terms of reference'. Brazil did not put in any proposal for special terms as a developing country pursuant to the provisions of article 6.2 of the DSU (WT/DS, 2003). The strategy adopted by Brazil cannot to claim for the special terms of reference can be attributed to several reasons; the first being that the request of 'special terms' by Brazil would have likely attracted prolonged litigation on preliminary points over the terms of reference (Ewart, 2007, p. 49).

It has been observed that the adoption of special terms allowed by Article 7.1 of the DSU has only been recorded twice with a success rate of 50% (Stewart & Karpel, 2000). In one case the dispute was between Philippines and Brazil. The parties reached an agreement in regard to the applicable terms of the reference (WT/DS, 1996).

The second dispute was between the U.S. and Japan where the parties failed to agree on the terms necessitating the imposition of the standard terms upon the parties by the DSB approximately 51 days after the establishment of the panel (WT/DS, 1998). The imposition of standard terms upon the parties under the DSU eliminates the possibility of delays occasioned by disputes regarding the applicable terms of reference.

It is worth to mention that the total disregard of development concerns of a DC in a dispute amounts to a procedural anomaly that undermines the effective use of the SDT provisions by DCs. In the Upland Cotton case the parties were unable to agree on the composition of the panel members and on the 9 May 2003. Brazil made a request to the DG to appoint the same pursuant to the provisions of Article 8.7 of the DSU (WT/DS, 2003). On the 19 May 2003 the DG pursuant to the provisions of Article 8.7 of the DSU appointed a three person panel (WT/DS, 2003, par. 4). The panel was chaired by a Polish trade expert and Members from Chile and Australia (WTO, 2008).

The inclusion of two representatives of developing countries in the panel satisfied the provisions of Article 8.10 of the DSU which requires at least one representative in the panel to be from a developing country where one of the parties in the dispute is a developing country. It is clear that the SDT requirements in this respect were observed. The constitution of the panel may have as well played a major role in ensuring that Brazil was availed a fair hearing during the process.

The final report was submitted to the parties on the 18 June 2004 (Panel Report, par. 1.8). The issue of the same was in direct violation of the provisions of Article 12.11 since there was no effective indication that the dispute involved developed and developing member countries. It can be properly argued that Brazil did not mention its development concerns in the course of the proceedings. It has been argued that parties opt not to avail

themselves the provisions of the SDT embodied in the DSU for the simple reason that the provisions ‘do not clearly define what facts, information and evidence are sufficient and necessary to support their applicability, when they can be applied, or what can be expected (Alavi, 2007). This complicates the reliance on the provisions in any proceedings due to the fact that there is lack of sufficient information to enable the effective assessment of the same by a panel (Alavi, 2007).

The Panel in recognizing the status of Benin and Chad who are considered as least-developed countries appeared to have been of the view that it had complied with the provisions of Article 24.1 of the DSU. The Panel in an attempt at appearing to appreciate the special situation of the countries stated that ‘...in their joint submissions Benin and Chad extensively explained the situation of the cotton sector in their respective countries... (Panel report, par. 7.54)’

The panel was mandated to take total consideration of the two countries as third parties pursuant to the provisions of Article 10.1 of the DSU which clarifies the rights and obligations of third parties by stating that ‘The Interests of the parties to a dispute and those of other members under a covered agreement at issue in a dispute shall be fully taken into account during the panel process’ (panel report, par. 7.1407-7.1408). This provision is further supported by the notion that a breach of obligations by one member ostensibly causes adverse effects upon the other parties to the agreement (DSU, Article 3.8). Despite all the provisions in favour of the two countries, in considering the provisions of Article 24.1 of the DSU the panel proceeded to state that:

...the provision is sufficiently generally worded to encompass the situation where least-developed country member are involved as third parties...this requires that...particular consideration shall be given to the situation of least-developed countries ...by the terms of article 10.1 of the DSU, we are bound to take ...full account of all member’s interests, we do not view it as conceptually or practically possible to take certain member’s interest more fully into account than those of other members (panel report, par. 7.1410).

2.5 The Appellate Process

On the 18 October 2004, the United States Appealed against the Panel decision (WT/DS, 2004). It is worth mentioning that there are no issues related to the provisions of SDT, however the outcome of the dispute at this stage is largely shaped by the procedures applied during the panel stage. The serving members of the Appellate Body were Ms. Merit E. Janow as Presiding member, Mr. Luiz Olaro Baptista and Mr. A.V. Ganesan as members (WT/DS, 2005). The members are American, Brazilian and Indian respectively (WTO, 2010). There is no doubt that the Appellate phase conformed to the DSU requirement for at least one member from a developing country to form part of the members.

2.6 Viable Reforms in the Dispute Settlement System

2.6.1 Proper Definitions

World Trade Organization has been given the responsibility to define and classify ‘developing countries’, a subject that has been blatantly in-existent within their system. It has been left to the respective members to decide whether they are ‘developed’ or developing countries without any interference at all (WTO).

What is the effective definition of a ‘developing country’? This is one aspect that has conspicuously been lacking within the WTO system. Member countries have no authority to choose how they wish to be classified. To clarify this point China is ostensibly a major exporter enjoying a massive trade surplus surpassing the U.S and the EC as listed in the world fact sheet book. On the other hand the economy of the republic of Kenya is premised purely on agricultural exports. These countries have been elected to be classified as ‘developing countries’ within the WTO system. It appears that the reliance on the consensus approach in the WTO decision making hinders the effective agreement on the definition of ‘developing country’ thereby hindering the countries that genuinely need the effective operation of the SDT provisions within the system leaving them greatly disadvantaged.

It is however proposed that this issue can be properly solved with reliance on the system adopted by the United Nations in the classification of the least developed countries. The United Nations systems relies on three categories to classify least developed countries to include the use of; calculations based on a GDP per capita of less than US dollars 750, poor record on nutrition, health and adult literacy and economic instability (UN Conference on Trade and Development). This has led to the conclusive classification of 50 countries as ‘least

developed countries'. This also elicited a fundamental commitment from the Doha process that commits all developed country members to 'provide duty-free and quota-free market access on a lasting basis, for all products originating from all least developing countries' (WTO, 2005). It should be noted that there are several countries fitting the description of Least Developed while others do not but nonetheless are considered as members of humble economies within the WTO system.

Another category of countries has been identified as Vulnerable Economies that calls for special consideration as it relates with other members. This classification is based on the proposals that identifies and categorizes countries on the basis of actual isolation from markets, small population, negligible human and resource base (Roman & Jay, 2004). The proposals were given effect at the Doha Ministerial WTO (2002) through the appointment of a Work Programme on Small Economies mandated to frame 'responses to the trade related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system (WTO, 2002).' These characteristics have greatly contributed to the countries' lack of ability to penetrate the global markets and hike operational costs, more so it complicates structural adjustments that enhance market abilities of these states.

It is proposed that the classification of DCs be identified on the basis of fundamental reliance of not more than two market sectors for economic gain. The country should be expecting at least 70% of its foreign earnings from either of the two sectors. The country's over-reliance upon one sector for the sustenance of its economy increases the possibility of adverse effects occasioned by the aggressive competition from similar products from foreign companies.

2.6.2 Reforms relating to the DSU procedures

Consultation process (CP)

The engagement of parties in the CP is not based on any guiding terms of reference, despite the fact that it is only possible to effectively determine the success of the parties' negotiations on the basis of these terms. Where developing countries or least developed countries are involved the terms of reference of the CP should include the identification of the justification for the violation, if any, the realistic time parameters for possible phasing out of the violating measure. The terms should in any event be phrased in a manner that enables the parties to negotiate freely.

Post Consultation Phase

The system permits parties to utilise the services of the good offices of the Director General (DG), conciliation or mediation on the basis of the consent of the parties involved.

The DG gets involved as an independent party where the parties agree to utilise the services of his 'good office'. In the event the parties agree on conciliation the services of a neutral third party who will initiate a proper investigation on the issue and based on his findings table a possible solution to the parties. It is proposed that where parties fail to reach an amicable settlement during the CP, the system should compel the parties to attempt the services of the good office, conciliation or mediation with a view of arriving at a possible settlement.

This proposal tends to encourage parties to reach a settlement and the introduction of a third party who is supposed to be neutral eliminates the power constraints that ails the DCs.

Effective Timing

A party is currently required before proceeding to the Panel stage to have a waiting period of sixty days immediately after the CP. The rules do not clearly stipulate any guidelines in regard to the number or frequency of meetings in the CP. The absence of proper guidelines during consultations encourages engagement that is purely designed to be public relations antics.

The process can also be further legitimized by allowing consultations to take place at any place of choice other than Geneva. The choice of place preferred by a DC should be given special precedence by the developed country. These proposals are designed to strengthen the process of consultation that will eventually eliminate the financial constraints of DCs due to the fact that consultation is cost effective than litigation.

Third Party participation through Amicus briefs

The use of Amicus briefs can only be effective where the special interests of the DCs are also given the required prominence. The discretionary nature of the application of amicus briefs continue to concern DCs due to their legitimate concerns that Amicus briefs can be employed to present information that is designed to elicit unfavourable outcome (Ghias, 2006). The WTO system in striving to achieve development at the same time should give effect to the divergent interests that come forth such as health and environmental issues through amicus briefs.

Cost effectiveness

It is necessary and desirable to create a safety net for DCs in regard to the cost of litigation. It has been argued that the prohibitive costs of litigation can be eliminated through the establishment of a fund accessible to DCs for purposes of meeting the costs of litigation (Mosoti, 2006, P. 442). Alternatively the fund can be used to retain a team of legal experts committed to assisting DCs through the litigation process (Mosoti, 2006). This solution has the effect of eliminating the resource and financial constraints that has undermined the effective participation of DCs in the Dispute System (DS).

The fund can be actualized by imposing an additional charge to the membership fees paid by the developed countries for purposes of raising the support funds (Stostad, 2006). In this regard, developed countries will reasonably be expected to resist such an imposition specifically since such a move will not serve any of their interests. However, the availability of funds for litigation will greatly improve the participation of DCs which will in turn enhance the effectiveness of the DS.

The Panel Process

The continued lack of sufficient representation of DCs in the panel and AB does not inspire the confidence in the DS. The lack of proper representation further heighten doubt as to the legitimacy of the DS especially considering the fact that currently the DCs are the majority in the WTO system.

It should be noted that the presence of a panellist affiliated to a DC does not necessarily mean that the panellist will be there to insist on the rights of the DC. However such inclusion will inspire confidence in the commitment of the WTO in its consideration of the diverse interests of its members. The possibility of the panellist introducing a different view on matter in issue could further enhance the development of the system's jurisprudence where dissenting views are recorded.

Third party Participation

Participation of most DCs in the DS is only possible through third party litigation due to the inherent resource and financial constraints that inhibits their effective participation as the principal litigators. The issue of limited rights accorded to third party countries can be resolved by availing funds for litigation purposes. The availability of funds to support the litigation process will essentially eliminate the resort to third party status and the issue of third party rights in litigation.

In the alternative the DSU can be modified to include SDT specifically designed for DCs participating as third parties in the DP. Further the enhancement of third party rights should be properly institutionalized to eliminate the unpredictable nature of the discretionary powers enjoyed by the panels in regard to the enhancement of third party rights.

Enhancement of Retaliation Capabilities

A member must be capable of initiating suspension of equivalent concessions effectively to be able to consider retaliation. However, most of the DCs are prevented from even attempting these measures due to lack of economic resources.

The principle of Collective retaliation is an instrument that can be explored to enable the weak countries to compel compliance (DSU, 2002). This would entail permitting some or all members to retaliate in response to non-compliance. The automatic operation of such a principle would be covered under the SDT available to DCs (DSU, 2002). However, it has been argued that this can be counter-productive in the long run due to the involvement of third parties in the implementation process and eventually prolonging litigation (Nzelibe, 2008). The parties opposing such proposals have continued to argue that collective retaliation has the potential to

introduce protectionist policies guised as collective retaliation (Nzelibe, 2008). This has led to a very discouraging statement from a scholar who stated that:

The consequence would be to turn a major bilateral dispute into a major trial for the multilateral system not entirely unlike the unintended events which unfolded in August 1914 following the assassination of an American archduke, although on a less grand scale. This concern is especially great if the offending member believes that it has been unjustly found to be non-compliant with WTO policy (Wolff, 2008).

This statement is over ambitious with the attempt to equate the potential outcome of the use of collective retaliation with the events immediately leading to the world war one. It should be appreciated that a member will be inclined to comply in circumstances where there is a potential threat of large scale retaliatory measures from all or part of the members of the WTO (Pauwelyn, 2001). This proposal should be the last line of attack where all other instruments designed to elicit compliance have been exhausted. This is due to the possibility that negative impact on the overall operation of the WTO cannot be dismissed especially where the sanctioned retaliatory measures eventually amounts into actual trade barriers.

3. Conclusion and Recommendations

It is proposed that the classification of DCs be identified on the basis of fundamental reliance of not more than two market sectors for economic gain.

Consultations are further perceived as a process that involves polite engagements that increase the chances of amicable settlement than litigation that is more adversarial in nature.

There should be guidelines ensuring that the proposals presented by NGOs through Amicus briefs should include alternative proposals that put into consideration the special economic and social circumstances of the DCs. The NGOs further should strive to offer proposals that are cost effective coupled and should be ready to extend the necessary technological and technical support. These modifications will eliminate the consistent objections of the developing countries.

The conspicuous lack of participation by several members undermines the whole systems and its predictability which is undesirable.

There is urgent need for effective procedural guidelines to give effect to the provisions and to enhance the interests of developing countries in the dispute process.

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