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# **ISSUES OF INEQUALITY IN INTERNATIONAL TRADING ACTIVITIES**

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## **INTRODUCTION**

*“A nation will not survive morally or economically when so few have so much and so many have so little.”*

*Bernie Sanders*

It has been argued that the world we live in today is that of unmatched and unparalleled economic prosperity, largely on account of increased co-operation and growth between the countries, advancement and transfer of technology as well as spread of knowledge and education. At the same time, despite this astonishing level of prosperity that has been witnessed, ours is also a world that is characterized by bewildering level of deprivation and of astounding inequality. A paradox of this kind would naturally lead anyone to wonder why these inequalities exist, and of what, exactly.<sup>1</sup>

Principally speaking, the paradox of inequality as stated above can be simplified into two problems; the first, dealing with inequalities between nations and the other, dealing with inequalities within the nations. The twin trouble of inequality has been further convoluted by the process of globalization, which brings with it reduced significance of the nation state system and the strengthening of an integrated global economy and a globalized legal order. Globalization is an economic process through which trade and business activities are becoming increasingly symbiotic worldwide and increasingly independent of national boundaries.<sup>2</sup>

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<sup>1</sup> International Monetary Fund, *Global Trade Liberalization and the Developing Countries*, Nov. 2011 (Nov. 30, 2017, 10:04 AM), <https://www.imf.org/external/np/exr/ib/2001/110801.htm#iii>.

<sup>2</sup> Keith Horton and Haig Patapan, *Globalization and Equality*, Routledge Taylor & Francis Group, Griffith University Australia.

It is also very often claimed that globalization is aggravating the already existing economic and social inequalities not only between different countries but also within them. Taking this claim forward, it is further asserted that globalization also creates many new dimensions of inequality, for instance, inequality in the exercise of power play to regulate the framework in which the legal order would operate. And finally, be it the already existing inequalities, or the formulation of new inequalities, the entire process of globalization also raises questions on how certain forms of inequality could be morally or politically more crucial than the other.<sup>3</sup>

Over the last few decades, the world community has made systematic, robust steps towards uplifting people out of poverty. Whilst this may have alleviated and improved the conditions, some of the least developed countries nonetheless continue to struggle and live in poverty. Thus although inequality prevalent between the countries may have been reduced, it has significantly risen within the countries. It is in situations like these where questions of moral or political assertions over globalization are raised in respect of the possible inequalities that it could create.

An important aspect relating to the issues of inequality in international trade arena is that of trade liberalization. Trade liberalization is said to reduce inequalities and hence as a process is beneficial to all the nations of the world. This view would particularly hold true in case of good markets having a mature economy and where the employment rate is high. However, the flipside of such a concept of trade liberalization would be in countries where the market conditions are poor and the chances of finding alternate employment are less, in which case trade liberalization would render countries, most particularly the poor countries to greater risk and also leave the people residing in these countries at increased risk of further poverty and deprivation. The paradox that this aspect creates therefore is whether trade liberalization would truly be a case of benefit for all. Another interesting instance to consider would be the cases of some of the world's leading countries that have now emerged as developing economies, had in fact adopted an import-export regime vis-à-vis adopting trade liberalization and opening their markets to other countries and foreign investment.<sup>4</sup> Thus the corollary would continue to exist over whether the process of globalization and trade liberalization in fact leads to faster economic growth or increases the chances of risk that the countries concerned could be subjected to, given their already weak economic state.

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<sup>3</sup> *Id*, footnote 2.

<sup>4</sup> For instance, countries in East Asia such as China have undergone development on account of their import-export regime.

Not just the current international economic arrangements, even the dispute settlement mechanism that has been adopted at the World Trade Organization (“WTO”) level is very often questioned as far as inequality at the global level is concerned. The dispute settlement mechanism of the WTO has direct consequences as far as inequalities between developed and developing countries are concerned. The institutional interests of the WTO, may many times conflict with the interests of the developing countries in the WTO. The resultant consequence of such a conflict would be further aggravation of the existing inequalities between the developed and developing countries.

## GLOBALIZATION AND INEQUALITY

Economic inequality amongst the members of the world community remains a major bone of contention as far as the international trading arena is concerned. In fact, the concerns over growing economic inequality in respect of international trading activities can be traced back to the year 1999, when at the WTO’s Third Ministerial Meeting in Seattle, Washington, United States of America, several developing countries ruined hopes of the developed nations with respect to the inauguration of a multilateral “*Millennium Round*” of negotiations following concerns over the trade agenda of the developed world.<sup>5</sup> Representatives of several developing nations pronounced that their interests and involvements were being marginalized and those nations already in possession of an unequal portion of the world’s limited natural and social resources continued to receive an unequal amount of benefits from trade.<sup>6</sup>

Globalization and trade liberalization are believed to foster global economic development and productiveness, but increasing voices are emphasizing that the global economy and trading system function in a manner that in principal is unfair and appears to be engineered in favor of the developed and rich nations.<sup>7</sup> On the other hand, it can be said that unequal results in the global trading system and economic spheres are conventional given that equality of opportunity is available for all the nations.

### 2.1 ADVANTAGES OF GLOBALIZATION

Historically speaking, developing and underdeveloped nations of the world were not able to participate in international economic and trading activities on account of the trade barriers that

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<sup>5</sup> Frank J. Garcia, *Trade and Inequality: Economic Justice and the Developing World*, MJIL, Vol. 21, at 975-976.

<sup>6</sup> *Id.*, footnote 5.

<sup>7</sup> Joseph Stiglitz, *Social Justice and Global Trade*, Eastern Economic Review, Mar. 2006, 169(2), at 18.

existed within their national economies. With the advent of globalization, developing countries have been provided with a platform of dealing and interacting with other countries in the world, increase their economic growth, resolve poverty and other related issues prevalent in the country concerned. Globalization has to a great extent rendered the world a more equal place. With every single passing day, transportation and travel have become faster and communication has got cheaper, which is why developing countries have now been rendered capable of bridging the gap with their rich counterparts. International organizations such as the International Monetary Fund (“IMF”), the World Bank (“WB”) and the WTO have also played a pivotal role in inspiring developing countries to undergo market restructurings and fundamental reforms through various grants and loans. Consequentially, many developing nations began taking steps to open up and free their markets by eliminating tariffs. Such a free economy allowed the developed nations to make investments, thereby creating job opportunities for the economically backward people. For instance, countries such as India and the Peoples’ Republic of China have reported rapid growth thereby causing world poverty to decrease.<sup>8</sup> Likewise, countries such as Singapore and Taiwan followed suit during the period of 1990s and 2000s by increasing their export and reducing the domestic protections.<sup>9</sup> Thus, it is evident that globalization has made relationship between developed and developing nations stronger and more co-dependent in nature.

Developing nations heavily rely on their developed counterparts for inflow of technical quality resources and technology transfer, whereas developed nations depend on developing countries for raw materials, and as markets for industrial markets. The increased growth in transportation and communication between the individual citizens and corporations has also helped to raise the levels of trade between countries that has led to an increased growth in economy. Policies and measures that render economies of countries open to investment and trading activities with the rest of the world are essential for persistent economic development. Not a single nation in the world has, in recent times, been able to achieve economic triumph, without being accessible to the other nations of the world. Juxtapose to this, the opening of trade has been an important component of the economic empowerment of a number of countries in East Asia. The WB has defined these countries as “*new globalizers*”, wherein the number of people living in absolute poverty declined by over a hundred and twenty million between the years 1993 and 1998.

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<sup>8</sup> *Supra*, footnote 1.

<sup>9</sup> The World Bank, *Trade Liberalization: Why So Much Controversy?* (Dec. 2, 2017, 9:35 AM) at [http://www1.worldbank.org/prem/lessons1990s/chaps/05-Ch05\\_kl.pdf](http://www1.worldbank.org/prem/lessons1990s/chaps/05-Ch05_kl.pdf).

Countries like Uganda, Vietnam and India that have opened up their economies in the last few years have experienced more rapid economic advancement and greater poverty alleviation. On an average, those developing nations that have reduced their tariffs greatly in the 1980s developed more speedily in the 1990s than those nations that did not follow a similar pattern. Liberalizing trade more often profits the economically weaker specifically. An important impact of trade liberalization is the large number of jobs that are created for unskilled and semi-skilled workers, thus uplifting them from the poorer section into the middle-income group. Getting rid of trade barriers has a lot of potential gains. The benefits of from eliminating remaining trade barriers are considerable.

Whilst globalization enhances access to economic markets all over the world, nations profit utmost from liberalizing their very own markets. Liberalization of their agricultural markets would lead to long-term benefits for the industrial countries and the developing states would benefit equally from liberalization of their manufacturing, and agricultural activities. Low-income generation countries would however gain most from agricultural liberalization in industrial nations on account of the increased importance of agricultural activities.<sup>10</sup>

## 2.2 DISADVANTAGES OF GLOBALIZATION

Despite the positive aspects of globalization, within many developing countries, the levels of inequality have worsened. Most basic theories of economics predict that entry into international markets by the developing nations would lead to a drop in the levels of inequality therein. This is largely premised on the belief that economically weaker nations manufacture products and goods that require large amount of unskilled labour whilst developed countries concentrate on products requiring skilled labour. For instance, a country like Thailand is a big exporter of rice whereas a developed nation like the United States of America is the world's largest exporter of services pertaining to the financial sector. This theory further explains that as global trade surges, unskilled laborers in economically weaker countries turn out to be high in demand, whereas skilled workers in these countries are rendered no longer considered as desirable. Thus, leading to a situation wherein the unskilled workers in the developing nations get wage improvements, whereas their skilled equivalents are not given the same. The result of which is a fall in the level of inequality.

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<sup>10</sup> *Supra*, footnote 1.

However, the high level of inequality that is being witnessed in economically weaker countries is instigating several new theories around the same. One amongst them emphasizes outsourcing i.e. when developed countries move fragments of their production methods to developing countries. There are several instances of how multinational corporations end up recruiting skilled workers with high wages, while setting up production offices and units in the developing countries. For instance, in Vietnam, workers in foreign country owned and controlled footwear and clothing plants in Vietnam rank in the top twenty per cent of the country's population by in terms of domestic expenditure. Additionally, the Organization for Economic Co-operation and Development reports that the average wages that are paid by multinational corporations tend to be forty per cent higher than that paid by local organizations and firms. In fact the skilled workers, end up being bestowed with opportunities to work with managers and officers from economically stronger countries, and also get the opportunity of working with these countries. This in turn may boost their productivity that enables them to demand higher wages. On the other hand, semi-skilled or unskilled workers, or those settled in rural regions, may not be given such opportunities which may consequently have an adverse impact on their opportunities. Thus, the natural outcome of such a globalized situation would be an increase in the wages of the skilled workers, with crumpling effect on the wages of the semi-skilled or unskilled workers leading to an increase in inequality.

Despite the economic progress made by developing countries like India and the Peoples' Republic of China, countries in the African continent continue to have the highest poverty rates. Moreover, developed countries set up industries in the developing nations to take advantages of the low wages that may end up causing increased rates of unemployment on account of the risk factor that has to play.<sup>11</sup>

Simon Kuznets<sup>12</sup> asserted that as far as the initial phases of development are concerned, the rapidly increasing inequality within the countries following the same would be inescapable and inevitable. He also postulated that those who were in possession of a very small amount of capital could begin to see big benefits from making investments subsequently, and hence, could have

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<sup>11</sup> Fairouz Mustafa Hamdi, The Impact of Globalization in the Developing Countries, The International Institute for Science, Technology and Education, Developing Country Studies, Volume 3, No. 11, (2013).

<sup>12</sup> Simon Smith Kuznets was a Russian-American statistician and economist who was awarded the Nobel Memorial Prize in the field of Economic Sciences in the year 1971 on his empirical interpretation of economic growth and social structure.

potential gains from economic growth, whereas those who were not in possession of any such capital would continue to be embedded in poverty. Such a crisis of inequality can be solved only with economic co-operation and advancement followed with calls for systematic redistribution. Given the current state of affairs, globalization may battle to foster equality within the poorest nations of the world.

Additionally, as far as removing trade barriers are concerned, the greatest protest that is ever made is against the WTO, the global flag bearer as far as advocating free trade is concerned. Greatest drawback that may arise from trade liberalization, as discussed, hereinabove is the situation of low pay and wages, mediocre standard of working conditions and even forced labor and abusive child labor. This practice of cutting costs, at the expense of human rights, is by far the greatest instrument that is being used while protesting at the WTO. Another growing concern that springs from trade liberalization and globalization is the adverse impact it has on the environment. A rise in the corporate firms in developing nations may lead to an increased negative impact upon the environment, in the event the host countries end up ignoring the prescribed environmental standards. Very often criticism is levied against the WTO for not allowing trade barriers in respect of those imports that are based on improperly followed environmental standards in countries where these goods are manufactured. Nevertheless, the WTO retracts to its 1990 ruling wherein it had allowed a bank from the United States of America in respect of shrimp imports because the fishing methods threatened endangered sea turtles outside the U.S borders.<sup>13</sup>

Additionally, free trade agreements such as the North American Free Trade Agreement, (“NAFTA”) that has been executed between Canada, Mexico and the United States of America has been criticized on the grounds of being harmful to American workers as well as the American economy, contributing to job loss and significant drops in levels of income while at the same time encouraging the growth of various multinational organisations and corporations. Free trade can cause instability in sectors of a closely guarded domestic economy, such as long term prevalent manufacturers, which may be averse to competition from globalization.<sup>14</sup>

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<sup>13</sup> *Supra*, footnote 11.

<sup>14</sup> Julian Aguilar, *Twenty Years Later, NAFTA Remains a Source of Tension*, The NY Times, Dec. 7, 2012, (Dec. 2, 10:05 AM), <http://www.nytimes.com/2012/12/07/us/twenty-years-later-nafta-remains-a-source-of-tension.html>.

## WTO DISPUTE RESOLUTION MECHANISM AND INEQUALITY

Multilateral trade regime and its future has become the pivotal subject of dialogues on the status of developing countries within the WTO. The dispute resolution mechanism of WTO has been addressed to as the “*Crown Jewel*” of international multilateral trade system. After the conclusion of Uruguay Round the legalistic procedures of dispute settlement laid probable prospects of benefitting developing nations. Officially named as Doha Development Agenda is the latest round related to trade negotiations in WTO that is trying to address the issues of developing countries as well as several non-governmental organizations related to visible inequities in WTO mechanism. One of the most criticized issues relate to favoring of the developed countries in substantive areas related to rules governing agriculture, intellectual property, trade remedies etc.

### 3.1 DISPUTE SETTLEMENT UNDERSTANDING AND DEVELOPING COUNTRIES

The dispute resolution system of the WTO under the General Agreement on Trade and Tariff (“GATT”) was traditional and diplomatic, thereafter the Uruguay Round agreements brought about drastic reforms. Current dispute resolution process commonly known as Dispute Settlement Understanding (“DSU”) took birth as part of the WTO agreement in the Uruguay Round wherein the negotiators tried establishing an automatic procedure of dispute resolution to discard the earlier consensus decision rule of GATT. Thus the privileges that single government of defendants in previous GATT dispute use to exercise which included adoption of 3<sup>rd</sup> party rule and authorization of sanctions have been worn out. After the Uruguay round, the above measures now have to be unanimously decided, which in other words meant that the prevailing party to the dispute must also approve the action. Moreover with a view to secure uniformity and reliability in the rulings DSU provides for the process of judicial review. The result of the changes brought about by the Uruguay Round have established the WTO’s dispute settlement system as an example in the trend towards legalization of world politics.

The developing economies of the world have proved to be a major beneficiary of the Uruguay Round Agreement which promises speedy unbiased dispute resolution mechanism to WTO members. The conventional expectation is that a more legalistic, rule-oriented institution should be more likely to safeguard the interests of member governments with little bargaining leverage. In the multilateral trade system, where market access is the agenda, bargaining power is in large

part a simple function of market size. For this reason, developing countries (as well as small economies with high per capita incomes) have generally been presumed to be beneficiaries of the Uruguay Round's institutional reforms, which guarantee prompt, impartial rulings to all WTO members.

The question that needs to be answered to is whether the cases filed by developing countries in WTO have increased or no. The answer to the question will help us in figuring out whether the DSU framework has proved to be beneficial for developing countries or no. The research on above question will depend relatively on how one defines the baseline, but unanimous view is that there is an increase in case filing by developing countries in WTO, specifically against one each other. On comparison of WTO working with GATT it is found that there is substantial increase in developing countries participation. Furthermore it has been reported that after the conception of WTO, both developed and developing economies are utilizing the platform more frequently.

Other researchers have taken opposite view wherein they emphasize that complaint database from the side of developing countries is very low. Moreover developing countries become target of complaints by the developed economies because of less share in world trade. Almost all the activity that happens in DSU from the side of developing economies is done by Argentina, India, Korea, Philippines, Venezuela, Thailand, Chile, Brazil, Mexico and Korea. In other words large majority of developing economies of the world do not even participate at this formal dispute resolution forum.

This enigmatic bridge between the alleged interests of developing countries which are smaller in size and are weak economically as compared to developed economies at the global level dispute adjudicatory system results in frustration and indifference in such countries. There are several factors responsible for this paradoxical gap out of which the biggest one is that the developing countries have developed a feeling that the multilateral guidelines and rules of DSU are highly biased in favor of developed industrial economies. The earlier dispute resolution structure under GATT was also biased as it gave preferential treatment to Quadrilateral Group of members i.e. US, Canada, EU and Japan to take decisions and thereafter give it for approval by other delegations. Secondly, even if we argue that the WTO procedural rules meet the set standards to enhance distributive justice and fairness to bring structural equalities in the international trade but

still there remains some loophole which deter developing economies from participating equitably in WTO and file legitimate cases. The reasons for such lack of participation may be that the developed industrial countries may at any point of time threaten the developing countries by withdrawing the benefits of unilateral trade preference, developmental etc. that they provide to such economically poor countries. Lastly, developing countries that already lack financial and institutional resources may find the cost of litigating in WTO prohibitively high. Even when developing economies can bear the high cost of litigation at WTO the obstacle lies in the system of remedies that mainly relies on economic sanctions. The system of devolved sanctions automatically tend to favor the developed countries with large markets. The developed industrial economies are anyways at the superior end due to their lesser dependence on trade and they have added value of access to their markets which give them edge by threatening closure of markets for such complainants.

To gain a way out from these procedural inequities developing countries including Brazil and India had proposed that they should be given preferential treatment at the WTO dispute settlement forum. A “Green Room” procedure was proposed wherein diversity of interest of WTO members will be reflected. For effective remedies in favor of WTO member countries measures related to collective retaliation, mandatory fines were proposed but all in vain. Moreover the need of expert prosecutor was advocated who would act in an unbiased manner to enforce multilateral rules of trade. Such reforms have always been opposed by super powers like USA, which led to WTO Secretariat being forced to take incremental steps in favor of developing countries. Such steps included provision for training and educational workshop for delegates from less developed economies. Thus we can say that there are numerous factors which lead to inefficiency of developing countries to use the dispute resolution forum to enforce their legitimate rights.

### **3.2 APPELLATE BODY AND INSTITUTIONAL CHANGES**

One of the most basic features of Institutional Theory is that once a political institution is set up it is resistant to changes due to various political and economic influences. At the global level changes in the working of a forum require consensual support from signatory states, which makes reforms a distant dream. Conception of DSU in Uruguay Round Agreement was a step forward in achieving this dream, which clearly showcased departure from earlier stringent GATT approach. In review meeting of DSU that was supposed to happen every 4 years, certain procedural amendments relating to transparency and remedial measures were laid down but led

to no improvisation in the functioning of the dispute resolution procedure. After this failure, WTO members finally agreed on meeting for a reform in dispute resolution mechanism in next round commonly known as Doha Agenda that turned out to be equally unrealistic.

Such difficulties kept happening because of the consensus decision method of WTO that has been religiously followed from right after its conception. In the process of such decision taking if any country objected the status quo was maintained. Even if changes in the voting structure are strongly favored by the countries it will only remain on papers if it turns out to be a failure to practice it in a meaningful way at formal negotiations.

### 3.3 PARTICIPATION BY MEMBER GOVERNMENTS AS THIRD PARTIES

In bilateral trade related disputes, member countries of WTO have a right to participate in the proceedings as interested third party provided they declare “*substantial trade interest*” in the case which is a very low standard being set for allowing interference. But substantially Uruguay Round has managed to decrease this interference by providing rules as to restricted participation of third party at the panel stage. At the appellate stage however such participants are allowed to have complete access to proceedings in form of oral arguments and written submissions as they are treated as interested third party. Thus, it would not be wrong to say that that such party enjoy status equivalent to that of disputants. Nonetheless to say that such participation may prove to be helpful to the appellate body to reach a just and amicable solution but it is definitely problematic for the interest of the developing and least developed countries.

The appellate body is aware of these constraints and hence they have huge discretion to decide as to the level of participation of the third parties in the dispute proceedings. Appellate body created a category wherein third party can participate but only as “passive observers”. But in one such dispute the body deviated from its stand and denied participation of Columbian delegate as passive observer in an oral hearing round. Such deviation is a discretion with the board but is permissible only after amendment in the procedural rules. In the list of developing countries, India has participated maximum times as passive observers followed by Mexico and Brazil. But when matched with the stats of participation by developed countries stark difference is clearly visible, 4 quad members have cumulatively participated approximately 49 times out of combined 65 appearances of delegated from developed countries. Such high rate of participation is complimentary to the fact that the industrial economies have filed maximum cases even as

disputants.

Demand of equity in multilateral trading regime is an extremely complex and notorious expectation. Although traditional regime of WTO suggest that the developing and the least developed economies should be primary beneficiaries of such legalization, but such least developed economies still continue to express their distress and frustration in the DSU mechanism and its quasi- judicial process. Such criticism has their backbone in the institutional framework of WTO dispute settlement system as defined in the Uruguay Round Agreement. Other criticism related to international inequity in trade relate to structural differences in world economies.

These procedural restructurings, however, also effect the position of developing economies at the WTO level. Decisions such as expansion of 3<sup>rd</sup> party participation and opening of doors to the amicus curiae brief were expected to act detrimentally for developing countries since they make way for politicized advocacy and legal arguments from advanced industrial economies which will be disproportionate if we take into account the interests of poor and underdeveloped countries, especially at the conception of the WTO. With the passage of time and building of experience developing countries may start seeking advantage and utilizing opportunities that amendment related to amicus curiae and third party access can afford, but at this point of time these modifications have been critically looked down upon by the developing and the least developed countries. Also the decision of the appellate body to allow private counsels to advocate on behalf of the member nations is a victory for Saint Lucia and also other developing countries, but its impact on the operation of DSU and the inequities that hail out of its working is limited.

The key concern raised by this paper is how countries should acclimatize to the legal system, on the one hand, and how the system's procedures could be reformed or jurisprudentially applied so as to reduce operational disadvantages, on the other. A pivotal aim of the paper is to provoke deliberation of substitute choices in WTO dispute settlement. The inclusion of changes in WTO dispute settlement design that includes less legalization (such as the adoption of simplified procedures for smaller claims or claims between smaller countries),<sup>15</sup> or more legalization (such as the provision of stronger remedies which will facilitate the use of outside law firms and their

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<sup>15</sup> See Hakan Nordstrom, "The cost of WTO litigation, legal aid and small claim procedures" (March 2005 discussion paper on file with author) (noting articles 5 and 25 of the DSU on mediation and arbitration, subject to the parties' agreement; and the accelerated procedures of the Decision of 5 April 1966 (BISD 14S/18) for developing country complaints against developed countries, but the procedures only reduce the time for panel decisions in a situation where developing countries already have difficulty meeting time constraints).

financing by private industry). They also include key jurisprudential selections over rules of evidence, burden of proof, and the setting of clear rules or general (more fuzzy) standards that are more costly to litigate. These design and jurisprudential alternatives all involve complex tradeoffs that do not beckon clear simple solutions.

## RECOMMENDATIONS AND CONCLUSION

WTO has proved to be successful in reducing trade barriers and taking steps in creating equality in matters of economic opportunities for the world at large. But the researches all around the globe have come to an extensive conclusion that the liberalization benefits that WTO has produced are not distributed equitably among the member nations.<sup>16</sup> Thus three proposals for reforming the WTO procedure which meet the standards of egalitarianism are:

***First***, the advisory centers on WTO Law (ACWL) which work in favor of developing countries and the Least Developed Countries (LDC's) should be expanded in capacity by establishing additional centers to advocate the concerns of economically weak countries<sup>17</sup> and help them to defend their case at the global level trade dispute resolution forum by providing them legal aid. But since the flaw in this mechanism is that the funding for these centers comes from developed countries, therefore it will be utopic to think that their working is unbiased. Thus, these centers should rely on private institutions for funding and also they can create a provision for annual membership fee to fund their activities. Furthermore, since ACWL is headquartered in Geneva, outreach to all member developing countries is not possible and therefore there should be other head offices at different parts of the world to extend legal aid and expert services with promptness to the poor countries.

***Second***, the remedies available in WTO dispute resolution forum should include monetary payment of damages. This would result in improvement of negotiating power of developing countries at WTO and also provide additional benefit in term of improving their resources at the forum. There can also be a reform by way of introducing payment of backdated damages<sup>18</sup>. This

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<sup>16</sup> See BOWN, *supra* note 83, at 238. "The consensus among many analysts of and participants in the current international trading system appears to be that there are two distinct World Trade Organizations-one for rich economies and one for poor economies." *Id.* See also Horn et al., *supra* note 110, at 454 (noting that there has been a "debate about whether the DS system is biased against smaller and poorer countries").

<sup>17</sup> 7 KENNETH RUWAN SCHUNKEN, *THE ADVISORY CENTRE ON WTO LAW: A SUCCESS STORY, BUT FOR WHOM?* 59 – 79 ( [The Law & Practice of International Courts and Tribunals, Volume 7, Issue 1](#) 2008)

<sup>18</sup> Gregory Shaffer, *How to Make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies*, 14 (ICTSD Resource Paper No. 5, 2003).

alteration in the remedy would act as an incentive for the developing countries to put forward their grievances at the forum. Finally the last suggestion to improvise the WTO's remedy regime is to include the advocate's fee in the decision of the forum if the complaint is successful. Such remedial improvisation would deter the developed countries to take undue advantage of the developing and the Least Developed Countries because of their resourcefulness.

*Lastly*, the developing and under developed states whose rights are violated should be able to auction their legal right to file case at WTO to take countermeasure. This incentive would actually help the developing countries financially plus the developed countries would be demotivated to violate their obligations.

Changes in institutional mechanism and the procedures can lead to better functioning of the forum but at the end what is required is the change in the mindset of the member nations. Participating countries should take proactive steps on the kind of rules and regulations required for effecting equality in all perspectives by way of international trade which would in turn foster globalization and development. Economic inequality at the international trading level becomes an issue of concern not merely from the point of view of trade law but also from the point of view of moral philosophy. Moral philosophy greatly covers within its purview principles of social order, not only at the individual level, but also as far as social institutions are concerned. The problem of economic inequality has within its ambit the question of distribution of resources within states, as well as between states.

Thus, while dealing with moral philosophy, an attempt can be made to understand the inequalities in international trading activities from the point of view of John Rawls' philosophy and his "*Justice as Fairness*" as far as economic inequalities in the international trading arena is concerned. Rawlsian principle of distributive justice at the international forum, would, therefore require three important elements: ascertaining the particulars of inequality, an analysis of the selection problem that is posed and faced by those in the original position and affinity of the principles and values of justice that would result from the same.<sup>19</sup> Moreover, developing nations often criticize that the "*Special and Differential (S&D)*" status that is acquired in WTO as a result of the U.S backed "*Generalized System of Preferences*" is not really to their advantage and stress

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<sup>19</sup> Dominykas Broga, *Justice and Inequality in the World Trading System: A Critical Assessment*, Inquiries Journal, Vol. 4, No. 11, (2012).

that the same is preferential for the developed countries. Going further, the Rawlsian “*principle of difference*” further elaborates that “*international social and economic inequalities in trade negotiations are just only if they result in the benefit the least advantaged nations*”.<sup>20</sup> Additionally, Rawls argued that inequality in natural endowment ought to be recompensed in a re-distributive preference that in principle is fair and that favors the worse-off. As far as international trade is concerned, a problem may arise in the WTO wherein a country is judged developing not on the basis of its economic scale, but rather through self-selection. Thus, inequality may arise in a situation where a country like Singapore, as part of the self-selection criteria, avails itself of the status of being developing, which could turn out to be detrimental to the status of those countries that are genuinely developing and need the status many times more than a country like Singapore. Likewise, Pakistan’s acceptance of more liberal tariff than India on the European textile market because of an apparent drug trafficking problem would be unfair to those countries who need such an economic plan the most.

Furthermore, Rawls asserted that inequalities that arise from the inherent disadvantage that exists in the allotment of natural endowments that in turn may lead to inability of developing nations to compete with their developed counterparts. However, instances of countries such as Singapore that can hardly be said to be a country rich in natural resource show that the original position would depend upon various principles including policies on good governance, efficient economic programs and policies, which places it in the situation that it currently is in now.<sup>21</sup>

Another principle that can be analyzed in light of the international trade regime is that of egalitarianism which stipulates fairness to be equality in the conduct and treatment as well as selection of equal number of representatives in the rounds of many-sides treaty negotiations. Egalitarians stress upon the need for all the member states to be treated equally in all trade agreement drafting as well as negotiations in order to truly be just and fair. Egalitarians also claim that the interests of developing countries at the WTO level is very often marginalized and their interests are also excluded from the decision making process.<sup>22</sup> As for instance, as part of the Seattle Summit, the European Union, Canada, the United States of America and Japan interacted with each other through closed committees and groups whereas the other nations were not even invited. Thus, this indicates how the interests of the developing nations have been excluded.

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<sup>20</sup> Id, footnote 19.

<sup>21</sup> Id, footnote 19.

<sup>22</sup> Kapstein, E. B., *Economic Justice in an Unfair World: Toward a Level Playing Field*, at 48.

Likewise, principles of S&D and GSPs have all been adopted unilaterally by the economic powers to the detriment of the developing nations.<sup>23</sup>

Thus, from the point of view smaller economies, it becomes particularly important to open up these economies as they have smaller markets and very limited resources. Multi-lateral trade negotiations at the international level are pertinently important as they offer an important opportunity for nations to obtain immense benefits for their respective exporters by opening their markets to other nations of the world. Such an approach provides an added inducement to countries to open up their own markets, and to overcome strong obstruction from the vested interests of those benefitting from this kind of a protection on the economy. Having a successful round of trade negotiations is often considered to be an important step towards meeting the desired objective of making globalization and trade liberalization work in favor of all the nations involved. Thus, it becomes important to push for the need to liberalize trade even further.

## BIBLIOGRAPHY

### BOOKS

1. [Kenneth Ruwan Schunken](#), “The Advisory Centre on WTO Law: A Success Story, But for Whom?”

Developing economies face a lot of problem when it comes to WTO mechanism and its working. The article in the book purport to deal with the problems such economies face while negotiating concerns related to world trade at this dispute resolution platform. The main reason behind the formation of Advisory center at the WTO was to address the concerns of the developing and the least developed countries and enhancing the credibility of the forum. The article also elaborates upon the legal principles of the ACWL. Furthermore, it also talks about the mechanism to improvise upon the functioning of the Advisory Centers. All of these factors will at the end contribute to the fair and equitable representation of the developed as well as the developing countries at the WTO level.

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<sup>23</sup> Cohn, T. H. ‘*Global Political Economy: Theory and Practice*’ at 242.

## ARTICLES

1. Adam S. Chilton and Ryan W. Davis, Equality, Procedural Justice and the World Trade Organization, 7 Intercultural Human Rights Law Review 277 (2012).

This Article postulates several mechanisms on how equality comes to occupy an extremely important place in international affairs, more particularly with respect to the economic activities between the countries. It further stipulates of how inequality is related to a morally unacceptable condition in respect of international institutions. The Article further elaborates on equality as criteria for distributive justice within local political framework but how the concept of domestic egalitarianism fails to apply in the international trade regime.

2. Dominykas Broga, Justice and Inequality in the World Trading System: A Critical Assessment, Inquiries Journal, Vol. 4, No. 11, (2012).

This Article assesses the level of fairness that prevails in the international trading system by using various political philosophies, most prominently the Rawlsian principle of justice to argue that the international trading mechanism exhibits unfairness towards the developing countries. It also examines the principle of reciprocity that is involved in the WTO rules and regulations.

3. Frank J. Garcia, Trade and Inequality: Economic Justice and the Developing World, Michigan Journal of International Law, Volume 21, No. 4 (2000).

This Article focuses on the principle of special and differential treatment that occupies a predominant position in the international trading regime. It goes on to throw light on how the principle of special and differential treatment is not merely a political tool that is used for governing relations between nations of the world, but also seeks to explore the moral obligations that are deeply embedded in terms of economic inequality between the nations of the world.

4. Fairouz Mustafa Hamdi, The Impact of Globalization in the Developing Countries, The International Institute for Science, Technology and Education, Developing Country Studies, Volume 3, No. 11, (2013).

This Article focuses on the advantages and disadvantages of globalization in terms of *inter alia* trade and economic activities. The author stresses on how globalization has played an important role in bridging the gap between the developing nations along with their rich developed counterparts and about how the world has come to witness increased co-operations. The Article also familiarizes the reader with the negatives of globalization, most particularly from the point

of view of developing East Asian countries.

5. James Smith, *Inequality in International Trade? Developing Countries and Institutional Change in WTO Dispute Settlement*, *Review of International Political Economy*, 11:3, (2004).

The crux of the abovementioned Article is how the beneficiaries of legalization i.e. Delegation of power to third party in case of trade related dispute has played a critical role in the working of the WTO. Furthermore, it also accentuates on the role of the Appellate Body within the WTO framework in the dispute settlement procedure and how developing countries and developed countries get affected because of these aforesaid procedures.

6. Joseph Stiglitz, *Social Justice and Global Trade*, *Eastern Economic Review*, March 2006, 169(2), Page 18.

In this Article, Joseph Stiglitz asserts upon the importance of trade talks at an international level. The Article further stipulates on how there needs to be a reformed mindset and increased political will on part of the members of the world community to deliberate upon the kind of international rules and regulations that need to be brought in place to lay down the governing framework for international trading related activities.

### **REPORTS**

1. International Monetary Fund, *Global Trade Liberalization and the Developing Countries*, November 2011.

This Report prepared by the International Monetary Fund seeks to explore the connection between the swift rapidity of trade and globalization and the increase in the levels of income inequality between the countries. The Report also asserts on the paradox of how globalization on the one hand plays an important role in fostering economic equalities between the nations and how on the other it creates inequalities within the nations.

### **WEBSITES**

1. Julian Aguilar, *Twenty Years Later, NAFTA Remains a Source of Tension*, *The NY Times*, Dec. 7, 2012, (Dec. 2, 10:05 AM),

<http://www.nytimes.com/2012/12/07/us/twenty-years-later-nafta-remains-a-source-of-tension.html>

In this Article, Julian Aguilar puts forward the case of the NAFTA after almost being in

operations for over two decades. The Article on the one hand explores how the economists are of a favorable view as far as the economic and social success of the NAFTA is concerned and how on the other hand, several consumer groups as well as trade unions criticize the NAFTA on the grounds of the negative impact it has come to have on the American as well as Mexican economies.

