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## WTO DISPUTE SETTLEMENT AND THE CHALLENGES AROUND IT

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**Abstract.** *The main issue considered in the present research work is the challenges that developing countries experience when participating in the Dispute Settlement Body (DSB) of the World Trade Organization (WTO). Developing countries and the least developed countries are faced with limitations of the DSB and, therefore, this research examines the most substantial aspects of these limitations. The current research discusses the financial and legal constraints encountered by developing countries and the least developed countries. This research also explains the need to ameliorate the Dispute Settlement Understanding (DSU). Moreover, the current work scrutinizes the disproportionate use of DSBs for developing countries. It is observed from WTO case law that rulings and proposals based on the DSU not only influence the parties of a dispute but also may impact a considerably broader group of countries. To maintain the progressive, foreseeable and liberal development of world trade, the DSB engages in resolving trade conflicts between the WTO member states. To reach this feasible goal, the integrity and impartiality among members should be increased.*

**Keywords:** *WTO, DSB, DSU, dispute settlement system, developing countries, least developed countries.*

### NIZOLARNI JST BO’YICHA HAL QILISH VA MAVJUD MUAMMOLAR

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**Annotatsiya.** Mazkur tadqiqot ishida rivojlanayotgan mamlakatlar Jahon Savdo Tashkilotining (JST) nizolarni hal qilish organida (DSB) ishtirok etish jarayonida duch kelayotgan muammolar tahlil qilingan. Rivojlanayotgan mamlakatlar va kam rivojlangan mamlakatlar DSB cheklovlariga duch keladi va shuning uchun ushbu cheklovlarni har jihatdan o'rganish muhim hisoblanadi. Xususan, mazkur ishda rivojlanayotgan mamlakatlar va kam rivojlangan mamlakatlar duch kelayotgan moliyaviy hamda huquqiy cheklovlar muhokama qilingan. Tadqiqotda, shuningdek, nizolarni hal qilish institutini soddalashtirish zarurati ham tushuntirib o'tilgan. Bundan tashqari, mazkur tadqiqotda rivojlanayotgan mamlakatlar DSBdan nomutanosib ravishda foydalanayotgani asoslab berilgan. JST sud amaliyotidan ko'rinib turibdiki, DSUga asoslangan qaror va takliflar nafaqat nizo tomonlari, balki ancha kengroq mamlakatlar guruhiga ham ta'sir qilishi mumkin. Jahon savdosining progressiv, tahlil qilinadigan va liberal rivojlanishini ta'minlash uchun DSB JSTga a'zo davlatlar o'rtasidagi savdo ziddiyatlarini hal qilish bilan shug'ullanadi. Amalga oshirilishi mumkin bo'lgan ushbu maqsadga erishish uchun a'zolar o'rtasida halollik va xolislikni oshirish zarur.

**Kalit so'zlar:** JST, DSB, DSU, nizolarni hal qilish tizimi, rivojlanayotgan mamlakatlar, kam rivojlangan davlatlar.

## УРЕГУЛИРОВАНИЕ СПОРОВ В РАМКАХ ВТО И СУЩЕСТВУЮЩИЕ ПРОБЛЕМЫ

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**Аннотация.** В данной исследовательской работе анализируются проблемы, стоящие перед развивающимися странами в процессе участия в Органе по урегулированию споров (DSB) Всемирной торговой организации (ВТО). Развивающиеся страны и менее развитые страны сталкиваются с ограничениями DSB, поэтому важно подробно изучить эти ограничения. В частности, в исследовании обсуждаются финансовые и правовые ограничения, с которыми сталкиваются развивающиеся и менее развитые страны. Исследование также объясняет необходимость упрощения института разрешения конфликтов (DSU). Кроме того, в исследовании утверждается, что развивающиеся страны используют DSB непропорционально. Из прецедентного права ВТО следует, что постановления и предложения, основанные на DSU, не только влияют на стороны спора, но также могут влиять на значительно более широкую группу стран. Для поддержания поступательного, предсказуемого и либерального развития мировой торговли DSB занимается разрешением торговых конфликтов между государствами-членами ВТО. Для достижения этой реальной цели необходимо повысить честность и беспристрастность среди членов.

**Ключевые слова:** ВТО, DSB, DSU, система разрешения споров, развивающиеся страны, менее развитые страны.

### Introduction

Due to the rapid development of trade relationships, economic ties between

countries are becoming increasingly paramount. In the worldwide economy, all countries across the globe are

interconnected, and international trade is a global force that affects each country in the world. In 1944, a conference on economic issues and smooth international trade cooperation among countries was held in New Hampshire. The conference contributed to the establishment of the General Agreement on Tariffs and Trade (hereinafter GATT) in 1947. To boost economic cooperation and curtail tariffs and other trade roadblocks in 1995, the GATT member states embraced the World Trade Organization (WTO) Agreement. During the WTO global tariff negotiation rounds, the negotiations in the Uruguay Round were particularly important [1].

WTO is one of the major international organizations and plays a vitally important role in international trade cooperation. The WTO established an effective dispute settlement institution that operates within the Dispute Settlement Body (hereinafter DSB). The DSB resolves international trade disputes of WTO Member states and is regulated by procedures outlined in the Understanding on Rules and Procedures (hereinafter DSU) [2]. Disputes regarding the legal rights and obligations of the states arising from the WTO Agreement are settled by the DSB. However, currently, a number of problems have appeared limiting the developing and least developed countries' (hereinafter DLDC) access to justice through the DSB and revealed the actual need to reform the dispute settlement system of the WTO.

The present research discusses and assesses the factors constraining DLDC participation in the WTO DSB. The formation of the WTO dispute settlement structure equipped both developing and less developed countries with a useful tool for resolving their trade disputes. However, concerns about the limitations of DLDC performance in the WTO have been raised, and researchers across the globe have conducted a myriad of studies. Therefore, this research aims to

thoroughly investigate the most significant difficulties of the dispute resolution procedure used by DLDC, *i.e.*, the dearth of legal and financial sources, the expenses of lawsuits, retaliation, the implementation of the DSU, the length of the dispute settlement process and so on. The main objective of this research is to pinpoint the practical obstacles pertaining to dispute settlement and examine them through the prism of fairness.

### **Materials and methodology**

The research methodology employed in this work is i) careful study of the current literature, research articles, books, WTO documents, and publications on dispute settlement related to DLDC and ii) the application of case law in this context. The dispute settlement arrangement of the WTO is discussed, and relevant case law is highlighted so issues related to practice can be better understood. This work also attempts to evaluate the indicated problems and reform suggested by scholars with respect to the participation of DLDC in the WTO dispute resolution process. Thus, the research analysis is theoretically paramount for understanding these issues by using a large dataset and crucial for understanding the shortcomings of the existing dispute settlement mechanism in practice. Moreover, this work is also believed to contribute to augmentation and will strengthen and enhance the existing knowledge of academia on the intricacies and plausible amelioration of dispute settlement in the WTO for DLDC.

### **Research findings**

#### *Development of International Trade Law*

Until the twentieth century, many countries throughout the world promoted their own national industries by imposing tariffs on products imported from foreign countries. A tariff is defined as a tax on imported goods that increases the cost of the goods compared to those of local products. A tariff provides economically friendly revenue for the national government. At the

beginning of the nineteenth century, some countries highlighted the need to reduce tariffs. The concept of *reciprocity* enabled countries to obtain equal advantages and maintain sustainable economic growth by reducing tariffs for each other's goods [3, p. 15]. The progressive development of free trade encouraged countries to negotiate for liberalized markets across the globe.

#### *1) Evaluation of the GATT*

Primarily, the GATT was an international trade contract signed on 27<sup>th</sup> October 1947; later, it became an international organization [4, p. 40]. Until 1960, GATT did not have any authority to implement tariffs and nontariff obstacles and was a small institution. More interestingly, only signatories of the GATT managed the structure, and the GATT did not consider any procedure to become a member. In 1995, the WTO treaty was initiated, and the GATT became a part of the organization.

The GATT envisaged unbiased and balanced free trade among members. The fundamental purpose of the GATT was to reduce tariffs and eliminate unfair trade practices. One of the basic features of the GATT was i) guidance for contracting parties and ii) special agreements on tariff reductions. There have been eight multilateral "rounds" on trade negotiations by the GATT to reduce tariffs and barriers (Table).

**Table**  
***Multilateral "rounds" on trade negotiations by the GATT to reduce tariffs and barriers***

Geneva	1947
Annecy	1949
Torquay	1950
Geneva	1956
Dillon	1960-1961
Kennedy	1962-1967
Tokyo	1973-1979
Uruguay	1986-1994

Negotiations of the GATT were particularly aimed at tariff reduction. Admittedly, the objective of the Uruguay

Round was to reduce nontariff barriers, and thus, it led to the formation of a completely new qualified international body, the WTO, on 15 April 1994 [5].

#### *II) Review of the WTO*

Numerous essential requisites and proposals clearly demanded the systematic formation of the WTO. The Uruguay Round negotiations led to the establishment of a new mechanism for healthier international trade regulation and dispute settlement. The foundation of the new trade organization, the WTO, was considered in negotiations related to the "Functioning of the GATT System". The WTO Agreement was embodied in the final agreement of the Uruguay Round and signed on 15th April 1994 in Marrakesh. The WTO Agreement became effective on 1st January 1995.

The WTO was founded as a new international organization with full legal capacity. The WTO is a legal body and has all required legal rights and immunities. The establishment of the WTO was an enormous leap to integrate world trade on a vast scale. It is true that the GATT 1947 was fully replaced by the WTO Agreement, and its basic function is to assist with "the implementation, administration, operation" and accomplish the subsequent ambition of the WTO Agreement [6]. There are three principal obligations of the WTO: 1) to offer a forum to negotiate existing and future issues among member states; 2) to ensure the proper functioning of the dispute settlement mechanism; and 3) to oversee the Trade Policy Review Mechanism and when necessary, collaborate with the World Bank and the International Monetary Fund.

Administrative bodies of the WTO:

1. Ministerial Conference;
2. General Council:
  - a) Dispute Settlement Body;
  - b) Trade Policy Review Body.

*WTO Dispute Settlement Mechanism*

- a) *WTO Dispute Settlement System*

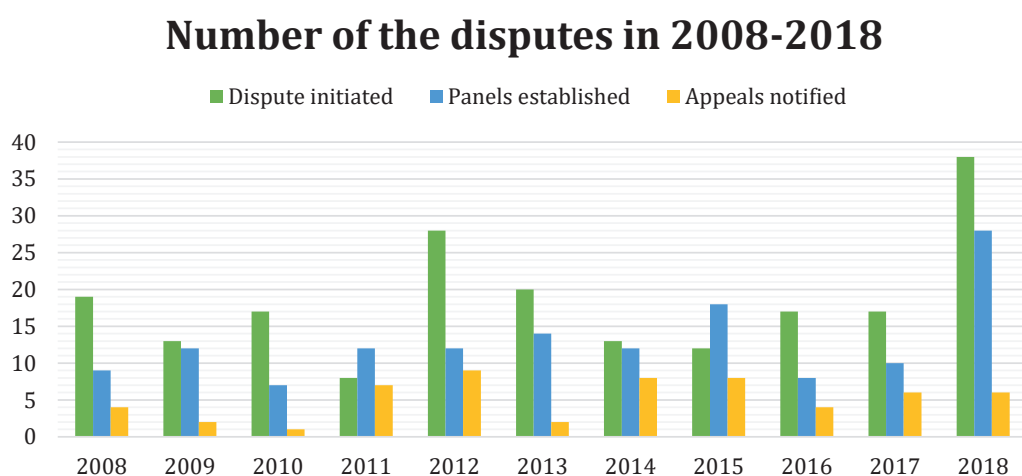


The WTO introduced dispute settlement mechanisms that were substantially different from those of the GATT. The system became less vulnerable to the influence of politics and more predictable due to the convergence of the “positive consensus” concept and rules-based mechanism of litigation [7]. In the Uruguay Round of Multilateral Trade Negotiations, the participants underlined the essence of the initiation of new dispute resolution system and strict compliance of the members’ obligations under the WTO Agreement. Currently, the rational development of the global economy is based on a vigorous and vibrant binding system of resolving disputes under the auspices of the WTO.

The WTO DSB consists of Dispute Settlement Panels (hereinafter DSP) and the Appellate Body (hereinafter AB). In the first stage, the DSB is regarded as the “Consultations”, while the DSP and AB are active in the judicial phase. The DSU outlines the provisions that regulate procedural aspects of the dispute settlement. [8] A trade lawsuit is filed by the DSB when one of the members of the WTO breaches its obligations by imposing new trade policy action and other members complain about it. Disputes filed by the DSB are mainly due to a breach

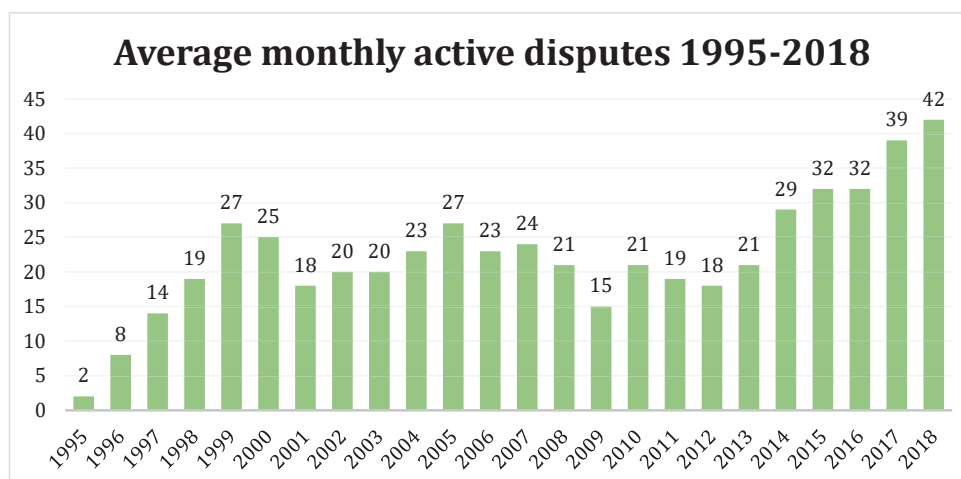
of a deal. The WTO members agree to use multilateral system of dispute resolution rather than a unilateral system [9]. The DSU is designed to reduce the adverse effects of trade discords and alleviate international trade inequalities between richer and poorer states.

The DSU helps international trade systems eliminate uncertainties that might arise from trade-related governmental regulations and laws. Accordingly, the DSU provides a speedy, practical, reliable and rule-oriented approach to settle international trade disputes. [10] The DSB is an independent body that is effective and can impose presumable trade sanctions on non-implementing members. The DSB has the power to implement countermeasures against a member state that declines to enforce a decision. The AB of the DSB has the jurisdiction to formally inspect panel reports and has legal control over the implementation of panel decisions. To better comprehend the practice of the DSB, the following graphs illustrate the number of average active disputes per month (1995-2018) and annual disputes filed in the WTO, that are designated to a panel and the AB from 2008 to 2018:



**Figure 1. Number of disputes, panels initiated and notices of appeal in preliminary proceedings (1 January 2008 – 31 December 2018)\***

\* WTO dispute settlement statistics [11].

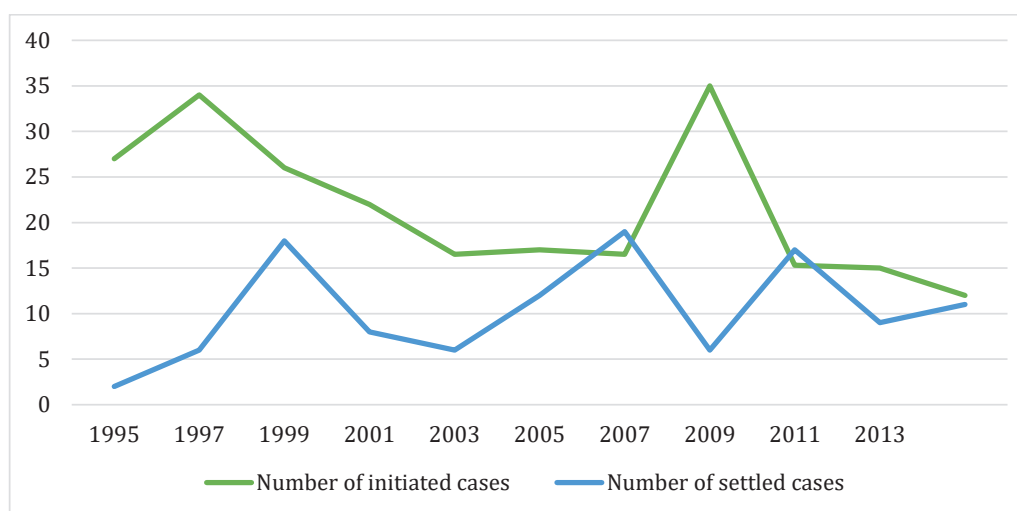


**Figure 2. Annual average active disputes per month (1995-2018)\***

\* WTO dispute settlement statistics [12].

According to Article 3.3 of the DSU, the proper functioning of the DSB contributes to the effective operation of the WTO and ensures balance between member states. Article 3.7 of the DSU defines that the target of the dispute resolution procedure is to achieve mutually satisfactory settlement of the conflict. Article 17.4 of the DSU states that only parties of a dispute have the right

to appeal panel reports [13]. The DSP and AB are tasked with the expeditious resolution of a particular dispute and should concentrate on settling the conflict. The *US-Shirts and Blouses* case overseen by the AB highlighted that resolving disputes “is fundamental feature of panel performance” [14]. The following graph 3 represents the volume of filed and completed cases per year.



**Figure 3. Annual number of filed and completed cases from 1995-2014**

\* WTO dispute settlement statistics [15].

Certainly, it is observed from WTO case law that rulings and proposals based on the DSU not only influence the parties of a dispute but also may impact a considerably broader group of countries. The AB stated

in the *EC-Bananas* case that the “heightened interconnection of the universal economy is the result of member states stronger interest in applying WTO rules” [16]. Furthermore, the DSP stated that the scope of WTO

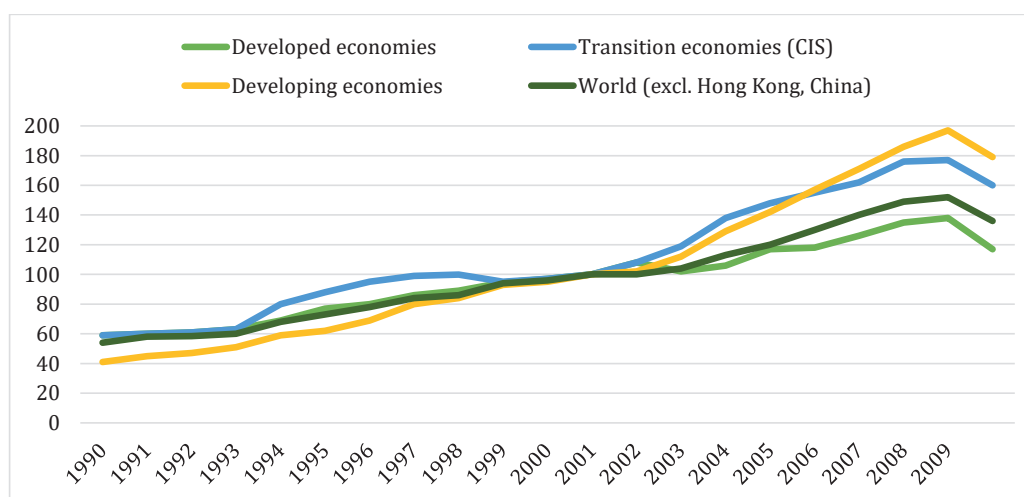
regulations affect not only member countries but also individuals. Consequently, the DSU should be used to settle controversies competently and expeditiously, and thus, WTO members can reinforce their rights and liabilities in covered transactions. To maintain the progressive, foreseeable and liberal development of world trade, the DSB engages in resolving trade conflicts between the WTO member states. To reach this feasible goal, the integrity and impartiality among members should be increased [17].

*b) The status of DLDC in the WTO*

A great number of member states of the WTO are DLDC; these countries are categorized as “developing countries” and “least developed countries”. However, there is no specific interpretation of a “developing country”. Thus, the countries can declare themselves “developed” or “developing” states [18]. At the same time, other countries can protest against the “developing country” status of some members.

Approximately 164 members of the WTO are classified as DLDC [19]. The international market is a crucial and powerful engine, especially for the advancement of DLDC.

The economies of DLDC are highly diversified in terms of size, and these countries are improving and becoming a substantial market in the international economy. Therefore, DLDC have an influential role in the WTO. After the GATT mechanism led to the establishment of the WTO, DLDC experienced positive transformations. After the Uruguay Round, DLDC were granted a considerably stronger degree of guarantees within the structure of the WTO. Since that time, a number of DLDC have experienced intense prosperity and flourished by altering their economies, and this improvement may have been related to the development of the WTO. Constructive changes in their economies ensured their active participation in international trade and strengthened their interests in the WTO. The line graph below demonstrates that from 1990 to 2008, the amount of exports from DLDC increased more rapidly than exports from advanced communities. Interestingly, from 2000 to 2008 the proportion of exports of developing countries increased approximately two-fold, while world exports expanded by merely 50% (Figure 4).

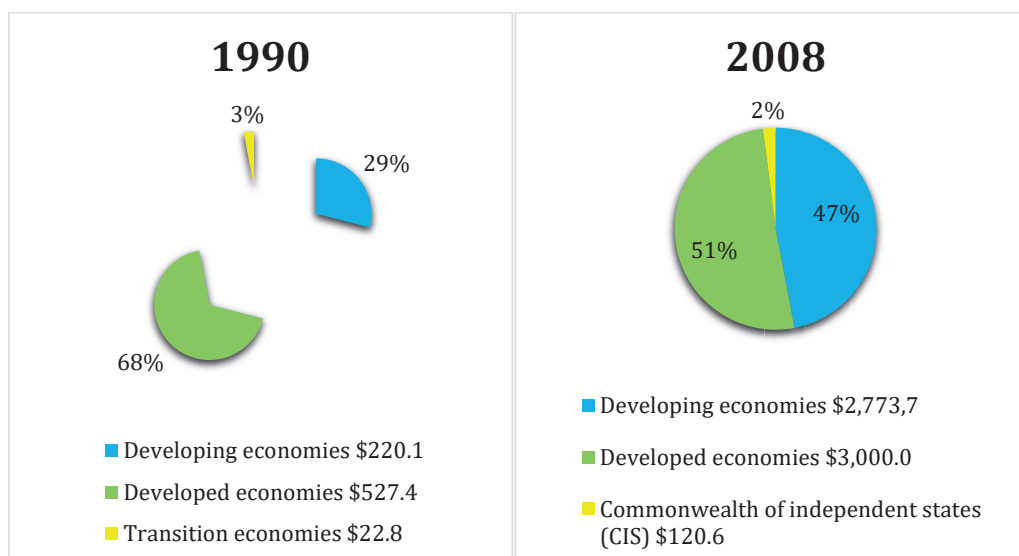


**Figure 4. Total number of exports from 1990-2009\***

\* WTO Secretariat [20].

Trade exchanges between DLDC have climbed considerably, reaching

47% in 2008 compared to that in 1990 (Figure 5).



**Figure 5. Destination of exports from developing countries (1990-2008) (billion dollars and percent)\***

\* WTO Secretariat [21].

Two-thirds of the WTO members are DLDC. Thus, the principal focus of the WTO should be to ensure that they receive an advantage by being part of the global market and multilateral business system. Accordingly, the WTO Agreement stated that “the demand for productive endeavors constructed to assure that developing countries, and specifically least developed states, get a stake in the expansion in universal trade which is compatible with the lacks of their economic progress.” Therefore, according to DSU rules, the WTO engages in promoting the specific demands of DLDC. The DSU incorporates several arrangements that are undertaken to enhance the prospects for DLDC to gain favor of the WTO structure. For that reason, contemporary DSU procedures provide particular provisions for DLDC to benefit from.

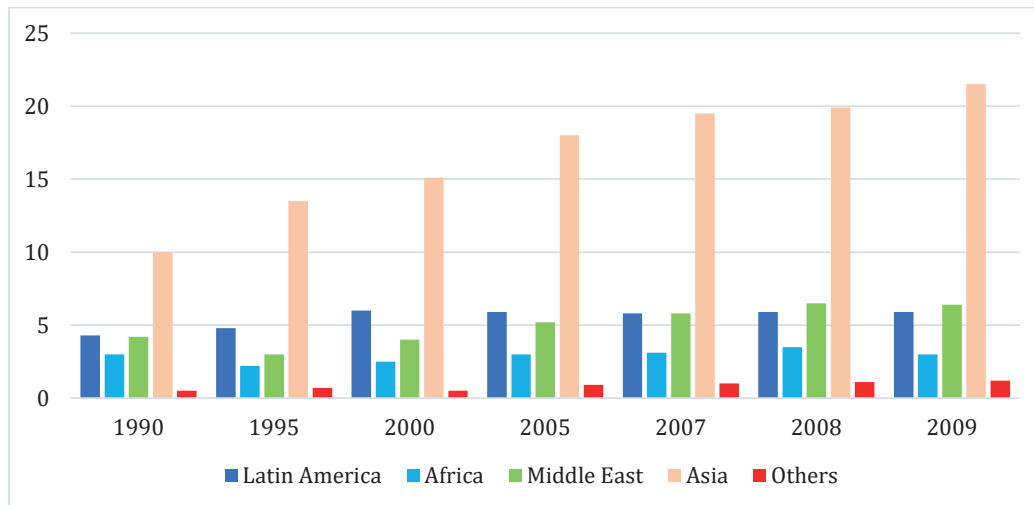
It should be noted that even though there has been a progressive upsurge in international trade, not all DLDC equally contributed to it. Chart 6 below presents data on the DLDC share of global exports. From the graph, it is clear that Asia is the most significantly influential exporting ter-

ritory in the developing world. Asia’s share was approximately 10 percent in 1990 and this surged to 21 percent in 2009. Compared to Asia, Africa had the smallest percentage of global exports during the given period, with approximately 3 percent alone. Between 1990 and 2009, Latin America, the Middle East and Africa have not accomplished remarkable expansion in their proportion of global exports (Figure 6).

### Conclusions

Overall, this research sought to highlight the most critical factors that constrain DLDC involvement in the dispute settlement procedure of the WTO. It should be noted that the DSB originally emerged as a rules-based dispute resolution mechanism, as low-income DLDC participation in the DSB is illustrated by their modest participation in the global market. The analytical evaluation indicates that virtually 85% of the disputes are made by developed states. Interestingly, DLDC participation constituted 15.7% of the DSB and represented merely 4.8% of the WTO members’ trade exchange [23].





**Figure 6. Regional contribution of the developing world to global exports\***

\* WTO Secretariat [22].

As we discussed above, there are several restraints on developing nations' participation in the DSB, and they have to deal with these vulnerabilities in the WTO. The DSB system should be more adjudicative and effective.

Notably, if a country has adequate legitimate reserves, has satisfactory retaliatory capability or is a member of the ACWL, it can protest against trade partners. The pressure of increasing amounts of

established lawsuits might force the WTO to experience unusual difficulties, such as making the DSB accessible to all communities. The sixth Director General Roberto Azevêdo stated that "the structure is in extremely high demand" due to the volume of cases and the intricacy of each conflict arising [24]. A more powerful WTO can ensure the veracity of trade dispute settlement that could portray a key aspect of world trade practice.

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