Hacettepe University Graduate School of Social Sciences

Department of International Relations

A NEO-MERCANTILIST APPROACH TO THE DISPUTE SETTLEMENT BODY OF THE WORLD TRADE ORGANIZATION: DEVELOPING COUNTRIES

Alperen SEYHAN

Master's Thesis

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Prof. Dr., İlkben AKANSEL (Jury President)

Prof. Dr., Itır İMER (Main Adviser)

Prof. Dr., Derya GÜLER AYDIN

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ABSTRACT

SEYHAN, Alperen. *A Neo-Mercantilist Approach to the Dispute Settlement Body of the World Trade Organization: Developing Countries*, Master's Thesis, Ankara, 2025.

This thesis examines the role of the World Trade Organization's (WTO) Dispute Settlement Body (DSB) in shaping the legal and strategic behaviour of developing countries, with a particular focus on the developing countries. Anchored in a neo-mercantilist theoretical framework, the thesis argues that the DSB, while formally impartial and rules-based, operates within a global system where power asymmetries deeply influence legal outcomes, access and enforcement. The research first contextualizes the evolution of the multilateral trading system from GATT to the WTO and explores the institutional and legal dimensions of the DSB. It then analyses the theoretical tensions between liberal institutionalism, realism, structuralism, and neo-mercantilism, ultimately favouring the latter for its explanatory power regarding state behaviour and systemic inequality.

The thesis scrutinizes how developing countries engage with the DSB, highlighting both the benefits—such as Special and Differential Treatment (S&DT) provisions and the support of the Advisory Centre on WTO Law (ACWL)—and persistent challenges, including limited legal capacity, high litigation costs, and difficulties in enforcement. China's accession to the WTO and its evolving role from rule taker to rule maker are analysed through key dispute cases. The thesis emphasises China's strategic use of its self-declared developing country status to maximize legal and economic advantage while resisting pressure to relinquish these privileges.

The analysis culminates in an assessment of the Appellate Body crisis, which is framed as a geopolitical struggle between the U.S. and China, reflecting a deeper clash over the future of the WTO's rules and power distribution. The findings suggest that although the DSB offers formal equality, it ultimately reproduces material inequality. The thesis concludes that reforming the DSB without addressing power asymmetries risks reinforcing the status quo, and that neo-mercantilist behaviour by dominant and emerging powers alike continues to challenge the integrity of the multilateral trading system.

Keywords

World Trade Organization, Dispute Settlement Body, Appellate Body, Special and Differential Treatment, Advisory Centre on WTO Law

ÖZET

SEYHAN Alperen. *Dünya Ticaret Örgütü Anlaşmazlıkların Halli Organına Neo-Merkantilist Bir Yaklaşım: Gelişmekte Olan Ülkeler*, Yüksek Lisans Tezi, Ankara, 2025.

Bu tez, Dünya Ticaret Örgütü'nün (DTÖ) Uyuşmazlıkların Halli Organının (DSB) gelişmekte olan ülkelerin hukuki ve stratejik davranışlarını nasıl şekillendirdiğini incelemekte, özel olarak gelişmekte olan ülkelere odaklanmaktadır. Neo-merkantilist bir kuramsal çerçeveye dayanan çalışmada, DSB'nin biçimsel olarak tarafsız ve kural temelli bir yapı arz etmesine rağmen, küresel güç asimetrilerinin hukuki sonuçları, erişim imkanlarını ve uygulama süreçlerini derinden etkilediği savunulmaktadır. Tezin ilk bölümünde çok taraflı ticaret sisteminin GATT'tan DTÖ'ye evrimi ile DSB'nin kurumsal ve hukuki yapısı incelenmektedir. Ardından liberal kurumsalcılık, realizm, yapısalcılık ve neo-merkantilizm arasındaki kuramsal gerilimler analiz edilmekte ve devlet davranışları ile sistemik eşitsizlikleri açıklama açısından tezde neo-merkantilist yaklaşım tercih edilmektedir.

Çalışma, gelişmekte olan ülkelerin DSB ile etkileşimini inceleyerek; Özel ve Farklı Muamele (S&DT) hükümleri ve DTÖ Hukuku Danışma Merkezi (ACWL) gibi mekanizmaların sağladığı avantajlara karşın, sınırlı hukuki kapasite, yüksek dava maliyetleri ve kararların uygulanmasında yaşanan zorluklar gibi yapısal sorunların altını çizmektedir. Çin'in DTÖ'ye katılım süreci ve DSB'deki rolünün "kural izleyiciden" "kural koyucuya" evrilmesi, temel davalar üzerinden incelenmekte ve Çin'in "gelişmekte olan ülke" statüsünü stratejik biçimde kullanarak nasıl hukuki ve ekonomik avantaj sağladığı ortaya konmaktadır.

Analizin sonunda, 2019'dan bu yana süregelen Temyiz Organı krizine odaklanılmakta ve bu kriz, ABD ile Çin arasındaki daha geniş jeopolitik mücadelenin bir parçası olarak değerlendirilmektedir. Tezin bulguları, DSB'nin biçimsel eşitlik sunduğu halde fiili eşitsizliği yeniden ürettiğini göstermektedir. Tezin temel argümanı, DSB'nin reforme edilmesi gerektiği; aksi takdirde mevcut güç dengesizliklerinin kalıcılaşacağıdır. Nihayetinde hem yerleşik hem de yükselen güçlerin neo-merkantilist davranışları, çok taraflı ticaret sisteminin bütünlüğünü tehdit etmeye devam etmektedir.

Anahtar Sözcükler

Dünya Ticaret Örgütü, Anlaşmazlıkların Halli Organı, Temyiz Organı, Özel ve Farklı Muamele, DTÖ Hukuku Danışma Merkezi

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LIST OF ABBREVIATIONS

AB	Appellate Body
ACWL	Advisory Centre on WTO Law
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EU	European Union
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HDI	Human Development Index
IMF	International Monetary Fund
LDC	Least Developed Country
MFN	Most Favoured Nation
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
OECD	Organisation for Economic Co-operation and Development
SPS	Agreement on the Application of Sanitary and Phytosanitary Measure
S&DT	Special and Differential Treatment
TRIMs	Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TFA	Trade Facilitation Agreement
USTR	United States Trade Representative
WB	World Bank

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INTRODUCTION

Since its establishment in 1995, the World Trade Organization (WTO) has played an important role in the regulation of global trade relations. This has been achieved through the establishment of a comprehensive legal framework that emphasises non-discrimination, transparency and predictability (Petersmann, 1997, p.35). The Dispute Settlement Body occupies a central position within the WTO's institutional architecture (Palmeter, Mavroidis, & Meagher, 2022, pp.22-23). The DSB functions as a rule-based mechanism for the resolution of trade disputes between member countries. It is regarded as one of the most effective mechanisms of international law (Pauwelyn, 2001). Its purpose is to enable weaker states to challenge stronger states on equal legal grounds (WTO Secretariat, 2017). However, the practical operation of the system reveals asymmetries in access, capacity and implementation, which disadvantages developing countries in particular (Nottage, 2009; Pauwelyn, 2001, pp. 535–578; Steinberg, 2002, pp.339-374). The WTO's system of self-declared development status has further complicated the issue by allowing large economies, such as China, to claim developing country privileges while wielding significant influence within the global trading system (Linklaters, 2020). Since acceding to the WTO in 2001, China has utilised the DSB both as a complainant and as a respondent, thereby transitioning from a role as a rule-taker to that of an assertive rule-maker (Zhou, 2023, p.252). Concurrently, the relationship between China and the leading developed countries, most notably the United States, has undergone a marked escalation of tensions, culminating in the paralysis of the Appellate Body (AB) since 2019 (Hopewell, 2021, p.1033). These dynamics have given rise to broader debates about justice, reform and power politics in the multilateral trading system. The present thesis examines the functioning of the WTO's Dispute Settlement Mechanism (DSM)[1] through the lens of neo-mercantilist theory, focusing on how power asymmetries shape legal outcomes and institutional behaviour. The experiences of

[1] Throughout this thesis, the term "Dispute Settlement Mechanism" (DSM), more commonly referred to as the "Dispute Settlement System" in the literature, refers to the entire system of dispute resolution within the structure of the WTO, encompassing its rules, procedures and institutional components. In contrast, "Dispute Settlement Body" (DSB) specifically denotes the formal WTO organ responsible for administering dispute settlement proceedings, including the establishment of panels and the adoption of panel and Appellate Body reports.

developing countries are given particular emphasis, with China serving as a critical case study to analyse strategic engagement, contested status and the implications of this contested status for institutional legitimacy and reform.

This thesis makes a critical contribution to the existing literature on global trade governance by examining the functioning of the WTO's dispute settlement mechanism through a neo-mercantilist lens and by highlighting the role of power asymmetries in shaping institutional outcomes. It is frequently observed that the DSB is praised for its formal legal equivalence and effectiveness. However, a persistent gap has been noted between normative design and practical implementation, a discrepancy that is especially pronounced in the context of developing countries. The findings of this thesis underscore how structural disadvantages, including constrained legal capacity, implementation challenges, and geopolitical pressures, impede the ability of less powerful states to fully leverage the system. Furthermore, the case of China offers a compelling illustration of how a strategically positioned developing country can manipulate and, at times, exploit the rules of the multilateral system to advance its national interests. The research contributes to the broader discourse on WTO reform by addressing current challenges such as the Appellate Body crisis, the politicisation of development status and the contestation of legal authority within the multilateral trading regime. The present thesis seeks to provide meaningful insights for scholars, policymakers and practitioners interested in the future of global economic governance and the principles of fairness and equity in international legal institutions. In order to achieve this objective, it employs a dual approach, integrating theoretical inquiry with empirical analysis.

This thesis seeks to answer the following basic research question: How has the World Trade Organization's dispute settlement mechanism been used by developing countries, including the special case of China, and to what extent has it contributed to or constrained their strategic interests within the global trading system? To address this overarching question, the thesis explores several interrelated sub-questions: How do neo-mercantilist assumptions help explain the evolving behaviour of major trading states within the DSM framework? In what ways does the WTO's DSM reflect power asymmetries between developed and developing countries? How has China, a self-declared developing country, strategically engaged with the DSM since its accession in 2001? What role has the Appellate Body crisis played in reshaping the conflict dynamics between China and the

United States? These questions guide a theoretical and empirical investigation into the functioning and future of the WTO's dispute settlement mechanism, aiming to reveal how legal structures mediate and reproduce global economic power relations.

By answering these research questions, this thesis aims to analyze how the World Trade Organization's Dispute Settlement Mechanism functions in practice for developing countries and to assess the extent to which it facilitates or constrains their strategic interests, with a particular focus on the case of China. To achieve this, the thesis will examine the structural and institutional design of the WTO's DSM, with particular attention to how it seeks to ensure legal equality among members regardless of economic size. It will assess developing countries' participation patterns, identifying barriers to access, limitations in legal capacity, and implementation challenges. It will explore China's strategic engagement with the DSM since its accession to the WTO in 2001, including its roles as complainant, respondent, and third party. The consequences of the Appellate Body crisis will also be analysed, especially in the context of US-China trade rivalry and its implications for dispute settlement legitimacy. These dynamics will be interpreted through a neo-mercantilist theoretical framework, emphasizing how power politics and state interests continue to shape international legal institutions. To this end, the thesis aims to contribute to academic debates on global economic governance, international law and WTO reform by providing a nuanced and power-sensitive account of the dispute settlement process.

The present thesis employs a qualitative, case-based methodology grounded in International Political Economy (IPE) with particular emphasis on neo-mercantilist theory. The research is designed as a theory-informed empirical analysis that examines how power asymmetries and strategic state behaviour manifest in the World Trade Organization's Dispute Settlement Mechanism. Methodologically, the study utilises a range of texts and documents as primary sources including academic literature, WTO legal texts (e.g. the Dispute Settlement Understanding (DSU), Appellate Body reports), dispute case summaries and official correspondence. The case of China was selected for its dual status as a developing country and a major economic power, thereby facilitating an in-depth examination of how the DSM functions within a context of contested legal and political authority. The scope of the study is twofold: institutional and temporal. Institutionally, the scope is confined to the functioning of the WTO's Dispute Settlement

Mechanism with attention to mechanisms such as the Appellate Body and the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). Thematically, the research focuses on issues such as the state of development, legal asymmetries, dispute outcomes, implementation limitations and institutional reform debates. The temporal focus of the study is the post-1995 period, commencing with China's accession to the WTO in 2001 and culminating in the present day. The thesis encompasses recent developments, including the Appellate Body crisis and the ongoing WTO reform negotiations. While the specific case of China is analysed separately, the thesis has broader implications for developing countries by identifying structural constraints that apply in all cases. The findings are, therefore, intended to offer both case-specific insight and theoretical generalisation regarding the functioning of international legal institutions in a stratified global economy.

The structure of the thesis is organised into seven chapters, each designed to progressively build the analytical framework and empirical foundation needed to address the central research question. The introduction provides context, explains the significance of this thesis, presents the research question, defines the objectives, outlines the methodology and describes the scope of the study. This chapter provides a concise overview of the rationale for prioritizing the development agenda, focusing on China’s unique circumstances within the broader context of the WTO’s Dispute Settlement Mechanism. The second chapter provides an overview of the evolution from the General Agreement on Tariffs and Trade (GATT) to the establishment of the WTO. This section traces the evolution of the Dispute Settlement Mechanism and contextualises current challenges including the Appellate Body crisis. The third chapter introduces the theoretical lens of neo-mercantilism and compares it with liberal institutionalism, realism and structuralism. This chapter explains why the neo-mercantilist approach is the most suitable framework for analysing strategic state behaviour within the WTO legal system. The fourth chapter examines the contested nature of the term "developing country" within international institutions, particularly the WTO. The chapter examines the various classification criteria and highlights the implications of self-identification for trade privileges and participation in disputes. The fifth chapter, focusing on the participation of developing countries in the DSM, analyses structural barriers, legal capacity issues and empirical dispute outcomes. The chapter also examines Special and Differential Treatment and the

role of the Advisory Centre on WTO Law. The sixth chapter presents a case study of China's specific circumstances and examines its dispute settlement behaviour since joining the WTO. The chapter analyses key disputes, China's use of developing country privileges, the discourse on its status and its role in the Appellate Body crisis and the WTO reform debate. The final chapter synthesises the main findings, reflects on the theoretical and empirical implications and offers recommendations for WTO reform and future research.

CHAPTER 1
HISTORICAL BACKGROUND

The establishment of the WTO Dispute Settlement Body signifies a substantial progression from earlier trade governance mechanisms that were part of the GATT framework. While the GATT established a forum for addressing trade-related disputes, its procedures were frequently criticised for their perceived lack of enforceability and for being dominated by negotiations based on power dynamics. The World Trade Organization, endeavored to establish a more rules-based, legally binding dispute settlement system through the Dispute Settlement Agreement. This transition proved to be of particular significance for developing countries, as it presented a structured framework within which smaller and less influential states could advocate for their trade interests against larger economies within the confines of established legal principles. However, as will be analysed in the following sections, the implementation of these rules has revealed persistent asymmetries based on structural, economic and institutional factors.

1.1. FROM GATT TO WTO

In order to understand the origins and evolution of international financial institutions in their contemporary form, most of which emerged after World War II, it is crucial to mention the characteristics of the pre-institutional era and the processes that led to this formation. During World War II, international trade was severely disrupted and nearly came to a halt. The stagnation and deterioration of international trade during the war stemmed from multiple factors: The imposition of trade sanctions by warring parties through blockades and embargoes; significant risks to maritime routes, which hindered commercial shipping—particularly relevant given that over 80% of world trade today relies on maritime transport[2]; the prioritisation of domestic production to reduce import dependency under wartime economies; and restrictions on the free market flow of critical raw materials such as oil, coal, rubber and iron due to their strategic military value (UNCTAD, 2024). Additionally, the United States' neutrality policy at the beginning of

[2] Please see United Nations Conference on Trade and Development. (2024). *Review of maritime transport 2024*. UNCTAD. https://unctad.org/publication/review-maritime-transport-2024

the war further constrained trade dynamics (Hoekman & Kostecki, 2009, pp.23-25). Following this stagnation, states sought to establish international institutions to restore and promote global economic cooperation. The first significant step towards this goal was the Anglo-American-led Bretton Woods Conference in 1944, which aimed to bring global economic stability and resulted in the establishment of the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD) (currently, the World Bank Group; WBG) and the idea of creating an international trade organisation (Bordo & Eichengreen, 1993, pp.357-404). As a result of this aim, 56 countries laid the foundations of the International Trade Organization (ITO) by preparing the Havana Charter at the United Nations Conference on Trade and Employment to liberalise and regulate global trade in November 1947 (Toye, 2003).

However, in the period between the adoption of the Havana Charter and the institutional formation of the ITO, 23 countries seeking to reduce tariffs and trade barriers came together in Geneva in October 1947 and signed the General Agreement on Tariffs and Trade (Jackson, 1997, pp. 36-41). The Havana Charter, which was finalised in March 1948 and expanded the provisions of the GATT to cover employment, development, competition policies, investment, services and commodities as well as trade, had to be ratified by the signatory states to enter into force. However, the US government under President Truman did not submit it to Congress because domestic opposition considered its scope too broad and contrary to national sovereignty. In addition, the United Kingdom expressed reservations particularly regarding the Charter's provisions on monetary controls and its potential interference with the Sterling Area, as well as the perceived overreach of the ITO into areas traditionally managed by national governments. As a result, the ITO was never formally established. (Toye, 2003, pp.304-305). The GATT filled this gap with the Protocol of Provisional Application on 1 January 1948 and functioned as a *de facto* trade regime for 47 years without a formal institutional foundation (Jackson, 1997, pp.41-42).

The GATT has made important contributions to the international trade regime through principles such as reciprocity and non-discrimination, most notably embodied in the 'Most-Favoured-Nation' (MFN) and 'National Treatment' clauses (GATT, 1947, Art. I & III). As a result, practices such as protectionism, high tariffs and import restrictions that were previously dominant among states have been increasingly replaced by freer

trade practices, including the reduction of tariffs and the elimination of trade barriers. This transformation was largely driven by the application of MFN and National Treatment principles. The MFN principle, codified in Article I of the Agreement, prohibited discriminatory trade practices among contracting parties (Jackson, 1997, pp.157-160). Under this rule, all members were required to treat each trading partner equally; any concession or trade advantage—such as tariff reductions or market access benefits—granted to one member had to be automatically extended to all other members, unless explicitly exempted. This mechanism was designed to ensure fairness, predictability and stability in global trade by eliminating preferential treatment. However, there were notable exceptions to MFN, such as in Regional Trade Agreements (RTAs) where countries were permitted to form free trade areas or customs unions and grant preferential treatment exclusively to their members or in Multi-Fibre Arrangement (MFA) and Agreement on Textiles and Clothing (ATC) which allowed developed countries to impose import quotas on textile and clothing products from developing countries, thereby deviating from MFN obligations until the full integration of the sector into WTO rules in 2005 (Hoekman & Kostekci, 2009, pp.226-231). Two additional exceptions relevant to this thesis include: first, when a country engages in unfair trade practices, affected states may impose duties or other trade remedies without violating the MFN principle; and second, under the Generalized System of Preferences (GSP), developed countries are allowed to offer special trade advantages to developing countries without extending them to others (B. Hoekman et al., 2004, pp.485-486; Jackson, 1997, pp.160-173). Complementing the MFN obligation, the National Treatment principle, outlined in Article III of the Agreement, requires that once foreign goods have entered a country's domestic market, they must be treated no less favourably than domestically produced 'like' products in terms of internal taxes, regulations and other requirements (GATT, 1947, Art. III). This principle was designed to prevent the use of domestic regulations as disguised protectionist tools. For example, a country cannot impose a domestic tax on imported wine that is higher than that imposed on locally produced wine of similar quality and characteristics. In this way, National Treatment works alongside MFN to create a level playing field not only at the border but also within domestic markets. In addition to these core principles, GATT contributed to the international trade regime through mechanisms aimed at promoting reciprocity, the elimination of non-tariff

barriers (NTBs)[3] and increased transparency in trade policies (Hoekman & Kostecki, 2009, pp.25-36). It also incorporated safety valves, such as safeguard measures and balance-of-payments exceptions, allowing temporary protection when needed. Furthermore, GATT laid the institutional foundation for enforcement and dispute settlement, establishing a rules-based system that was later strengthened under the WTO (WTO, n.d.-a)—a development that will be examined in further detail in the following paragraphs.

Unlike formal international organisations, GATT did not have a permanent institutional structure but operated through a temporary secretariat that organised periodic meetings. Moreover, decision-making was based on consensus rather than voting (Hoekman & Kostecki, 2009, pp.56-57), reinforcing its intergovernmental contract rather than an international organisation. Initially, GATT had 23 founding contracting parties, which collectively accounted for at least one-fifth of global trade at the time; by 1994, this number had expanded to 128 members, representing approximately 90 percent of world trade (WTO, n.d.-b). While it originally focused on industrial tariffs, subsequent amendments broadened its scope to include a wider range of trade-related issues. One of the most significant amendments was Part IV (Trade and Development), introduced in 1965 and the 'Enabling Clause,' adopted in 1979, addressed the special needs of developing countries and allowed developed countries to offer preferential market access to developing nations, thereby creating more exceptions to the strict MFN principle (Hoekman et al., 2004, pp.482-484; Hoekman & Kostekci, 2009, pp.39-41).

These institutional and substantive expansions under GATT were primarily driven by a series of multilateral trade negotiations, known as the GATT Rounds, held between 1947 and 1994. The first of these, the Geneva Round (1947), resulted in the signing of GATT itself, as 23 countries exchanged approximately 45,000 tariff concessions affecting around $10 billion in trade—establishing the foundational tariff schedules of the postwar order. In the Annecy Round (1949) and the Torquay Round (1950–51), further tariff

[3] Non-tariff barriers (NTBs) refer to trade restrictions that do not involve tariffs but instead rely on mechanisms such as quotas, import licensing, sanitary and phytosanitary regulations, technical standards and domestic subsidies. NTBs gained prominence particularly after the 1970s as part of a broader shift toward "new protectionism", where states, facing increased global competition and domestic economic pressures, resorted to less overt but still restrictive trade policies to shield sensitive sectors (Baldwin, 1970, p.5-13; Bhagwati, 1988, p.43-59). Unlike traditional tariffs, NTBs can often function as disguised barriers to trade, making them harder to identify and regulate under multilateral rules.

reductions were achieved and new members joined, though limitations of item-by-item negotiations began to emerge. The Second Geneva Round (1956) continued the liberalisation process and marked the accession of Japan, while the Dillon Round (1960–61) notably introduced the European Economic Community into negotiations, requiring tariff harmonisation within the new customs union. A significant breakthrough occurred in the Kennedy Round (1964–67), which introduced linear tariff cuts, resulted in $40 billion in trade concessions and produced GATT's first anti-dumping code—signalling a shift toward rule-making beyond tariffs. The Tokyo Round (1973–79) expanded the agenda to include non-tariff barriers, generating plurilateral agreements on issues such as subsidies, technical standards and government procurement. While it achieved over $300 billion in tariff cuts and made procedural improvements to dispute settlement, its fragmented legal architecture and the limits of the consensus-based approach underscored the need for systemic reform (WTO, n.d.-b; Croome, 1995).

By the early 1990s, it had become increasingly clear that the provisional GATT framework, lacking a permanent institutional structure and confined largely to trade in goods, was insufficient to manage the complexities of a rapidly globalizing economy. There was growing recognition of the need to address trade-related issues beyond goods, such as services, intellectual property and agriculture and to strengthen enforcement mechanisms to ensure compliance. These institutional and substantive gaps prompted the launch of the Uruguay Round (1986–94), the most ambitious and comprehensive GATT negotiation, involving 123 countries (WTO, n.d.-c). Over nearly eight years, members agreed to wide-ranging reforms: the inclusion of services through the General Agreement on Trade in Services (GATS), the integration of intellectual property rights (TRIPS), new rules on agriculture and textiles and a comprehensive overhaul of the dispute settlement mechanism with binding rulings and appellate review. The round culminated in the signing of the Marrakesh Agreement in April 1994, which established the WTO (Hoekman & Kostecki, 2009, pp. 39–41; Croome, 1995). While the original GATT 1947 text was retained within the WTO framework as GATT 1994, the WTO created a permanent institutional structure with legal personality, broader substantive scope and enhanced enforcement capacity—marking a historic shift from a provisional trade arrangement to a fully institutionalised, rules-based multilateral trading system. Following the establishment of the WTO, the need to make the global trading system

more inclusive and responsive to development concerns led to the launch of the Doha Development Round in 2001. Initiated in the wake of the 9/11 attacks and amid growing concerns about the marginalisation of developing countries in global trade, the Doha Round was explicitly framed as a development-focused negotiation. It aimed to address the imbalances inherited from the Uruguay Round, especially in agriculture, market access and special and differential treatment for developing countries (WTO, 2001). However, despite early ambitions, the negotiations faced persistent deadlocks over issues such as agricultural subsidies, non-agricultural market access (NAMA) and services liberalisation. The inability of developed and developing members to reconcile divergent interests led to the effective stalling of the Round in the following years, exposing both the limitations of consensus-based decision-making and the increasingly multipolar nature of the trading system (Palmeter, Mavroidis, & Meagher, 2022, pp.26-30).

1.1.1. WTO in the 21st Century

The previous section examined the foundational developments marking the transition from the GATT to the WTO in the 20th century. This section focuses on the major developments in the 21st century, particularly the efforts to revise trade rules and respond to persistent challenges faced by the WTO since its inception. These developments have increasingly tested the organisation's effectiveness and relevance in the evolving global trade landscape (Oatley, 2019, pp.80-81). A major initiative in this regard was the Doha Development Agenda (DDA), launched during the WTO Ministerial Conference held in Doha, Qatar, in November 2001. The DDA aimed to promote deeper trade liberalisation while addressing the development-related concerns of member states, especially those of developing countries. The agenda covered several contentious issues, including agricultural subsidies, market access for industrial goods and reform of existing WTO regulations. However, contentious issues such as agricultural subsidies, industrial tariffs and the reform of WTO rules exposed entrenched divides between developed and developing countries. These disagreements persisted despite successive Ministerial Conferences, such as the 2003 meeting in Cancún, Mexico, where only partial agreements were reached. As a result, the Doha Round effectively stalled, undermining confidence in the WTO's ability to deliver comprehensive trade reforms (Oatley, 2019, pp.56-59). By the 2010s, the global trade environment had further evolved, shaped by the rise of emerging economies and the growing importance of new trade domains such as digital

commerce. Nonetheless, the WTO failed to adapt its institutional and regulatory framework accordingly, further calling into question its capacity to govern contemporary trade dynamics (Wolfe, 2013).

In light of the persistent difficulties in achieving consensus within the WTO framework, many countries have increasingly turned to bilateral and regional trade agreements as alternative pathways to trade liberalisation (Hopewell, 2016, p.176). Particularly throughout the 2000s, there was a significant rise in the number of bilateral free trade agreements and the establishment of regional economic blocs (Hoekman, 2014, p.243; Oatley, 2019, pp.69-77). As of 2025, 375 regional trade agreements are in force and recognised by the WTO (WTO, 2025). While agreements such as the EU enlargements, NAFTA, ASEAN FTAs, Mercosur and the Trans-Pacific Partnership (TPP/CPTPP) have advanced trade among their members by reducing trade barriers, they have also sparked concerns about undermining the WTO's multilateral principles—particularly the norm of non-discrimination (Oatley, 2019, pp.69-77). The rise of regionalism, driven in part by the slow progress of multilateral negotiations, has thus introduced new challenges for the coherence and inclusivity of the global trading system. When trade rules are increasingly shaped within exclusive, club-like settings, the broader objective of a unified and rules-based international trade regime risks being diluted. To mitigate such fragmentation, the WTO relies on mechanisms such as the "Enabling Clause," which allows for certain preferential trade arrangements and maintains ongoing surveillance of regional agreements to ensure that they complement rather than replace the multilateral system (Hoekman et al., 2004, pp.482-484; Oatley, 2019, pp.69-77).

After nearly a decade of deadlock in the Doha Round, a significant development occurred at the WTO's 9th Ministerial Conference in Bali in 2013 with the adoption of the Trade Facilitation Agreement (TFA). Signed as the centrepiece of the so-called "Bali Package", a limited set of agreements that also included provisions on agriculture and development, the TFA marked the first multilateral trade accord concluded under the WTO since its establishment in 1995 (WTO, n.d.-d). Though limited in scope, the TFA demonstrated that consensus on targeted issues remains possible (Eliason, 2015). Its primary objective was to expedite the cross-border movement of goods by simplifying customs procedures and reducing bureaucratic obstacles (WTO, 2017b). Following the attainment of the required ratification threshold, the agreement entered into force in February 2017. It is

expected to lower global trade costs over the medium to long term and contribute to enhancing the efficiency of international trade logistics (WTO, n.d.-d).

As previously discussed, several cases have illustrated the WTO's limited capacity to address global challenges effectively. Further reform potential was demonstrated in January 2017 through the first-ever amendment to a WTO agreement provision was adopted—specifically, to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (WTO, n.d.-e)[4]. This amendment represented a critical step toward aligning intellectual property protections with global public health priorities. By establishing a legal mechanism that enables the production and export of patented medicines under compulsory licenses to countries facing supply shortages, the WTO demonstrated its potential to adapt existing rules in response to pressing international concerns, albeit gradually. Despite its significance, the practical utilisation of this mechanism has remained limited (Abbas & Riaz, 2017).

One of the most significant contemporary crises facing the WTO concerns its dispute settlement mechanism. This crisis was initially triggered in 2017, when the United States, under the Trump administration, began blocking new appointments to the WTO Appellate Body. The U.S. accused the Body of exceeding its mandate and engaging in judicial overreach. As a result, the number of Appellate Body members, normally seven, gradually declined as terms expired and by 10 December 2019, only one member remained (Bachand, 2020, p.859; Hopewell, 2021, pp.1025-1028; Howse, 2020, pp.371-389). With fewer than the required three members to adjudicate appeals, the Appellate Body effectively ceased functioning, allowing parties to appeal panel reports "into the void." (Hopewell, 2021, p.1033). This procedural gap has significantly undermined the credibility of the WTO's rule enforcement, one of the organisation's core functions and contributed to what many observers view as an existential crisis for the mechanism. The collapse of the two-tier dispute system, previously a cornerstone for ensuring compliance with WTO rules, has raised serious concerns about the credibility and efficacy of the multilateral trading regime (Hopewell, 2021, pp.1033-1036). In response, a group of WTO members led by the European Union launched the Multi-Party Interim Appeal

[4] Please see https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art31_bis_oth.pdf for the full text.

Arbitration Arrangement. Adopted in April 2020 under Article 25 of the Dispute Settlement Understanding, this provisional agreement includes 25 participants, such as the EU, China, Canada, Brazil and Australia (WTO Plurilaterals, 2025). The MPIA replicates key procedural elements of the Appellate Body and provides an alternative appellate mechanism for disputes between participating members. Though it is explicitly intended as a temporary measure and not a permanent substitute, the MPIA ensures continuity in appellate adjudication for those who opt in (Hopewell, 2021, pp.1035-1043). Despite the absence of major economies such as the United States and India, the MPIA reflects the determination of certain members to uphold the principles and integrity of the WTO's dispute system while broader institutional reforms are being negotiated.

Finally, it is essential to underscore the growing consensus on the need for WTO reform—a point that has been repeatedly emphasised in recent Ministerial Conferences. At the 12th Ministerial Conference[5] in June 2022 and the 13th[6] in March 2024, ministers acknowledged the systemic challenges confronting the WTO and reaffirmed their intent to restore a fully functional dispute system by the end of 2024. Additionally, they pledged to enhance the effectiveness of special and differential treatment provisions for developing and least-developed countries (LDCs) (Grieger, 2022). At the same time, ministers recognised that addressing contemporary trade challenges, such as digital trade, climate change and state-industrial policies, requires substantial updates to the WTO rulebook. This includes integrating large emerging economies under equitable terms, managing the competing demands of diverse membership and resolving the ongoing crisis surrounding the Appellate Body. Ongoing discussions on WTO reform cover a wide array of issues, including improved transparency, enhanced notification requirements and revisions to decision-making procedures. These debates aim to ensure that the WTO remains fit for purpose in the 21st-century trade environment. The coming years will be critical in determining the Organisation's ability to maintain its key role in global trade,

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[5] Please see World Trade Organization. (2022, June 17). *MC12 outcome document (WT/MIN(22)/24; WT/L/1135)*. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True for the full text.

[6] Please see World Trade Organization. (2024, March 2). *Abu Dhabi Ministerial Declaration [WTO Doc. WT/MIN(24)/DEC]*. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN24/DEC.pdf&Open=True for the full text.

as well as its capacity to negotiate and implement reforms amid shifting geopolitical and economic dynamics (Dombrovskis, 2024).

1.2. DISPUTE SETTLEMENT UNDER GATT

In order to fully appreciate the institutional transformation brought by the WTO, it is essential to first examine the limitations of the dispute settlement mechanism under GATT, which ultimately laid the groundwork for the more structured and legally robust system adopted under the WTO. Under GATT 1947, however, dispute settlement mechanisms lacked a permanent institutional framework and evolved slowly from informal diplomatic consultations into a rudimentary panel process (Petersmann, 1997, pp.90-91). The legal basis for resolving disputes was found in Articles XXII and XXIII of the original agreement. When a government believed that one of its benefits under the agreement had been "nullified or impaired" by the actions of another party, it could initiate consultations and request a joint review by the contracting parties. This system was largely collaborative rather than judicial in nature and relied heavily on diplomatic engagement (Jackson et al., 1995, pp.338-346). In practice, this meant, especially in the early years, that disputes were handled either by the GATT Council Chair or by *ad hoc* working groups composed of member state representatives tasked with investigating the complaint and proposing non-binding solutions (Hudec, 1993, pp.29-31).

The GATT's search for a more formal dispute settlement practice led, in the 1950s and 1960s, to the development of a system, in which three neutral and expert panelists examined disputes, made findings and recommended corrective actions to the GATT Council (Palmeter et al., 2004, pp.6-20). These panels allowed written submissions, brought the parties together and issued both interim and final reports. This structure established a rule-oriented, though still informal, process and many of the panels' decisions helped shape subsequent WTO jurisprudence. However, the system remained weak because it was entirely subject to member control: Both the establishment of a panel and the adoption of its final report required unanimous approval from all contracting parties. In practice, the respondent could veto the process at either stage, preventing resolution (Jackson et al., 1995, pp.338-346). As a result, the effectiveness of the GATT dispute settlement mechanism ultimately depended on the losing country's willingness to accept and comply with the ruling.

Steps towards solving these inherent problems were not absent. In 1966, the GATT contracting parties adopted a decision to introduce faster and more flexible dispute procedures to address the specific challenges faced by developing countries, recognizing their unique difficulties—particularly their lack of institutional capacity to participate effectively (Hudec, 1993, pp.40-43). Later, during the Tokyo Round in 1979, the Understanding on Dispute Settlement introduced more detailed procedures and clearer time frames for each stage of the process, aiming to improve predictability and consistency (Petersmann, 1997, pp.84-87). Despite these efforts, the ability of losing parties to veto the adoption of panel reports and the system's continued reliance on diplomacy rather than legal enforceability led to a widespread recognition in the 1980s that a stronger mechanism was necessary.

As part of the Uruguay Round's 1988 Mid-Term Review in Montreal, members agreed to tighten procedures by, for example, setting firm timelines for panel formation and report issuance. Collectively known as the "Montreal rules," these mid-term improvements streamlined consultations and panel procedures, helping to prepare the ground for the more formal and binding dispute settlement mechanism that would emerge under the WTO (Palmeter et al., 2004, pp.6-20).

It should be noted that even after these developments, GATT's dispute settlement mechanism remained voluntary and lacked binding force. Only in one case did GATT authorise retaliation against a non-complying party and even then, no retaliation was actually carried out. The requirement of consensus meant that even the simplest disputes could be left unresolved because the losing party could veto any proposed solution (Steger & Hainsworth, 1998). This experience ultimately led the contracting parties to prioritise the design of a more robust, automatic and enforceable dispute settlement mechanism during the Uruguay Round negotiations—a mechanism that would become a fundamental pillar of the WTO. Indeed, the negotiations culminated in the signing of the WTO's Dispute Settlement Understanding (Palmeter et al., 2004, pp.15-16).

1.3. FORMATION OF WTO

By the 1980s, world trade in new sectors such as services, intellectual property and agriculture was either outside the scope of GATT rules or not adequately covered

(Hoekman & Kostecki, 2009, pp.37-44). The GATT—an unorganised agreement covering only trade in goods and lacking coherent governance—was increasingly seen by states as limited in its effectiveness due to its *ad hoc* nature and absence of an institutional foundation (Jackson, 1998, pp.15-22). Launched in 1986, the Uruguay Round stemmed from the need to address these shortcomings of the GATT and enhance its effectiveness. Trade ministers meeting in Uruguay initiated negotiations with the aim of establishing new rules and institutions to strengthen the multilateral trading system and the result of seven and a half years of negotiations was the establishment of the WTO on 15 April 1994 with the agreement signed by 123 countries in Marrakesh, Morocco (WTO, n.d.-b; Croome, 1995).

In the Marrakesh Agreement, the WTO was established as a permanent, rules-based international organisation overseeing trade in goods, services and intellectual property and it was envisaged that it would improve the settlement of trade disputes (Van den Bossche & Zdouc, 2017, pp.169-171). The Marrakesh Agreement, along with all legal amendments and protocols made since GATT 1947 (collectively referred to as GATT 1994), GATS, TRIPS and commitments to phase out quotas in the textile and agricultural sectors—areas where concerns about world trade were concentrated—were brought under the framework of the WTO (Jackson, 1998, pp.24-29; Hoekman & Kostecki, 2009, pp.37-41). On 1 January 1995, the WTO, which replaced the GATT as the umbrella organisation for multilateral trade agreements, officially became operational with its 128 member countries, all of which were contracting parties to the GATT (WTO, n.d.-b; Croome, 1995).

As previously mentioned, in contrast to the *ad hoc* structure of the GATT, the WTO has established institutional structures such as a Ministerial Conference, a General Council and separate councils for Trade in Goods, Trade in Services and TRIPS (Petersmann, 1997, p.55; Van den Bossche & Zdouc, 2017, pp.354-357)[7]. Here, the Ministerial Conference functions as the highest decision-making body, meeting every two years, while the General Council convenes as the Dispute Settlement Body and the Trade Policy

[7] Please see Petersmann, E. (1997). *The GATT/WTO dispute settlement system: International law, international organizations and dispute settlement*. Martinus Nijhoff Publishers, p. 55 for the organigram.

Review Body, in addition to overseeing the organisation's day-to-day work. It also confers legal personality on the multilateral trading system through its permanent secretariat in Geneva and in this respect, it can be said to have greater permanence and authority than the GATT, which functioned merely as a treaty (Jackson, 1998, pp.37-47). Finally, by providing a legal framework that brings together all GATT and Uruguay Round agreements, it has placed all member states under a single framework of obligations (Petersmann, 1997, pp.47-53; Van den Bossche & Zdouc, 2017, pp.276-286).

In sum, the emergence of the WTO reflected an attempt by states to establish a formal international institution capable of responding to emerging trade challenges and institutional limitations under GATT. The WTO was structured to reinforce rule enforcement, preserve the fundamental principles of the GATT, such as MFN and national treatment and expand its coverage to include services and intellectual property (Hoekman & Kostecki, 2009, pp.37-41; Van den Bossche & Zdouc, 2017, pp.169-171). As previously mentioned, while GATT allowed individual states to block dispute outcomes, the WTO introduced a binding dispute settlement mechanism with procedural innovations, which will be examined in detail below (Petersmann, 1997, pp.90-91). Although the WTO has often been portrayed as a system that facilitates the implementation of liberal trade norms, broadens trade governance and counters protectionist pressures, the effectiveness and neutrality of such functions remain subject to critical scrutiny—particularly in light of empirical and structural challenges that will be discussed in the following chapters.

1.4. THE WTO DISPUTE SETTLEMENT MECHANISM

Among the institutional innovations introduced by the WTO, the Dispute Settlement Understanding (DSU) has received particular attention and will constitute the main focus of this thesis. While often regarded as a major advancement compared to the GATT-era framework, its practical effectiveness and broader implications remain subject to debate. The DSU marked a departure from the previous system by introducing binding procedures and limiting the ability of member states to unilaterally obstruct the adjudication process. A core deficiency of the GATT dispute settlement mechanism was its lack of binding and mandatory mechanisms, which often rendered rulings dependent on political will rather than legal obligation (Van den Bossche & Zdouc, 2017, pp.169-

171). The DSU sought to overcome this by institutionalizing the "reverse consensus" rule: once a panel report is issued, it is deemed adopted unless all WTO members—including the prevailing party—agree to reject it. In practice, this significantly limits the ability of the losing party to block adoption and transforms panel decisions into effectively binding outcomes (Palmeter et al., 2004, p.234). While this procedural innovation has often been hailed as enhancing the rule of law in trade, its implications for equity, access and enforcement across states with differing capacities remain contested.

Another major innovation introduced by the DSU is the establishment of a two-tier adjudication system, consisting of panels and a permanent Appellate Body. Whereas disputes under the GATT were handled in a single stage, under the WTO, a panel report is first produced and then the Appellate Body, composed of seven members serving four-year terms, reviews the legal aspects of the panel's findings (Van den Bossche & Zdouc, 2017, pp. 576–581). This mechanism, often described as a "quasi-judicial trade court," was designed to strengthen legal certainty in international trade disputes (Davey, 2005, pp. 17–50). However, its ability to function as an impartial and universally accessible adjudicative body has been increasingly questioned, particularly in light of enduring power asymmetries between developed and developing countries and the political pressure exerted by more influential members during both panel and appellate stages (Pauwelyn, 2001, pp. 535–578; Petersmann, 1997, pp. 70–72). The Appellate Body holds the authority to uphold, modify, or reverse the findings of the panel, but the extent to which this authority can be exercised independently and equitably remains contested (Palmeter et al., 2004, pp. 234).

Another novelty brought by the DSU is the establishment of specific timelines for the dispute resolution process. A panel is normally expected to conclude within 6 to 9 months and an appeal before the Appellate Body is expected to be completed within 60 to 90 days (Palmeter et al., 2004, pp.169)[8]. This allows countries pursuing dispute settlement to anticipate when a decision will be reached. Following a dispute, the losing member is expected to comply with the decision within a "reasonable period of time" or offer

[8] Please see Palmeter, D., & Mavroidis, P. C. (2004). *Dispute settlement in the World Trade Organization: Practice and procedure* (2nd ed.). Cambridge University Press. https://doi.org/10.1017/CBO9781139177931, p.169 for the flow chart.

compensation. If it fails to do so, the DSU permits the winning member to request authorisation to impose retaliatory measures—for example, by suspending equivalent trade concessions (Davey, 2005, pp.17–50; Petersmann, 1997, pp.184)[9]. While this mechanism is intended to strengthen compliance, the actual deterrent effect of authorised retaliation varies significantly across WTO members. For economically powerful countries, the suspension of concessions may exert tangible pressure on the respondent. However, for smaller or less economically influential states, the utility of such measures is often limited in practice, due to asymmetries in trade volume and economic leverage. As a result, the uniform enforceability of DSB decisions remains contested, particularly in cases involving power imbalances (Davey, 2005, pp.17–50; Pauwelyn, 2001, pp.535–578).

Since its inception, the WTO dispute settlement mechanism has processed a considerable number of trade disputes, covering diverse sectors and involving both developed and developing member states (Van den Bossche & Zdouc, 2017, pp.467–472). However, the frequency of disputes alone does not necessarily equate to systemic effectiveness or inclusiveness. The high level of activity must be contextualised by considering which members most frequently initiate disputes, which states possess the legal and financial capacity to pursue lengthy litigation and whether all WTO members can genuinely access and benefit from the mechanism (Pauwelyn, 2001, pp.535–578). Indeed, despite the system's formal accessibility, practical disparities persist, particularly for least-developed and low-income countries facing resource and expertise constraints. These asymmetries raise broader concerns about the equity and representativeness of the dispute settlement process. Nevertheless, each adjudicated case has contributed to the development of a substantial body of jurisprudence, enhancing the predictability of the rules and encouraging members to shape their trade policies in accordance with panel and Appellate Body rulings (Palmeter et al., 2004, pp.52–54; Pauwelyn, 2001, pp.535–578). In this sense, while the mechanism contributes to the legalisation of world trade governance and provides a formal avenue to resolve disputes peacefully, its distributional consequences and operational imbalances must be acknowledged. Ultimately, this dual character,

[9] Please see Petersmann, E. (1997). *The GATT/WTO dispute settlement system: International law, international organizations and dispute settlement*. Martinus Nijhoff Publishers, p.184 for the table.

simultaneously legalistic and structurally imbalanced, makes the WTO dispute system both a significant institutional innovation and a subject of persistent criticism (Petersmann, 1997, pp.28–29; Van den Bossche & Zdouc, 2017, pp.153–158).

CHAPTER 2
THEORETICAL FRAMEWORK

This chapter employs a neo-mercantilist perspective to examine the dynamics of the WTO Dispute Settlement Body and its implications for developing countries. Neo-mercantilism places significant emphasis on the pivotal role of state power, economic asymmetries and strategic behaviour within international economic institutions. Rather than perceiving the WTO as an impartial, rules-based system, this framework underscores the persistent influence of structural inequalities, resource inequalities and power politics on access to and outcomes of dispute settlement processes. The theoretical framework enables a critical evaluation of how developing states navigate these institutional constraints as they seek to advance their trade interests in an environment fundamentally conditioned by global power imbalances.

2.1. NEO-MERCANTILISM AS A THEORETICAL FRAMEWORK

Neo-mercantilism, or economic nationalism as Gilpin (1987) defined, will be beneficial in explaining this thesis with its state-centred framework for analysing international economic relations (Gilpin, 1987, pp.31-34; Krasner, 1976). Mercantilism, as a broader tradition, can be divided into three main strands: classical mercantilism, economic nationalism and neo-mercantilism. Neo-mercantilism has its beginnings in the ‘classical mercantilist’ idea that economic policy is a tool for the accumulation of national power and wealth and is based on the 19th century economist Friedrich List's criticism that Adam Smith's liberal ‘cosmopolitical’ approach ignored the realities of national interest (Helleiner, 2002, p.312; List, 1885, p.487). List advocated a ‘national political economy system’ that prioritised domestic development over unrestricted free trade and emphasised the importance of protective measures to build national industries - especially the protection of infant industries - and the importance of state intervention and protection to secure long-term prosperity and power and in these regards contradicts with the liberal theory of trade put forward by Smith (Bairoch, 1993, 16-18; Chang, 2002, pp.13-19; List, 1885). This perspective is most powerfully articulated by List himself, whose critique of liberal economic theory highlights the necessity of state-led development and the strategic use of protectionism in building national strength:

> "The nation must sacrifice and give up a measure of material property in order to gain culture, skill and powers of united production; it must sacrifice some present advantages in order to insure to itself future ones. If, therefore, a manufacturing power developed in all its branches forms a fundamental condition of all higher advances in civilisation, material prosperity and political power in every nation (a fact which, we think, we have proved from history); if it be true (as we believe we can prove) that in the present conditions of the world a new unprotected manufacturing power cannot possibly be raised up under free competition with a power which has long since grown in strength and is protected on its own territory; how can anyone possibly undertake to prove by arguments only based on the mere theory of values, that a nation ought to buy its goods like individual merchants, at places where they are to be had the cheapest—that we act foolishly if we manufacture anything at all which can be got cheaper from abroad—that we ought to place the industry of the nation at the mercy of the self-interest of individuals—that protective duties constitute monopolies, which are granted to the individual home manufacturers at the expense of the nation?" (List, 1841, p.265)

The transition from mercantilism to neo-mercantilism can be attributed to the theoretical foundations established by scholars such as Robert Gilpin, Susan Strange and Stephen Krasner. These scholars served to establish a connection between realist international relations theory and international political economy. A thorough examination of their work reveals several recurring themes: a state-centric approach, an emphasis on power over wealth, the prioritisation of relative gains and a degree of scepticism towards liberal institutions (Gilpin, 1987; Krasner, 1976; Strange, 1988).

In essence, it can be claimed that it is state behaviour, rather than autonomous market forces, that exerts a predominant influence on the international economy. It can be asserted that economic processes are inherently shaped by political influences, wherein the exercise of power often takes precedence over considerations of market efficiency (Gilpin, 2001; Strange, 1996). From this perspective, global institutions and markets are not perceived as neutral arenas; rather, they are seen to produce outcomes that systematically favour dominant actors within the international system (Helleiner, 2002; Strange, 1988). Accordingly, institutions such as the WTO are argued to reflect the

underlying structure of power politics, rather than serving as impartial mechanisms of global governance (Krasner, 1983, pp.45-46).

For Gilpin (1987, pp.31-34; 2001, pp.15-23), states function as the primary agents, with the market serving their interests. The prevailing perspective regarding economic policy is that it is utilised as a means to achieve power rather than being regarded as an objective in itself. In the context of interstate relations, states prioritise the pursuit of relative gain over others, as opposed to a mutual pursuit of gain (Gilpin, 1987, pp.31-34). Moreover, the effectiveness of institutions is conditional upon their alignment with hegemonic interests (Krasner, 1983, p.54). From Strange's perspective, the fundamental power in markets is held by influential actors who control the structural mechanisms that govern economic activities (Strange, 1988, pp.23-24; Strange, 1996, pp.36-40). Consequently, outcomes in the economy are determined by the balance of power within these structures, particularly in sectors such as production and finance. This dynamic leads to the accumulation of structural control, resulting in unequal economic gains across global capitalism. Notably, Strange's analysis highlights a crucial oversight in liberalism, which tends to overlook the intricate power structures that underpin economic systems (Strange, 1988; 1996). Finally, Krasner's argument posits that states structure international regimes based on power and that trade regimes and institutions are established and maintained according to power hierarchies, interests and hegemonic preferences, rather than on the basis of cooperation (Krasner, 1976; Krasner, 1983).

In sum, neo-mercantilists conceptualise the global economy as a competitive arena among nations, wherein the distribution of gains is prioritised over the pursuit of absolute gains (Gilpin, 1987, pp.31-34; Oatley, 2019, pp.32-39). The classical liberal principle that trade is beneficial for all has been called into question. Instead, trade policy is said to be an instrument of statecraft. Importantly, the neo-mercantilist paradigm is not confined to classical forms of protectionism such as tariffs. Since the 1970s, states have increasingly resorted to non-tariff barriers (NTBs)—including quotas, technical standards, subsidies, voluntary export restraints and anti-dumping measures—as strategic tools to protect domestic industries while formally adhering to liberal trade commitments (Baldwin, 1970, pp.5-13; Bhagwati, 1988, pp.43-59). This trend marked the emergence of what is commonly referred to as “new protectionism”, whereby governments pursued national economic objectives through more subtle and legalistic means within the global trading

system. From a neo-mercantilist perspective, these practices reflect a deliberate attempt by states to maintain relative gains and domestic industrial competitiveness under the guise of compliance with international trade norms. Consequently, the widespread adoption of NTBs underscores the adaptability of neo-mercantilist strategies in the evolving landscape of international political economy. Historically, mercantilists measured national wealth in terms of gold bullion stocks. In contemporary times, equivalent measures of national wealth can be defined in terms of trade surpluses, capital accumulation and dominance in high-value industries. Powerful states develop policies to achieve these measures, participate in the creation of international economic arrangements that benefit them and gain advantages through trade agreements and institutions (Gilpin, 2001, pp.15-23; Oatley, 2019, pp.39-41). In contrast, weaker states find themselves in unfavourable positions within the international division of labour due to their lack of similar leverage (Krasner, 1983, pp.50-52).

With regard to international institutions, the neo-mercantilist approach would argue that states will participate in international institutions, regimes and dispute settlement mechanisms such as the WTO as long as they serve their national interests. Liberal theory suggests that international institutions reduce power inequalities but Gilpin's argument is the opposite: international economic institutions often reflect the interests of their most powerful members, who have the influence to set rules and dominate outcomes (Gilpin, 2001, pp.379-390; Keohane, 1984). In this regard, the "rules-based" regime of the WTO, to be an example, will also depend on who writes the rules and who has the means to enforce or break them. This question leads us to the central focus of this thesis: whether the seemingly neutral legal procedures of the WTO’s DSM in fact serve to cover up structural power imbalances, thereby favouring developed countries and disadvantaging developing ones.

From what has been mentioned so far, it should not be understood that it is only interventionism and protectionism that neo-mercantilism claims to be in the interest of the state; on the contrary, it can also be selective liberalisation that is in the interest of states in the broad sense and this thesis will show and examine that this is often the case in the real world (Gilpin, 2001, pp.41-45 & 316-321; Wade, 2003). For instance, the United States actively promoted liberal trade rules during the 1990s when it held a dominant position in global markets, whereas China, despite formally supporting the

liberal trading order, has strategically embraced aspects of the WTO system that align with its export-driven development model (Hopewell, 2016, pp.125-146; Wade, 2003). Neo-mercantilist thinkers would also argue that states will support international rules as long as they are to their advantage, e.g. a hegemonic power will advocate free trade or strong enforcement of legal disputes once its industries have become globally dominant, effective use of the regime can be an effective means of maintaining its leadership, but if the same rules begin to constrain the strategic interests of the same hegemonic power, it will resist and renegotiate them (Chimni, 2004, pp.1-37; Gilpin, 2001, pp.15-24). States' attitudes towards the WTO's DSM will therefore change as power dynamics shift (Jackson, 1997, pp.342-345). The theoretical lens of neo-mercantilism will be the framework of this thesis in making sense of developed and developing countries' relations with the DSM, where the empirical counterpart in the US-China and developing countries will be examined. Furthermore, it is imperative to not only examine strategic state behavior and power-oriented approaches but also to critique the broader capitalist system within which these behaviors are embedded.

A critical examination of the capitalist world economy reveals its profound implications for the creation of deep structural inequalities and the erosion of national economic autonomy. The prevailing critique within this framework asserts that, under the principles of laissez-faire, wealth and power have become concentrated in the hands of a select few. However, numerous societies grapple with the escalating disparities in income, both among and within nations, as well as the exploitation of their resources and populations. These societies are further subject to the influence of economic and technological forces that often transcend their control (Gilpin, 2001, pp. 3-13). As Strange (1996, p.4) points out, the impersonal forces of global markets have become more powerful than the states that hold ultimate political authority over society and the economy, forcing state policy to bow to the dictates of capital. Therefore, the liberal promise of shared prosperity is, at best, a veil for a hidden hierarchy and in this hierarchy, dominant states employ free market doctrines to further their own advantages. Friedrich List's (1841) seminal metaphor of powerful countries "kicking away the ladder" after achieving industrial superiority demonstrates that leading capitalist states historically defended free trade only when it served their own interests and deprived less developed countries of the protections they themselves used to rise. This systemic logic extends to the institutional framework

of the WTO, particularly the DSM. The rules established by the WTO, which were largely formulated by and for major industrialized powers, impose restrictions on various economic policies, including customs duties, subsidies, investments, and intellectual property rights. These policies, in essence, limit the policy space available to developing countries. In summary, the WTO's dispute settlement mechanism, which operates within a neo-mercantilist framework, appears to be a protector of the dominant capitalist order. This mechanism institutionalised liberal rules that favor dominant states and corporations, while restricting the economic sovereignty and development goals of less powerful countries.

2.2. THEORETICAL COMPARISON: LIBERALISM, REALISM AND STRUCTURALISM

In order to justify the relevance of neo-mercantilism to the WTO's DSM, it is essential to first contrast it with alternative international relations theories and demonstrate their explanatory shortcomings. To do so, firstly the different expectations of international institutions and power offered by liberal institutionalism, realism and structuralism (Marxist/dependency perspectives) need to be considered.

2.2.1. Liberal Institutionalism: Limits to Cooperation and Institutions

Assertions of the pioneers of classical liberal belief such as Adam Smith and David Ricardo that free trade increases the wealth of all nations is the foundation of liberal institutionalism (or neoliberal institutionalism), which holds that cooperation is mutually beneficial and has the potential for absolute gains for all parties (Keohane, 1984; Ricardo, 1817; Smith, 1776). This intellectual foundation was later expanded by neoliberal institutionalists, who argued that cooperation under anarchy could be sustained through the creation of formal institutions (Abbott & Snidal, 1998; Keohane, 1984). Later liberal theorists such as Robert Keohane built on this premise to explain why states create institutions, arguing that international regimes such as the WTO help states overcome collective action problems by providing information, reducing transaction costs and creating enforcement mechanisms that stabilise cooperation even under anarchy (Keohane, 1984; Martin, 1992; Petersmann, 1997, p.14). Institutions can reduce power asymmetries between countries through their autonomous structure and a common set of rules for all members, large and small (Abbott & Snidal, 1998; Keohane, 1984;

Petersmann, 1997, p.14). Looking from a liberal institutionalist perspective to the WTO's DSM, it can be argued that the DSM is beneficial to all members because it provides a remedy for trade disputes based on legal rules rather than power politics. This is also DSB's own claim[10] that it provides a platform to administer the multilateral trading system efficiently and fairly and to allow countries to resolve their disputes without resorting to trade wars. A liberal institutionalist would argue that developing countries benefit from using the DSM, which is indeed empirically proven; developing countries like Brazil, India and Indonesia have a forum in which they can make claims against more powerful trading partners on the basis of law, not force and they have been successful in a number of disputes, forcing developed countries to comply (Busch & Reinhardt, 2007; Guzman & Simmons, 2005)[11] [12]. It would be difficult to talk about this happening if one relies on a power-based relationship. Accordingly, the claim of liberal institutionalism that a well-designed international legal system sometimes allows weaker states to achieve advantageous outcomes against stronger states is well-founded and correct.

But the limitation of liberal institutionalism here is the unequal capacity of states to actually implement these rules (Busch & Reinhardt, 2007; Guzman & Simmons, 2005). Once in force, rules cannot be applied equally by all states; in practice, states face many practical obstacles while implementing them. In the DSB, for example, most developing countries face obstacles such as limited legal expertise, high litigation costs, diplomatic pressure and the difficulty of enforcing decisions (Busch & Reinhardt, 2007; Shaffer, 2003, pp.10-18). While institutions have developed systems that favour developing countries (in the case of the WTO's DSM, technical assistance or special and differential treatment could be mentioned), it is important to recognise that systemic biases may arise not from the formal rules themselves but from the structural dynamics and founding actors of the institution (namely, the dominant developed countries) which can shape interpretations, implementation and outcomes in their favour (Chimni, 2004, pp.7-8;

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[10] Please see World Trade Organization. (1994). *Understanding on rules and procedures governing the settlement of disputes (DSU).* In *Marrakesh Agreement establishing the World Trade Organization, Annex 2*. https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf for the full text.

[11] Please see Busch, M. L., & Reinhardt, E. (2007). Developing countries and GATT/WTO dispute settlement. In G. A. Bermann & P. C. Mavroidis (Eds.), *WTO law and developing countries* (pp. 195–212). Cambridge University Press, p.202 for the table.

[12] Please see Guzman, A. T., & Simmons, B. A. (2005). Power plays and capacity constraints: The selection of defendants in World Trade Organization disputes. *The Journal of Legal Studies, 34*(2), 557–598. https://doi.org/10.1086/430767, p.561 for the table.

Steinberg, 2002, p.339-374). If we were to observe that the DSB consistently favours richer countries (through subtle rule interpretations, disproportionate access and usage by those countries or enforcement realities that benefit larger markets) liberal theory would be compelled to treat such outcomes as theoretical 'anomalies'.[13] These would constitute exceptions that contradicts one of the theory's main assumptions: Rule-based institutions can constrain power and create a level playing field regardless of states' relative strength. Yet, liberal theory maintains that in the long run a level playing field will be created by constraining weak states as well as strong ones and the rule of law will triumph power in many cases. The DSM does indeed level the playing field in some cases but the suspicion here should be that these institutions and systems created by developed countries may produce biased outcomes for them.

In sum, liberal institutionalism is overly optimistic about impartiality and fairness and does not address the power imbalances that arise in supposedly neutral legal processes, but it does help us understand why states participate in the DSM and abide by its decisions (Chimni, 2004, pp.1-37; Mearsheimer, 1994). This mismatch between liberal institutionalist expectations and the practical realities of the DSM highlights the necessity of an alternative framework—one that does not assume institutional neutrality but rather interrogates how international legal mechanisms can reflect and reproduce existing power asymmetries. For this thesis, neo-mercantilism, with its emphasis on the strategic use of institutions by powerful states, is better suited to explain these dynamics.

2.2.2. Realism: Limits of Power-Based Explanations

The realist view of institutions in international relations is almost the opposite of the liberal view. Classical realists such as Hans Morgenthau and neo-realists such as Kenneth Waltz and John Mearsheimer consider states as the main actors in an anarchic international system that maximises power or security with outcomes determined by their relative power capabilities. International institutions are therefore either marginal players or instruments of powerful states (Morgenthau, 1948; Petersmann, 1997, p.14; Waltz, 1979). According to Mearsheimer (1994), institutions have minimal influence on state behaviour, in other words, institutional rules are unlikely to deter states from pursuing

[13] In reference to Keohane's criticism that the fact that states often follow the rules even when they conflict with their interests can only be explained by Realist theory as an 'anomaly'.

their core interests. From a realist perspective, the WTO and the DSM exist only because hegemonic states find it useful to create a rules-based order but this order will be abandoned in a scenario where it fundamentally conflicts with great power interests. In the context of realist international relations theory, which posits that power lies at the core of international dynamics, the possibility of the bias in international institutions favouring powerful states is not accidental but structurally embedded—primarily through mechanisms such as agenda-setting by dominant actors, the disproportionate influence of powerful states in rule-making processes and the enforcement asymmetries that allow these states to ignore or manipulate institutional outcomes when contrary to their interests (Pauwelyn, 2001, pp.535-578; Steinberg, 2002, pp.339-374). Accordingly, a realist perspective on the WTO's role in the global economic order posits that developed countries possess the capacity to influence, disregard or bypass the established rules while their less developed counterparts are not similarly endowed with these instruments. With regard to the matter of cross-retaliation[14], a realist would argue that only developed countries possess the capacity to engage in such actions. Furthermore, it was asserted that the mechanism for dispute settlement was devised by major actors, such as the US and the EU, during the Uruguay Round negotiations (the negotiation round that led to the WTO's foundation and key legal mechanisms) for the purpose of serving their own interests (Steinberg, 2002, pp.339-374). Moreover, in instances where legal decisions are found to be in conflict with the interests of the great powers, the principles of realism suggest that they will either opt to disregard the established rules or will undertake strategies to undermine the legitimacy or functionality of the system. The repercussions of this are indeed being observed, as evidenced by the United States' obstruction of the DSM by blocking appointments to the WTO Appellate Body since 2019 (Howse, 2020, pp.371-389). This obstruction has been explicitly justified on the grounds that WTO decisions do not align with the interests of the United States. American officials contend that WTO judges impose obligations on the United States that it has never acknowledged, particularly with regard to trade measures against China (Howse, 2020, pp.371-389). Rather than going along with these unfavourable rulings, they deliberately obstruct the

[14] Cross-retaliation refers to a form of trade sanction whereby a complainant country, authorized by the WTO's Dispute Settlement Body, imposes retaliatory measures in a sector different from the one where the violation occurred—typically when retaliation within the same sector would be ineffective or insufficient. (Palmeter et al., 2022, pp.484-489)

system by asserting that they will not consent to being constrained by the institution's decisions on matters they deem to be of paramount importance to their vital interests.

It is reasonable to assume that the preceding arguments are sufficient to demonstrate the validity of this thesis, particularly with regard to the predominance of the United States and Europe and the rationale behind the establishment of a system effectively dominated by developed countries in practice (Pauwelyn, 2001, pp.535-578; Steinberg, 2002, pp.339-374). However, the study's limitations primarily pertain to its lack of depth and scope. The pursuit of realism in the study does not extend to the institutional and procedural intricacies that can, in a systematic manner, impede the development of emerging economies. From this standpoint, it would be challenging to explain the mechanisms of bias in the DSM. The only conclusion that can be drawn from this standpoint is that developing countries are unsuccessful due to their weakness, while developed countries achieve victory because of their strength. Furthermore, it would be an inadequate explanation to suggest that weak states sometimes succeed against strong states, because, as has been argued, realism suggests that strong states will find ways to block decisions unless they are in their interests (Mearsheimer, 1994). The assertion of realism in this context would be to posit that there are instances where great powers permit such occurrences because their fundamental interests remain uncompromised (Morgenthau, 1948; Waltz, 1979). Nevertheless, in order to explore the complexities of the reasons and mechanisms behind this phenomenon in greater depth, a more specialised lens is required.

Whilst realism provides critical insights into the overarching power asymmetries that shape the DSM, it remains insufficient for the analysis of the institutional and legal mechanisms through which this imbalance is operationalised (Pauwelyn, 2001, pp. 535–578; Petersmann, 1997, pp. 70–72). This gap necessitates a shift towards a neo-mercantilist perspective. It may perhaps allow us to see the ultimate bias of a system that claims to equalise the power capacities and the playing field with realism, but it will not help us to understand the political economy within the DSM and to elaborate on the independent role of trade rules and legal adjudication. From a neo-mercantilist perspective, drawing upon the concept of power awareness as adopted by realism, it is possible to analyse how powerful states utilise economics, international trade and economic law as instruments to serve their own interests.

2.2.3. Structuralism: Limits of Marxist and Dependency Approaches

Structuralism in IR and IPE refers to a body of theories that emphasise the impact of global economic structures, particularly capitalism, on shaping international outcomes; often to the detriment of weaker states. Marxism is generally considered to be the foundational strand within structuralist thought; however, in this section, greater emphasis will be placed on two prominent offshoots of structuralism: dependency theory and world-systems theory. These theories examine both inter-state competition and the global economic hierarchy divided between a wealthy industrialised "core" and an impoverished, commodity-producing "periphery" (in world-systems theory, there is a semi-periphery between core and periphery). It is argued that the current international economic order is designed to benefit developed countries, commonly referred to as the 'core', while structurally disadvantaging developing countries, or the 'periphery' (Frank, 1971; Wallerstein, 1974). From a structuralist perspective, the WTO's DSM is inherently biased (Chimni, 2004, pp.7-8). This bias is seen as a reflection of broader neoliberal economic principles that prioritise market liberalisation and free trade, often at the cost of policy autonomy in developing countries. Structuralist scholars contend that such bias is not accidental, but rather a direct result of the systemic design of the global economic system (Frank, 1971). For instance, the WTO has been the subject of criticism from Marxist scholars who argue that it functions as a form of 'global economic governance' that promotes neo-imperial outcomes, where legal equality on paper conceals real inequalities (Bachand, 2020). Similarly, dependency theorists argue that WTO agreements constrain the policy space of developing countries, thereby impeding their capacity to utilise the same instruments that contemporary developed countries have historically employed for their industrialisation (Akyüz, 2008). The structuralist approach asserts that global economic institutions do not genuinely serve all members but rather serve capital and powerful states. The presence of systemic bias within the DSM is not incidental but reflective of deeper structural asymmetries embedded in the global trading regime (Chimni, 2004, pp.1-37). When peripheral countries attempt to challenge trade barriers or subsidies from the core, they encounter obstacles. However, when core countries challenge peripheral countries on issues such as market access or intellectual property, they are more often successful.

The structuralist framework highlights the underlying factors contributing to the disadvantage experienced by developing countries in the context of the DSM, particularly with regard to resource and power asymmetries. Building on this structural asymmetry, core countries have the capacity to engage in intricate legal proceedings by utilising their expertise in litigation, employing specialised legal teams comprising trade lawyers and in-house specialists and demonstrating the ability to effectively retaliate when they achieve a favourable outcome (Jahan, 2020, pp.17-18). In contrast, peripheral countries lack the capacity to engage in such complex legal processes and it is the developed countries that stand to benefit from the dispute system (Davis & Bermeo, 2009, p.1035). Another "barrier to entry" that developing countries face in order to take full advantage of the DSM is the cost of litigating at the WTO. This cost includes the hiring of legal counsel and the allocation of specialised staff and in the case of a low-income country, these costs limit access to the system in practice (Bown & Hoekman, 2005). Furthermore, the structural interdependency in trade between the core and the periphery renders it challenging for a small economy to challenge its larger partner. Even when peripheral countries win a case, they may face subtle forms of retaliation (such as the withdrawal of aid, loss of investment and behind-the-scenes political and economic pressures) which can act as deterrents to initiating or pursuing further legal action. In the context of WTO disputes, the imposition of retaliatory tariffs serves as a practical enforcement mechanism. However, the limited capacity of peripheral countries to impose such tariffs renders the likelihood of confrontation between major powers and small states relatively low (Guzman & Simmons, 2005, p.579). This imbalance has the potential to result in the non-implementation of decisions that would be advantageous to developing countries, as the victorious periphery may lack the capacity to compel compliance (Shaffer, 2003, pp.10-18).

Although structuralism (or Marxism) appears to be compatible with the central claim of this thesis, this perspective specifically perceives developing countries as agents whose capacity for manoeuvre is constrained by the global capitalist structure. Despite these structural constraints, historical developments indicate that some developing countries, most notably China, have managed to improve their economic standing by strategically navigating the global economic system—a case that will be explored in greater detail in the following sections. China’s economic rise has been associated with its adoption of an

industrialisation strategy shielded by protectionist barriers, a strategy that aligns with List's argument, complemented by the strategic exploitation of WTO regulations when advantageous (List, 1841; Wade, 2003). However, by focusing on state strategy, distinctions will be made in this thesis and the perspective will not be simply framed as North versus South or capital versus labour. States' actions will be examined while acknowledging the role of corporate lobbies and economic classes in shaping policy. While adopting insights from structuralist theory, the framework in this thesis departs by focusing on the strategic agency of states rather than solely attributing outcomes to systemic bias. In doing so, this thesis aims to analyse how particular injustices emerge within institutional mechanisms such as the WTO's DSM, without reducing the complexity of global economic relations to a simple core-periphery binary.

2.3. EXPLAINING WTO'S BIAS THROUGH NEO-MERCANTILISM

Following a thorough review of the literature on IPE and IR, it is contended that neo-mercantilism offers the most suitable theoretical framework for understanding the political economy of the WTO's DSM, with a particular emphasis on the experiences of developing countries. The foundation of neo-mercantilism is rooted in the economic nationalism of Friedrich List, Alexander Hamilton and Robert Gilpin, drawing upon a broader tradition of thought (Gilpin, 1987, Gilpin 2001; List, 1841). The theoretical underpinnings of neo-mercantilism provide a contextually solid basis for understanding the pursuit of relative gains by states, the strategic employment of economic instruments, including and among others, trade disputes as instruments of national power and the perception of international institutions as competitive arenas rather than neutral arbiters (Gilpin, 2001; Mearsheimer, 1994). Neo-mercantilism also allows us to explain how global power asymmetries can be observed in international institutions such as the WTO's DSM, how shifts in the global balance of power affect such institutions, as well as why developed states support DSM rules when they are compatible with their strategic objectives, but resist, ignore or block them when they decide on consequences that constrain their actions (Pauwelyn, 2001, pp.535-578; Steinberg, 2002, pp.339-374). Within this framework, such outcomes are predictable: powerful states craft the rules, secure the benefits and when cost-benefit calculations shift, seek to either exploit or undermine the system accordingly. Another neo-mercantilist expectation is that states comply with legal norms selectively, adhering to them only insofar as they do not

undermine their relative positions of power. In this view, legal commitments are subordinated to strategic calculations and compliance becomes conditional rather than absolute. This dynamic is clearly observable in the cases of China and the United States. While the WTO's push for market liberalisation initially served U.S. interests, China's increasing share in global trade and its growing support for the organisation eventually clashed with U.S. strategic preferences. As China's position strengthened, the United States, perceiving the institution as less aligned with its own interests, moved to block Appellate Body appointments (Hopewell, 2016, pp.125-146; Howse, 2020, pp.371-389). This development provides a compelling illustration of how shifts in the global balance of power reshape states' attitudes toward international institutions, as predicted by a neo-mercantilist framework.

In contrast, liberalism asserts that states achieve absolute gains through the cooperation of international institutions and by limiting power politics through legal norms (Keohane, 1984). It argues that institutions such as the DSM are tools that level the playing field by setting commitments and providing neutral implementation mechanisms. It can also account for the occasional victories of developing states, but it cannot fully explain why the weakest states rarely initiate disputes or why sanctions mechanisms often break down when powerful members are violators. In short, liberalism does not claim that the problems in the DSM are due to the nature of the system but rather that they are flaws within the system that need to be corrected, which makes it an inadequate framework for the thesis. Thus, liberal institutionalism ultimately fails to explain the systemic and persistent bias of the DSM in favour of developed countries, rendering it an insufficient framework for the analysis in this thesis. Realism, in contrast, emphasises that power constitutes the fundamental axis of international relations with the interests of states being the primary concern in decision-making processes (Krasner, 1983; Mearsheimer, 1994). In cases where the outputs of institutions conflict with the interests of states, it is anticipated that they will either oppose these decisions or ignore the decision or institution in fundamental terms. From this perspective, it is unsurprising that the DSM leans towards powerful states. However, the theoretical framework does not incorporate the legal and procedural dynamics that give rise to this lean, thus providing an inadequate explanation of how institutions such as the DSM are designed or used to protect the interests of the hegemonic power by merely asserting that great powers prevail simply because they are

powerful (Krasner, 1983, pp.253-262). To sum up, while correctly highlighting the role of power, it does not adequately account for the institutional and procedural mechanisms through which dominant states entrench their advantages, limiting its explanatory power in our context. A neo-mercantilist perspective, on the other hand, builds upon the legacy of realism's power-oriented view while offering a more comprehensive interpretation that considers the impact of institutions on the balance of power and economic strategy. Structuralist theories, including Marxism and dependency theories, successfully identify the bias in international institutions and see mechanisms such as the WTO's DSM as another way in which the capitalist 'core' exploits the powerless 'periphery' (Wallerstein, 1974; Frank, 1971). These approaches underline the systemic inequality, the imbalance of legal capacity and the dependence of the periphery on Northern capital and the market, identify inherent injustice of the global order and critiques it; but on the other hand, tends to over-determine outcomes and to discount state agency. For example, it explains the lack of participation of least developed countries in DSM processes but struggles to explain China's integration to the system and eventually instrumentalizing it (Wu, 2016). Therefore, it can be stated that neo-mercantilism is a more comprehensive approach to understanding political-economic behaviour in trade governance, with an emphasis on strategic statecraft and the deliberate use of legal institutions to increase power.

In conclusion, while liberalism, realism and structuralism each offer partial insights, neo-mercantilism most comprehensively captures the interplay of power, national interest and institutional design in explaining why the WTO's DSM tends to favour developed states. It situates the DSM within a broader system of strategic economic competition, offering a clear and compelling lens through which to analyse how legal mechanisms are shaped, used and contested by states. The subsequent empirical sections will apply this framework to explore case studies, participation patterns and reform efforts—shedding light on how developing countries might navigate or challenge a system built upon mercantilist foundations.

CHAPTER 3
DEVELOPING COUNTRIES

In this section, the concept of developing countries will be defined first, followed by a comparative analysis of their position vis-à-vis developed and Least Developed Countries within the framework of the WTO and other international organisations. This framework allows for a systematic evaluation of both the benefits that developing countries derive from the WTO Dispute Settlement Body and the structural constraints they encounter within the system. The establishment of a precise definition for "developing countries" is imperative to facilitate a comprehensive analysis of the ongoing crisis surrounding the Appellate Body and its ramifications for developing countries' engagement in the multilateral trading system. In the subsequent chapters, the contentious categorisation of China as a developing nation within the WTO framework will undergo a thorough critical evaluation. In this manner, the central research question of the thesis will be addressed in the context of this crisis, thereby elucidating China's position on the matter.

3.1. INSTITUTIONAL DEFINITIONS OF DEVELOPING COUNTRIES

Despite the absence of a universally accepted definition of the term developing countries, various international organisations employ divergent criteria and classificatory approaches. The term is predominantly used to describe countries that exhibit lower levels of income, industrialisation, economic diversification and human development in comparison to economically advanced nations. The definitional approaches vary significantly across institutions: the WTO relies on self-identification by its members; the United Nations adopts a broad regional classification while distinguishing a subset of Least Developed Countries; the International Monetary Fund employs a hybrid method based on income levels, export diversification and integration into the global economy; and the World Bank classifies countries primarily by Gross National Income (GNI) per capita, distinguishing between low- and middle-income economies under the developing category (Khokhar & Serajuddin, 2015; United Nations, 2014, pp.143-144; International Monetary Fund, 2025; WTO, n.d.-f; Yang, 2023)

A critical analysis of these differing definitional frameworks and the criteria underpinning them, such as income, industrial capacity and trade performance, is necessary for a robust

understanding of the concept. Moreover, a comparison of the status, rights and obligations of developing countries in the WTO system with those of developed countries is crucial. Particular attention will be paid to the legal flexibilities and special provisions granted exclusively to developing countries under WTO law, which reflect both economic realities and political compromises. The examination of these asymmetries will be followed by a discussion of their implications for international trade governance and policy recommendations will be offered. Furthermore, the tension between the legal status of developing countries and their evolving economic profiles will be explored as a means to address the central research question of this thesis.

3.1.1. The WTO: Self-Declaration of Development Status

The WTO does not provide a formal definition of the terms developed or developing country. Instead, WTO members determine for themselves whether they are a developing country or not. This process is referred to as 'self-selection' or 'self-declaration' (Linklaters, 2020, WTO, n.d.-f). Consequently, any member state is entitled to claim developing country status—a practice that has contributed to the ongoing institutional crisis surrounding the Appellate Body, especially regarding the legitimacy of development claims by major emerging economies (Kwa & Lunenborg, 2019, p.1; Linklaters, 2020; White House, 2019). This provision enables a broad spectrum of WTO members, encompassing both nascent and prosperous economies, to partake in the benefits and flexibilities provided to developing countries under the WTO's framework (Hoekman, Michalopoulos, & Winters, 2004, p.482; WTO, n.d.-f). The sole exception to this flexible approach is the category of Least Developed Countries—a formal status defined by the United Nations that is also recognised by the WTO (Ine, 2023, p.12). The United Nations established the Least Developed Countries category in 1971, a designation that has been acknowledged by the WTO since its establishment (United Nations Department of Economic and Social Affairs, n.d.; WTO Agreement, 1999, Art. XI.2; WTO, n.d.-g). This category signifies the most economically disadvantaged and vulnerable subset of developing countries. In accordance with the United Nations criteria, 46 countries are designated as least developed (United Nations Conference on Trade and Development, 2023; WTO, n.d.-g). Of these, 37 are already WTO members and 4 are in the process of WTO membership negotiations (WTO, n.d.-g). Consequently, with the

exception of LDCs, the WTO has not established its own criteria for determining which members qualify as developing.

In retrospect, the GATT, the WTO's predecessor, recognised the concept of developing countries and their special needs but did not provide a precise definition. The closest definition, however, is found in Article XVIII of the 1947 GATT on “Governmental Assistance to Economic Development”, which states that "The contracting parties recognize…the progressive development of their economies, particularly of those contracting parties the economies of which can only support low standards of living and are in the early stages of development." (GATT, 1947, Art. XVIII; Ine, 2023, p.12). These two phrases, low standard of living and early stage of development, were the distinguishing characteristics of a developing country in the GATT context, but the classification is subjective as no numerical thresholds and substantive criteria were set for these terms. In 1965, Chapter IV of the GATT formally recognized the "special needs" of developing countries and recommended that developed countries grant non-reciprocal trade concessions (GATT, 1947, Art. XXVIII; Ine, 2023, p.12). Subsequently, the Enabling Clause of 1979 authorised developed countries to offer preferential tariffs to developing countries (Generalized System of Preferences) and provided greater flexibility, especially for LDCs (Hoekman et al., 2004, p.482-484; WTO, 1979). To summarise, there is no definitive definition of the term 'developing country' that has been established by the General Agreement on Tariffs and Trade and that has been maintained by the WTO. The system is basically based on self-declaration in combination with political consensus—the present day situation in the Appellate Body can be attributed to a significant degree to the legal ramifications that are inherent to this self-declaration.

3.1.2. The UN: Statistical Convenience and Policy Implications

It was noted that the United Nations adopted a definition of Least Developed Countries in 1971; however, no official definition for developing countries exists (Khokhar & Serajuddin, 2015). It is important to note that the terms developed and developing are still in use within the UN but the primary function of this classification is to provide analytical and statistical information in publications through the Statistics Division—this is not intended to imply any legal implications (United Nations Statistics Division, n.d.). Within the context of this classification, Europe, North America, Japan, Australia and New

Zealand are designated as developed regions, while other countries in Africa, Asia, Latin America and Oceania are categorised as developing (United Nations, 2014, pp.143-144, 146)[15]. It should be stressed once more that the utilisation of this particular metric is solely for the sake of statistical convenience. It does not constitute a judgement on the development status of any given nation. The updated version of this classification, which was last revised in May 2022, treats 181 countries as developing countries (United Nations, n.d., United Nations Conference on Trade and Development, 2024, p.7). However, the UN acknowledges that this terminology is now considered outdated and has been officially phased out in recent reports (United Nations, n.d.).

On the other hand, the category of LDCs is clearly defined with the UN system. The UN's Committee for Development Policy (CDP) uses specific criteria to identify LDCs, including: (a) low per capita income (a Gross National Income per capita below an established threshold), (b) weak human assets (measured by a composite Human Assets Index (HAI), reflecting health and education levels) and (c) high economic vulnerability (measured by an Economic Vulnerability Index (EVI)) (United Nations Conference on Trade and Development, 2023; United Nations Department of Economic and Social Affairs, n.d.-a). The designation of LDC is maintained for the duration of the fulfilment of the prescribed criteria and the revocation of this status is effectuated upon the attainment of the stipulated thresholds. The official recognition of LDC status is provided by both the United Nations and the WTO. Finally, it should be noted that there are arguments to suggest that global development is a spectrum rather than a binary distinction; the UN does not have a fixed category of developing countries, while the term is used flexibly for any country that is not in the developed category (Khokhar & Serajuddin, 2015; Mahler, Holla, & Serajuddin, 2024). In light of the heterogeneity evident within the developing world, there is a compelling argument for a more comprehensive classification system that can adequately capture the nuances of development (Mahler et al., 2025). This would be informed by a framework similar to the UNDP's Human Development Index, which categorises development as "very high", "high", "medium" or "low". This approach would serve to nuance the simplistic binary

[15] Please see United Nations. (2014). *World economic situation and prospects 2014: Country classification*. Department of Economic and Social Affairs. https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf , p.145-146 for the tables.

distinction between developed and developing countries, thereby offering a more nuanced and accurate depiction of the complexity of development (Fukuda-Parr, 2003, 301-317; Mahler et al., 2024; United Nations, n.d.-a).

3.1.3. The IMF: Economic Classification by Income, Diversification and Integration

Unlike the WTO, the IMF classifies member countries into “Advanced Economies” and “Emerging Market and Developing Economies” and uses specific criteria for this classification, but also states that it is “not based on strict criteria, economic or otherwise” and is intended to “facilitate analysis” (International Monetary Fund, 2023). The main criteria the IMF considers are: per capita income level – higher-income countries are more likely to be advanced; export diversification – countries reliant on a narrow range of exports (especially primary commodities) are less likely to be deemed advanced (for example, an oil-rich country with high GDP per capita might still be classified as developing due to lack of diversification); and integration into the global financial system – meaning the extent of linkages and openness of the economy to international financial markets (United Nations, 2014, p.147; UNIDO, 2024, p.2; International Monetary Fund, 2025)[16][17]. The IMF presently acknowledges 42 countries as "advanced economies" and categorises the remainder as emerging and developing economies (International Monetary Fund, 2023). The approach adopted by the IMF may be characterised as having certain prescriptive characteristics, with income being a primary determining factor.

However, it must also be noted that structural features, including the diversity of the economic base and global integration play a significant role in the determination of economic status – reclassification is also possible, for example, in the cases of a country's accession to the Euro area or when it sustains higher levels of income and stability over an extended period of time. This phenomenon can explain why a country is classified as part of the developing group despite its high income – often the case in countries with a

[16] Please see United Nations. (2014). *World economic situation and prospects 2014: Country classification*. Department of Economic and Social Affairs. https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf , p.147 for the table.

[17] Please see United Nations Industrial Development Organization. (2024). *UNIDO country classification: Edition 2024*. https://stat.unido.org/portal/storage/file/publications/country-classif-report-2024.pdf, p.2 for the table.

large share of oil exports and less diversified economies (International Monetary Fund, 2025). In summary, the IMF's classification system differentiates between advanced economies and others based on quantitative thresholds (income) and qualitative elements (economic structure and financial integration), rather than any political definition. The IMF's categorisation—while not legally binding—serves as a crucial reference for global economic assessments and macroeconomic policy discourse.

3.1.4. The WB: Income-Based Country Classification

The World Bank employs a classification system that categorises countries according to their income levels, namely 'low-income', 'lower-middle-income', 'upper-middle-income' and 'high-income' (Metreau, Young, & Eapen, 2024). Consequently, despite the absence of an official designation as either developed or developing, the data, which is revised annually in accordance with gross national income per capita (GNI), reveals an intersection between countries that falls outside the confines of the high-income group and those classified as developing countries by other international institutions (Khokhar & Serajuddin, 2015). In summary, any country in the low, lower-middle or upper-middle income category can be designated as developing, while high-income countries can be considered developed. In accordance with the World Bank's 2025 criteria, a nation is designated as high income if its GNI per capita surpasses 14,005 dollars. This establishes a tangible income level benchmark for the attribution of developed status (Hamadeh, Van Rompaey, & Metreau, 2021). For instance, China, with a GNI per capita of approximately $11,800 in 2021, is classified within the upper-middle income group. However, it is approximately $1,300 below the high-income threshold, thus meeting the criteria for designation as a developing country (Hamadeh et al., 2021).

The World Bank acknowledges the limitations of the term developing country due to its imprecise definition, which allows for significant variations in development levels among countries within the same income category. The Bank asserts that the utilisation of the term developing countries is for the sake of convenience rather than as a rigid classification of development status. To illustrate this point, consider the example of Malawi and Mexico. Despite the significant disparity in per capita income, with Mexico's income being approximately 40 times that of Malawi, both countries are classified as 'developing countries'. This is despite their placement in different income groups, further

highlighting the complexity of defining ‘developing country’ (Khokhar & Serajuddin, 2015). Consequently, the World Bank is cautious in its use of the term developing world, emphasizing that it does not constitute a judgment, but rather serves to collectively denote "low- and middle-income countries" (Mahler et al., 2024). However, within the context of international discourse (including the WTO), the World Bank income categories are frequently utilised as an objective foundation for distinguishing between developing and developed countries, particularly given that high income status typically corresponds to the designation of developed countries. The World Bank’s GNI-based classification, although lacking a formal “developing” country label, remains one of the most widely utilised metrics for comparative economic development.

3.2. RECONCEPTUALISING DEVELOPMENT: ECONOMIC, SOCIAL AND STRUCTURAL DIMENSIONS

A review of these institutions reveals several criteria as the basis for classifying countries according to their stage of development: income level (GDP/GNI per capita), economic diversification and industrialisation, human development and social indicators and integration into global trade and finance. The most widely used of these, the level of income, will not suffice in isolation when considering numerous other aspects of development (education, health, infrastructure). Whilst the World Bank's high income threshold is widely regarded as a significant marker of developed status, it is important to note that this marker is not sufficient in itself to describe the diversity of developing countries (United Nations Industrial Development Organization, 2024, p.3). This is the reason why the IMF and the UN adopt an indirect approach to the treatment of income (International Monetary Fund, 2023; United Nations Statistics Division, n.d.;). Nevertheless, it is important to note that the average income in developing countries is generally lower than that of developed countries. Conversely, countries with per capita incomes of only a few thousand dollars or less are often considered to be developing (or least developed). Another significant criterion to consider is the structure of the economy (International Monetary Fund, 2025). This criterion includes factors such as the diversity of production and exports and the degree of industrialisation. Developed countries are distinguished by their advanced industrialisation, which has resulted in a diverse range of goods and services. In contrast, developing countries characteristically possess an economy that is less industrialised. These countries frequently have economies that are

based on agriculture or the extraction of raw materials and their exports are typically limited to primary goods (Zheng, 2021, pp.3-7). The IMF also utilises the concept of export diversification as a criterion, given its comprehension of real economic development as a transition from agricultural or resource-based activities to a diversified industrial and service economy (International Monetary Fund, 2014, pp.6-8). The prevailing consensus defines a developing country as one that has not yet attained a substantial level of industrialisation in relation to its population. Conversely, an economy that is characterised by a substantial manufacturing sector and the presence of advanced industry is considered to be a developed country. In underdeveloped countries, there is a tendency towards low export and industrial production diversification, i.e. over-reliance on a single commodity, which engenders economic fragility. The economic structure, the level of industrial development and the diversification of the economy are therefore a factor that distinguishes developing countries from developed countries.

Thus far, the discussion has been confined to the economic dimension of development; however, it must be acknowledged that the concept of development is not confined to this scope. The utilisation of quality of life measures constitutes a further method of evaluating a nation's developmental status (United Nations Industrial Development Organization, 2024). Developed countries are characterised by a range of human development indicators that surpass those observed in developing countries. These include, but are not limited to, increased life expectancy, enhanced literacy rates, access to quality education and more comprehensive health outcomes (United Nations, n.d.-a). The United Nations Development Program's Human Development Index (HDI) is a composite score that combines several factors (such as income, education and life expectancy) to provide a comprehensive assessment of a nation's development. The classification of countries according to the HDI is as follows: those with a "very high human development" are considered developed, while those with a medium or low HDI are classified as developing countries (United Nations, n.d.-a). While the WTO does not utilise these indicators for the purpose of classification, the UN's incorporation of human capital and vulnerability criteria for LDCs demonstrates the significance of non-income factors. For instance, a LDC may be characterised by limited educational attainment and poor health outcomes, while an economically developed nation might be designated as developing if it exhibits deficiencies in social welfare. In summary, measures of

education, health and general living standards tend to correlate with measures of income and industry. The general pattern is that developed countries have high human development and social indicators, while developing countries generally have moderate to low living standards.

Finally, another significant issue that must be addressed is the extent of a country's integration into the global economy. In the context of this thesis, this topic assumes particular importance. This factor is one of the areas also addressed by the IMF, namely in terms of share in world trade and investment, financial linkages, etc. It can be argued that developed countries are deeply integrated in global markets and capital flows, while smaller and poorer developing countries in particular are marginalised. However, it is imperative to undertake a thorough examination of the correlation between elevated levels of trade integration within an economy and its developmental trajectory. China, which has been the world's largest exporter since 2009 and currently accounts for around 13 per cent of global merchandise exports, is a controversial figure due to its moderate per capita income and relatively low level of human development (White House, 2019). The utilisation of global trade share as a criterion for developed status in WTO deliberations was initiated by the US in 2019 (Kwa & Lunenborg, 2019, p.1; Linklaters, 2020; White House, 2019). The United States has asserted that any nation with a share of global trade exceeding 0.5 per cent is deemed ineligible for the designation of a developing country (Kwa & Lunenborg, 2019, p.1; Linklaters, 2020). Despite the absence of formal adoption, this concept underscores the perception of trade participation as an indicator of development level. The practical implementation of this criterion is challenging due to the gradual convergence of less developed countries, which would be classified as developing according to other criteria, with developed countries in terms of international trade and finance.

In summary, it can be posited that the typical developing country is characterised by lower per capita income, a less diversified and partially industrialised economy, lower human development indicators and a more limited role in global trade and finance when compared to advanced industrialised countries. By contrast, developed countries are typified by higher incomes, more diversified and intensive industrialisation, higher human development indicators and a more integrated economy in global trade and finance. Nevertheless, it is important to acknowledge that the concept of development is

multidimensional and there is no clear boundary between the developing and the developed. This becomes particularly evident when countries meet some criteria but not others, resulting in a blurring of the boundary. This conceptual ambiguity lies at the heart of current debates within international institutions such as the WTO concerning the definitional boundaries of “developing country” status.

CHAPTER 4
DEVELOPING COUNTRIES IN DISPUTE SETTLEMENT BODY

This chapter explores the multifaceted relationship between developing countries and the World Trade Organization's Dispute Settlement Body, offering both empirical analysis and theoretical interpretation. It is structured into three main parts. First, it examines the potential benefits of the WTO DSB for developing countries, with a particular emphasis on the special and differential treatment provisions, legal outcomes, participation trends and the role of the Advisory Centre on WTO Law in building legal capacity. Second, it provides a critical analysis of the challenges and constraints faced by developing countries in accessing, utilizing and benefiting from the DSB system—covering case studies, structural asymmetries, enforcement problems and institutional limitations. Finally, it assesses how the substantive and procedural characteristics of WTO law create disproportionate disadvantages for weaker states, despite the formal equality of rules. Drawing from both legal practice and International Political Economy perspectives, particularly neo-mercantilism, this chapter aims to evaluate whether the DSB genuinely serves the trade interests of developing members or reproduces existing global power hierarchies under a legalised framework.

This chapter will address numerous dispute cases, to which it will refer at various points. Table 1 presents a selection of WTO dispute settlement cases, which illustrate the dynamics between developed and developing countries within the multilateral trading system. Each entry in the table includes the dispute number, short title, parties involved, outcome and a brief summary of the legal and economic issues involved. The table offers an overview of the cases and will support broader analyses of power asymmetries, legal mobilisation and strategic litigation in the global trading system.

Table 1

Selected WTO Dispute Settlement Cases Involving Developed and Developing Countries

Case ID	Short Title	Parties	Summary

DS27	EC - Bananas	Complainants	Ecuador, Guatemala, Honduras, Mexico, United States	The dispute involved the EC's preferential banana import regime for ACP countries. WTO found this regime inconsistent with GATT and GATS. Resolved via mutual agreements in 2001.
		Respondents	European Communities	
		Third Parties	Dominican Republic, Jamaica, Nicaragua, Saint Lucia	
DS54	Indonesia - Autos	Complainants	European Communities, Japan, United States	Indonesia's National Car Program violated SCM, TRIMs and GATT due to local content requirements and subsidies.
		Respondent	Indonesia	
		Third Parties	Australia, Canada, Hong Kong, South Korea	
DS58	US - Shrimp	Complainants	India, Malaysia, Pakistan, Thailand	US ban on shrimp imports was found discriminatory and unjustified under GATT Article XX despite environmental goals.
		Respondent	United States	
		Third Parties	Australia, Canada, Colombia, Costa Rica, Ecuador, European Communities, Hong Kong, Japan, Nigeria, Philippines, Singapore, Venezuela	
DS90	India - Quantitative Restrictions	Complainant	United States	India's import restrictions on 2,700 tariff lines were inconsistent with WTO rules and not justified under balance-of-payments exceptions.
		Respondent	India	
		Third Parties	Japan, Australia, Canada, European Communities, New Zealand, Switzerland	
DS192	US - Combed Cotton Yarn	Complainant	Pakistan	US safeguard measures on cotton yarn imports from Pakistan lacked evidence of serious damage, violating WTO rules.
		Respondent	United States	
		Third Parties	European Communities, Japan	
DS204	Mexico - Telecommunications	Complainant	United States	Mexico's telecom regulations violated GATS by favoring the domestic market and restricting foreign access.
		Respondent	Mexico	
		Third Parties	Canada, European Communities	

DS217	US - Offset Act (Byrd Amendment)	Complainants	Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea, Thailand	The Byrd Amendment violated Anti-Dumping and SCM Agreements by redistributing duties to domestic petitioners.
		Respondent	United States	
		Third Parties	Argentina, Canada, Costa Rica, Hong Kong, Israel, Mexico, Norway	
DS267	US - Upland Cotton	Complainant	Brazil	US cotton subsidies violated AoA and SCM, causing global price suppression.
		Respondent	United States	
		Third Parties	Argentina, Australia, Benin, Canada, Chad, China, Chinese Taipei, European Communities, India, New Zealand, Pakistan, Paraguay, Thailand, Venezuela	
DS285	US - Gambling	Complainant	Antigua and Barbuda	US online gambling ban conflicted with GATS commitments and discriminated against foreign suppliers.
		Respondent	United States	
		Third Parties	Canada, China, Chinese Taipei, European Communities, Japan, Mexico	
DS334	Turkey - Rice	Complainant	United States	Turkey's import licensing and domestic purchase rules for rice violated GATT and AoA.
		Respondent	Turkey	
		Third Parties	Brazil, China, European Communities, India, Japan, Korea, Pakistan, Thailand	

Note. This table summarises selected WTO dispute settlement cases, including complainants, respondents, outcomes and core legal issues. Adapted from World Trade Organization. (2023). WTO dispute settlement: One-page case summaries 1995–2022 (2023 ed.).

At this stage, an additional perspective to be considered is the numerical data. As illustrated in Table 2, a systematic analysis of WTO dispute outcomes is contingent upon the development status of the involved parties. That is to say, the classification of the

complainant and respondent as developed or developing countries serves as a critical factor in the interpretation of the data.

Table 2

WTO Dispute Outcomes by Party Development Status

Party Alignment by Development Status	Outcome Favourable to Complainant	Outcome Favourable to Respondent
Developed Countries - Developed Countries	59	4
Developed Countries - Developing Countries	35	0
Developing Countries - Developed Countries	51	2
Developing Countries- Developing Countries	23	0

Note. This table considers a case as favourable to the complainant if a violation was found in the panel and/or Appellate Body reports. A case is considered favourable to the respondent if the complainant's claims were rejected or the challenged measures were deemed consistent with WTO rules. The table excludes disputes that remained at the consultation stage, were resolved mutually without a ruling, or lack a publicly released decision. Article 21.5 (compliance) cases are only listed separately when they contain distinct substantive outcomes differing from the original ruling. If the complainant side included both developed and developing countries and the ruling was favourable to them, the case was counted once under each group (i.e., both received +1). Data adapted from World Trade Organization. (2023). WTO dispute settlement: One-page case summaries 1995–2022 (2023 ed.).

The data in Table 2 reveal a salient trend: Complainants achieve a decisive victory in all configurations, while respondents attain favourable outcomes in only a minority of cases. In particular, in disputes where developing countries challenge developed countries, complainants have prevailed in 51 cases, compared to only two wins for respondents. A similar pattern emerges in disputes between developing countries, where the complainant has historically prevailed. In the 2 cases where cases involving developing country complainants were decided in favour of the respondents, an argument that could be made is that the legal and technical capacity of the respondents was superior to that of the complainants. Furthermore, the table reflects methodological considerations such as the

exclusion of unresolved cases, separate treatment of Article 21.5 compliance decisions and double counting where the coalitions of complainants include both developed and developing countries. This structured approach provides insight into the accessibility and effectiveness of the WTO dispute settlement mechanism for developing members.

4.1. BENEFITS OF WTO DSB FOR DEVELOPING COUNTRIES

The WTO Dispute Settlement Body claims to provide a rules-based forum for the settlement of trade disputes, allowing all its members, including developing countries, to "have their day in court" on an equal legal footing (Abbott, 2007, p.2). However, states, irrespective of their level of development, perceive this mechanism as a strategic instrument to advance their national economic interests. This is achieved through the enforcement of trading partners' commitments, the securing of access to export markets and the protection of domestic industries within the legal framework of the WTO. This phenomenon can be demonstrated through the increasing activity of developing countries, especially emerging economies, as users of the system, leading to their rising participation in disputes. In contrast, developed countries, notably the United States as a pioneer, have demonstrated a marked disengagement from the system. The emergence of a small number of developing countries as active participants in the global economic landscape does not necessarily imply the elimination or reduction of economic inequality. The most economically disadvantaged nations persist in their exclusion from the global financial system. However, it is crucial to acknowledge the merits of the WTO's dispute settlement mechanism in facilitating the more active utilisation of this mechanism by developing countries.

4.1.1. Special and Differential Treatment (S&DT)

The WTO has established provisions within its agreements known as Special and Differential Treatment. These provisions are designed to accommodate the unique circumstances of developing countries, encompassing various aspects such as consultative procedures, panel composition, extended timelines and implementation flexibilities. Within the framework of dispute settlement, a range of S&DT clauses are designed to provide benefits to developing members. Table 3 provides a summary of the primary S&DT provisions outlined in the Dispute Settlement Understanding (DSU).

Table 3

S&DT Provisions in the WTO Dispute Settlement Understanding

DSU Article	S&DT Provision for Developing Members	Description
Art. 3.12	Option to use 1966 GATT Procedures	A developing country complainant may request the use of the older, simplified GATT 1966 dispute procedures (e.g., faster timelines and automatic panel establishment), but this requires mutual agreement by both parties. In practice, it has never been invoked.
Art. 4.10	Special attention in consultations	Developed country members must give special attention to the particular problems and interests of developing country members during consultations. This is a soft obligation and does not mandate specific outcomes.
Art. 8.10	Panel composition flexibility	If a dispute is between a developing and a developed country, the panel must include at least one panelist from a developing country if the developing country requests it. This ensures representation and sensitivity to developing country perspectives.
Art. 12.10	Extended panel timeframes	Panels must grant sufficient time for developing country respondents to prepare and present their arguments. This provision acknowledges the potential institutional and resource limitations of developing Members.
Art. 12.11	Consideration of special situations	Panels must explicitly consider the special situation of developing country members during the panel process. This opens the door for context-sensitive analysis, though it lacks enforcement teeth.
Art. 21.2	Surveillance of implementation	When monitoring implementation of rulings, the DSB must consider the difficulties that developing country members may experience in complying with recommendations. This provision aims to introduce flexibility but offers no concrete remedies.
Art. 21.7	Technical assistance for compliance	The WTO Secretariat is instructed to provide developing country Members with assistance to help them comply with recommendations and rulings. This provision supports capacity-building during implementation.
Art. 24	Special procedures for Least-Developed Countries	Developed country members must exercise due restraint in bringing complaints against LDCs. Additionally, if a dispute involves an LDC, the Director-General or the Chairman of the

		Dispute Settlement Body must offer good offices, conciliation or mediation with a view to helping the parties reach a mutually satisfactory solution. This provision provides both substantive leniency and procedural support to LDCs.
Art. 27.2	Legal and technical assistance	The WTO Secretariat must make qualified legal experts available to developing country Members involved in disputes to ensure they can effectively participate. This is a direct form of capacity support.
Art. 27.3	Financial support and independence	When providing legal assistance to developing-country Members, the Secretariat must ensure that this support is independent and does not compromise the impartiality of the dispute settlement process.

Note. Adapted from Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), World Trade Organization, 1994.

Based on the summary table above, some case examples will illustrate how S&DT provisions operate at the consultations stage, at the panel stage, at the implementation and enforcement stage and in disputes involving LDCs, the differences between their meaning in theory and their impact in practice and the ineffectiveness or limited utility of the provisions.

4.1.1.1. Consultations Stage

The provisions of S&DT are introduced in the initial phase of the trial, specifically during the consultation stage. The directive outlined in Article 4.10, which calls for the provision of "special consideration" to the concerns of developing countries, is commendable in its intention but lacks legal enforceability (Palmeter et al., 2022, p247; Tania, Atkins, Cunningham, & Anawaratna, 2024; p.126; WTO, 1994, Art. 4.10; WTO, 1996, p.2; WTO, 2021, p.106). In practice, however, powerful members exercise their superior bargaining power during the consultations stage to gain an advantage over developing countries. An illustration of this phenomenon can be observed in the case of "United States - Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan" or "US - Cotton Yarn" for short (WTO, 2023, p.78). In 2001, Pakistan, a developing cotton exporter, lodged a formal complaint regarding the transitional safeguard measures imposed by the United States under the ATC. In response, Pakistan requested

consultations under Article 4.10 of the WTO rules. Instead of focusing on the particular problems and interests outlined in the Article, the United States utilised the consultation phase as a means to impede Pakistan's progress (Palmeter et al., 2022, p241; Tania et al., 2024, pp.126-128). An alternative example can be observed in the consultations phase of the dispute between the small island nation of Antigua and the United States over gambling services. In the dispute, known as "US - Gambling", Antigua and Barbuda accused the United States of violating Articles XIV(a), XIV(c) and XVI of the GATS by implementing various measures against gambling and betting services (WTO, 2005; WTO, 2023, pp.118-119). During the consultation phase of the dispute, it appeared that, despite Antigua's willingness to accept a mutually acceptable settlement proposal, the US position was legalistic rather than sensitive to Antigua's development concerns as per Article 4.10 of the DSU. The absence of binding obligations and the inapplicability of the Article at the consultations stage resulted in inconclusive negotiations and practical inefficiencies that undermined the original intent of the DSU (Tania et al., 2024, pp.126-127).

Finally, the first part of Article 12.10 states, "In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods..." (Palmeter et al., 2022, pp.247-248; Tania et al., 2024, pp.126, 128, 129; WTO, 1994, Art. 12.10). This provision is advantageous for developing countries by allocating additional dialogue time during the consultation phase (WTO, 2021, p.106). However, the extension of the period necessitates either mutual agreement or the intervention of the WTO Director-General. A notable illustration of this issue is the “Turkey - Rice” dispute between Turkey and the United States regarding Turkey’s alleged discriminatory import practices. On 2 November 2005, the United States requested consultations with Turkey concerning the latter’s import restrictions on rice originating from the United States (WTO, 2023, p.139). Turkey, as a developing country Member, requested an extension of the consultation period under Article 12.10, yet the procedural handling of this request revealed the non-binding and discretionary nature of the provision. The DSB Chairman declined to make a definitive ruling on Turkey’s request at the relevant meeting and no binding procedural obligation compelled the complainant to accept the extension (Palmeter et al., 2022, p.248). Moreover, the Panel's inclusion of S&D analysis in the final report without prior review by the parties was criticised by the United States and

other Members as inconsistent with Article 15 of the DSU, underscoring the procedural challenges developing countries may face even when attempting to invoke their entitled flexibilities (WTO, 2021, pp.106-107). Consequently, although S&DT has been formally incorporated into the consultation phase, its practical impact on developing countries remains limited. Rather than functioning as a robust procedural safeguard, it often reflects the underlying asymmetries of power that characterise the dispute settlement process (Tania et al., 2024, pp.128-129).

4.1.1.2. Panel Stage

It is imperative to deliberate on Article 8.10, the most prominent of the S&DT provisions when a dispute is referred to adjudication. It ensures the prerogative to appoint a panelist from WTO member developing countries upon the request of the disputing developing country (Palmeter et al., 2022, p.249; WTO, 1994, Art. 8.10). In practice, this right has been consistently upheld, ensuring that panelists operate within the framework of the WTO and not as national representatives and guaranteeing that panelists are able to assess the dispute from the perspective of a developing country (WTO, 2021, p.106).

As previously referenced, the second part of Article 12.10 constitutes an additional panel-stage S&DT provision. In accordance with this provision, which mandates panels to grant developing countries additional time to present their case, panels have, on their own initiative, granted further time even in instances where such explicit requests have not been made (Palmeter et al., 2022, pp.247-248; Tania et al., 2024, pp.129-130; WTO, 1994, Art. 12.10; WTO, 2021, pp.106-107). In the case of the "India - Quantitative Restrictions" dispute, concerning restrictions imposed by India on imports of agricultural, textile and industrial products to the United States, the panel noted India's status as a developing country and granted the Indian authorities additional time to prepare their submissions (Palmeter et al., 2022, p.247-248; WTO, 2023, p.40). This flexibility is advantageous in terms of compensating for the limited legal staff and internal coordination obstacles that are characteristic of developing countries. Nevertheless, the impact of Article 12.10 is limited in scope. The decision as to what constitutes "sufficient" time is one which panels have discretion to make and the requirement to complete proceedings within the overall DSU time limits remains in place (Tania et al., 2024, pp.129-130). Finally, it is important to acknowledge that the application of the Article is

restricted exclusively to instances in which a developing country is designated as a respondent, excluding its roles as either a complainant or third party. In the “European Communities - Bananas” case, third-party developing countries from the African, Caribbean and Pacific (ACP) group contended that they had limited time to prepare their submissions (WTO, 1997; WTO, 2023, p.16-18). However, the panel declined to consider 12.10 on their behalf, as the provision does not pertain to third parties (Palmeter et al., 2022, p.248; Tania et al., 2024, pp.129-130; WTO, 2021, pp.106-107; WTO, 2023, p.16-18). Consequently, although extended time frames offer procedural support to developing respondents, the provision's narrow applicability excludes third-party developing countries. This exclusion is especially problematic, as third-party participation plays an important role in institutional learning and capacity building for developing countries.

Finally, of the S&DT provisions that must be addressed at the panel stage, Article 12.11 obliges panels to explicitly address any development flexibilities invoked by a developing party – S&DT clauses in WTO agreements (Palmeter et al., 2022, p.248; WTO, 1994, Art. 12.11). Consequently, the DSU is associated with numerous S&DT provisions within the framework of WTO agreements (WTO, 2021, p107). For instance, when developing countries propose extended transition periods in TRIPS or specific agricultural provisions for developing countries at the panel stage, the panel considers this to be a positive obligation on legal grounds in the context of development. In practice, as previously observed, this approach is not subject to effective enforcement, despite formal recognition by the panel and consequently exerts no substantive impact. For example, in the dispute “Mexico - Measures Affecting Telecommunications Services”, where the United States referred Mexico to the panel for allegedly adopting anti-competitive and discriminatory regulatory measures in violation of its GATS commitments, the panel examined whether Mexico had breached its obligations in the basic and value-added telecommunications sectors. The United States argued that Mexico failed to prevent market barriers established by dominant private actors and did not implement appropriate regulatory frameworks to ensure fair competition (Palmeter et al., 2022, pp.248-249; WTO, 2004b; WTO, 2023, p.81). Although the panel noted in its report that, “pursuant to Article 12.11, it has taken into account...provisions on differential and more-favourable treatment”, it ultimately offered no substantive analysis or special consideration in Mexico’s favour based on its developing country status (Tania et al., 2024, pp.130-131). In another dispute,

“United States - Continued Dumping and Subsidy Offset Act of 2000”, involving the distribution of collected anti-dumping and countervailing duties to U.S. domestic producers (commonly known as the “Byrd Amendment”), India and Indonesia invoked Article 15 of the S&DT provision in the Anti-Dumping Agreement, but after a brief mention, the panel found the provision “not relevant” because the countries had not “demonstrated” how it would change the outcome (Palmeter et al., 2004, pp.48-9; Tania et al., 2024, p.131; WTO, 1994; WTO, 2023, p.89). Furthermore, the WTO Appellate Body has previously stated that Article 12.11 is essentially an aspect of a panel's overall objective assessment mandate and has played down the idea that it establishes new rights. Despite the progressive wording of Article 12.11, its application has not yielded tangible development benefits in panel decisions. Panels rarely alter their findings in favour of a developing country based on this provision (Tania et al., 2024, pp.130-132).

4.1.1.3. Implementation and Enforcement Stage

A significant challenge confronting developing countries is the dilemma between complying with unfavourable decisions and implementing positive ones. Consequently, S&DT considerations persist beyond the decision process. As articulated in Article 21.2 of the DSU, "special attention" is to be accorded to the interests of developing countries in the implementation of decisions (Palmeter et al., 2022, pp.249-250; WTO, 1994; WTO, 2021, pp.107-108). In instances where a developing country is unsuccessful, arbitrators have been known to permit supplementary time periods for compliance that extend beyond the customary 8-15 months. For example, in “Indonesia - Certain Measures Affecting the Automobile Industry” (in short, “Indonesia - Autos”), the case arose from Indonesia’s National Car Programme, under which the government provided tax and customs duty exemptions for “national vehicles” and their components, favouring certain domestic manufacturers. The complainants claimed that the program constituted de facto discrimination against foreign products and unfair subsidisation of local industries (WTO, 1998a). In response, Indonesia requested a longer implementation period, invoking its status as a developing country. The WTO Dispute Settlement Body responded positively to Indonesia's request, acknowledging the specific challenges it faced and granting the maximum compliance period of 15 months—highlighting the application of special and differential treatment under the DSU (Tania et al., 2024, pp.135-136; WTO, 2023, p.27). Conversely, in instances where a developing country emerges victorious in a dispute

against a developed country, there is a compelling interest on the part of the developing country to implement the decision with immediate effect. This is due to the fact that the duration of the compliance period can result in trade losses for countries that are vulnerable to economic disruption. Despite the absence of explicit reference to this point in the Article, proponents of the development of complainants argue that their status should encourage more expeditious implementation. In the “US - Gambling dispute”, Antigua invoked Article 21.2 to compel the US to comply expeditiously (Tania et al., 2024, p.136, WTO, 2023, p.118). In response, the US contended that Article 21.2 applies exclusively to developing practitioners, not complainants. The arbitrator elected not to deliver a definitive ruling on this particular interpretation (WTO, 2023, p.119). However, subsequent arbitrations have highlighted that Article 21.2 is not confined to one party (Tania et al., 2024, pp.136-137). As previously mentioned, it is imperative to address the development impacts of both parties in order to comprehend economic vulnerability and trade loss. In practice, the compliance of a powerful country is influenced more by its political will than by the developing status of its rival. The establishment of a timetable by developed countries is predicated on the calculation of trade and technical feasibility, with little consideration given to the status of developing countries.

Another area in which S&DT is evident is in cross-retaliation (Palmeter et al., 2022, pp.484-489). In instances where compliance is unsuccessful and retaliation is permitted, a small economy may choose to suspend intellectual property or service obligations (not solely goods) in order to maximise pressure on a larger offender. This approach has been adopted by Antigua, which was granted authorisation to suspend certain intellectual property rights following the US's non-compliance with the gambling case (Palmeter et al., 2022, pp.486; WTO, 2005). Given that Antigua's imports from the US are negligible, conventional tariffs would have been rendered ineffective. A similar situation occurred in the “United States - Subsidies on Upland Cotton” dispute involving Brazil, where Brazil challenged a wide array of U.S. subsidies granted to American cotton producers (Palmeter et al., 2022, p.487; WTO, 2023, pp.108-109). Following the legal process, Brazil prevailed and when the U.S. failed to comply fully with the ruling, Brazil requested authorisation for cross-retaliation—specifically in the areas of intellectual property rights and services (Palmeter et al., 2022, p.487; Tania et al., 2024, pp.138-139; WTO, 2004c, WTO, 2023, pp.108-109). The request was granted by the DSB, marking a rare instance

of cross-sectoral retaliation and ultimately contributing to a negotiated settlement between the two parties. These cases demonstrate that, while the DSU's text only tentatively addresses the issue of enforcement asymmetry, the strategic utilisation of retaliation provisions has to a certain extent resulted in the empowerment of developing winners.

4.1.1.4. Disputes Involving LDCs

Article 24 of the DSU calls upon all parties to exercise particular leniency towards the poorest countries. They are urged to exercise "due restraint" in both the initiation of disputes and the pursuit of sanctions in the event of a violation being committed (Palmeter et al., 2022, p.249; WTO, 1994; WTO, 2021, pp.109-110). In the context of the WTO, the involvement of LDCs as respondents has been infrequent. The underlying reasons for this phenomenon, whether attributable to the specific provisions of a designated Article or to the inherently limited trade volumes characteristic of LDCs, remain subjects of debate. It can thus be posited that the overall effect of Article 24 has been predominantly one of soft pressure. A notable case in point is that of Benin and Chad, both LDCs, as third parties in “United States - Subsidies on Upland Cotton”, where they provided support to Brazil's challenge to the damage caused to their cotton sector by US subsidies (WTO, 2004c; WTO, 2023, pp.107-109). While the Appellate Body acknowledged the significance of the Article in emphasising the consideration of LDC interests as outlined in Article 24.1, it ultimately declined to grant them any specific relief. This decision was made on the basis that they were third parties and Brazil's claims had been resolved on other grounds. Nevertheless, the fact that LDC concerns were highlighted by the Appellate Body contributed to pressure on the United States to reform some aspects of its cotton programmes (Tania et al., 2024, pp.138-139). In summary, WTO members who wish to avoid being perceived as exerting undue influence over a LDC are advised to act in a manner consistent with this objective, including the possibility of compromising or waiving their rights in favour of the LDC.

4.1.1.5. The Realities of S&DT for Developing Countries in the DSB

As previously stated, certain S&DT mechanisms, despite their modest nature, have been found to offer tangible assistance in the resolution of disputes. For instance, the stipulation in Article 8.10 that a panelist from a developing country be included has been consistently

adhered to, thereby ensuring representation (WTO, 2021, p.106). The extension of defence deadlines stipulated in Article 12.10 has facilitated the development of a more robust defence strategy among certain respondents from emerging backgrounds (WTO, 2021, p.106). In the India-Quantitative Restrictions dispute, for instance, the Panel invoked Article 12.10 and granted India additional time to gather data and prepare arguments challenging US claims against import restrictions. This assistance enabled India to manage the complex case and ultimately align its policies with WTO rules (Palmeter et al., 2022, pp.247-248; Tania et al., 2024, pp.129-130; WTO, 2023, p.40). This Article could also be observed in the China – Rare Earths dispute, which concerned a complaint by the US, EU and Japan against China's export restrictions, such as duties, quotas and licensing, on rare earths, alleged to violate GATT 1994 and China's Accession Protocol. As a developing country Member, China invoked procedural flexibilities and was granted an extended schedule to coordinate its defence (WTO, 2014; WTO, 2023; p.187). Although not formally framed under Article 12.10 of the DSU, this extension reflected the underlying logic of the provision, as it allowed China's domestic agencies more time to compile and present evidence. The case thus represents an implicit application of Article 12.10 principles, demonstrating how procedural accommodations can be used to address capacity constraints in complex disputes.

Implementation phase flexibilities have also played a significant role, as seen in EC – Tariff Preferences (GSP), a dispute initiated by India against the European Communities concerning the conditions under which the EC granted tariff preferences under its Generalized System of Preferences scheme. India argued that the EC's special arrangements, particularly those tied to drug control and labour/environmental standards, violated the Enabling Clause and Article I:1 of GATT 1994 by creating undue difficulties for its exports (WTO, 2004a; WTO, 2023, p.101). Despite being a developed respondent, the EC successfully argued for a longer implementation period, partly on the grounds that an immediate withdrawal of its GSP scheme could disrupt exports from multiple developing countries. Arbitrators took this into account under Article 21.2, indirectly applying S&DT by considering the broader interests of developing-country GSP beneficiaries—even though they were not formal parties to the dispute (Tania et al., 2024, pp.134-135; WTO, 2021, pp.107-108). Finally, a reference should be made to the technical assistance outlined in Article 27.2. According to this provision, the Secretariat

offers the services of two legal consultants to provide guidance throughout the dispute settlement process. Although many developing countries now prefer to engage independent legal counsel or seek assistance from the ACWL (a topic to be addressed subsequently), this guaranteed support ensures that no developing Member is compelled to undertake litigation without access to legal expertise (WTO, 2021, p.109).

Notwithstanding these modest illustrations, S&DT in the context of dispute settlement has frequently fallen short of the development objectives set out in the relevant documents. The ambiguity of Article 4.10's "special attention" provision has been demonstrated to be ineffective in preventing the utilisation of power-play tactics during consultations, as evidenced by instances such as those observed in the U.S. against Pakistan and Antigua (Tania et al., 2024, pp.126-128). The prospect of an early resolution or additional compensation for the development of grievances has seldom been realised. Consequently, respondents with developed interests have minimal motivation to compromise during consultations solely due to S&DT. During panels, Article 12.11 has proven a disappointment. For example, in “US - Import Prohibition of Certain Shrimp”, a case brought by India, Malaysia, Pakistan and Thailand on the United States’ ban on shrimp imports, which allegedly violated GATT Articles I, XI and XIII, the complainants raised their development needs in arguing against a U.S. environmental trade ban (WTO, 1998b; WTO, 2023, p.29). The panel and Appellate Body ruled for the complainants on legal grounds (finding the U.S. ban violated GATT), but nowhere did the reports explicitly cite Article 12.11 or any development exception – the win was based on standard rules, not S&DT (Palmeter et al., 2022, p241). Similarly, in “EC - Bananas”, it was said that WTO rulings had annulled the EC's preferential regime favouring developing exporters because it violated MFN obligations (WTO, 1997; WTO, 2023, p.16-19). Here S&DT principles (like the Enabling Clause for developing preferences) were raised in defence, but ultimately received little weight - the development aims could not override core WTO rules and the panel/AB did not frame their findings to soften the blow on the affected countries (Tania et al., 2024, p.131). In practice, emerging winners frequently encounter compliance delays or non-compliance that the S&DT is unable to rectify. The victory of Antigua over the US in the gambling case was rendered meaningless by the US's refusal to amend its legislation. Article 21.2 did not mandate expedited compliance and the retaliatory remedies granted to Antigua (though limited in

effect due to its diminutive economy) were rendered ineffective. In the EC-Bananas case, Ecuador endured a protracted period of arbitration and negotiations, as the S&DT provisions proved ineffective in promoting immediate compliance from the EC (WTO, 1997; WTO, 2023, p.16-19). This phenomenon may be linked to the execution problem previously discussed, as the S&DT is not equipped with an execution tooth.

In addition, upon closer inspection, the 'due restraint' promised for LDCs in Article 24 is found to be inadequate. This tendency is particularly evident in the domain of intellectual property, where developed countries have been observed to articulate their concerns regarding LDCs with notable frequency (WTO, n.d.-h). In essence, the S&DT clauses have been largely symbolic, with value as political statements and, on occasion, a marginal influence on procedure. However, they have proven insufficient to effect substantive change in outcomes. This reality has stimulated ongoing discussions and proposals (especially by coalitions of developing countries) to strengthen and operationalise S&DT in the dispute system. The limited effectiveness of the S&DT means that developing countries cannot rely on special dispensations; instead, they use the rules of the DSB like any other player to defend their trade interests. Rather than seeking charity or one-sided exemptions, it is evident that more economically advantaged developing states utilise the dispute mechanism to enforce reciprocal obligations. The subsequent sections will demonstrate how numerous developing countries are implementing this strategy, enhancing their involvement in disputes and utilising institutions such as the ACWL to surmount structural disadvantages.

4.1.2. Developing Countries' Increasing Use of the WTO DSB

This part examines the evolving role of developing countries in WTO dispute settlement, focusing on their patterns of participation, the distribution of disputes among different regions and income groups and the extent to which legal outcomes have translated into meaningful trade benefits. Although some major emerging economies, such as China, India, Brazil and Mexico, have become frequent litigants, smaller and less developed nations remain largely underrepresented, reflecting broader structural asymmetries in access and capacity. Through a review of empirical evidence and key cases, this chapter evaluates the strategic use of the DSM by developing countries and assesses its effectiveness as a mechanism for enhancing market access and defending trade interests.

Ultimately, the chapter argues that while the DSM provides a valuable institutional platform for contesting trade barriers and enforcing rules, its benefits remain unevenly distributed. The system's legal neutrality often masks the unequal capacities of member states, particularly in terms of enforcement and litigation resources.

4.1.2.1. Developing Country Participation: Quantity Without Equality

Since the early 2000s, developing countries have emerged as significant participants in the WTO dispute settlement (WTO, 2003b). Despite the fact that in the 1990s the system was dominated by the 'Quad'[18], in 2001, developing countries accounted for 75% of all new complaints. This increase can be attributed to a large number of cases filed by Latin American and Asian exporters (WTO, 2003b). While the percentage of disputes where the complaining party is a developing country was 39% between 1995 and 2005, according to Abbott (2007), this rate is 30% when OECD member developing countries are not included, this rate increased to 45% when considering the years 1995-2019 (Abbott, 2007, p.1; Crosbie, 2007). In other words, it is evident that the majority of WTO disputes, approximately 50%, have been initiated by developing countries. It is noteworthy that developing countries constitute approximately two-thirds of WTO members, thereby signifying a substantial augmentation in participation. From this standpoint, the hypothesis that economically disadvantaged nations are reluctant to adopt costly legal systems is invalidated. In contrast, it appears that numerous nations are strategically leveraging this mechanism to counteract trade barriers.

However, it is important to note that participation among developing countries is highly uneven. While a number of 'more developed' developing countries are parties to a large proportion of disputes, smaller or poorer developing countries have hardly ever initiated disputes at the WTO. According to Crosbie (2007), prior to 2006, 60% of disputes were initiated by a mere five developing countries: Brazil, India, Thailand, Chile and Argentina. Today, the largest emerging markets are still the most active users of the system: China, India, Brazil, Mexico and South Korea. These five countries alone have participated in 249 disputes as complainants or respondents, which is about 75% of the participation of developing countries in WTO cases (González & Jung, 2020, p.6). Since

[18] The term "Quad" refers to an informal grouping of four major developed WTO members: the United States, the European Union, Japan and Canada.

acceding to the WTO in 2001, China has rapidly emerged as one of the most active participants, utilising the DSB to contest US and EU trade remedies and to defend its own measures (Zhou, 2023, p.252). India and Brazil have been identified as two of the primary countries responsible for initiating disputes on industrial goods, agriculture and intellectual property at the global level (WTO, 2004c; WTO, 2023, pp.29, 108-109; WTO, n.d.-k). Mexico and Argentina were the first to utilise this strategy extensively, asserting market access rights (frequently in opposition to the United States) particularly in anti-dumping and agriculture cases. In the second tier, countries such as Thailand, Indonesia, Turkey, Chile, Colombia and South Africa have all initiated or actively defended multiple cases (González & Jung, 2020, p.6). Conversely, the least developed countries in Africa, Asia and the Pacific, in addition to numerous low-income states, are conspicuously absent from the dispute registers. By 2007, 80 to 90 WTO members, predominantly developing countries, had not initiated a case (Crosbie, 2007). To date, only one LDC, namely Bangladesh, has initiated a dispute against India in 2004 regarding yarn export restrictions (Crosbie, 2007; Jahan, 2020, pp.17-18; Palmeter et al., 2022, p.249; Tania et al., 2024, p.143). This finding indicates that while the DSB is accessible to all, its effective utilisation remains predominantly concentrated among developing members who possess sufficient trade volume, legal capacity, or political motivation to engage.

The present situation can be attributed to several factors. In the contemporary global economic landscape, major emerging economies, characterised by their substantial contributions to global trade, have initiated legal proceedings with the objective of maintaining the accessibility of foreign markets for their exports. As of 2017, the 15 largest emerging economies accounted for approximately 48% of global exports, underscoring their significant role in the global trade dynamics (González & Jung, 2020, p.3). As their export volumes have grown, these countries have begun to participate in disputes not only as complainants but also as respondents. This further encourages them to pursue the experience of filing a counter-complaint or litigation, for example in China and India. In contrast, smaller countries with limited export volumes may seek to resolve their disputes through diplomacy or regional trade remedies rather than expensive WTO disputes. Consequently, limitations in terms of resources and capacity may act as deterrents for the most economically disadvantaged nations (González & Jung, 2020,

p.5). Furthermore, it is evident that countries will only engage in disputes if they anticipate substantial trade benefits, thereby underscoring the limitations of the ACWL, as will be elaborated upon subsequently. Allee's (2008) study provides supporting evidence for this argument, showing that countries, especially developing ones, are more likely to initiate disputes against their largest import markets, where a favourable ruling could yield significant export gains and where prior rulings on similar issues increase the perceived likelihood of success.[19] However, as competition between developing countries intensifies, as evidenced by disputes such as those between Argentina and Brazil concerning anti-dumping duties on poultry and between Mexico and Argentina regarding measures affecting the importation of goods, these countries are increasingly positioned not only to be the challenging party but also to be the party tasked with defending their own trade measures (WTO, n.d.-i; 2023, pp.96, 192). Indeed, some developing countries have been defendants in 43% of cases since 1995 (González & Jung, 2020, p.5). The implication is that developing countries utilise the system in both an offensive and defensive manner to safeguard their trade interests. However, the preponderance of developing country participation in regions such as Asia and Latin America is indicative of the presence of a considerable number of emerging economies in these regions. In contrast, Africa and the Middle East have experienced a comparatively limited number of disputes, which has led to criticisms of the system's inclusiveness (González & Jung, 2020, p.5).

In summary, the possibility of substantial economic gains and the observation of others achieving success has been demonstrated to enhance the likelihood of developing countries pursuing legal action. Notable victories in the early years, including Brazil's triumphs against EU sugar subsidies and US cotton subsidies, or India's victories against US and EU import restrictions, underscored the system's capacity to yield outcomes for developing complainants (WTO, 2004c; WTO, 2023, pp.29, 107-109; WTO, n.d.-k). The WTO acknowledges this phenomenon in the phrase "many examples of developing country Members prevailing... over large trading nations" as an indication of growing

[19] Please see Allee, T. (2008, February). *Developing countries and the initiation of GATT/WTO disputes*. Paper presented at the 1st Conference on the Political Economy of International Organizations, Monte Verità, Switzerland. https://wp.peio.me/wp-content/uploads/2014/04/Conf1_Allee_Developing.Countries.WTO_.Disputes.pdf, pp.38-42 for the tables.

confidence in the rule of law (WTO, n.d.-j). Nevertheless, it is important to emphasise that developing countries prevailing over developed countries are only a minority with high trade volumes, legal capacity or political motivation. It is true that by the mid-2000s, developing countries accounted for the vast majority of new disputes and that, since 2000, nearly 60% of complaints filed each year have been by developing members, but it is worth noting another striking fact. The 15 largest developing country users of the DSB have collectively been involved in more cases (328 by 2019) than even the US (279 cases) or the EU (187 cases) over the same period (González & Jung, 2020, p.6). In other words, the mechanisms developing country participants only have a numerical edge over its key players.

4.1.2.2. Dispute Outcomes for Developing Countries

One way to measure the effectiveness of the DSB is to look at whether developing countries achieve positive outcomes when they litigate. Evidence shows that developing countries are often successful on the merits when they bring a case and see it through to the end. Across all WTO members, complainants win about 90% of the cases decided (Bacchus, 2023). Developing country complainants are no exception to this high success rate. India, for instance, has a strong track record as a complainant, having prevailed in cases against the EU and the US (WTO, 2023, p.29; WTO, n.d.-k). Similarly, Brazil has won cases against the EU regarding sugar subsidies and against the US regarding cotton subsidies (Tania et al., 2024, p.138; WTO, 2004c; WTO, 2023, pp.107-109). Argentina and Indonesia also secured wins against the EU's anti-dumping methodologies (WTO, 2023, pp. 194, 206, 210; WTO, n.d.-l, n.d.-m, n.d.-n). Even relatively smaller economies have notched victories, Ecuador succeeded alongside the U.S. in the "EC - Bananas" dispute (1997–2001) against the EU's quota regime, enforcing its rights despite being a much smaller economy than the EU (WTO, 1997; WTO, 2023, p.16-18). And in 2005, Antigua and Barbuda shocked many by winning its services trade case (on internet gambling) against the United States – a single Lilliput's victory over Gulliver[20] (WTO, 2005; WTO, 2023, pp.118-119). These results can be regarded as a positive development for emerging economies; however, it is crucial to acknowledge that such advancements

[20] In reference to Keohane's analogy of Gulliver and Lilliput, where international institutions and smaller states collectively constrain the actions of powerful states.

are instrumental in nature. They compel trading partners to eliminate or compensate for barriers, thereby expanding the developing country's export opportunities or safeguarding the interests of its producers.

However, it should be noted that the successful resolution of a dispute is not necessarily indicative of merit. The ultimate effectiveness of the win is contingent on compliance and implementation and on this issue the evidence is inconclusive. The European Communities, after losing cases brought by developing nations, reformed its policies: it restructured its banana import regime post-2001 to comply with rulings (benefiting Latin American exporters like Ecuador and Honduras) and it repealed its sugar export subsidies after losing to Brazil, Thailand and Australia in EC – Sugar (WTO, 1997; WTO, 2023, pp.16-19, 107). The United States, after the Shrimp/Turtle case, changed its import rules to allow shrimp from Malaysia, Thailand and others (the complainants) once they adopted turtle-excluder devices, thus re-opening the U.S. market to those countries' shrimp exports (WTO, 2023, pp. 29-30). Even in the Upland Cotton case, the U.S., after years of arbitration, reached a settlement in 2010 with Brazil, paying Brazilian farmers a compensation fund and eventually tweaking its Farm Bill to remove the offending cotton subsidies (WTO, 2023, pp.108-109). It is evident that these adjustment outcomes can be interpreted as a payoff of the mercantilist policies pursued by developing countries. The elimination of unfair trade barriers and subsidies abroad, as well as the levelling of the playing field for exports, can be attributed to the DSB. As Jung and González (2020) also cited, WTO disputes often yield substantial export gains for prevailing complainants, especially in major cases (González & Jung, 2020, p.2).. Yet, it could still be observed that the dispute settlement mechanism primarily functions to secure market access for powerful exporters while reinforcing existing asymmetries. Rather than ensuring equitable rule enforcement, it serves as a strategic tool that legitimises the trade interests of dominant economies, whether developed or developing, under the veneer of legal neutrality.

However, implementation can prove challenging, particularly in instances where a small developing country emerges victorious against a significantly larger economy. The most significant shortcoming to be addressed here is the limited capacity of the smallest countries to enforce their victory through retaliation if the losing side is procrastinating. The dispute between Antigua and the US serves as a pertinent example in this context

(WTO, 2005; WTO, 2023, pp.118-119). Following the United States' failure to align its legal framework with international standards, Antigua was granted the authority to impose trade sanctions (Tania et al., 2024, pp.126-127). However, due to the island nation's limited market size, the implementation of conventional tariff sanctions would have a more significant adverse impact on Antigua than on the United States. The WTO arbitration consequently granted Antigua the prerogative to suspend specific US intellectual property obligations (a course of action which has been previously characterised as a form of cross-retaliation) (Bartels, 2013; Palmeter et al., 2022, p.486; WTO, 2005). Whilst this settlement was of significance from a legal perspective, it did not provide Antigua with adequate compensation for its losses. Rather, it functioned as a symbolic gesture of leverage in the context of ongoing negotiations. Ultimately, the United States did not amend its legislation and Antigua's economy derived minimal benefit from its legal triumph, with the exception of the symbolic victory of resisting a superpower (Tania et al., 2024, pp.126-128). This situation highlights a salient fact: the capacity of WTO dispute settlement to fully equalise power imbalances when it comes to enforcing compliance is questionable. A large country may be able to withstand any form of reprisal or delay in implementation, given the assumption that the capacity of a small complainant to exact retribution is inherently constrained. As previously stated, the anti-dumping dispute between Bangladesh and India is also of relevance in this context. In this case, India elected to implement an adjustment to its duties. However, it is debatable whether Bangladesh's potential retaliatory measures would have had any impact on India if it had declined to comply (Crosbie, 2007; Jahan, 2020, p.17; Tania et al., 2024, p.143). It could be argued that India's actions were motivated by a desire to maintain its credibility, dependability and regional goodwill in the eyes of international institutions.

Another salient concern pertains to the financial implications and temporal expanse of disputes, which have the potential to compel developing countries to acquiesce to partial concessions or withdraw their complaints under pressure. It is customary for cases to endure a period of two to three years from the filing of initial documentation to the delivery of the court's final judgment, a duration that encompasses the appeals and compliance phases (Palmeter et al., 2022, p.39). While the DSU's timelines are designed to avoid indefinite delays, developing countries with limited legal resources may encounter difficulties in maintaining the process (WTO, 1994). However, it is important

to acknowledge that the ACWL was established with the intention of addressing the challenges faced by developing countries. The subsequent section will provide an evaluation of the ACWL's impact.

In summary, the increased utilisation of the DSB by developing countries is indicative of an augmented perception of the efficacy of the mechanism. In developing economies, the approach to WTO cases is strategic, employed as a means to either open foreign markets or to resist trade demands from other nations. For instance, when the US and EU sought to protect their steel and agricultural markets (through safeguards or subsidies), countries such as Brazil, India, China and Argentina vigorously contested these measures at the WTO, perceiving legal victory as a means to augment their own steel and agricultural exports (WTO, 2023, pp.102, 108-109, 234) . Conversely, when these developing countries are subject to complaints (e.g. on industrial policies), the DSB functions as a forum for defence and deferral, thereby allowing time for adaptation rather than immediate unilateral sanctions. In essence, therefore, the DSB offers developing countries a rules-based apparatus by which they may engage in the pursuit of trade. While it is not capable of completely eliminating disparities in economic power, it has served to somewhat narrow the gap by institutionalising implementation. The subsequent section will address one such element, namely the Advisory Centre on WTO Law, which seeks to encourage numerous developing countries to utilise the DSB to their advantage.

4.1.3. The Advisory Centre on WTO Law and Developing Country Capacity

The Advisory Centre on WTO Law is an innovation in the WTO's legal system designed to support developing countries. Established in 2001 and headquartered in Geneva, the ACWL operates as an independent non-profit law firm, offering legal counsel and representation exclusively to developing and least developed countries on WTO matters (ACWL, 2000, pp. 1–3; ACWL, 2014, pp. 2–3; ACWL, n.d., pp. 2–3). ACWL was created in response to the perception that many poor WTO members lacked specialised lawyers and financial resources to fully participate in dispute settlement (Jahan, 2020, pp.17-18; Palmeter et al., 2022, pp.30-31; Tania et al., 2024, pp.139-140). Hiring top law firms and understanding WTO law were seen as the main obstacles preventing small countries from participating in litigation (González & Jung, 2020, p.5). Therefore, the

ACWL emerged with the aim of levelling the playing field by offering affordable (and often free) legal assistance, enabling developing countries to assert their rights under WTO agreements on an equal footing with wealthier members (ACWL, 2000, p.2; ACWL, 2011, p.29).

4.1.3.1. Legal Services and Operational Functions of the ACWL

The ACWL provides three main services: legal advice on WTO law, support in dispute settlement processes and training and capacity building (ACWL, 2000, p.19-20).[21] Developing country members of ACWL, as well as all least developed countries, can request legal advice on WTO matters from ACWL staff. The goal is to help governments understand their WTO rights and obligations to avoid or prepare for disputes. On average, ACWL provides more than 200 legal opinions per year (Palmeter et al., 2022, p.30; Jahan, 2020, p.18). By 2024, it had provided 3,940 legal advice notes (ACWL, 2024, p.8). It also acts as an advocate for governments in dispute settlement proceedings before WTO panels and the Appellate Body (ACWL, 2000, p.1). It provides at subsidised or no cost services to the least developed countries and subsidised prices to developing countries (depending on the countries category decided by income level of countries), which is intended to be significantly more affordable than private market alternatives (ACWL, 2011, p.62; ACWL, 2024, pp.73-74). Finally, the ACWL aims to build long-term legal capacity by organizing regular training programs, internships and secondments for lawyers from developing countries. Through these programs, many government lawyers from Africa, Asia, Latin America and least developed countries receive training in WTO law and seek to qualify as representatives for their countries in trade disputes (ACWL, 2011, p.33; ACWL, 2014, p.4; ACWL, n.d., pp-23-26).

4.1.3.2. Empirical Engagement: Participation in WTO Disputes

The ACWL aimed to change the rules of the game by involving more developing countries in WTO disputes. According to Jahan (2020), the ACWL is responsible for the increase in participation by developing countries in the dispute settlement mechanism after 2001 (pp.17-18). During the ACWL's first seven years, it was involved in 23 of the

[21] Please see Advisory Centre on WTO Law. (2000). *Establishing the Advisory Centre on WTO Law*. https://www.acwl.ch/wp-content/uploads/acwl-booklet-5-1-2000-english.pdf, pp.19-20, Art. 2, for full provisions.

144 disputes initiated by developing countries. By 2024, the ACWL had assisted in a total of 73 disputes (ACWL, 2024, p.8). The ACWL provided guidance to Bangladesh in the anti-dumping dispute between India and Bangladesh, which was mentioned as the first case brought by a LDC before the DSB (ACWL, 2011, pp.58-59; ACWL, 2024, p.65; Jahan, 2020, p.17). Pakistan, the complainant in the US – Upland Cotton case, which is frequently cited here as a victory of developing countries over major economies and Chad, which participated as a third party in the same dispute, also received support from the ACWL. (ACWL, 2011, pp.38, 50; ACWL, 2024, p.63-64; WTO, 2023, pp.107-109). These examples demonstrate that the ACWL's legal support extends not only to formal complainants but also to small and least developed countries acting as third parties (ACWL, 2011, pp. 50, 58–59; ACWL, 2024, pp. 63–65). This broader engagement indicates that the Centre enables systemic participation in WTO adjudication processes, allowing states to articulate their trade-related interests in otherwise exclusionary legal forums. This institutional support does not merely serve technical legal functions; rather, it reinforces the strategic capacity of developing countries to defend their national economic interests in a system traditionally skewed in favour of developed states (Hoekman & Mavroidis, 2000, p.535). By equipping them with the tools to challenge trade distortions and assert their rights, the ACWL enhances their ability to extract reciprocal benefits and to deter future violations, thereby aligning with the mercantilist logic of maximizing relative gains in the global trading system (Gilpin, 1987, pp.15-23, 31-34; Oatley, 2019, pp.32-39).

4.1.3.3. Strategic Implications: A Neo-Mercantilist Interpretation

Although the ACWL's training and capacity-building efforts may seem to align with liberal institutionalist goals, such as promoting procedural equality and access to justice through legal empowerment, they also serve strategic purposes (González & Jung, 2020, p.5). By cultivating domestic expertise in WTO law, the Centre contributes to the consolidation of state capacity in the international trade arena—ultimately enhancing each state’s ability to defend its economic interests autonomously (VanGrasstek, 2013, p.235). In addition to ACWL's impact on individual cases, its capacity-building and potential long-term benefits deserve emphasis. Providing opportunities for graduates of its training programs to work as trade lawyers or negotiators in their home countries could encourage governments to participate more confidently in WTO committees and

negotiations (ACWL, 2011, p.33; ACWL, 2014, p.4; ACWL, n.d., pp.23–26). This process can be interpreted through a mercantilist lens, as it enables states to better protect their national interests in international rule-making processes by increasing their institutional capacity (Hopewell, 2016, p.48). While developed and larger developing countries already possess their own trade law units and larger developing economies tend to use ACWL only for second opinions, the dissemination of legal know-how through ACWL challenges this monopoly and offers a more balanced system (Shaffer, 2003, pp.16-17; Shaffer, 2006, pp.188-190). It could be said that ACWL augments the power of developing states in the trade arena by providing them with the technical tools necessary to enforce rights and extract the benefits of negotiated agreements. This legal empowerment enhances their capacity to credibly assert: “we will hold you to your commitments,” embodying the logic of securing reciprocal gains (Hopewell, 2016, p.48). Furthermore, the capacity to litigate credibly enhances bargaining leverage, as the mere threat of initiating a WTO dispute may suffice to secure favourable outcomes, thereby reinforcing indirect gains.

4.1.3.4. Evaluating the Impact of the ACWL

In short, the ACWL is an important tool that developing countries can use to actively participate in the WTO dispute settlement process. As of 2025, 82 WTO members, nearly half of all members, are entitled to ACWL services (ACWL, 2024, p.8). Indeed, participation of developing countries in disputes has increased since the ACWL's establishment (Palmeter et al., 2022, pp.30-31). However, correlation does not imply causation, so it cannot be conclusively demonstrated that this increase is a direct result of the ACWL's establishment. It is also impossible to precisely measure how many cases would not have occurred or how many developing countries would not have emerged victorious from disputes without the ACWL (Bown & McCulloch, 2010, p.55). Therefore, while the ACWL constitutes a valuable tool for developing countries to assert their rights in a highly legalised trade regime, the extent of its impact remains empirically indeterminate. Its contribution must be understood within a broader constellation of factors affecting dispute participation, including economic capacity, political will and strategic calculation.

4.2. CHALLENGES OF WTO DSB FOR DEVELOPING COUNTRIES

In light of the aforementioned discourse, it can be posited that the WTO Dispute Settlement Mechanism has been effective in transitioning global trade governance from a power-based diplomatic framework to a more rules-based order (Nottage, 2009). The Dispute Settlement Understanding, in principle, ensures the establishment of an impartial and equitable forum for all member countries, irrespective of their economic status, to address and resolve trade-related disputes. However, in practice, developing countries continue to encounter substantial challenges in utilizing and benefiting from the DSB. From the perspective of this thesis, these barriers reflect the underlying power asymmetries in the trading system and the power-driven approach, self-interest and strategic behaviour of states. In the context of international relations, powerful states frequently employ their advantages in legal capacity, economic power and political influence to affect the outcomes of disputes. In contrast, weaker states often encounter difficulties in asserting their rights. The initial phase of this chapter will entail an examination of empirical case studies concerning a selection of disputes involving developing country complainants (with a particular focus on those initiated against developed countries) since the establishment of the DSB. This examination will emphasise the procedural, strategic and outcome-related challenges encountered. Subsequently, the primary structural weaknesses will be addressed. These include legal and institutional barriers, financial and capacity constraints, power imbalances, risks of retaliation and implementation problems. These factors hinder the development of countries. Finally, the text will discuss the endogenous features of international trade law that exacerbate these challenges and examine them in terms of power-centred, state interest-based dynamics.

4.2.1. Case Studies on Developing Country Challenges in WTO Disputes

A series of prominent World Trade Organization disputes since the formation of the Dispute Settlement Body in 1995 have served to shed light on the challenges faced by developing states when it comes to contesting the actions of more powerful trading nations. The aforementioned cases of EC-Bananas, US-Gambling and US-Upland Cotton will shed light on common procedural and outcome challenges, consistent with the view that power inequalities can permeate ostensibly rules-based adjudication.

4.2.1.1. DS27: European Communities - Regime for the Importation, Sale and Distribution of Bananas

A notable example is the EC-Bananas dispute, wherein a coalition of developing countries, led by Ecuador, contested the European Communities' banana import regime, which prioritised former European colonies in the Caribbean and Africa (Palmeter et al., 2022, pp.295-297, 495-497; WTO, 2023, pp.16-18; WTO, n.d.-o). The dispute in question spanned over a decade, encompassing numerous WTO cases and adjustment processes that occurred throughout the late 1990s and 2000s. Ecuador, the world's largest banana exporter, along with other Latin American countries, was awarded a WTO ruling in 1997 that the EU's quota and license system violated its MFN obligations (Tania et al., 2024, pp.137-138; WTO, n.d.-o). However, the actual harmonisation of these systems has proven to be a formidable challenge. The European Union implemented interim measures and subsequently a revised regime that failed to align with World Trade Organization regulations, resulting in further legal challenges (Article 21.5 compliance panels) and persistent findings of noncompliance (Palmeter et al., 2022, pp.295-297, 495-497). After lengthy negotiations, the final settlement only came in 2009, when the EU agreed to gradually reduce banana tariffs and the 2012 agreement ended “After so many twists and turns, these complicated and politically contentious disputes...” in the words of WTO secretary general Pascal Lemy (VanGrasstek, 2103, pp.404-405; WTO, 2012). From the perspective of a developing nation, the Bananas disputes have brought to light several challenges. The legal intricacies of repeated proceedings exerted significant strain on Ecuador's limited institutional capacity. The policy change and economic relief were delayed and the need for an alliance with a major power (notably the US, which joined the dispute on behalf of US fruit companies) to exert pressure on the EU became evident (Abbott, 2007 p.5, Moon, 2006, pp.221-222). The observation that, in spite of a developing country's formal legal victories, the EU, a formidable actor, was able to extend its preferential treatment for years by employing temporary arrangements and its sway in negotiations, underscores the efficacy of the mechanism. This case underscores how power politics can shape outcomes; the EU's eventual compliance was not a matter of immediate legal compliance under the DSU, but rather a bargaining agreement that demonstrated the limits of legal decisions when it comes to the trade interests of major powers and domestic lobbies.

4.2.1.2. DS285: United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services

Another significant case is that of the US-Gambling case, which was initiated by the small Caribbean nation of Antigua and Barbuda against the United States. Antigua challenged the US legislation that effectively prohibited cross-border online gambling services on the grounds that they violated the General Agreement on Trade in Services. Antigua's success in 2005 was an anomaly, with the WTO ruling in favour of the United States' breach of its commitments (WTO, 2005; WTO, 2023, p.118). However, this legal victory did not result in tangible benefits in the real world. The United States declined to amend its legislation to permit Antiguan gambling services, consequently prompting Antigua to seek authorisation for retaliatory measures (Tania et al., 2024, pp.126-137, 133). In this instance, the discrepancy in the enforcement of these provisions became evident. In 2007, WTO arbitrators assessed Antigua's annual damages at a mere $21 million, a negligible sum in the context of the US economy (Palmeter et al., 2022, pp.285-286). Antigua had initially requested a significantly higher level of retaliation (in excess of $3 billion, including "cross-retaliation" outside the goods sector), but the amount approved - approximately 4% of Antigua's GDP, but only 0.002% of US exports - was regarded by Antigua as "absurdly low" and insufficient to exert pressure on the US (Bartels, 2013; Lynn, 2007). Antigua was even authorised to suspend certain US intellectual property rights in cross-retaliation, an unusual remedy, but one which lacked the necessary leverage to be used effectively (Palmeter et al., 2022, p.285). Ultimately, the US faced minimal consequences and did not fully comply, eventually offering token compensation and even withdrawing its gambling sector from its WTO commitments to avoid future liability (Bartels, 2013). This case exemplifies the sanctions gap that developing countries face: Winning the legal battle but losing the war in the face of intransigence from a powerful state. In order to protect its trade interests, it is possible to observe the US effectively overriding the WTO outcome through its economic dominance. This demonstrates that formal legal equality can be overridden in practice by inequalities of material power. For small economies such as Antigua, the DSU's promise of security and predictability in trade relations proved to be virtually unenforceable against a superpower, thus confirming the view that power can supersede legal rights.

4.2.1.3. DS267: United States - Subsidies on Upland Cotton

Examples of smaller developing countries challenging established powers are evident, yet larger developing countries have also encountered impediments when mounting challenges against industrialised nations. The magnitude of a developing country's economic weight typically corresponds to elevated expectations. The legal case brought against the United States by Brazil under the auspices of the WTO concerning the subsidies provided to the Upland Cotton industry, serves to illustrate both the possibilities and the limits for a developing economy in utilising the WTO system. The Brazilian government initiated legal proceedings in 2002 to challenge the United States' agricultural subsidies, which were having a deleterious effect on Brazilian farmers by significantly lowering global cotton prices (WTO, 2004c; WTO, 2023, pp.108-109). Following an extensive legal battle, Brazil prevailed: In the 2004-2005 period, WTO panels and the Appellate Body ruled that certain US subsidy programmes violated the Agreement on Agriculture and the SCM Agreement (Tania et al., 2024, pp.138-139). This outcome signified a pivotal victory, underscoring the capacity of a developing nation to hold a dominant global power accountable for the distortion of its domestic policies (Hopewell, 2016, p.113). Nevertheless, the actual reform of these subsidies proved to be a challenging endeavour. The United States delayed its compliance, which resulted in Brazil being compelled to return to the DSB for the purpose of conducting compliance proceedings and arbitration on retaliation levels (WTO, 2004c; WTO, 2023, pp.108-109). In 2009, the arbitrators authorised Brazil to impose affordable sanctions, including the right to cross-retaliate in the area of official intellectual property or services, worth $829 million annually (Hopewell, 2016, p.112; Elsig & Stucki, 2011, pp.301-302). This considerable sum is dwarfed by Brazil's larger volume of complainants, the majority of which are developing countries. However, the US opted to negotiate an interim agreement rather than immediately comply with the settlement. The Brazilian government has been providing annual compensation payments to cotton interests, amounting to approximately $147 million per year (Hopewell, 2016, p.112; Elsig & Stucki, 2011, p.302). In addition, the government has expressed its intention to pursue legislative changes. This agreement remained in effect until the United States amended the Farm Bill in 2014, a measure which resulted in the removal of these subsidies. Consequently, Brazil chose to rescind the sanctions (Hopewell, 2016, p.113). From Brazil's standpoint, the dispute yielded

partial success, yielding concessions and eventual policy change (Hopewell, 2016, p.113). However, this was only achieved after a protracted period of 12 years, necessitating costly litigation and negotiations. It is reported that Brazil expended considerable sums of money on legal fees and utilised a substantial amount of technical expertise to present the intricacies of cotton subsidies (Milligan, 2006, pp. 238–243). It appears that Brazil's relative weight (as a medium-sized power with a strong agricultural lobby) enabled it to maintain pressure on the US, but the outcome still required a political bargain (monetary compensation) rather than the rapid removal of trade barriers prescribed by the rules (Hopewell, 2016, pp.112-113). The strong domestic interests in the US, in conjunction with the country's leverage, enabled it to postpone compliance until a mutually acceptable agreement was attained. This serves to reiterate the notion that state interests and power realities serve as mediators in the influence of legal decisions.

4.2.2. Structural Weaknesses Facing Developing Countries in the DSB

In fact, beyond individual cases, the previous section attempted to demonstrate that developing countries face several structural weaknesses in the WTO dispute settlement mechanism. These include legal and institutional barriers; resource and capacity constraints; power asymmetries with developed members; fear of retaliation; and problems ensuring compliance with decisions. This section will examine how these challenges persist despite the existence of a rules-based framework and inequalities in state power and interests.

4.2.2.1. Legal Complexity and Institutional Asymmetry: Structural Obstacles

One obstacle to developing countries effectively using the WTO's dispute settlement mechanism is the DSU's complexity and procedural rigor (Meagher & Buencamino, 2024, pp.93-94; Shaffer, 2006, p.180). The rules and processes, from consultations to panel cases, Appellate Body reviews and compliance proceedings, are highly legalistic and require a certain level of institutional sophistication (Meagher & Buencamino, 2024, p.93). Many poorer WTO members lack dedicated trade litigation units and specialised permanent missions, which makes navigating the system's legal intricacies difficult (Sharipbekkyzy, 2015). Although the WTO has special provisions for developing countries, such as the S&DT mentioned earlier, they are modest and underutilised. The usefulness of the existing support identified by the DSU should be debated, as should the

fact that developing countries are largely left to fend for themselves when it comes to putting together their legal arguments and evidence (Bahri, 2018, pp.27-28). For instance, Article 27.2 of the DSU instructs the WTO Secretariat to offer legal counsel to developing country members, yet the practical effectiveness of this assistance is questionable (Nottage, 2009, pp.6-7). Similarly, procedures to expedite cases involving developing countries (e.g., the rarely used 1966 consultation procedures or Article 3.12, which allows for shorter timelines) are rarely implemented, which poses a serious problem for these countries (Nottage, 2009, pp.17-19).

Many developing countries, especially those with less diplomatic influence, were unable to actively shape the DSU during the Uruguay Round negotiations (Shaffer, 2006, pp.180-181). Thus, the system was designed according to the priorities of the major trading powers. Although the rules-based regime is supposedly neutral, one could argue that it was crafted in an environment of asymmetric influence and is biased against those with greater legal and administrative capacity. This is evident in the lack of an independent enforcement mechanism or institutional support with which wealthier members are comfortable (Shaffer, 2006, pp.179-180). The requirement of a coalition of nations outside the WTO framework for establishing the ACWL, which aims to increase the participation of developing countries in the Dispute Settlement Mechanism, reflects this imbalance (Bahri, 2018, pp.26-27). Although the ACWL aims to fill institutional gaps by providing developing countries with affordable legal counselling, training and advice for WTO disputes, it cannot eliminate all barriers (Meagher & Buencamino, 2024, p.93). ACWL membership is voluntary, not all developing countries benefit equally, its budget and human resources are limited and it mainly addresses legal representation, not the domestic institutional weaknesses that often prevent countries from bringing cases in the first place (Jahan, 2020, pp.20-21; Shaffer, 2003, pp.16-17; Shaffer, 2006, pp.187-190).

Another institutional weakness is the absence of mechanisms to detect and prosecute violations on behalf of countries without capacity (Shaffer, 2006, p.184). It is reasonable to entertain serious doubts regarding the system, in light of the assertion that it was designed according to the priorities of the major trading powers, as was stated at the conclusion of the Uruguay Round negotiations. In contradistinction to domestic systems, the WTO is devoid of an investigative entity such as a prosecutor (Bahri, 2018, p.27; Nottage, 2009, p.12; Shaffer, 2006, pp.184, 186). Disputes are referred to by member

states. Consequently, in the absence of either a realisation on the part of a developing country that its rights are being violated or the formulation of a complaint, the issue remains unaddressed. A significant number of developing countries are yet to establish procedures for mobilising domestic mechanisms that would facilitate the identification of trade barriers and the utilisation of the system (Zhang, 2025, p.16). As Shaffer (2006, p.179) argues, states should possess the ability to "perceive injuries to its trading prospects, identify who is responsible and mobilise resources to bring a legal claim or negotiate a favourable settlement" and the effective use of the system is contingent upon these capacities. In the absence of robust trade ministries or sectoral lobby groups, numerous developing countries encounter difficulties in transforming market access issues into WTO cases. Economically stronger states have historically established institutional connections between government entities (such as the US's Section 301 or the EC's Trade Directorate General of the European Commission[22]) and exporters, enabling them to methodically pursue their trade interests through legal channels. In contrast, weaker states often have *ad hoc* channels or none at all, meaning that their complaints may never be heard by a WTO courtroom. This "information and coordination" barrier is a consequence of the legal-institutional asymmetry built into the system's functioning (Bown & McCulloch, 2010, p.36; Singh & Tara, 2019, pp.344-345). In conclusion, while the DSU's legal framework is uniform, it assumes capacities that many developing countries do not have, thus reinforcing the advantage of states that can better afford the institutional investment to use trade litigation as a policy tool (usually developed and developing states with larger economies).

4.2.2.2. Economic Disparities: The Price of Pursuing Trade Interests

For low-income countries contemplating the initiation of a dispute at the WTO, the primary deterrent may be financial cost. The legal and expert fees associated with WTO cases are often exorbitant, which can impose a significant financial burden on the budgets of developing countries (Bahri, 2018, p.24; Shaffer, 2006, pp.185-193; Zhang, 2025). Formal disputes differ from diplomatic negotiations in several ways. Firstly, formal disputes require the preparation of extensive legal briefs, the analysis of economic data

[22] For further reading please see Singh, A., & Tara, P. (2019). A critical analysis of the developing countries participation in the WTO dispute settlement mechanism. *Journal of the Indian Law Institute, 61*(3), pp.344-345.

and attendance at hearings in Geneva. Secondly, formal disputes often require the services of outside counsel and experts, due to insufficient in-house capacity, a situation frequently encountered in low-income developing countries (Sofromadze, 2022). Nottage (2009, p.5) reports that a basic market access case incurs legal expenses amounting to approximately $500,000 for the complainant; more intricate disputes that undergo Panel and Appellate Body review can result in legal expenditures easily surpassing $1-2 million and certain reports suggest that fees in substantial cases can exceed $10 million. These figures are particularly noteworthy when considering that they are observed in both least developed and middle-income countries. This is particularly salient given the relatively modest gains that could be realised from successfully resolving trade disputes (Abbott, 2007, pp.12-13). In other words, it can be argued that developing countries generally have smaller trade shares and lower export values, which makes cost of litigation very high relative to the potential gain from the disputes' outcome - in instances where the annual exports in question amount to a mere few hundred thousand dollars, it may be deemed uneconomical to expend higher sums to challenge an obstacle (Cheng, 2009, pp.8-9[23]; Boza & Fernández, 2014, p.24). Consequently, it is imperative to acknowledge that the capacity to pursue rights under the DSU is contingent upon factors such as the extent of trade volumes and incomes in developing countries. The challenges associated with the costs of such pursuit may compel these nations to exercise discernment in selecting the disputes brought before the DSB (Davis & Bermeo, 2009, p.1035). While all states have legal access to the system, in practice, wealthier states are better positioned to utilise it as a tool of economic statecraft, while poorer states encounter budgetary constraints.

The protracted and multifaceted nature of WTO disputes serves to exacerbate the financial burden. The duration of a case can be protracted, with consultations requiring a minimum of 60 days, panel formation and proceedings taking 6 to 12 months, appellate review taking 2 to 3 months when functional and potentially a compliance panel and another appeal, followed by retaliatory level arbitration (Palmeter et al., 2004, pp.169). Each stage of the process necessitates legal work and financial expenditure. Furthermore, disputes within the ambit of the WTO frequently encompass specialised technical issues.

[23] Please see Cheng, F. (2009). The WTO dispute settlement mechanism and developing countries: The Brazil–U.S. cotton case (9-4). In P. Pinstrup-Andersen & F. Cheng (Eds.), *Case studies in food policy for developing countries: Institutions and international trade policies* (pp. 49–62). Cornell University Press. https://doi.org/10.7591/9780801466380-007, p.9 for the table.

For instance, disputes falling under the SPS Agreement (Agreement on the Application of Sanitary and Phytosanitary Measures) necessitate scientific evidence, such as risk assessments for health measures (Boza & Fernández, 2014; Nottage, 2009, pp.5-6). Additionally, subsidy cases mandate meticulous economic modelling (Nottage, 2009, pp.5-6). The procurement of scientific and economic experts to substantiate a legal case incurs considerable expenses, a practice that is commonly employed by developed countries. In contrast, developing countries may encounter challenges in allocating the necessary financial resources to procure such specialised knowledge, which can potentially result in an imbalance during legal proceedings relying on technical evidence (Shaffer, 2006, pp.185-193). For instance, developing countries have seldom initiated disputes concerning the SPS Agreement, despite its paramount importance for agricultural exports. This is primarily due to the fact that successfully challenging a health standard necessitates a substantial degree of technical capacity. Conversely, the United States and the European Union have initiated a considerable number of SPS cases, indicating that cost and complexity act as deterrents for weaker participants (Abbott, 2007, p.14; Boza & Fernández, 2014).

Consequently, the cost barrier ensures an unequal distribution of the "legal weapon" of WTO litigation, effectively transforming it into a luxury tool for richer states and a selective last resort for poorer ones. This finding aligns with the participation data, which indicates that 239 out of 376 complaints (approximately 64%) in the mid-2000s were submitted by high-income countries (with the United States and the European Union leading as sole complainants) (Davis & Bermeo, 2009, p.1033). In contrast, the poorest members did not emerge as primary complainants in the DSB for an extended period. A significant proportion of developing WTO members have not initiated a single dispute. In point of fact, over 75% of members have not utilised the system in the 15+ years since its inception and the majority of these are developing or least developed countries (Horn et al., 1999, p.1). As posited by Davis and Bermeo (2009, p.1033), the combination of substantial upfront expenses and resource requirements engenders a "start-up cost" obstacle for developing countries. Indeed, developing countries and a select group of emerging economies (such as Brazil, India, Mexico and China) that have successfully invested in and learned from the initial litigation have surmounted this obstacle and have become recurrent players in trade litigation, allocating substantial public funds and

demonstrating a strong commitment from their political leaders (Davis & Bermeo, 2009, pp.1040-1043[24]). However, these countries represent a notable exception to this general rule. For the majority, the opportunity cost of litigation, the allocation of limited financial and human resources to a protracted legal battle, is too high, especially when weighed against the uncertain outcomes and the uncertain prospect of victory (Cheng, 2009, p.1; Shaffer, 2003, pp.16-17; Shaffer, 2006, pp.188-190). In essence, the financial burden creates a structural imbalance in the system, favouring states with greater financial resources, which are typically developed countries or the largest developing countries. This is a significant factor contributing to the partial fulfilment of the promise of equal access.

4.2.2.3. Knowledge as Power: Legal Capacity and Technical Disparities

A closely related issue to economic constraints is the scarcity of in-house technical and legal expertise in many developing countries. It has been posited that the domain of WTO law is characterised by its specialisation (Cheng, 2007, p.12; Davis, 2016, p.12; Shaffer, 2003, p.26). The effective litigation of such cases necessitates the expertise of trade lawyers with a proven track record, a comprehensive understanding of WTO jurisprudence and the capacity to compile technical evidence (Bahri, 2018, pp. 20, 24). Developed members frequently possess the capacity to oversee sizable teams of trade lawyers, as evidenced by their employment of the most reputable law firms (Davis & Bermeo, 2009, p.1039). These members also benefit from the profound institutional knowledge accumulated over several decades within the frameworks of the GATT and the WTO (Davis & Bermeo, 2009, p.1034; Shaffer, 2003, p.27-29). In contrast, the majority of developing members, particularly those of smaller stature or lower economic status, acceded to the WTO during the 1990s with a paucity of established expertise in Geneva and a limited number of government lawyers versed in trade law (Bohl, 2009, pp.33-34; Shaffer, 2006, p.182). This imbalance has been a significant impediment to the utilisation of the DSB. From a certain vantage point, knowledge and expertise can be regarded as forms of power (Davis, 2012, pp.128-130). The legal capacity gap signifies that rules-based dispute settlement is not truly a level playing field, as those who possess

[24] Please see Davis, C. L., & Bermeo, S. B. (2009). Who files? Developing country participation in GATT/WTO adjudication. *The Journal of Politics, 71*(3), 1033–1049. https://doi.org/10.1017/s0022381609090860, p.1041, for the table.

the knowledge to "play the game" (i.e., richer states) naturally possess an advantage over novices (Nottage, 2009, pp.3-4).

This limited technical capacity can manifest in a number of ways. In the absence of skilled legal counsel, developing countries may be reluctant to initiate disputes due to concerns regarding their ability to effectively defend their cases and compete with the legal resources of a developed competitor (Busch & Reinhardt, 2007, pp.197-198). Secondly, in the event that a dispute is initiated, countries lacking expertise frequently find themselves compelled to seek representation from foreign law firms or to rely on the ACWL. This can be costly (reminiscent of the issue of cost) and occasionally politically sensitive (governments may be reluctant to rely on foreign lawyers in matters of sovereignty) (Meagher, 2015, p.7). The ACWL has emerged as a pivotal innovation aimed at mitigating this challenge. As previously mentioned, the organisation offers subsidised or complimentary legal services and training to its developing members. By the late 2000s, the ACWL had benefited from capacity building for developing litigants by intervening in a significant number of disputes and providing extensive legal advice and training (Bown & McCulloch, 2010). ACWL has also established a trust fund for technical experts. This initiative was developed in recognition of the necessity for scientific and economic evidence in cases beyond those involving legal counsel. This fund, with an approximate value of CHF 600,000, has been instrumental in providing financial support for expert work in developing country cases on multiple occasions (Meagher, 2015, p.8; Nottage, 2009, pp.6-7). These efforts have been successful in reducing the aforementioned expertise gap, albeit not entirely eliminating it (Nottage, 2009, p.7). ACWL's operational capacity is constrained by its limited ability to assist multiple countries concurrently and its defined mandate, which typically involves providing advisory or consultative services upon request but does not authorise independent action. Because of this, least developed countries and some low-income developing states that engage in less trade may lack awareness of WTO legal issues or may not benefit from training programs. Consequently, the latent demand for legal capacity in the poorest countries remains unmet.

An additional dimension that merits consideration is the local legal and analytical capacity. Disputes within the ambit of the WTO necessitate a collaborative effort between governments and relevant industries (or farmers, etc.) to identify any transgressions and

substantiate losses incurred (Davis & Bermeo, 2009, p.1034; Sofromadze, 2022; Shaffer, 2003, p.20). A significant number of developing countries are deficient in the institutional capacity to conduct the requisite research and data analysis. For instance, the collection of export data, the demonstration of the impact of a foreign measure on trade, or the conducting of scientific risk assessments (as in SPS cases) require technical skills that can be found in a country's academia or private sector (Abbott, 2007, p.14; Boza & Fernández, 2014; Horn et al., 1999, pp.24-25). Absent these provisions, a government may harbour suspicions regarding the consistency of its partner's policy with the WTO's framework yet find itself incapable of substantiating these concerns through concrete evidence. In developed countries, there is a tendency for the presence of such capacities. Think tanks, industry associations and regulatory bodies are known to conduct the necessary analysis on a regular basis (Bown, 2009, pp.182, 220, 235[25]; Shaffer & Meléndez-Ortiz, 2010, p.1205). This phenomenon can be interpreted as part of a structural power imbalance, wherein the knowledge infrastructure necessary to enforce rights under international trade law is distributed unevenly. There are creative solutions to this problem, such as the WTO Prosecutor's Office, but they have not yet been implemented within the WTO framework (Shaffer, 2006, p.184; Tiwary, 2023, p.5). Despite the efforts of capacity-building initiatives such as the ACWL and WTO technical assistance workshops, a persistent knowledge gap continues to impede the progress of many developing members (Evans & Shaffer, 2011).

The repercussions of inadequate expertise manifest in the patterns of participation. As previously mentioned, only a small number of developing countries have initiated a WTO dispute as complainants. Those that have done so have typically been the more developed among them. Conversely, the poorest countries (LDCs) are virtually non-existent (Nottage, 2009, p.4). This statistic is logical: Although many LDCs are theoretically WTO members with equal rights, their lack of legal power (and other constraints) has kept them on the sidelines. Conversely, LDCs and smaller developing states have predominantly engaged as third parties in disputes characterised by less stringent requirements, enabling them to observe and acquire knowledge (Jahan, 2020, pp.22-23). Legal capacity and human capital are among the most salient factors determining who

[25] Please see Bown, C. P. (2009). *Self-enforcing trade: Developing countries and WTO dispute settlement*. Brookings Institution Press, p.182 for the table.

can effectively defend their interests (Shaffer, 2003, pp.16-17, Shaffer, 2006, pp.188-190). Until weaker states develop a more robust trade law expertise, a process that can take years, they remain at a disadvantage, depending either on foreign assistance or on the hope that larger allies will support them in WTO cases.

4.2.2.4. Power Asymmetry: Formal Equality vs. Strategic Reality

Despite the DSU's professed commitment to equality, the inherent disparity in power between developed and developing countries pervades numerous facets of the dispute settlement process. When a small or economically weak country is confronted with a major commercial power, it is confronted with not only a legal struggle, but also a political one, where the influence of the larger player can shape outcomes (Horn et al., 1999, pp.17-20). Power can manifest in overt and covert ways. The ability to exert pressure or persuasion behind the scenes, to prolong transactions, to mobilise greater resources (as previously discussed), or to insist on advantageous interpretations of the rules are all examples of covert manifestations of power. The significance of the role that powerful states play in shaping international regimes to serve their own interests is a critical consideration in this context (Gilpin, 2001, pp.379-390). It appears that even a rules-based system is susceptible to the influence of power politics, a notion that is substantiated by empirical observations within the context of the WTO (Davis & Bermeo, 2009, p.1033; Jahan, 2020, p.19).

A salient indicator of this phenomenon is the manner in which disputes are initiated and targeted. As previously indicated in Table 2, the most prominent trading powers, namely; the United States, the European Union, Japan and Canada (collectively referred to as the Quad or G4), not only initiate the most complaints, but also exhibit a tendency to target developing countries with a lower frequency compared to their own bilateral trade (Horn et al., 1999; pp.1-2). This is not an act of benevolence; rather, it is the result of a strategic calculation. While developed members are more inclined to challenge each other's barriers in circumstances involving high stakes in trade, they may be reluctant to pursue minor violations by developing countries (Davis & Bermeo, 2009, p.1035; Jahan, 2020, pp.18-19). This reluctance may stem from a strategic decision, based on the understanding that these countries possess limited capacity for defence or that the potential benefits are minimal. Conversely, when developed countries initiate legal

proceedings against developing countries, these latter countries may feel compelled to settle swiftly in order to avoid strained political relations. Furthermore, when a developing country challenges a great power, it is entering into a highly asymmetric conflict (Davis & Bermeo, 2009, pp.1042-1043). As demonstrated in the aforementioned case studies, the defendant can employ compelling legal arguments and in the event of a loss, can exert its influence over compliance outcomes by delaying implementation or negotiating terms that are favourable to itself. In the event that the complainant in development secures a favourable outcome, it is possible that they may be compelled to accept a protracted resolution or a partial concession. According to critics cited by Nottage (2009, p.7), this dynamic has led to the dismal "conventional wisdom" that "it may be a waste of time and money for developing countries to resort to the WTO's dispute settlement procedures against industrialised countries" because the small state ultimately has no effective means to enforce the ruling or force compliance. While this view may be a bit too pessimistic, it underscores the perceived power imbalance: Legal victory on paper does not translate into practical victory when the loser is a much larger economy (Dutta, 2025).

Power asymmetry can also occur through what can be termed informal politics of leverage and linkages (Jahan, 2020, pp.19-22). The economic interdependency between developing countries and developed countries is often characterised by a reliance on trade opportunities, market access, security cooperation, investment and aid (Bown, 2003, pp.1-5, 13-14). This dynamic is often evidenced by the participation of developing countries in GSP programs, which facilitate trade between these nations and larger markets. There is a latent risk that if a developing country were to pursue a case against a powerful state in the WTO with great fervour, it may encounter repercussions from external actors that are not directly associated with the WTO (Nottage, pp.16-17). For the sake of illustration, a developed country might initiate the withdrawal of preferential market access or bilateral aid in the interest of political retaliation, as distinct from WTO-defined retaliation. Alternatively, the nation might exhibit a diminished degree of cooperation in other domains. One critique, similarly articulated by Nottage (2009, p.17), pertains to the reluctance of developing and least developed countries to initiate WTO dispute settlement proceedings against developed countries and this hesitancy is attributed to their heightened vulnerability to retaliatory measures in various domains,

including the withdrawal of development assistance and preferential market access. For instance, an African nation that stands to benefit from an EU trade preference or a US aid program might exercise restraint in filing a WTO complaint, in order to avoid provoking its partner (Bown, 2003, pp.1-5, 13-14; Breuss, 2001, p.7). In contrast to large economies, which possess the capacity to compartmentalise trade disputes and broader diplomacy, small states are acutely aware that their legal actions are subject to the "shadow of power". In essence, the state with considerable influence may implicitly threaten to restrict the economic benefits it unilaterally provides (which are beyond the scope of its WTO obligations) in order to deter objections to its trade measures (Breuss, 2001, pp.45-47). This is a profound structural disincentive that tilts the field: The weaker state must weigh the legal merits of a case against the potential political backlash. It is important to note that such calculations are inherently outside the legal process, yet they greatly influence it. The WTO lacks provisions to safeguard against this form of power coercion, relying instead on the principle of good faith and the expectation that countries will not engage in dispute retaliation in conjunction with unrelated issues (Van der Borght, 1999, pp.1233-1234). However, from the perspective of neo-mercantilists, this expectation may be regarded as naive, given the inherently power-driven nature of state behaviour.

Within legal proceedings, the subtle influence of power must be acknowledged. The composition of Panels and the Appellate Body, while ostensibly impartial, is not immune to the potential influence of political considerations. As Davis and Bermeo (2009, p.1033) demonstrate, numerous scholars have examined whether panels may exhibit bias or oppression in cases involving substantially unequal parties. For instance, do panels consciously or unconsciously grant powerful defendants the benefit of closer scrutiny or suspicion? A thorough review of the available data does not reveal any indication of systematic bias in decisions that are unfavourable to developing countries. In fact, a considerable number of cases have been won by developing countries on legal grounds (Davis & Bermeo, 2009, pp.1033-1034). Nevertheless, post-decision outcomes frequently mirror power dynamics. While a powerful member's compliance may be reluctant or partial (as has been observed), if a developing country loses a case, it often adjusts its policy swiftly to avoid sanctions it cannot afford. The ultimate expression of power asymmetry in the system is, in fact, enforcement asymmetry (a topic to be discussed subsequently).

In summary, despite the DSU's "one country, one vote" approach to cases, in which each member officially possesses the same standing and rights in a dispute, real-world disparities in economic size, geopolitical influence and vulnerability render WTO disputes a strategically unequal proposition (Horn et al., 1999; pp.1-2). Powerful states have the capacity to strategically manoeuvre within the legal framework, leveraging their influence to favour bilateral pressure over multilateral litigation when it aligns with their interests (Davis & Bermeo, 2009, pp.1047-1048; Shaffer, 2003, pp.40-41). They can also influence the pace and terms of settlements, shaping the negotiations for DSU reform in a manner that benefits their agenda (Shaffer, 2003, pp.37-38). The ongoing crisis in the Appellate Body, which will be discussed in greater detail subsequently, can also be interpreted through the lens of power. A major power, dissatisfied with certain decisions, utilised its institutional clout to neutralise the system's highest court—an action that would have been beyond the capabilities of a small country (Hopewell, 2021, pp.1025-1028, 1033). This manoeuvre would have adverse consequences for all members, particularly developing countries that depend on the stability of a viable two-tier system. This finding lends credence to the neo-mercantilist assertion that when constraints are imposed on the perceived interests of a major power, that power will either disregard or modify the established rules (Pauwelyn, 2001, pp.535-578; Shaffer, 2003, pp.40-41; Steinberg, 2002, pp.339-374). In the absence of such leverage, the capacity of developing countries to proactively influence outcomes is constrained, leaving them with the option of observing the situation and attempting collective responses, such as the alternative appeals mechanism that has been established by some parties (Hopewell, 2021, pp.1035-1043). The aforementioned factors substantiate the notion that power imbalance persists as a foundational issue, with the potential to compromise the fairness and efficacy of dispute resolution processes for those who are less dominant in the relevant context.

4.2.2.5. Enforcement Deficit: Retaliation and Compliance

Another salient structural vulnerability confronting developing countries within the ambit of the WTO DSB pertains to the absence of an enforcement mechanism to ensure the implementation of decisions (Dutta, 2025, p.21; Shaffer, 2006, pp.179-180). In the event that a nation is found to have lost a dispute, the primary incentive for compliance is diplomatic and economic pressure. In the event that the losing party fails to comply within a "reasonable period of time," the winning party may also be able to impose trade

sanctions as a retaliatory measure. This retaliatory mechanism poses significant challenges for small economies attempting to enforce decisions against larger economies (Bown, 2003, pp.2-5; Dutta, 2025, p.3; Horn et al., 1999; pp.1-2). In terms of mercantilist theory, the efficacy of enforcement is predicated on the principle of mutual harm, whereby the suspension of concessions is employed to inflict harm upon the offender (Gilpin, 1987, pp.31-34). However, the effectiveness of this approach is contingent upon the size of the complainant country's market, which must be sufficiently substantial to have a significant impact on the offender (Horn et al., 1999; pp.17-18). In instances where the complainant's economic resources are significantly inferior to those of the defendant, the potential for retaliation is minimal, thereby rendering the threat of sanctions and subsequent compliance “virtually meaningless" (Nottage, 2009, p.7). As Nottage (2009, p.5) notes, when there is a significant asymmetry in market size, the WTO retaliation measure provides little advantage to the smaller state.

This phenomenon was exemplified by Antigua's imposition of a $21 million sanction against the United States, a measure that the U.S. effectively accommodated without significant difficulty (Palmeter et al., 2022, pp.285-286; Tania et al., 2024, pp.126-137, 133). In the context of a low-income nation with negligible total exports to the offending nation, even a complete cessation of imports from the offending nation would exert minimal influence on the offending nation's economy, while concurrently inflicting harm on consumers in the complaining nation (Breuss, 2001, p.4). Indeed, the act of retaliation can prove to be a double-edged sword (Jahan, 2020, p.20). The imposition of tariffs or the cessation of trade, particularly in instances where the trade volume is negligible, has the potential to inflict harm on the sanctioning nation to an extent that is equal to or exceeds that of the target nation (by means of increasing import costs or constraining consumer options) (Cheng, 2007, pp.8-9). For a developing country, the suspension of trade privileges may prove more detrimental than the non-compliant member, rendering retaliation a counterproductive measure (Nottage, 2009, p.5). According to Nottage (2009, pp.7), this situation has led some to characterise DSU sanctions as a “waste of time” for small countries and to conclude that when the violating country is a major power, a developing country has “no effective way to enforce the decision”.

A review of WTO dispute records supports the hypothesis that developing countries rarely resort to trade retaliation (Breuss, 2001, p.4; Cheng, 2007, pp.8-9; Jahan, 2020,

p.20; Nottage, 2009, pp.5, 7). Furthermore, the evidence suggests that if the retaliating party is a major economic entity, there is an even lower probability of a policy shift on the part of the responding party. By the conclusion of 2024, out of a substantial number of disputes, only 21 cases had been granted the authority to retaliate. (WTO, n.d.-p)[26]. A review of these cases reveals that they were largely disputes where retaliation was decided against the US and the EU—such as the Banana and Cotton disputes (WTO, 2004c; WTO, n.d.-o). In addition, developing countries have not typically resorted to or executed retaliatory measures. Instead, negotiation may be a more effective approach. This issue is illustrated by several prominent instances of non-compliance. For instance, the United States accepted Brazil's right to retaliate in the cotton dispute until a compensation agreement was reached. The symbolic nature of retaliation did not pose a significant threat to the broader economy of the United States; rather, it functioned as a political statement (Hopewell, 2016, p.112; Elsig & Stucki, 2011, pp.301-302).

Additionally, the DSU's concept of "equivalent" retaliation (as outlined in DSU Article 22.4) imposes strict limitations on the scope of retaliation, confining it to the extent of the incurred damage (WTO, 1994c). While this damage may appear negligible from the perspective of a small country, it is of significant concern to a large country. For instance, Antigua's damages, amounting to $21 million, were stated to constitute 4% of its GDP (Bartels, 2013; Lynn, 2007; Palmeter et al., 2022, pp.285-286). However, when applied to the United States, this figure is negligible. This internal limitation has prompted developing countries to propose creative solutions in the long-stalled DSU review negotiations (Bartels, 2013). These include ideas such as collective retaliation, where a group of countries would exert pressure on a non-compliant country and tradable retaliation rights, where a smaller country could sell its retaliation rights to a larger country that could enforce them (Bartels, 2013; Nottage, 2009, p.7). Additionally, there have been proposals for monetary compensation as an alternative solution, which would require the offending party to pay the complainant an amount equivalent to the damage caused. However, these proposals remain largely theoretical due to the reluctance of major powers to alter the current system, which benefits them and no consensus has been reached on such reforms (Bartels, 2013). Neo-mercantilist arguments posit that sanction

[26] Please see World Trade Organization. (n.d.). *Dispute settlement activity — some figures*. https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm, Chart 7 for detailed information.

mechanisms are designed under the influence of the powerful and thus reflect their interests (Gilpin, 2001, pp.379-390). The current retaliation-based system is considered acceptable by major actors due to its assurance of proportional penalties, excluding punitive compensation. In practice, these major actors have demonstrated resilience in the face of opposition from smaller states. The system is designed to prevent the imposition of truly coercive penalties that would compromise national sovereignty. However, in situations of extreme power imbalance, the responsibility for compliant behavior is entrusted exclusively to "good faith" (Van der Borght, 1999, pp.1233-1234).

In light of these considerations, it can be posited that the issue of incompatibility imposes a disproportionate burden on developing countries. In the event that a large member state opts to disregard or delay a decision, the small country that voices concern has limited recourse options (Dutta, 2025, p.21; Shaffer, 2006, pp.179-180). This is due to the fact that it is unable to inflict significant economic harm through customs duties or to easily obtain other forms of relief. At best, it can resort to moral persuasion or seek support from other countries to exert pressure (e.g., through the WTO General Council or public opinion) (Shaffer, 2003, pp.5-6). For instance, Antigua endeavoured to enhance its bargaining position by disseminating information regarding the United States' non-compliance in the gambling case (Bown, 2009, 192-194). However, when the cost of compliance exceeds the cost of reputation, a major power may opt for non-compliance. Nevertheless, flagrant disregard of WTO rulings is uncommon; more prevalent are instances of partial or delayed compliance. As demonstrated in the relevant studies referenced by Nottage (2009, p. 10), statistical evidence indicates that, in instances where the complaining party is a developing nation with minimal retaliatory capabilities, a substantial proportion of WTO rulings are consistently executed (Davey, 2005, p.12; Tiwary, 2023, p.3). However, it has been observed that the compliance period and conditions have been extended to the point where the developing country's victory becomes meaningless. This situation was observed in the EC-Banana and EU-Sugar Subsidies cases (Tania et al., 2024, pp.137-138).

In summary, the enforcement problem highlights a fundamental paradox of the WTO dispute settlement mechanism. The mechanism is legally binding, yet its enforcement is decentralised and dependent on reciprocal action. For developing countries, the efficacy of a "victory" is uncertain due to the potential for the winning party to possess a

significantly more substantial degree of strength (Davis & Bermeo, 2009, p.1033; Jahan, 2020, p.19). In such instances, compliance is contingent upon the winning party's benevolence or broader strategic considerations of interest (Gilpin, 2001, pp.15-24; Shaffer, 2003, pp.40-41). The DSU categorically rejects the notions of financial penalties or external enforcement mechanisms (WTO, 1994c). For instance, there is no WTO coercion to impose fines or force policy changes. This arrangement undoubtedly benefits stronger states that possess the capacity to withstand enforcement pressure, while weaker states lack this capacity (Chimni, 2004, pp.1-37). Consequently, compliance outcomes are skewed in favour of the stronger parties. The African Group[27] and the LDC Group within the WTO have expressed concerns regarding the perceived bias in the organisation's remedies system. They have noted that the mechanisms in place for enforcing findings and recommendations, such as trade retaliation, appear to be disproportionately unfavourable to African Members. The underrepresentation of impoverished nations in these initiatives is attributed, in part, to the "inadequacies and structural rigidities of the remedies available" (Nottage, 2009, p.7). A small country may rationally decide not to pursue a case if it knows that even if it wins, it will be unable to effectively enforce the decision. This, in turn, reinforces the problem of underutilisation. This scenario exemplifies a circumstance in which the deficiencies in enforcement serve to compound the difficulties encountered by developing countries within the DSB.

4.2.3. Disproportionate Disadvantages: How WTO Law Fails Developing States

Despite the WTO's formal commitment to equality among its members, its operational practices reveal a different reality. The rules and procedures, though uniformly applied, tend to reflect the interests and capacities of economically and politically dominant states. Consequently, developing countries frequently encounter systemic impediments not due to overt bias, but rather as a result of structural characteristics inherent in the architecture of international trade law. The ensuing subsections delve into the ways in which enforcement mechanisms, defensive capacities and procedural uniformity tend to impose

[27] The African Group within the World Trade Organization is an informal coalition composed of WTO member states from the African continent. The group operates through coordinated positions and statements, often presenting unified proposals in WTO committees and Ministerial Conferences.

disadvantages on weaker states, thereby serving to reinforce existing global power imbalances.

4.2.3.1. Enforcement and Defence Mechanisms of WTO Law

It would be erroneous to consider the aforementioned difficulties as isolated failures rather than attributing them to the inherent characteristics of the international trade law system and its operation within a global context characterised by disparate states. International trade law, for instance, in contrast to domestic law, relies on states fulfilling their obligations through the principle of reciprocity (retaliation) rather than through a central authority (Keohane, 1986). The design operates under the assumption that all states possess the capacity to engage in proportionate retaliation (Bartels, 2013). This assumption holds within relatively equal economic frameworks; however, it becomes invalid in asymmetric relationships (Keohane, 1986, p.8). The retaliatory enforcement of the DSU is demonstrably biased in favour of large markets, which is indicative of the influence of great power interests in the system's design (Davis & Bermeo, 2009, pp.1042-1043, Nottage, 2009, pp.9-10, Shaffer, 2003, p.40). This arrangement is met with approval by powerful nations, as it ensures the autonomy of their sovereignty, immune to any higher authority (Keohane, 1986, p.25). Furthermore, they are aware of the fact that smaller states are incapable of posing a significant threat to their economic interests through acts of retaliation. The result is a legalised system of self-help enforcement that remains fundamentally underpinned by power dynamics as opposed to neutral coercive force (Brewster, 2011, pp.155-156).

Another inherent problem in international trade law is the absence of retrospective remedies. Decisions made by the WTO do not constitute the provision of compensation for past harm; rather, they serve to recommend prospective compliance (Brewster, 2011, pp.105, 147). Consequently, the violator will not be held financially responsible for the duration of the infringement, other than to incur legal expenses or face subsequent retaliatory pressure (Goh & Ziegler, 2003; Scott & Stephan, 2006, pp.113-114). In practice, the absence of retroactive sanctions has been demonstrated to engender protracted non-compliance. To illustrate, a nation may perpetuate an illicit course of action until the conclusion of the judicial process, leveraging the interim to their advantage and subsequently adapt without the obligation to rectify past wrongdoings.

Developed countries are able to exploit this by delaying proceedings and maintaining the status quo (Brewster, 2011, p.105). In the context of developing countries as complainants, the challenges they face are compounded by the temporal discrepancy between the achievement of victory and the compensation for losses incurred during the intervening period. As Nottage (2009, p.5) observes, the absence of retroactive remedies provides an incentive for respondents to "further complicate, hence delay, the dispute settlement process". This becomes a natural legal feature that states, knowing that time is on the side of the big player who can withstand protracted litigation, can and do exploit to their advantage.

A further issue is that the WTO's decision-making mechanism (including DSU amendments) operates by consensus, in practice giving the major powers veto power over any changes (WTO, n.d.-q). This indicates that numerous proposals advanced by developing countries to address imbalances, encompassing initiatives such as enhancing legal aid, streamlining retaliation regulations and establishing special timetables for LDCs are not endorsed (Hughes, 2020). This inertia is indicative of the institutional strength of those who are satisfied with the status quo, namely the continued dominance of the developed powers (Bown, 2009, p.7). The great powers maintain their advantageous positions and block reforms that could strengthen weaker states in the dispute process, at the risk of imposing new constraints or risks on them. Consequently, inherent structural deficiencies persist due to the WTO's high threshold for implementing change, thereby effectively entrenching initial power-dominated compromises (Bown, 2009, pp.40-41, 43-44).

Another natural asymmetry is evident in the unequal allocation of resources among countries for the purpose of defence. While all members possess an equal right to initiate legal action, the capacity to defend one's actions is also influenced by factors such as ability (Davis & Bermeo, 2009, p.1034; Shaffer, 2003, p.27-29). A developing participating country that is subject to a complaint brought before the DSB by a complainant such as the US or the EU faces the same cost and expertise challenges described earlier (Bohl, 2009, pp.33-34; Shaffer, 2006, p.182). However, it now finds itself in a defensive position. In the event of an unsuccessful mounting of a robust defence (potentially as a consequence of inadequate legal assistance), there is a possibility of losing a case, even in circumstances where a more compelling defence might have been

successful in certain aspects (Busch & Reinhardt, 2007, pp.197-198; Bohl, 2009, pp.22-23). This is a less prominent yet significant issue, as it signifies that the resolution of disputes can, on occasion, be influenced by the quality of the legal team rather than the inherent merits of the case (Shaffer, 2003, pp.16-17, Shaffer, 2006, pp.188-190). This phenomenon is once more associated with the concepts of power, wealth and capacity (Davis, 2012, pp.128-130). International trade law is based on the premise that both parties are able to present cogent arguments in their respective cases; should one party be unable to do so, the panel will be unable to provide a compelling arguments on their behalf (Bohl, 2009, pp.13-15; Shaffer, 2003, pp.5-6). Therefore, in the event of a dispute between a developing and a developing country or between a developed and a developing country, it is evident that the side with greater legal knowledge will prevail more easily. The legalisation of the system was intended to remove the element of raw power, yet it resulted in the introduction of a reliance on the legal acumen associated with power (for example, wealthy states being able to employ more trade lawyers) (Bahri, 2018, pp. 20, 24; Davis, 2012, pp.128-130; Davis & Bermeo, 2009, p.1039).

4.2.3.2. Substantive Inequality Under Legal Uniformity in WTO

As has previously been stated, the WTO encompasses a broad range of agreements, accompanied by detailed regulations, including those pertaining to goods, services and intellectual property. This inherent intricacy undoubtedly favours those involved in the negotiation process, particularly those in developed countries who were able to send more substantial delegations and exert significant influence over the drafting process (Jahan, 2020, pp.21-22; Shaffer, 2003, p.60). Additionally, those with the financial resources to engage extensive legal teams for the purpose of reviewing and revising these agreements are likely to be well-positioned to benefit from this complexity (Shaffer, 2003, pp.16-17, Shaffer, 2006, pp.188-190). It is evident that certain agreements, such as the TRIPS and certain GATS provisions, appear to be driven by the agendas of developed economies, with developing countries adopting them as part of a broader initiative (Horn et al., 1999, pp.15, 22). In circumstances where such disagreements arise, the interpretation of these agreements has been known to favour the perspective of those who enforce the rules. The rule-making imbalance experienced during the Uruguay Round and in ongoing negotiations has been observed to extend to the realm of dispute settlement (Anyiwe & Ekhator, 2013, pp.127-128). Panel deliberations and the AB's interpretation of agreed

texts are notable for their alignment with the interests and concepts prevalent in developed countries (Shaffer, 2003, pp.11-13). Consequently, the outcomes of these processes are likely to reflect this inherent bias (Shaffer, 2003, pp.5-6). For instance, the TRIPS agreement has resulted in obligations that have given rise to disputes, with developing countries finding themselves constrained by rules (such as pharmaceutical patents or local labour requirements) that they had little involvement in drafting (Shaffer, 2003, p.34). In the context of enforcement disputes, small countries are constrained in their actions by a legal paradigm that was largely shaped by and for the major trading powers of the 1990s (Shaffer, 2003, p.60). This paradigm can limit the available remedies (as evidenced by the narrow definition of retaliation in strictly commercial terms, which fails to account for its broader implications) (Bartels, 2013; Nottage, 2009, p.7).

An extra layer of difficulty that needs to be addressed is that the DSU contains one-size-fits-all procedures. Irrespective of whether the disputing parties are two developed economies or a developed economy and the least developed country, the same litigation procedure applies to all disputes (Petersmann, 1997, pp.84-87). The time limits, standards of evidence and procedural steps all have the effect of reducing the scope for variation, with the exception of the slightly longer time allowed for developing countries to prepare their submissions in certain cases (Bohl, 2009, pp.54-56). This uniformity is a double-edged sword: Whilst it affirms equality, it is not equitable (Horn et al., 1999, pp.17-20). It is acknowledged that a small state may require a greater investment of time and support to present its case than a developed state (Palmeter et al., 2022, pp.247-248; Tania et al., 2024, pp.129-130). However, it is also recognised that panels may be hesitant to make significant deviations from established procedures for the benefit of one party only. In practice, panels have been known to demonstrate a degree of leniency, for instance by granting extensions. However, there is an absence of a formalised differentiation process. This is an inherent feature of the legalistic philosophy of the WTO, but it has the consequence of ignoring real-world power differentials (Bahri, 2018, p. 24; Davis & Bermeo, 2009, p.1039). Nordström and Shaffer (2008) have proposed the establishment of a "small claims" procedure and consultative opinion mechanism to facilitate the resolution of complaints by small countries; however, such a mechanism remains unimplemented.

Finally, it is important to mention the previously mentioned imbalance of interests, otherwise known as the asymmetry of conflicts (Davis & Bermeo, 2009, pp.1042-1043). It is important to note that a measure implemented by a large country may have ramifications for an entire sector of a small country (consequently exposing the small country to a significant degree of risk), but that the same measure may, in fact, present a low risk to the overall economy of the large country – or vice versa (Breuss, 2001, p.4; Davis & Bermeo, 2009, p.1035; Jahan, 2020, pp.18-19). To illustrate this point, consider the potential impact of a minor US regulation on the export of a specific product from a small nation. Such a regulation could have far-reaching consequences, as the nation's involvement in the dispute could be considered existential, while the US's commitment to maintaining the regulation might be regarded as minimal from an economic perspective, yet significant from a political standpoint (as evidenced in the gambling case) (Tania et al., 2024, pp.126-137). While this represented a substantial segment of Antigua's industry, it was of negligible significance to the US economy. However, domestic political considerations within the US played a pivotal role in the enforcement of the ban (Bartels, 2013; Lynn, 2007). In circumstances where the risks are asymmetric, the motivation to engage in a dispute or to delay the compliance can vary significantly. The small country is in urgent need of relief, while the large country has little economic incentive to comply (due to the negligible trade impact), although there may be a strong political principle at stake. This disparity has the potential to culminate in intractable disputes or outcomes that favour the politically determined developed state (Bartels, 2013). Trade law does not provide a formal means of evaluating risk; a breach is considered to be a breach irrespective of the associated risks. However, in the context of negotiations or agreements, the party with fewer vested interests is able to exercise greater patience (Palmeter et al., 2022, pp.247-248; Tania et al., 2024, pp.129-130). This is precisely what mercantilist logic predicts: Nations pursue their own interests; if a rule harms the interests of a strong state very little but helps a weak state a lot, the strong state may resist change for other considerations (precedent, sovereignty, etc.), calculating that the weak state cannot force the issue (Pauwelyn, 2001, pp.535-578; Steinberg, 2002, pp.339-374).

In essence, a multitude of these inherent problems point to a fundamental theme: Formal equality before the law does not eliminate substantive inequality. The WTO's dispute

system is a remarkable example of international law, in that it provides a forum and a binding process for all members. However, it is situated in an international order, in which states have very different capacities and effects. The concept of neo-mercantilism underscores the notion that states do not transcend their power politics; rather, they merely channel these dynamics through novel institutional frameworks. Power, therefore, reasserts itself in terms of who uses the system, how effectively they use it and what consequences they can draw from it. The ongoing challenges confronting developing countries do not stem from explicit discrimination against them by WTO rules, as these are often neutral. Rather, the impediments to the full utilisation and implementation of these rules are attributable to the uneven distribution of the conditions conducive to this process, which favour affluent and influential states.

CHAPTER 5
CHINA'S ENGAGEMENT WITH THE WTO: ACCESSION, DISPUTE SETTLEMENT AND THE APPELLATE BODY CRISIS

According to the neo-mercantilist perspective, nation states strategically establish relationships with the WTO and utilise the WTO's mechanisms to advance their national economic interests rather than as a completely rule-based altruistic endeavour. China's accession to the WTO in 2001 and its subsequent behaviour in the DSB illustrate how a rising power can strategically leverage its "developing country" status and the Dispute Settlement Mechanism to its advantage. Concurrently, the United States' reluctance to endorse certain provisions of the WTO, a stance that reached its peak during the Appellate Body crisis, is indicative of a deliberate strategy aimed at safeguarding its competitive edge against perceived trade practices deemed as inequitable, particularly those emanating from China. This chapter will examine China's accession to the WTO since 2001, the debates surrounding China's developing country status, China's role in the ongoing Appellate Body crisis and the power politics and biases within the multilateral trade system.

5.1. CHINA'S DEVELOPING-COUNTRY PRIVIGILES AND WTO DISPUTE ACTIVITY (SINCE 2001)

Since its accession to the WTO in 2001, China has consistently asserted its developing country status in order to benefit from the special provisions embedded in the multilateral trading system. While this status conferred certain advantages under the Special and Differential Treatment framework, China's economic rise and state-capitalist model have led to both scrutiny and unique constraints within the WTO framework. This section will explore the legal and economic implications of China's developing country designation, its evolving role in the dispute settlement mechanism as a complainant, respondent and third party and the major WTO disputes that illustrate its strategic use of the system.

5.1.1. China's Special and Differential Treatment under WTO

Upon acceding to the WTO in December 2001, China formally designated itself as a developing country, thereby acquiring eligibility to benefit from the WTO's S&DT

provisions (Zhou, 2023, p.252). These provisions confer certain privileges upon developing members and China, akin to the majority of WTO members, sought this status on a declaratory basis. Consequently, China was able to benefit from preferential rules in certain areas despite its rapidly growing economic power (García-Herrero, 2024, p.6; Hopewell, 2016, pp.140-141). Nevertheless, China's membership was accompanied by distinctive obligations and restrictions that curtailed these privileges. Members of the WTO have expressed concerns regarding China's state-led economic model (Zhou, 2023, p.254). This model has been characterised by the imposition of conditions that are unique to China, as outlined in the Accession Protocol (Choukroune, 2012, p.51; Zhou, 2023, p.261). Specifically, China was designated as a "non-market economy" for a period of 15 years, a designation that enabled other countries to impose anti-dumping duties on Chinese goods (Choukroune, 2012, p.51; García-Herrero, 2024, p.6; Zhou, 2023, p.266). The Protocol incorporated a specialised safeguard mechanism and a Transitional Review Mechanism for China (Zhou, 2023, p.135). An annual review of China's trade regime was a prerequisite for the mechanism to function during the initial ten years of the nation's membership (Choukroune, 2012, p.51; Zhou, 2023, p.135). These measures were implemented in response to concerns that the WTO's established regulations were not adequately aligned with the structural and economic realities of China. Consequently, while China was able to benefit from the flexibilities available to developing countries, it was also subject to heightened scrutiny and more stringent conditions in certain areas. This finding underscores the notion that China's membership was shaped by mercantilist bargaining.

It is noteworthy that China has not consistently utilised developing country exemptions in their entirety; at times, it has voluntarily adhered to more stringent regulations to facilitate membership and integration (Zhou, 2019). At the 2024 WTO Trade Policy Review meeting, China's Vice Minister of Commerce stated that China had accepted less special and differential treatment than other developing members in certain agreements (WTO, 2024d, pp.89, 102). This statement indicates China's willingness to be regarded as a responsible major trading partner, despite maintaining its claim to developing country status (Zhou, 2019). Indeed, in certain accords, China has committed to fulfilling the majority of obligations without delay, as evidenced by the Trade Facilitation Agreement (Hopewell, 2016, p.95; Zhou, 2019). Nevertheless, China has vigorously defended its

developing country status within the WTO and has only selectively relinquished S&DT privileges (Hopewell, 2016, p.141). This stance has been met with criticism from developed economies: given China's robust economic competitiveness, countries such as Japan contend that it is inappropriate for China to maintain this status and urge China to relinquish the advantageous positions typically reserved for developing countries, which are disproportionate to China's economic size (WTO, 2024d, pp.23-24; 45-47).

5.1.2. China's Evolving Role: From Rule Taker to Rule Maker

Since 2001, China has emerged as one of the most active participants in the WTO dispute settlement mechanism, leveraging this mechanism to defend and protect its trade interests. As Zhou (2023, p.252) puts, China's accession has precipitated a transformation in its trade policy approach, evolving from a role primarily focused on enforcement of established rules to a more proactive stance characterised by rule creation. This transformation is clearly evident in China's DSB participation statistics (see Table 4). As of 2025, China has been the complainant in 33 WTO disputes, the defendant in 53 disputes and a third-party participant in 198 disputes (WTO, n.d.-af). China's extensive participation in the WTO has positioned it among the three most active WTO members in the realm of dispute resolution, aligning it with prominent actors such as the United States and the European Union.

Table 4

China's WTO Dispute Settlement Participation (2001-2025)[28]

Role in the Dispute	Number of Cases
Complainant	30 cases
Respondent	53 cases
Third-Party Participant	198 cases

[28] Please see ChinaPower Project. (2020, August 25). *How influential is China in the World Trade Organization?* Center for Strategic and International Studies. https://chinapower.csis.org/china-world-trade-organization-wto/, for more data.

Note. Data adapted from World Trade Organization. (n.d.-af). Dispute settlement – Disputes by country/territory. https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

In its nascent stages within the WTO, China adopted a circumspect approach, engaging in a mere five disputes during its initial five-year tenure (2001–2006) (Kennedy, 2018, pp.50-52; WTO, n.d.-af). Initially, Beijing limited its role in more than half of all WTO cases to third-party participation, thereby expressing its views on other parties' disputes, in order to learn how the system worked (CSIS, 2020). These capacity-building efforts proved to be effective, as evidenced by China's notable increase in the number of cases initiated and defended over time (Kennedy, 2018, pp.52-56). China has demonstrated a notable degree of activity in this regard, having participated in approximately 50% of all disputes filed worldwide by 2019 (in comparison to 35% for the EU and 26% for the US) (CSIS, 2020). This involvement can be attributed to a deliberate strategy on the part of China to enhance its legal expertise and to defend its systemic interests.

This high level of engagement is indicative of China's mercantilist strategy, which utilises WTO litigation to safeguard its export markets and counteract trade barriers internationally (Hopewell, 2016, pp.201-202). This move also serves to communicate to trading partners China's commitment to safeguarding its rights in accordance with the provisions of the WTO. China has initiated substantial trade actions against other countries (particularly the United States) as a complainant (CSIS, 2020). Conversely, as a defendant, China has been compelled to provide justifications for its own industrial and trade policies (CSIS, 2020). A significant proportion of China's disputes have been with the United States and the European Union, the trade superpowers with which China competes in global markets (CSIS, 2020; WTO, n.d.-af). The United States accounts for more than half of all complaints lodged against China, while China has directed approximately three-quarters of its complaints against the United States (WTO, n.d.-af). This ongoing competition between the United States and China within the DSB highlights the emergence of neo-mercantilist policies, whereby both countries utilise legal disputes as a means to counteract each other's trade measures and promote the interests of their respective domestic industries.

5.1.3. Major WTO Disputes Involving China

A review of China's DSB records reveals a series of high-profile disputes since 2001 that demonstrate trends in compliance and conflict. Table 5 provides a summary of some of the disputes involving China in the DSB that will be discussed in this section.

Table 5

Selected WTO Dispute Settlement Cases Involving China

Case ID	Short Title	Parties		Summary
DS252	US - Steel Safeguards	Complainant	China	The US imposed safeguard measures on steel imports, which complainants argued violated the Agreement on Safeguards and GATT 1994. The WTO found the measures inconsistent and the US withdrew them in 2003.
		Respondent	United States	
		Third Parties	Brazil, Canada, Chinese Taipei, Cuba, European Communities, Japan, Korea, Mexico, New Zealand, Norway, Switzerland, Thailand, Turkey, Venezuela	
DS339 DS340 DS342	China - Auto Parts	Complainants	Canada, European Communities, United States	Complainants challenged China's extra charges on auto parts treated as complete vehicles. The WTO found the measures violated China's accession commitments. China complied in 2009.
		Respondent	China	
		Third Parties	Argentina, Australia, Brazil, Japan, Mexico, Chinese Taipei, Thailand	
DS394 DS395 DS398	China - Raw Materials	Complainants	European Communities, Mexico, United States	The dispute concerned China's export restrictions on raw materials. The WTO found them inconsistent with China's accession commitments and GATT. China was asked to comply.
		Respondent	China	
		Third Parties	Argentina, Brazil, Canada, Chile, Colombia, Ecuador, European Communities, India, Japan, South Korea, Mexico, Norway, Taiwan, Turkey, Saudi Arabia, United States	
DS431 DS432 DS433	China - Rare Earths	Complainants	European Union, Japan, United States	Complainants challenged China's export restrictions on rare earths, tungsten and
		Respondent	China	

		Third Parties	Brazil, Canada, Colombia, European Union, India, South Korea, Norway, Oman, Saudi Arabia, Taiwan, US, Vietnam, Argentina, Australia, Indonesia, Turkey, Peru, Russia	molybdenum. The WTO found them unjustified under environmental exceptions and in violation of WTO rules. China complied in 2015.
DS379	US - Anti-Dumping and Countervailing Duties (China)	Complainant	China	China challenged US use of both anti-dumping and countervailing duties on its goods, citing double remedies. The WTO found several US practices inconsistent. The US took steps to comply, but related disputes continued.
		Respondent	United States	
		Third Parties	Argentina, Australia, Bahrain, Brazil, Canada, European Union, India, Japan, Kuwait, Mexico, Norway, Saudi Arabia, Taiwan, Turkey	
DS511	China - Agricultural Producers	Complainant	United States	The US challenged China's farm subsidies for wheat, rice and corn. The WTO found they exceeded allowed limits. China accepted the ruling and agreed to comply.
		Respondent	China	
		Third Parties	Australia, Brazil, Canada, Colombia, Ecuador, Egypt, El Salvador, European Union, Guatemala, India, Indonesia, Israel, Japan, Kazakhstan, South Korea, Norway, Pakistan, Paraguay, Philippines, Russia, Saudi Arabia, Singapore, Taiwan, Thailand, Turkey, Ukraine, Vietnam	
DS543	US - Tariff Measures (China)	Complainants	China	China challenged US tariffs under Section 301 as GATT-inconsistent. The WTO ruled in China's favor, but the US appealed into the void, blocking adoption of the ruling.
		Respondent	United States	
		Third Parties	Australia, Brazil, Canada, European Union, India, Indonesia, Japan, Kazakhstan, South Korea, New Zealand, Norway, Russia, Singapore, Taiwan, Turkey, Ukraine	

Note. This table summarises selected WTO dispute settlement cases involving China, as complainants and respondents, case outcomes and core legal issues. Adapted from World Trade Organization. (2023). WTO dispute settlement: One-page case summaries 1995–2022 (2023 ed.).

These cases illustrate China's ambivalent experience, characterised by the implementation of unfavourable rulings that necessitate policy modifications, as well as the utilisation of this system to circumvent trade barriers imposed by external entities (Zhou, 2023, pp.259-260, 262-263). The necessity for policy alterations is consistent with the notion that the DSB typically implements flexible regulations developed by and for developed economies. However, China's adherence to both the explicit terms and underlying principles of WTO rulings is presented as substantiating evidence for the DSB's efficacy, even in the context of major trading powers as China (Zhou, 2023, p.262-263). This adherence has facilitated the implementation of incremental reforms within China's domestic trade system (CSIS, 2020). However, from a neo-mercantilist perspective, it is possible to argue that China's compliance is not driven by respect for liberal norms but rather by a strategic calculation that compliance, along with that of its trading partners, will ultimately benefit its export-oriented growth (Hopewell, 2016, pp.125-146). Conversely, bias against developing countries is also evident in the systemic challenges China faces: The rules established by the WTO regarding subsidies, intellectual property and related issues are largely aligned with the interests of developed countries (Wade, 2003). This has created significant challenges for late-developing state-oriented economies in defending their practices (Zhou, 2023, p.262-265). China's substandard performance in market access cases (e.g., Auto Parts, Raw Materials) and the United States' unblemished record in its initial disputes against China have contributed to the perception in Beijing that the DSB exhibits bias in favour of developed complainants (CSIS, 2020). It is evident that, as time progresses, China's escalating legal capacity and strategic case selection have contributed to a balancing of this competitive environment. Nevertheless, the disparity in resources and rule-making authority persists as a foundational characteristic of the system.

5.2. DEBATING CHINA'S DEVELOPING-COUNTRY STATUS: POWER, PRIVILEGE AND WTO POLITICS

The continued classification of China as a developing country within the WTO framework has generated significant controversy, particularly in light of its rapid economic ascent and global influence. While the WTO does not impose strict criteria for development status, the principle of self-designation has allowed China to retain access

to special provisions typically reserved for economically disadvantaged members. This has led to increasing tensions between China and several developed members, especially the United States, who argue that China's material capabilities no longer justify preferential treatment. This section explores the main lines of debate surrounding China's status—namely, the contrast between its economic power and its legal classification and the strategic utility of maintaining developing-country privileges in WTO negotiations.

5.2.1. China's Contested Developing-Country Status

China's insistence on maintaining its status as a "developing country" has given rise to a contentious debate, particularly in light of the nation's growing economic strength (Kwa & Lunenborg, 2019, p.1; Linklaters, 2020; White House, 2019). From a conventional standpoint, China is currently regarded as a predominant economic superpower. It is the foremost global trading nation, the preeminent recipient of foreign investment and contingent on the metric, either the foremost or second-largest economy in the world (García-Herrero, 2024, p.6). Despite its per capita GDP lagging behind that of developed countries, China has achieved an upper-middle-income status and possesses considerable industrial and technological capabilities (Hamadeh et al., 2021). These circumstances stand in stark contrast to the prevailing image of a developing nation and have prompted numerous WTO members to call into question the continued allocation of preferential treatment reserved for developing economies to China (WTO, 2024d). An examination of the WTO classification system, wherein member nations self-determine their status, reveals a fundamental contradiction with economic realities (Linklaters, 2020, WTO, n.d.-f). Pending the termination of China's designation as a developing nation, the WTO will be obligated to extend to China the same degree of courtesy typically reserved for less economically advanced and smaller states (Zhou, 2023, p.252). This system enables China to benefit from preferential regulations in certain domains, despite its status as a more substantial trading power than numerous developed economies.

A close inspection of relevant economic indicators suggests that certain criticisms regarding China's status as a developing country may have merit. For instance, China accounts for approximately 15% of global GDP and more than 14% of global goods exports—a proportion that is considerably higher than that of most developed countries (Hamadeh et al., 2021; Hopewell, 2016, pp.77-79). Concurrently, China's advanced

infrastructure facilitates the successful operation of numerous prominent global corporations, with the nation being the primary location of the majority of the Fortune 500 companies (García-Herrero, 2024, p.6). Despite its per capita GDP ($11,800 in 2021) falling short of OECD levels, detractors contend that China's substantial size and aggregate wealth necessitate the assumption of obligations more akin to those of developed nations (Hamadeh et al., 2021). The neo-mercantilist assumption that states will act in accordance with their national interests also applies in this context (Hopewell, 2016, p.48). China emphasises its per capita income and the extent of its unmet development needs to justify its continued classification as a developing nation. In contrast, the United States and other nations advocate for China to assume a more responsible global role, one that is accompanied by comprehensive obligations, underscoring the nation's substantial economic prowess (CSIS, 2020).

5.2.2. Shield and Sword: China’s Dual Use of Developing-Country Status

The ongoing developing country status of China has yielded numerous benefits, both concrete and strategic. Developing members of the WTO are entitled to numerous S&DT provisions in a variety of agreements. The primary advantages for China are as follows: The extension of implementation periods for new WTO agreements, the adoption of more flexible commitments in trade liberalisation rounds and the incorporation of certain permitted exceptions (WTO, n.d.-ag). For instance, developing countries are permitted to maintain higher agricultural subsidies (with the capacity to support up to 10% of production, in contrast to the 5% maximum for developed countries) and are exempt from certain subsidy bans (VanGrasstek, 2013, pp.113, 449). As a developing member of the global economic system, China is permitted to participate in aid-for-trade programs and technical assistance initiatives. However, given its status as a relatively wealthy developing country, its reliance on these programs is not significant (Choukroune, 2012, p.50).

Another benefit is negotiation dynamics. The assertion of developing country status has enabled China to align with the grand coalition of developing countries (i.e. the G77/G90 group[29]) to demand special treatment in negotiations (VanGrasstek, 2013, pp.99-102;

[29] The Group of 77 (G77) and the Group of 90 (G90) are coalitions of developing countries within the WTO that coordinate to promote their collective economic interests and enhance their negotiating power in trade discussions.

Zhou, 2019; Zhou, 2023, pp.266-278)[30]. In the Doha Round (2001-present), China has adopted a consistent position of aligning itself with developing countries to resist concessions that could potentially compromise its industrial and agricultural interests (Hopewell, 2016, pp.97-98). This position is underpinned by the principle of "Less than Full Reciprocity", which asserts that developed countries should make a greater reduction in tariffs than developing countries (Hopewell, 2016, pp.182-183). Consequently, this status shields China from the pressure to make the same level of market-opening commitments that the US or the EU are expected to make. From a strategic standpoint, China's designation as a developing nation serves as a defensive instrument, employed to temper or discontinue initiatives that are perceived as detrimental (Choukroune, 2012, p.49; Howse, 2020, p.386; Wu, 2016, pp.280-282; Zhou, 2023, pp.259-260). For instance, in the context of WTO negotiations concerning matters such as environmental products, e-commerce regulations and investment, China has, on occasion, invoked "development" concerns as a rationale to pursue flexibility or deferral of commitments that could potentially render its domestic industries susceptible to competition (García-Herrero, 2024, pp.6-7; Hopewell, 2016, pp.140-141; Zhou, 2023, p.262)

Furthermore, the status of “developing country” can engender legal advantages in the context of WTO disputes. The DSU incorporates specific provisions for developing countries, including the extension of time limits for the execution of decisions and the promotion of consideration for their economic circumstances during the course of settlements (VanGrasstek, 2013, pp.240-245, WTO, n.d.-ah). In the event of China losing a case, it has the option of requesting (or negotiating) an extension of time for compliance by citing these provisions (although China rarely has to explicitly request this, it usually complies within standard timeframes) (Zhou, 2023, p.259). This course of action has a diplomatic advantage: By emphasising its status as a developing nation, China invokes the principle of fairness, seeking to gain sympathy by highlighting its ongoing development and the belief that it should not be held to the same strict standards as more advanced countries (Hopewell, 2016, pp.132-133; WTO, 2024d, p.8). Domestically, the

[30] Please see VanGrasstek, C. (2013). *The history and future of the World Trade Organization*. Geneva: World Trade Organization, p.101 for the figure.

discourse surrounding the development of the country's status also serves to legitimise the protection of specific sectors as part of the overarching development policy.

It has been observed that China has at times indicated a willingness to relinquish or postpone the pursuit of certain S&DT benefits when deemed suitable, potentially with the objective of consolidating its image as a cooperative great power. For instance, China entered the Information Technology Agreement (ITA) and its subsequent expansion (which eliminated tariffs on high-tech goods) without following the longer-phased exit strategy employed by numerous developing members (Hopewell, 2016, pp.200-201; VanGrasstek, 2013, pp.349-150)[31]. In the Trade Facilitation Agreement, China has committed to the immediate implementation of the majority of its obligations (Zhou, 2019). This suggests that China is strategically leveraging its status as a developing country to its advantage, utilizing the associated normative shield to resist onerous new obligations while concurrently endeavouring to avoid being perceived as a free rider (Zhou, 2019; Zhou, 2023, p.266). Nevertheless, the net effect is that China is able to choose when to act in accordance with the status of a developing country. This imbalance, whereby the world's second largest economy is granted special exemptions, is perceived by the US and other nations as an unfair advantage that distorts the competitive environment (from a mercantilist perspective, it enables China to achieve relative gains under the guise of multilateral rules) (Kwa & Lunenborg, 2019, p.1; Linklaters, 2020; White House, 2019; Zhou, 2019).

5.2.3. Global Pressure and China's Resistance to Development Status Reclassification

The ongoing WTO reform debate has seen China's developing country status become a contentious issue. The United States, for instance, asserts that economically advanced countries such as China (or India, Brazil, etc.) should not be permitted to self-identify as developing countries solely for the purpose of receiving preferential treatment (González & Jung, 2020, p.12; Linklaters, 2020). In 2019, the US took the unprecedented step of issuing an executive memorandum (White House, 2019). This memorandum signalled that, in the event of the WTO failing to act, the US would unilaterally stop treating certain

[31] Please see VanGrasstek, C. (2013). The history and future of the World Trade Organization. Geneva: World Trade Organization, p.349 for the table.

self-declared developing countries as such in US trade agreements (USTR, 2023, p.10). It is evident that this move was clearly largely targeted at China. Although the WTO has not altered the formal rules, this US pressure has brought the issue to the fore.

In the course of China's WTO Trade Policy Reviews (periodic comprehensive assessments of a member's trade policies), several member countries have explicitly called on China to abandon its developing country claim (WTO, 2024d). For instance, during China's 9th Trade Policy Review in 2024, certain members urged China to assume the responsibilities that are commensurate with its economic weight and to desist from claiming WTO developing country status in the future (WTO, 2024d). It was suggested that China voluntarily withdraw from the S&DT provisions, given its global economic position (Zhou, 2019). US officials have similarly argued that China's continued use of the S&DT undermines the fairness of the system (White House, 2019; WTO, 2024d). For instance, the USTR's 2023 Report to Congress on China's WTO compliance criticises China for leveraging the benefits of WTO membership, including the assurance of open, non-discriminatory access to the markets of other nations, to become the WTO's foremost trader, while concurrently rejecting calls for further liberalisation by asserting its status as a 'developing' country (USTR, 2023). In other words, China derives benefit from the WTO-guaranteed market access, whilst circumventing specific obligations by asserting its status as a developing country.

China's response to these pressures has been multifaceted and nuanced (Zhou, 2019; Zhou, 2023). China officially observes that, despite its substantial size, its development is uneven. It is noted that hundreds of millions of Chinese citizens continue to earn modest incomes and that China's GDP per capita is significantly lower than that of developed economies (Cutler & Doyle, 2019; WTO, 2024d). The issue is framed in terms of the need for justice and ongoing development (Cutler & Doyle, 2019). Chinese diplomats frequently emphasise that development status constitutes a right of developing members and that China is unwilling to relinquish this right easily (García-Herrero, 2024, p.7; WTO, 2024d). In the context of its WTO reform proposals, China has intimated a willingness to engage in discussions concerning the heterogeneity amongst developing countries (CSIS, 2020; González & Jung, 2020, p.12). However, the proposals have not indicated any intention to relinquish its own status. Indeed, China's 2019 WTO reform proposal explicitly emphasised the need to respect the special circumstances of

developing members and opposed the application of "one-size-fits-all" criteria for graduation (Wu, 2016, p.31).

From a neo-mercantilist perspective, this standoff can be interpreted as a struggle for influence over the rules: In the context of the ongoing geopolitical dynamics between China and the United States, the former has been endeavouring to preserve a system that has thus far granted it a certain degree of flexibility, while the latter and its allies have sought to redefine established norms in an attempt to mitigate China's competitive advantages (Hopewell, 2016, pp.125-146; Gilpin, 2001, pp.379-390; USTR, 2023; Zhou, 2019). It is reasonable to hypothesise that as long as the practice of self-determination continues, China is unlikely to relinquish its designation as a developing country, as this is a valuable bargaining chip and a means of protection. As Rockwell (2025, p.11) contends, in circumstances where nations utilise the WTO to impose more stringent obligations on other states whilst concurrently withdrawing their own commitments, the probability of achieving reform appears minimal. The issue of development status, inextricably linked to the broader geoeconomic competition between the United States and China, has emerged as a significant impediment to achieving a consensus within the WTO (Howse, 2020, pp.371-389; Rockwell, 2025, p.5). It is imperative that a middle ground is identified for progress to be made (for example, the establishment of objective criteria for development status or the voluntary limitation of S&DT by advanced developing countries), yet negotiations on this issue persist.

5.3. THE APPELLATE BODY CRISIS AND THE CHINA-U.S. RIVALRY

The paralysis of the WTO Appellate Body since 2019 marks one of the most critical institutional crises in the history of the multilateral trading system. At the heart of this crisis lies a broader geopolitical rivalry—most notably between the United States and China. While the U.S. has publicly framed its refusal to appoint new Appellate Body members as a procedural concern, the underlying tension is closely linked to its dissatisfaction with the way the WTO adjudicates disputes involving China. This section explores the role of China in the evolution of the Appellate Body crisis, U.S. objections to Chinese trade practices, the perceived judicial overreach of the DSB and the broader strategic implications for the WTO’s future.

5.3.1. The U.S. Pushback Against China in the WTO

The ongoing crisis within the WTO Appellate Body, which has been characterised by the cessation of operations of the WTO's appeals court since December 2019 due to the United States' veto of the appointment of new judges, is intricately intertwined with the United States' ongoing grievances concerning China (Hart & Murrill, 2021; Howse, 2020, pp.371-389). The United States has long expressed concerns regarding China's state-led economic model, which deviates from market principles (González & Jung, 2020, pp.2, 11-12; Zhou, 2023, pp.265-268). Washington's perspective, particularly during the first Trump administration (2017-2020), was that China was engaging in practices that were deemed as "gaming" of the trade system (White House, 2019). These practices included protectionism, substantial industrial subsidies, mandatory technology transfer policies and a substantial state sector within China's domestic economy, whilst leveraging open markets in foreign countries (Cutler & Doyle, 2019; Zhou, 2023, pp.265-268). The United States Trade Representative has explicitly described China's approach as "state-driven, non-market and mercantilist" and characterised policies that "evade effective WTO disciplines and cause serious harm to the industries of the United States and other countries" (USTR, 2023, p.10). The United States has asserted that China has not adhered to the principles of its 2001 commitments to transition to a market economy (USTR, 2023, p.17). Instead, the United States has alleged that China has persisted in engaging in trade distorting practices, including the provision of subsidies for steel and solar panels, the imposition of restrictions on digital trade and the theft of intellectual property (USTR, 2023, pp.3-4).

In the context of WTO disputes from the US perspective, these concerns have translated into frustration with the manner, in which WTO rules and rulings have addressed China's cases (Hart & Murrill, 2021). American officials have indicated that there are multiple Appellate Body decisions that, from their perspective, present significant challenges to the effective counteraction of China's trade distortions (González & Jung, 2020, p.8; USTR, 2023; White House, 2019). The most notable example is the Appellate Body's interpretation of what constitutes a 'public body' under the Subsidies Agreement (García-Herrero, 2024, p.6; Hart & Murrill, 2021, p.31; Zhou, 2023, p.261). In the US context, in disputes pertaining to anti-dumping and countervailing measures, the Appellate Body has ruled that a 'public body' must possess governmental authority (Choukroune, 2012, pp.53-

54; García-Herrero, 2024, p.6; Hart & Murrill, 2021, p.31). This criterion is regarded as being of a high standard, thus resulting in a considerable number of Chinese state-owned enterprises being unable to be designated as public bodies whose subsidies are subject to action (USTR, 2023, p.31). The United States expressed strong displeasure at this decision, contending that it would weaken the ability of WTO Members to use tools to discipline injurious subsidies (a practice that China has effectively deregulated state-owned enterprises) (USTR, n.d.; Zhou, 2023, p.268). In a similar vein, the Appellate Body revoked certain US methodologies (including the utilisation of 'surrogate country' prices for the calculation of dumping margins for China's non-market economy) and imposed a more stringent review of US trade remedy actions (Hopewell, 2016, p.222). From the perspective of the United States, the WTO dispute system was considered to be overreaching in its grant of rights to China that had not been recognised in the negotiations and was restricting legitimate defence measures against unfair trade. This perspective was encapsulated in the USTR's 2020 report on the Appellate Body, which documented a series of 'errors of interpretation' committed by the AB in cases, a significant number of which involved China, that the US regarded as systemic issues (USTR, 2020).

It is evident that the United States articulated the Appellate Body blockade in overtly procedural terms, namely by voicing concerns regarding jurisdictional overreach, violations of the 90-day deadline and the conditions of the judges (Petersmann, 2018, pp.2-3; USTR, n.d.). However, beneath this overt expression of dissatisfaction, the underlying subtext frequently alluded to China (Hart & Murrill, 2021; Howse, 2020, pp.371-389). Instead of being surrounded by multilateral judges, the US could be said to have undermined the AB in order to retain the freedom to counter China through unilateral tariffs and pressure (Hopewell, 2016, p.48). The present crisis can be regarded as a strategic manoeuvre on the part of the US, with the aim of recalibrating a system that no longer serves its interests in the face of its rising rival (Pauwelyn, 2001, pp.535-578; Steinberg, 2002, pp.339-374). As García-Herrero (2024, p. 8) contends, the WTO was not established with the intention of regulating the presence of a very large non-market economy within its own regulations. This resulted in the United States opting to obstruct the system itself, rather than enabling China to adapt to the prevailing rules of dispute settlement.

5.3.2. China’s Role in the AB Crisis: From Beneficiary to Defender

The position adopted by China regarding the Appellate Body issue has been conspicuously divergent from that of the United States (Hopewell, 2021). The United States perceives the elimination of the Appellate Body as a bargaining chip, while China has demonstrated a consistent support for the preservation of the Appellate Body and the rules-based dispute settlement mechanism (García-Herrero, 2024, pp.1-2; Zhou, 2023, p.252). China has expressed its conviction that a functional WTO dispute mechanism is imperative for the protection of less economically powerful members (at least historically, such as China itself) from pressure based on economic or political power (Zhou, 2023, pp.262-263). China's provision of active support for the appointment of new Appellate Body members, with the objective of restoring the system's functionality, serves as a testament to this phenomenon. It was mentioned earlier that in the aftermath of the AB's collapse, precipitated by the US veto, the EU and some other WTO members initiated the Multi-Party Interim Appeal Arbitration Arrangement (Hopewell, 2021, p.1027; WTO, n.d.-i). This provisional mechanism was established with the objective of reviewing appeals on a voluntary basis (WTO Plurilaterals, 2025; Zhou, 2023, p.252). Notably, China was a participant in this arrangement. China's early involvement in the MPIA, as one of the first major developing countries to sign, signalled its commitment to multilateral dispute resolution, despite the absence of the United States from the arrangement (Hopewell, 2021, pp.1039-1040).

An alternative perspective on China's support for the AB is that it is in its own interests. As a growing trading power, China stands to lose a great deal from the violation of established rules (Hopewell, 20201, pp.1039-1040). The WTO's binding dispute settlement process empowers China to voice concerns regarding unfavourable treatment by other nations, such as the imposition of tariffs by the United States or discriminatory measures, without resorting to the principle of might makes right. In instances where the AB has been rendered immobile, a proportion of China's panel-stage triumphs have become subject to non-enforcement (a phenomenon exemplified in the US-Tariff Measures dispute) (Hopewell, 2021, pp.1034-1035; WTO, 2023, p.252). The institutional impasse is detrimental to China by depriving it of full legal remedies (retaliation rights) even after winning a case (WTO, n.d.-i). More broadly, this paralysis is increasing uncertainty in global trade and placing a trade giant like China, which relies on stable

rules, at a disadvantage. Consequently, China's 2018 and 2019 WTO reform proposals underscore the priority of reviving the Appellate Body (García-Herrero, 2024, p.6). Beijing has strategically positioned itself as a defender of the multilateral system and has likely sought to persuade other countries (especially developing members) to pressure the US to rebuild the AB (CSIS, 2020; Hopewell, 2021, pp.1029, 1040; Zhou, 2023, pp.262-263).

Concurrently, China has confronted the immediate challenges posed by the AB crisis. In the absence of recourse to the US, disputes between the US and China have effectively reached a stalemate at the panel stage, barring the consent of both parties to arbitration, a provision the US has declined to accede to for customs duty measures (González & Jung, 2020, p.1-2). This new normal has led China to exercise greater caution in its approach to filing new complaints against the US. The rationale behind this caution is that the efficacy of a negative panel ruling against the US would be questionable, given the challenges associated with successfully appealing such decisions (Bown, 2019; Zhou, 2023, p.269). Conversely, the United States has been freer to take measures without immediately fearing the legal consequences of the WTO, such as comprehensive export controls or sanctions against China (Hopewell, 2021, pp.1033-1034). While the United States has the capacity to exploit loopholes in the established regulations to exert pressure on China, China's legal recourse is constrained. This places an additional burden on China to take diplomatic and economic countermeasures outside the WTO framework (Bown, 2019).

Notwithstanding these challenges, it is probable that China's long-term strategic outlook entails the continued support of a revitalised WTO dispute settlement mechanism. Zhou's (2023, p.269) argument posits that the imperative for a functional DSB is paramount in order to ensure China's continued influence in the global arena. The absence of such a body, Zhou contends, would result in the loss of a pivotal instrument for countries seeking to encourage China to adopt further reforms. The efficacy of unilateral measures would be significantly diminished, or worse yet, might even prove counterproductive. This observation, while related to the subject of disciplining China, is two-sided: If multilateral disciplines weaken, trade conflicts become open to everyone's participation, which could harm all parties (González & Jung, 2020, p.1-2). China appears to have calculated that its interests would be better served in a global context where the United States is constrained

by the rules of the WTO (Hopewell, 2021, pp.1039-1040). These rules are designed to prevent excessive actions, such as indefinite tariff wars. Additionally, China can leverage its legal victories to its advantage, rather than operating within a system dominated by power politics (Zhou, 2023, p.252). Consequently, Beijing positioned itself, at least rhetorically, as a defender of the multilateral trading order during the AB crisis.

5.3.3. China, the U.S. and the Struggle to Reform the WTO

The impasse within the Appellate Body constitutes a component of a more extensive discourse concerning WTO reform, wherein China assumes a substantial role. A particularly contentious issue is determining how to address differential treatment for developing countries as part of the reform. The United States has suggested that, in the event of a reconstruction of the dispute settlement mechanism or the negotiation of new regulations, clearer distinctions should be established to prevent countries such as China from benefiting from the general leniency accorded to developing countries (Hopewell, 2021, pp.1034-1035; USTR, n.d.). In contrast, China has articulated its support for reforms that enhance the functionality of the Appellate Body (Zhou, 2023, p.266). However, China has been emphatic in its stance against reforms that it perceives as undermining the principle of special and differential treatment for developing countries (García-Herrero, 2024, p.7). From China's perspective, S&DT is considered a fundamental principle of equality within the trading system (Hopewell, 2016, pp.140-141). The imposition of this principle on high-income developing countries is regarded as an attempt to modify WTO agreements in a manner that is disadvantageous to China.

This divergence has had ramifications for the ongoing reform negotiations. For instance, in the context of negotiations concerning the enhancement of subsidy regulations (with the objective of addressing industrial subsidies and state-owned enterprises), Western members are proposing a series of measures aimed at enhancing transparency and expanding the scope of prohibitions, with a portion of these measures directed towards practices observed in China (González & Jung, 2020, pp.2; USTR, 2023, p.31; Zhou, 2023, p.254). China has adopted a prudent approach, consenting in principle to the elucidation of certain regulations, while concurrently asserting that novel disciplines must account for the unique circumstances of developing nations (Hopewell, 2016, p.141). Similarly, on issues such as fisheries subsidies, China, the world's largest fishing country,

initially sought to preserve flexibility for developing countries. However, after a period of deliberation, China ultimately made some concessions and signed the 2022 Fisheries Subsidies Agreement (Hopewell, 2016, p.140-142). China's position in the context of reform negotiations appears to be characterised by a concerted effort to maintain a delicate balance. On the one hand, China is endeavouring to safeguard the interests of developing countries and assume a leadership role within this group (Hopewell, 2016, pp.141-142). On the other hand, it is also evident that China is seeking to assert its role as a major power and contribute to global initiatives. For instance, China has assumed a prominent position in the facilitation of investments and the negotiation of e-commerce agreements, presenting itself as an entity that enables the involvement of developing countries. However, China has consistently opposed any reforms that explicitly target "non-market economies" or restrict S&DT (Cutler & Doyle, 2019; García-Herrero, 2024, p.6).

The issue of developing countries was indisputably addressed in the course of deliberations concerning the reinstatement of the Appellate Body. A considerable number of WTO members advanced the argument that large economies seeking full appellate rights should, as a matter of principle, assume full obligations—that is to say, relinquish certain privileges typically accorded to developing countries (WTO, 2024d, pp.24, 46, 102). However, China did not accept such a link. As previously mentioned, China has not yet acquiesced to this demand and there is no consensus among WTO members regarding the implementation of new criteria (many other developing members are apprehensive that they could be the next in line if the criteria are applied) (Zhou, 2019).

In summary, China's position on the AB crisis and reform is characterised by a conservative approach in certain aspects and a revisionist stance in others. The objective of the proposed initiative is to reinstate the previous dispute settlement mechanism, a system that was previously demonstrated to facilitate stability and ensure the protection of trade interests through a rule-based framework (Zhou, 2023, p.266). However, it resists revisions that would reduce its flexibility (developing country privileges) or reorganise the rights and obligations of member countries in a way that would clearly target its economic model (García-Herrero, 2024, p.7). Conversely, the United States is reluctant to restore the previous system without substantial modifications to address the imbalances resulting from China's economic growth (Hopewell, 2021, pp.1034-1035; USTR, n.d.).

Consequently, the WTO finds itself in a precarious position, grappling with the conflicting interests of a rising power that has derived benefits from the liberal trading order and is keen on maintaining those advantages and a dominant economic power that advocates for a rewriting of the rules to mitigate the competitive advantages of the emerging power. Concurrently, both nations are behaving in accordance with neo-mercantilist expectations, prioritizing national interests over the collective benefit of the system (Hopewell, 2016, p.48). Consequently, the WTO is confronted with a crisis of legitimacy and functionality and the future of the Appellate Body and broader reforms remains uncertain.

CONCLUSION

The patterns and dynamics of dispute outcomes in the WTO Dispute Settlement Body align with core neo-mercantilist assumptions about the primacy of state interest, structural asymmetry and the strategic use of legal instruments by powerful actors (Gilpin, 1987, pp. 31–34; Krasner, 1976). While the WTO formally operates within a rules-based multilateral framework, empirical evidence indicates that states, particularly larger economies, interact with this system in a manner that reflects calculated economic nationalism rather than legal idealism (Helleiner, 2002). First, an analysis of dispute participation and outcomes reveals clear differences between developed and developing countries. Developed countries, notably the United States and the European Union, exhibit significantly higher levels of litigation activity, enforcement success and retaliatory capacity (WTO, 2003b). Conversely, most developing countries face litigation constraints primarily due to costs, technical complexity and political risks (Bown & Hoekman, 2005; Nottage, 2009). This unequal participation reflects neo-mercantilist insights into structural inequality in international institutions that ostensibly promote legal equality (Krasner, 1983, pp. 253–262). Second, great powers tend to selectively comply with unfavourable decisions, especially when economic stakes are low and political stakes are high (Steinberg, 2002, pp. 339–374). Cases such as US-Gambling and EC-Banana demonstrate how states can delay or resist complying with unfavourable decisions, particularly when the complainant is a smaller economy. This behaviour aligns with the neo-mercantilist view that great powers resist institutional decisions that threaten their autonomy or domestic interests (Pauwelyn, 2001, pp. 535–578). Third, China's involvement in the DSB reinforces the neo-mercantilist argument that states use international institutions strategically (Hopewell, 2016, pp. 125–146; Howse, 2020, pp. 371–389). Since its accession in 2001, China has increasingly used the Dispute Settlement Mechanism to defend its export-led growth model, challenge trade barriers and counter anti-dumping measures (Choukroune, 2012, p.49; Howse, 2020, p.386). China's legal arguments in cases such as US – Steel Safeguards, China – Rare Earths and US – Tariff Measures reflect a rational effort to protect national competitiveness through formal legal channels (Wu, 2016, pp. 280–282). At the same time, China has avoided commitments that could undermine its state-capitalist model, particularly in the context of WTO reform

and Appellate Body negotiations (Zhou, 2023, pp. 259–260). The Appellate Body crisis is, at its core, an illustration of neo-mercantilist logic. The United States' obstruction of judicial appointments is not merely a procedural protest but a strategic move to regain policy space in its ongoing struggle with China (Hart & Murrill, 2021). The United States has sought to maximise its unilateral leverage by bypassing the multilateral dispute system and avoiding the constraints of binding legal decisions (Howse, 2020, pp.371-389). At the same time, China has positioned itself as a supporter of the rules-based order, not due to liberal principles but because a functioning DSB serves its long-term interests by ensuring predictable and stable terms of trade (CSIS, 2020; Hopewell, 2021, pp. 1029, 1040; Zhou, 2023, pp. 262–263). In conclusion, the outcomes of WTO disputes reflect a geopolitical order where power politics, not legal neutrality, has a stronger influence on the effectiveness of the multilateral trade regime. Neo-mercantilism clearly offers a robust analytical framework for explaining state behaviour within the WTO. In this context, states are not neutral legal participants but strategic actors seeking relative economic gains in a competitive international system.

The findings of this thesis emphasise the central role of power asymmetries in shaping strategic behaviour within the WTO dispute settlement mechanism. Although the WTO's legal structure is formally egalitarian, the ability to initiate, pursue and enforce dispute decisions is closely linked to states' material capabilities, legal expertise and geopolitical leverage (Davis & Bermeo, 2009, p. 1034; Shaffer, 2003, pp. 27–29). Developed countries, notably the United States and the European Union, possess enhanced legal and retaliatory capabilities (Bohl, 2009, pp.33-34; Davis, 2012, pp.128-130; Shaffer, 2006, p.182). This gives them the ability to use litigation not only for compensation but also as a tool of economic diplomacy and regulatory projection (Breuss, 2001, pp. 45–47). Conversely, many developing countries, despite benefiting from S&DT provisions and institutions such as the ACWL, face financial and legal limitations that make strategic litigation a high-risk endeavour (Bown, 2003, pp. 1–5, 13–14; Breuss, 2001, p. 7). China's engagement with the WTO illustrates how rising powers navigate and challenge these structural imbalances. As this thesis demonstrates, China has transitioned from a position of cautious rule-taking to one of assertive rule-making (Zhou, 2023, p.252). This strategic approach has been used both to assert China's status as a developing nation and to challenge the trade policies of major economies. This duality reflects neo-mercantilist

logic, where legal strategies are closely tied to national interests and geopolitical calculations (Hopewell, 2016, pp. 125–146; Howse, 2020, pp. 371–389). The United States' response, particularly its strategic use of the Appellate Body crisis, shows how dominant powers attempt to recalibrate institutional constraints when outcomes no longer align with their strategic preferences (Krasner, 1983, p. 54). Strategic litigation within the WTO is therefore not merely a legal process but a reflection of underlying power dynamics. The formal neutrality of the WTO dispute settlement mechanism conceals deeper imbalances in implementation, access and agenda setting. The legitimacy and effectiveness of the multilateral trading order will remain questionable as long as these asymmetries persist. Therefore, efforts to reform the system must address not only procedural deadlocks such as the paralysis of the Appellate Body but also structural inequalities that limit the ability of developing countries to use the system on equal terms.

As a cornerstone of the multilateral trading system, the WTO's Dispute Settlement Body has provided developing countries with an unprecedented opportunity to challenge trade barriers and defend their rights within a rules-based framework (Palmeter et al., 2022). However, the actual impact of this mechanism on developing countries' trade policy behaviour has been neither uniform nor consistently empowering. Instead, it reflects a complex interplay of legal capacity, strategic incentives, systemic asymmetries and broader geopolitical dynamics (Gilpin, 2001, pp. 379–390; Keohane, 1984; Krasner, 1983, pp. 45–46). From a normative perspective, the DSB offers legal predictability and a degree of equity among sovereign states. Many developing countries, particularly large ones such as Brazil, India and China, have used the DSB to challenge trade-distorting policies imposed by advanced economies (Crosbie, 2007). Successful cases such as Brazil–Upland Cotton and India–Quantitative Restrictions have had a clear impact on shaping national trade strategies and enhancing legal and technical capacity (Busch & Reinhardt, 2007, pp. 197–198). These cases have accelerated institutional learning, promoted domestic coordination and legitimised multilateral engagement over unilateral retaliation (Hoekman & Mavroidis, 2000, p. 535). Nevertheless, the dispute settlement process has simultaneously created structural limitations that constrain the policy space of weaker economies. High litigation costs, dependence on external legal expertise and the risk of political backlash are significant disincentives to the proactive use of the DSB, especially when confronting major powers (Nottage, 2009; Shaffer, 2006). Although

rulings in favour of developing countries are sometimes obtained, implementation is often delayed or blocked, limiting the tangible benefits of a legal victory (Dutta, 2025, p. 21; Shaffer, 2006, pp. 179–180). In this context, the DSB may unintentionally reinforce a two-tier system in which a few skilled developing countries dominate cases while others remain peripheral or absent (González & Jung, 2020, p. 6). Furthermore, the retaliation mechanisms under the DSB, intended to ensure compliance, are in practice ineffective for small economies (Davis & Bermeo, 2009, pp. 1042–1043; Nottage, 2009, pp. 9–10; Shaffer, 2003, p. 40). Lack of sufficient market size to implement meaningful countermeasures has prevented many developing countries from harnessing the full power of the system (Brewster, 2011, pp. 155–156). This, in turn, has altered the cost-benefit calculus of participating in disputes. This imbalance is evident in the US–Gambling case, where Antigua, despite winning, was unable to compel the United States to implement the ruling or retaliate effectively (Palmeter et al., 2022, p. 285).The case highlights a systemic imbalance in enforcement capacity (Palmeter et al., 2022, pp. 484–489). From a neo-mercantilist perspective, the DSB is not only a neutral arbiter but also a strategic arena where states defend national interests within a constrained institutional framework (Gilpin, 1987, pp. 31–34; Krasner, 1976). Stronger states are better positioned to navigate and shape the system, whereas weaker states must weigh the risks of contestation against the benefits of legal redress (Hopewell, 2016, p. 48). In practice, developing countries use the DSB instrumentally, not to universally liberalise trade but to selectively preserve or expand market access when aligned with domestic priorities (Wu, 2016). Therefore, the effects of dispute settlement on developing countries' trade policies are best understood through a dual lens: One that recognises the formal legal authority of the DSB and another that accounts for the structural inequalities embedded in the global trade regime. Although the DSB has sometimes contributed to policy improvement, institutional strengthening and multilateral integration, its uneven accessibility and implementation outcomes underscore the need for broader reforms that address the capacity, representational and strategic limitations of the developing world.

The findings of this thesis provide some important policy implications for developing countries navigating the WTO's Dispute Settlement Mechanism. While the WTO officially provides a rule-based mechanism that treats all members equally, in practice, its use and benefits are deeply affected by structural asymmetries and power dynamics.

Consequently, it is incumbent upon developing countries to formulate policies that are both legally compliant and geopolitically astute. Firstly, capacity building remains a crucial priority. It is evident that the probability of achieving legal success at the WTO is contingent not solely on the merits of the case, but also on the existence of adequate technical, financial and institutional resources (González & Jung, 2020, p.5). It is recommended that developing countries consider allocating resources towards the development of specialised legal expertise, whether through in-house initiatives or by participating in cooperative mechanisms such as the ACWL (Jahan, 2020, pp.17-18; Palmeter et al., 2022, pp.30-31; Tania et al., 2024, pp.139-140). The establishment of regional legal cooperation and joint dispute preparation platforms has also been demonstrated to facilitate the pooling of resources and the reduction of reliance on external counsel (Tania et al., 2024, pp.139-140). Secondly, strategic cases should be used selectively. As evidenced by China's and other emerging economies' engagement in WTO disputes, such participation not only serves to defend trade interests but also fosters the development of credibility and leverage in the context of negotiations. It is submitted that developing countries stand to benefit from the targeting of disputes that have the potential to generate systemic clarifications that are favourable to them or to strengthen their collective bargaining positions, particularly when such actions are coordinated among members who are in a similar situation (Cheng, 2009, pp.8-9; Boza & Fernández, 2014, p.24). Thirdly, there is a necessity to consolidate the existing coalitions within the WTO. Historically, the phenomenon of developing countries joining forces to advocate for their collective interests has been a recurring theme. Examples of such coalitions include the African Group, the G77 and the G90, which have served as instrumental platforms for the articulation of these nations' concerns (Nottage, 2009, p.7; VanGrasstek, 2013, pp.99-102; Zhou, 2019; Zhou, 2023, pp.266-278). However, given the increasing heterogeneity among developing members, it is essential to renew solidarity and build differentiated yet cooperative negotiating strategies, particularly with regard to the future of S&DT and dispute settlement reform (Mahler et al., 2025). Fourthly, it is recommended that countries adopt a balanced approach to the debate on WTO reform, characterised by both caution and initiative. While defending the S&DT framework is vital to preserve policy space, developing countries should also recognise the need for institutional legitimacy (Bown, 2009, pp.40-41, 43-44). Engagement in the formulation of reform proposals,

particularly those pertaining to objective development benchmarks and graduation frameworks, could empower developing members to influence the establishment of these rules, as opposed to a passive submission to external imposition (Wu, 2016). The prevailing impasse within the Appellate Body system must be regarded as both a challenge and an opportunity. While the legal vacuum has been shown to affect weaker states to a greater extent, it also underscores the need for a functional multilateral system (Hopewell, 2021, pp.1025-1028, 1033). It is recommended that developing countries advocate collectively for the restoration of the Appellate Body, whilst exploring interim mechanisms such as the MPIA (Hopewell, 2021, pp.1035-1043). The long-term security of their trade is contingent not only on access to rules, but also on the fair and credible enforcement of those rules. In summary, it is suggested that developing countries consider the WTO not only as a legal forum, but also as a strategic institution where power is exercised through legal norms. In such an environment, legal empowerment, diplomatic coordination and normative coherence are key elements of a resilient trade strategy.

The future of the WTO is of critical importance and is being shaped by competing visions of reform and entrenched geopolitical rivalries. The inactivity of the Appellate Body since 2019 has had a twofold effect: Firstly, it has eroded the credibility of the organisation in relation to the settlement of disputes; secondly, it has exposed the inherent imbalances in the governance of global trade (Hopewell, 2021, pp.1033-1036). The fundamental issue underpinning this impasse is the escalating strategic competition between the United States and China, two economic superpowers whose approaches to multilateralism reflect divergent conceptions of institutional purpose and fairness. The United States is pursuing a recalibration of the WTO framework (González & Jung, 2020, pp.2, 11-12; Zhou, 2023, pp.265-268). This is evidenced by demands for stricter disciplines on subsidies, stricter criteria for determining "developing country" status and greater transparency from state-capitalist economies (USTR, 2023, p.10). These demands are founded on the perception that nations such as China are leveraging the legal flexibilities of the WTO system while circumventing mutual obligations. When observed through the lens of neo-mercantilism, this can be interpreted as indicative of the United States' endeavours to safeguard its relative economic advantages by impeding the institutional leverage acquired by its emerging competitors. Conversely, China has established itself as both a proponent of the multilateral system and a cautious reformist (García-Herrero, 2024, pp.1-2; Zhou, 2023,

p.252). While overtly endorsing the revitalisation of the Appellate Body and advocating for institutional predictability, China has concurrently exhibited resistance to reforms that would impede its access to S&DT provisions or contest its non-market economic practices (Zhou, 2023, pp.262-263). By citing ongoing development challenges and emphasising procedural equity, China has sought to maintain strategic flexibility within the WTO while developing leadership among the developing group (Hopewell, 2016, pp.141-142). Consequently, the discourse surrounding the reform debate has evolved into a proxy battleground for broader power shifts within the global economy (García-Herrero, 2024, pp.1-2). The fundamental dilemma that underpins this issue is concerned with the reconciliation of the legal equality of sovereign members with the material asymmetries that define their capacity to participate meaningfully in the system. It is imperative to address this institutional contradiction if there is to be any hope of revitalizing the rules-based order, so that the same imbalances which erode its legitimacy do not reoccur. The future success of WTO reform is contingent on the willingness of major powers to engage in compromise and the organisation's capacity to adapt to twenty-first century trade realities, including digital trade, climate-related trade policy and the expanding role of state-owned enterprises. Mechanisms such as multilateral negotiations, the voluntary exit of advanced developing countries from the S&DT and the institutionalisation of *ad hoc* appeal mechanisms such as the MPIA could serve as pragmatic ways forward. The future of global trade governance is ultimately contingent not only on legal reform, but also on the presence of political will. As the WTO contends with challenges to its authority, the choices made during this transitional period will determine whether the WTO will remain a legitimate forum for fair dispute settlement or whether it will degenerate into rival blocs and unilateralism. The WTO's continued relevance is thus contingent on its capacity to mediate between power and principle, a challenging yet essential undertaking for the stability of the global trading system.

It is recommended that future research on the role of the WTO's Dispute Settlement Mechanism in shaping the behaviour of developing countries should include a broader examination of comparative case studies beyond China. China's experience, while notable due to its dual identity as both a developing and an emerging superpower, does not fully reflect the structural limitations faced by smaller or less strategically influential developing countries. Consequently, further empirical research focusing on LDCs or

small economies, especially those without effective legal capacity or political leverage, could reveal additional dimensions of institutional bias and structural asymmetry within the DSM. Furthermore, scholars may wish to consider conducting longitudinal analyses of the impact of specific dispute outcomes on domestic policy reforms in developing countries. This could include investigating whether DSB rulings lead to sustainable institutional changes or only temporary adjustments to avoid retaliation. In this context, mixed-methods research involving both legal analysis and field interviews with trade officials or WTO delegates from developing countries could provide valuable insights into how international legal norms are internalised or resisted at the national level. Another promising avenue for future research is to explore the intersection between DSM outcomes and emerging global priorities, such as digital trade, climate change and health emergencies. The present thesis posits that an investigation into the manner in which developing countries engage with disputes involving "next generation" trade issues could contribute to a more profound understanding of whether the current structure of the DSM is adequately equipped to address twenty-first century challenges in an equitable manner. It is recommended that future research undertake a critical evaluation of the normative foundations and political viability of proposed WTO reforms, with a particular focus on those that target S&DT provisions. Theoretical research grounded in political economy, potentially drawing on institutionalist or postcolonial frameworks, could offer a more nuanced perspective on whether calls for reform represent genuine efforts to improve justice or strategies to reinforce existing power asymmetries. The undertaking of comparative institutional studies between the WTO, the MPIA and regional dispute settlement mechanisms has the potential to illuminate alternative models for balancing legal equality and economic inequality.

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Panel Reports, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/R and Corr.1 / WT/DS249/R and Corr.1 / WT/DS251/R and Corr.1 / WT/DS252/R and Corr.1 / WT/DS253/R and Corr.1 / WT/DS254/R

and Corr.1 / WT/DS258/R and Corr.1 / WT/DS259/R and Corr.1, adopted 10 December 2003, as modified by Appellate Body Report WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, DSR 2003:VIII, p. 3273

Panel Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report WT/DS58/AB/R, DSR 1998:VII, p. 2821

Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, p. 5797

Panel Report, *United States – Subsidies on Upland Cotton*, WT/DS267/R, Add.1 to Add.3 and Corr.1, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R, DSR 2005:II, p. 299

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APPENDIX 1. ETHICS BOARD WAIVER FORM

	HACETTEPE ÜNİVERSİTESİ **SOSYAL BİLİMLER ENSTİTÜSÜ**	Doküman Kodu *Form No.*	FRM-YL-09
		Yayım Tarihi *Date of Pub.*	22.11.2023
	FRM-YL-09 **Yüksek Lisans Tezi Etik Kurul Muafiyeti Formu** *Ethics Board Form for Master's Thesis*	Revizyon No *Rev. No.*	02
		Revizyon Tarihi *Rev.Date*	25.01.2024

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞINA

Tarih: 17/07/2025

Tez Başlığı (Türkçe): Dünya Ticaret Örgütü Anlaşmazlıkların Halli Organına Neo-Merkantilist Bir Yaklaşım: Gelişmekte Olan Ülkeler

Yukarıda başlığı verilen tez çalışmam:

1. İnsan ve hayvan üzerinde deney niteliği taşımamaktadır.
2. Biyolojik materyal (kan, idrar vb. biyolojik sıvılar ve numuneler) kullanılmasını gerektirmemektedir.
3. Beden bütünlüğüne veya ruh sağlığına müdahale içermemektedir.
4. Anket, ölçek (test), mülakat, odak grup çalışması, gözlem, deney, görüşme gibi teknikler kullanılarak katılımcılardan veri toplanmasını gerektiren nitel ya da nicel yaklaşımlarla yürütülen araştırma niteliğinde değildir.
5. Diğer kişi ve kurumlardan temin edilen veri kullanımını (kitap, belge vs.) gerektirmektedir. Ancak bu kullanım, diğer kişi ve kurumların izin verdiği ölçüde Kişisel Bilgilerin Korunması Kanuna riayet edilerek gerçekleştirilecektir.

Hacettepe Üniversitesi Etik Kurullarının Yönergelerini inceledim ve bunlara göre çalışmamın yürütülebilmesi için herhangi bir Etik Kuruldan izin alınmasına gerek olmadığını; aksi durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

Ad-Soyad/İmza

Öğrenci Bilgileri		
	Ad-Soyad	Alperen SEYHAN
	Öğrenci No	
	Enstitü Anabilim Dalı	Uluslararası İlişkiler
	Programı	Uluslararası İlişkiler

DANIŞMAN ONAYI

UYGUNDUR.
(Unvan, Ad Soyad, İmza)

* Tez **Almanca** veya **Fransızca** yazılıyor ise bu kısımda tez başlığı **Tez Yazım Dilinde** yazılmalıdır.

	HACETTEPE ÜNİVERSİTESİ **SOSYAL BİLİMLER ENSTİTÜSÜ**	Doküman Kodu *Form No.*	FRM-YL-09
		Yayım Tarihi *Date of Pub.*	22.11.2023
	FRM-YL-09 **Yüksek Lisans Tezi Etik Kurul Muafiyeti Formu** *Ethics Board Form for Master's Thesis*	Revizyon No *Rev. No.*	02
		Revizyon Tarihi *Rev.Date*	25.01.2024

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF INTERNATIONAL RELATIONS

Date: 17/07/2025

ThesisTitle (In English): A Neo-Mercantilist Approach to the Dispute Settlement Body of the World Trade Organization: Developing Countries

My thesis work with the title given above:

1. Does not perform experimentation on people or animals.
2. Does not necessitate the use of biological material (blood, urine, biological fluids and samples, etc.).
3. Does not involve any interference of the body's integrity.
4. Is not a research conducted with qualitative or quantitative approaches that require data collection from the participants by using techniques such as survey, scale (test), interview, focus group work, observation, experiment, interview.
5. Requires the use of data (books, documents, etc.) obtained from other people and institutions. However, this use will be carried out in accordance with the Personal Information Protection Law to the extent permitted by other persons and institutions.

I hereby declare that I reviewed the Directives of Ethics Boards of Hacettepe University and in regard to these directives it is not necessary to obtain permission from any Ethics Board in order to carry out my thesis study; I accept all legal responsibilities that may arise in any infrigement of the directives and that the information I have given above is correct.

I respectfully submit this for approval.

Name-Surname/Signature

Student Information		
	Name-Surname	Alperen SEYHAN
	Student Number	
	Department	International Relations
	Programme	International Relations

SUPERVISOR'S APPROVAL

APPROVED
(Title, Name Surname, Signature)

APPENDIX 2. ORIGINALITY REPORT

	HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ	Doküman Kodu *Form No.*	FRM-YL-15
		Yayım Tarihi *Date of Pub.*	04.12.2023
	FRM-YL-15 **Yüksek Lisans Tezi Orijinallik Raporu** *Master's Thesis Dissertation Originality Report*	Revizyon No *Rev. No.*	02
		Revizyon Tarihi *Rev.Date*	25.01.2024

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞINA

Tarih: 17/07/2025

Tez Başlığı (Türkçe): Dünya Ticaret Örgütü Anlaşmazlıkların Halli Organına Neo-Merkantilist Bir Yaklaşım: Gelişmekte Olan Ülkeler

Yukarıda başlığı verilen tezimin a) Kapak sayfası, b) Giriş, c) Ana bölümler ve d) Sonuç kısımlarından oluşan toplam 127 sayfalık kısmına ilişkin, 17/07/2025 tarihinde şahsım/tez danışmanım tarafından Turnitin adlı intihal tespit programından aşağıda işaretlenmiş filtrelemeler uygulanarak alınmış olan orijinallik raporuna göre, tezimin benzerlik oranı % 7'dir.

Uygulanan filtrelemeler*:

1. ☒ Kabul/Onay ve Bildirim sayfaları hariç
2. ☒ Kaynakça hariç
3. ☒ Alıntılar hariç
4. ☐ ~~Alıntılar dâhil~~
5. ☒ 5 kelimeden daha az örtüşme içeren metin kısımları hariç

Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Çalışması Orijinallik Raporu Alınması ve Kullanılması Uygulama Esasları'nı inceledim ve bu Uygulama Esasları'nda belirtilen azami benzerlik oranlarına göre tezimin herhangi bir intihal içermediğini; aksinin tespit edileceği muhtemel durumlarda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

Ad-Soyad/İmza

Öğrenci Bilgileri		
	Ad-Soyad	Alperen SEYHAN
	Öğrenci No	
	Enstitü Anabilim Dalı	Uluslararası İlişkiler
	Programı	Uluslararası İlişkiler

DANIŞMAN ONAYI

UYGUNDUR.
(Unvan, Ad Soyad, İmza)

* Tez **Almanca** veya **Fransızca** yazılıyor ise bu kısımda tez başlığı **Tez Yazım Dilinde** yazılmalıdır.
**Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Çalışması Orjinallik Raporu Alınması ve Kullanılması Uygulama Esasları İkinci bölüm madde (4)/3'te de belirtildiği üzere: Kaynakça hariç, Alıntılar hariç/dahil, 5 kelimeden daha az örtüşme içeren metin kısımları hariç (Limit match size to 5 words) filtreleme yapılmalıdır.

	HACETTEPE ÜNİVERSİTESİ **SOSYAL BİLİMLER ENSTİTÜSÜ**	Doküman Kodu *Form No.*	FRM-YL-15
		Yayım Tarihi *Date of Pub.*	04.12.2023
	FRM-YL-15 **Yüksek Lisans Tezi Orijinallik Raporu** *Master's Thesis Dissertation Originality Report*	Revizyon No *Rev. No.*	02
		Revizyon Tarihi *Rev.Date*	25.01.2024

TO HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF INTERNATIONAL RELATIONS

Date: 17/07/2025

Thesis Title (In English): A Neo-Mercantilist Approach to the Dispute Settlement Body of the World Trade Organization: Developing Countries

According to the originality report obtained by myself/my thesis advisor by using the Turnitin plagiarism detection software and by applying the filtering options checked below on 17/07/2025 for the total of 127 pages including the a) Title Page, b) Introduction, c) Main Chapters, and d) Conclusion sections of my thesis entitled above, the similarity index of my thesis is 7 %.

Filtering options applied**:

1. ☒ Approval and Decleration sections excluded
2. ☒ References cited excluded
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I hereby declare that I have carefully read Hacettepe University Graduate School of Social Sciences Guidelines for Obtaining and Using Thesis Originality Reports that according to the maximum similarity index values specified in the Guidelines, my thesis does not include any form of plagiarism; that in any future detection of possible infringement of the regulations I accept all legal responsibility; and that all the information I have provided is correct to the best of my knowledge.

Kindly submitted for the necessary actions.

Name-Surname/Signature

Student Information		
	Name-Surname	Alperen SEYHAN
	Student Number	
	Department	International Relations
	Programme	International Relations

SUPERVISOR'S APPROVAL

APPROVED
(Title, Name and Surname, Signature)

**As mentioned in the second part [article (4)/3]of the Thesis Dissertation Originality Report's Codes of Practice of Hacettepe University Graduate School of Social Sciences, filtering should be done as following: excluding refence, quotation excluded/included, Match size up to 5 words excluded.