

# A Legal Appraisal of the Contributions of WTO Towards Enhancing Trade in Developing Countries

Nkambenh Allen Ghaseh<sup>1\*</sup>

<sup>1</sup>Ph.D. Candidate in the Department of English Law, Faculty of Law and Political Science, University of Dschang, Cameroon

DOI: <https://doi.org/10.36348/sijlcj.2025.v08i06.003>

| Received: 15.05.2025 | Accepted: 20.06.2025 | Published: 25.06.2025

\*Corresponding author: Nkambenh Allen Ghaseh

Ph.D. Candidate in the Department of English Law, Faculty of Law and Political Science University of Dschang, Cameroon

## Abstract

This work is set out to make an appraisal of the contributions of World Trade Organization (WTO) towards enhancing trade in developing countries. Many developing countries have joined the WTO in order to protect themselves against the unfair market practices common in international trade. Developing countries represent the majority members of the institution and participate actively in the WTO trading system. The WTO has provided in its agreements, some Special and Differential (S&D) treatment to developing countries. It is rather a paradox that most of these provisions to a greater extent have not been effective towards enhancing trade in developing countries. The objective of this work is to examine the extent to which the WTO has contributed towards enhancing trade in developing-member countries. The method adopted in this research is doctrinal wherein, both primary and secondary sources of data were collected. The findings reveal among others that, the S&D treatment provisions accorded to developing countries who are vulnerable members of the institution have not been effectively implemented. The WTO lacks an efficient mechanism to ensure the effective implementation of its rules. It is therefore recommended that, the WTO should put in place an effective mechanism to ensure that developed member countries comply with the S&D treatment accorded to developing countries. The organization should equally provide more assistance (tariffs reduction) to developing countries to enable them achieve their economic growth and development. Developing countries on the other hand should establish transparent domestic trade policies necessary to implement the WTO rules.

**Keywords:** Legal, Appraisal, Contributions, WTO, Trade, Developing Countries.

**Copyright © 2025 The Author(s):** This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

## INTRODUCTION

Following the end of World War II and its devastating consequences on the global economy, nations around the world led by the United States and several other developed countries sought to establish an open and non-discriminatory trading system. The ultimate goal was to raise the economic well-being of all countries around the world. This was also as a result of the trade barriers that contributed to the economic

depression in the 1930s [<sup>1</sup>] and the military aggression that rose. The countries that met to discuss the new trading system saw open trade as essential for economic stability and peace. The very first effort made was to create an International Trade Organization (ITO) [<sup>2</sup>]. However, the effort to create ITO failed due to US reluctance to adopt the ITO charter [<sup>3</sup>]. Disapproval of the ITO charter by US congress in 1950 marked an end of the efforts towards the creation of an ITO [<sup>4</sup>].

<sup>1</sup>This was a severe worldwide economic depression that took place mostly during the 1930s beginning in the United State. It began after the stock market crash of October 1929 which sent Wall Street into a panic and wiped out millions of investors ([www.history.com>topics>great-d](http://www.history.com/topics/great-d) accessed on the 20<sup>th</sup> of May 2025).

<sup>2</sup>In 1944, a conference was held in Bretton Woods, New Hampshire, where an agreement was made with the main

objective being towards the creation of the International Monetary Fund (IMF) and the World Bank (WB).

<sup>3</sup>In 1950, President Harry S. Truman's administration announced that it would no longer seek congressional approval of the ITO.

<sup>4</sup>Pefela Gildas N., (2016), "The Principles of WTO and its Contributions to Trade in Developing Countries: the Case of Cameroon," Masters Dissertation, Faculty of Law and Political Science, University of Dschang, Cameroon, P. 3.

The failure to create the ITO also indicated the failure to obtain the third pillar [5] on which the Bretton Woods economic structure was to be built. This failure influenced General Agreement on Tariff and Trade (GATT) to become an international organization which from the start was never meant to be an international organization. GATT is an international organization with a code of general rules regulating the conduct of the contracting parties in the domain of goods. This organization was however, limited to trade in goods and also suffered from what Professor John H. Johnson called "birth defects" inherent weaknesses that handicapped its operation. [6] Due to the defects or difficulties faced by GATT and also taking into consideration the evolving nature of the global economy, GATT was amended and replaced by the World Trade Organization (WTO) in order to meet up with the current global economic needs. The WTO is an intergovernmental institution with a set of rules and regulations governing international trade. The WTO, being the successor of GATT was adopted in 1994 and went operational from the 1<sup>st</sup> of January 1995. The world trade organization was made under the agreement reached during the Uruguay Round of multilateral trade negotiations signed in Marrakesh a city in Morocco.[7] The WTO has six main key objectives which are: to set and enforce rules for international trade; to provide a forum for negotiating and monitoring further trade liberalization; to resolve trade disputes; to increase the transparency of decision making processes; to cooperate with other major international economic institutions involved in global economic management such as the World Bank (WB)[8] and the International Monetary Fund (IMF)[9] and lastly to help developing countries benefit fully from the global trading system.

The developing-member countries of the WTO are provided with Special and Differential treatment

known as the S&D treatment which has been subdivided into six categories. [10] Around 117 members out of 166 are developing countries. [11] They play an increasingly important and active role in the WTO because of their numbers and they are becoming more important in the global trade. The WTO has undoubtedly widened the scope of international trade from trade in goods under GATT to trade in services and intellectual property rights and has put in place rules and regulations to govern trade among nations. The WTO has contributed in strengthening trade policies of many countries who are members of the organization. Its members represent over 98% of the global trade. [12] Developing countries present the highest group of members within the institution. [13] They actively participate in the multilateral trading system yet they remain vulnerable members of the institution. However, the paradox behind the WTO is that the special provisions have not change the economic situation of the developing-member countries. Despite the S&D treatment accorded to developing-member countries their plight is yet to be heard.

#### THE CONTRIBUTIONS OF THE WTO IN ENHANCING TRADE IN DEVELOPING-MEMBER COUNTRIES

The World Trade Organization is the main international organization with a set of rules and regulations governing trade between nations. This organization functions effectively via its fundamental principles. The WTO Agreement alongside some of its agreements such as; GATT, [14] General Agreement on Trade in Services (GATS) [15], Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPS), [16] Dispute Settlement Understanding (DSU) [17] and Trade Policy Review Mechanism [18] form the basis of the WTO. That is, they form the legal framework on which the WTO operates. The WTO has incorporated

<sup>5</sup>The other two pillars of the Bretton Wood Conference agreed that succeeded were the International Monetary Fund (IMF) and the World Bank commonly known as International Bank for Reconstruction and Development (IBRD).

<sup>6</sup>Mitsuo Matsushita *et al.* (2015), *The WTO Law Practice and policy*, 3<sup>rd</sup> Edition, USA, Oxford University Press, P. 2.

<sup>7</sup>[www.wto.org](http://www.wto.org) accessed on the 18<sup>th</sup> of May 2025

<sup>8</sup>Was made to deal with financial and structural issues. The World Bank is a vital source of financial and technical assistance to developing countries around the world. The World Bank has two main institutions the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).

<sup>9</sup>Deals with the fiscal and monetary issues, the main purpose of the IMF is to ensure the stability of the international system (Exchange Rates and international payments that enables countries and their citizens to buy goods and services from each other.

<sup>10</sup>Bossche P. Van Den, (2008), *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, Cambridge University Press, P. 676.

<sup>11</sup>[https://www.wto.org/tif\\_e](https://www.wto.org/tif_e) accessed on the 22<sup>nd</sup> of May 2025.

<sup>12</sup><https://www.wto.org/english>. accessed on the 26<sup>th</sup> of May 2025

<sup>13</sup>They are about 150 members of the WTO who are developing countries and they play an important role in the WTO based on their larger number and their contributions to trade.

<sup>14</sup>ANNEX 1A of the WTO Agreement entitled Multilateral Agreement on Trade in Goods.

<sup>15</sup>ANNEX 1B of the WTO Agreement entitled General Agreement on Trade in Service and Annexes.

<sup>16</sup>ANNEX 1C of the WTO Agreement entitled Agreement on Trade-Related Aspects of Intellectual Property Rights.

<sup>17</sup>ANNEX 2 OF THE WTO Agreement entitled Understanding on Rules and Procedures Governing the settlement of Disputes.

<sup>18</sup>ANNEX 3 of the WTO Agreement.

special treatment for developing-member countries to facilitate their integration into the multilateral trading system. These special treatments provided to developing-member countries are reiterated in The Marrakesh Agreement (the WTO Agreement). They are also found in the fundamental principles and the different WTO agreements.

### The Marrakesh Agreement (the WTO Agreement)

The WTO Agreement is the main source of law that governs the institution. This agreement is referred to as the Marrakesh Agreement. The agreement consists of provisions regulating to the scope, functions, structure, relationship with other organizations, budget and contributions, status, decision-making, amendments, membership, accession, withdrawal and a list of annexes [19] which form the basis of the WTO. The WTO Agreement explicitly provides for special treatment to be accorded to developing-country members. This is in line with the wordings of paragraphs 2 and 3 of the introductory part of the Agreement establishing the WTO [20] which states that:

*Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development, Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.*

This shows that the WTO agreement recognizes the position of the developing-member countries by ensuring that they secure a share in the growth of international trade and to promote their economic development.

### The General Agreement on Tariffs and Trade (GATT)

The GATT 1994 has a variety of provisions aimed to promote trade within the developing-country members of the WTO. It requires developed-country members of the WTO to accord high priority in the

reduction and elimination of barriers on products currently or potentially of particular export interest to developing countries. This includes customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms [21].

Developed-country members of the WTO are equally expected to grant preferential tariff treatment to developing countries. It permits developing countries to enter into regional and global arrangements among themselves for mutual reduction and elimination of tariff. This is done in accordance with the criteria and conditions which may be prescribed by the Ministerial Conference, for the mutual reduction and elimination of non-tariff trade measures [22].

### General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services [23] is one of the treaties of the WTO that entered into force on the 1<sup>st</sup> of January 1995. The GATS unlike GATT has the objective to create a reliable and predictable system of international rules for trade in services and to facilitate the progressive liberalization of market services.<sup>24</sup> According to article 1(2) of GATS, [25] trade in services is defined as the supply of services:

- (a) *From the territory of one member into the territory of any other member;*
- (b) *In the territory of one member to the service consumer of any other member;*
- (c) *By a service supplier of one member, through commercial presence in the territory of any other member;*
- (d) *By a service supplier of one member, through presence of natural persons of a member in the territory of any other member.*

It should be noted that 'supply of a service' includes the production, distribution, marketing, sale, and delivery of a service. [26] There are four modes of supply namely cross-border supply, consumption abroad, commercial presence and the presence of natural persons. [27] GATS equally accord some special treatment to developing-member countries. According to article IV of GATS, the increasing participation of developing-country members in world trade shall be facilitated through negotiated specific commitments, by

<sup>19</sup>Other agreements which form an integral part of the WTO

<sup>20</sup>The Marrakesh Agreement

<sup>21</sup>This is provided under article XXXVII of the GATT 1994.

<sup>22</sup>This was established under GATT 1979 Decision on Differential and More Favourable Treatment referred to as "Enabling Clause." The Enabling Clause is the WTO legal for the Generalized System of Preference (GSP). Under the GSP, developed countries offer non-reciprocal preferential treatment such as zero or low duties on

imports to products originating developing countries. Here, preference-giving countries unilateral determine which countries and which products are include in their schemes.

<sup>23</sup>Annex 1B of the WTO agreement (the "Marrakesh Agreement") 1995

<sup>24</sup><https://www.wto.com> accessed on the 22<sup>nd</sup> of May 2025.

<sup>25</sup>Entitled the scope and definition

<sup>26</sup>GATS Article XXVIII(b)

<sup>27</sup>Mitsuo Matsushita *et al.*, (2015), Op. Cit. P. 562.

different members pursuant to part III [28] and IV [29] of GATS relating to:

- (a) *The strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis;*
- (b) *The improvement of their access to distribution channels and information networks; and*
- (c) *The liberalization of markets access in sectors and modes of supply of export interest to them.*

Article XII of the GATS allows developing-member countries and countries in transition to restrict trade in services for reasons of balance-of-payment difficulties. This provision is aimed to enable countries to meet up with their balance of payment. The relationship between trade in services (GATS) and trade in goods (GATT) was established in the early cases of *Canada-Periodicals* and *EC-Bananas III*, where the Appellate Body explained that the agreements are not mutually conclusive, and so both may apply as was stated in *Bananas III*. [30]

### **The Agreement on Trade-related Aspect of Intellectual Property Rights ('TRIPS Agreement')**

The TRIPS Agreement was created to regulate intellectual property rights at the international level. This is provided under Annex 1C of the WTO Agreement. Before the establishment of the TRIPS Agreement, intellectual property was traditionally limited in the scope of protection provided under national laws. [31] Because of the limited protection accorded to Intellectual

Property Rights (IPRs), there was a need to ensure that the protection of IPRs goes beyond national boundaries. The first effort made in the 19<sup>th</sup> century was through bilateral recognition agreements for the protection of IPRs. The protection provided under bilateral agreements, were not sufficient and nations therefore, saw the need for Multilateral Agreements. Some of these multilateral agreements made are: Paris Convention for the Protection of Industrial Property (1967), the Bern Convention for the Protection of Literary and Artistic Works (1971), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) and the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989), which makes the provisions of these agreement applicable.[ 32 ] Subsequently the World Intellectual Property Organization (WIPO) was created. The WIPO<sup>33</sup> treaties were proven to be ineffective at standardizing and harmonizing Intellectual Property Law [34].

The TRIPS Agreement was therefore established prior to the fact that intellectual property was largely unregulated at the international level and the protection provided under the WIPO Agreement was limited [35]. The TRIPS Agreement of the WTO has provided minimum standards of protection of intellectual property rights. [36]

In order to encourage and ensure an effective participation of the developing-country members into the WTO Agreement, the TRIPS Agreement has provided

<sup>28</sup>Deals with "Specific Commitments"

<sup>29</sup>Deals with "Progressive Liberalization"

<sup>30</sup> Given the respective scope of application of the two agreements, they may or may not overlap, depending on the nature of the measures at issue. Certain measures could be found to fall exclusively within the scope of the GATT 1994, when they affect trade in goods as goods. Certain measures could be found to fall exclusively within the scope of the GATS, when they affect the supply of services. There is yet a third category of measures that could be found to fall within the scope of both the GATT 1994 and the GATS. These are measures that involve a service relating to a particular good or a service supplied in conjunction with a particular good. In all such cases in this third category, the measure in question could be scrutinized under both the GATT 1994 and the GATS. However, while the same measure could be scrutinized under both agreements, the specific aspects of that measure examined under each agreement could be different. Under the GATT 1994, the focus is on how the measure affects the goods involved. Under the GATS, the focus is on how the measure affects the supply of the service or the service suppliers involved. Whether a certain measure affecting the supply of a service related to a particular good is scrutinized under the GATT 1994 or the GATS, or both, is a matter that can only be determined on a case-by-case basis." Lester

Simon *et al.*, (2012), *World Trade Law Text, Materials and commentary*, 2<sup>nd</sup> Edition, Oregon P. 523.

<sup>31</sup> Traditional countries only recognized registration/production of Intellectual Property Rights (IPRs) by nationals and actually encouraged the copying of IP produced by non-nationals; that is, they did not recognize nor protect the IPRS of non-national. Simon Lester *et al.* (2012), Op. Cit. P. 604.

<sup>32</sup>Bossche P. Van Den, (2008), Op. Cit. P. 52.

<sup>33</sup> It should be noted that TRIPS Agreement works with WIPO and the other agreements on IP as provided under paragraph 8 of the introductory part of the TRIPS Agreement: *Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations.*

<sup>34</sup> Lester Simon *et al.*, (2012), Op. Cit. P. 604.

<sup>35</sup>Ibid.

<sup>36</sup> RIPS Agreement requires WTO members to provide copyrights, covering authors and other copyright holders, as well as holders of related rights, namely performers, sound recording producers and broadcasting organizations; geographical indications; industrial designs; integrated circuit layout- designs; patents. <https://en.m.wikipedia.org/wiki> accessed on the 25<sup>th</sup> of May 2025.



some special treatment to be granted by the developed-country members to the developing-country members. Some of these provisions are provided under Article 67 of the TRIPS Agreement [37] which provides that *“In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel”*.

Also, developing member countries are given an additional period to delay their application. This is aimed to encourage developing country members who might be late to equally benefit from the provisions of the TRIPS agreement [38].

### **The Agreement on Government Procurement**

This is another form of agreement provided under annex 4 of the WTO Agreement. It has the fundamental aim to mutually open government procurement markets among its members [39]. For instance under GATS and GATT rules, WTO Members are free to discriminate in favour of domestic products, services and service suppliers in the context of government procurement. This agreement is an exception to the National Treatment Obligation [40] which is provided under GATS [41] and GATT 1994 [42].

The Agreement on Government Procurement (AGP) is of importance to developing member countries because it enables them to purchase local products over foreign products. This helps to boost domestic trade and to promote economic growth and development.

### **The Rules and Procedures Relating to Disputes Settlement**

The WTO Dispute Settlement Understanding (DSU) provides members with a fast, efficient, dependable and rule-oriented, consultative and judicial mechanism to protect and enforce members' rights in case of any trade infringement [43]. The WTO dispute settlement system has rapidly become the most important international tribunal and whose institutions also

function very much like a court of international trade [44]. The WTO empowers its member states in order to protect and expand its foreign market access by challenging foreign trade practices and also defending measures through an established procedure of consultation, litigation and implementation. One of the main objectives of the WTO dispute settlement understanding is to resolve disputes on the application of the provisions of the WTO Agreement.

The WTO Dispute Settlement Understanding has provided some special treatments to developing country members in order to encourage their integration into the dispute settlement system. Special assistance is given to developing countries by the Secretariat in the dispute settlement. This is provided by article 27(2) of the DSU which states that *“While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat”* [45].

### **The Fundamental Principles of the WTO**

The principles of the WTO are very essential to the Multilateral Trading System and they are binding on all the WTO member states. The principles help to maintain a smooth functioning of the WTO. The WTO's principles provide exceptions to its application with regards to developing-member countries. Some of the fundamental principles of the WTO include: the principle of non-discrimination, reciprocity, binding and enforceable commitment, transparency and the principle of safety valves.

#### ***The Principle of Non-discrimination***

The principle of non-discrimination is one of the most important principles of the WTO. It emanates from GATT 1947. This principle is found in GATT, GATS and TRIPS agreements. The principle of non-discrimination entails that, all the members of the WTO should be treated equally among each other. That is, the principle is aimed to eliminate all aspects of discrimination among the members of the WTO. In this light developing member countries are required to be

<sup>37</sup>Dealing with Technical Cooperation

<sup>38</sup>This is provided by Article 65(2-4) of the TRIPS Agreement

<sup>39</sup>[www.wto.org](http://www.wto.org)>gp-gpa-e accessed on the 28<sup>th</sup> of May 2025.

<sup>40</sup>Under the terms of the Agreement on Government Procurement, the parties have agreed to accord national treatment in respect of government procurement by designated government entities.

<sup>41</sup>Article XVII of the GATS.

<sup>42</sup>Article III of the GATT 1994

<sup>43</sup>Annex 2 of the WTO Agreement.

<sup>44</sup>This can be determined from the fact that there is compulsory jurisdiction, disputes are settled largely by applying rules of law, decisions are binding on the parties, and sanctions may be imposed if decisions are not observed.

<sup>45</sup>Article 27(2) of Dispute Settlement Understanding

treated equally and not to be discriminated against by the developed member countries. There are two main components of the principle of non-discrimination which are; the Most-Favoured-Nation Treatment Principle and the National Treatment Principle.

The Most-Favoured-Nation treatment principle [46] requires Member states of the WTO to accord the most favourable tariff and regulatory treatment given to the product of any one Member during import or export of “like products” to all the other Members. This principle requires that a Member of the WTO should treat other Members equally under the various WTO agreements. The MFN treatment principle has exceptions when it comes to developing-member countries in order to facilitate their integration into the multilateral trading system. [47] This is also called the Generalised System of Preferences (GSP) [48] which grants lower tariff rates for products originating from developing countries than those normally provided under the MFN treatment obligation. The GSP is a special measure granted to developing member countries of the WTO with the aim of increasing their export earnings and to promote their economic growth and development. The developed member countries are expected to accord preferential treatment to the developing member countries.

The National Treatment (NT) obligation is one of the two fundamental pillars of the principle of non-discrimination, the other being the most favoured nation (MFN) obligation. National treatment means that a foreign person, product, or right in regulation to a good, a service, a service provider, an investor, an intellectual property right holder, or a juridical or physical person owning an intellectual or other property right must be treated by a regulating state like their domestic ‘national’ equivalent to all the other members of the WTO. The NT principle is provided under GATT (Article III), TRIPS (Article 3), GATS (Article XVII) and also in the Sanitary and Phytosanitary Measures (Article 2.3) and Agreement on Technical Barriers to Trade (Article 2.1). This principle has exceptions under the different WTO agreements with regards to developing-member countries. [49]

### ***The Principle of Reciprocity***

<sup>46</sup>Hereinafter referred to as MFN principle

<sup>47</sup>Fotoh, Alexander Achia, (2012), *Exceptions to and the Fate of the Most-Favoured-Nation Treatment Obligation under GATT and GATS* P. 9.

<sup>48</sup>The GSP is defined in the GATT Decision on GSP of June 1971.

<sup>49</sup>The exceptions under this principle include article 3:2 of the TRIPS Agreement, Article III: 8(a) (b) of GATT,

<sup>50</sup>Reciprocity is provided under Article XXVIII bis: (1) GATT,

<sup>51</sup>See Para. 3 of the introductory part of the WTO Agreement

Another fundamental principle of the WTO is reciprocity which implies the granting of mutual concessions in tariff rates, quotas, or other commercial restrictions. Reciprocity is also defined by the Oxford English Dictionary as mutual corresponded concession of advantages as forming the basis for the commercial relations between two countries. Reciprocity implies that these concessions are neither intended nor expected to be generalized to other countries with which the members have commercial treaties. [50] Reciprocity is mentioned in the WTO agreement in its preamble. [51]

To encourage and facilitate trade in developing-member countries, the principle of reciprocity as provided under GATT has an exception with regards to developing member countries. By virtue of article XXXVI: 8 developed member countries do not expect reciprocity from developing members in trade commitment entered between them. [52] The principle of reciprocity is important to developing-member countries in that, it aims to provide a rapid expansion of their economies.

### ***The Principle of Binding and Enforceable Commitment and its Importance to Trade***

This principle is enforced via the principle of non-discrimination of GATT provided in article 1 (the MFN treatment obligation) and article III (the NT principle). These provisions are essential in ensuring that market access commitments are implemented and maintained. According to article II:I(a) of GATT it states that; each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate part of the appropriate schedule annexed to the agreement.

The principle of binding and enforceable commitment [53] is relevant to trade because when countries agree to open their markets for goods or services in the WTO, they ‘bind’ their commitments. [54] It equally gives a country the chance to change its bindings, but only after negotiating with its trading partners through compensation for loss of trade. [55] When this compensation is made all the other members benefit from it by extending the compensation provided to all the other members. This principle ensures that

<sup>52</sup>According to Article XXXVI: 8 of GATT, “*The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties*”

<sup>53</sup>Schropp Simon A. B., (2009), *Trade Policy Flexibilities and Enforcement in World Trade Organization: A Law Economic Analysis*, Cambridge University Press, P. 32.

<sup>54</sup><https://www.lawteacher.net> accessed on the 14<sup>th</sup> of April 2025.

<sup>55</sup>Hoekman B *et al.* (2002), “The WTO, Functions and Basic Principles” Washington DC

member states respect trade commitments entered into with other members and it maintain equal treatment with regards to compensation to be made to any member for breach of the tariff ceiling bindings.

### ***The Principle of Transparency***

Transparency is another fundamental principle of the WTO which stipulates that a country's policies and regulations affecting foreign trade should be clearly communicated to its trading partners. [56] The principle of transparency is a legal obligation provided by Article X of GATT, Article III: 1 of GATS and Article 63 of the TRIPS Agreement.

Transparency is very important in international trade because countries have different domestic rules, regulations or laws governing their domestic trade. These rules, regulations or laws are not static but dynamic. It is therefore, necessary for countries to review the changes or new development in their laws regulating to trade. This brings about predictability, simplification and accountability. [57]

### ***The Principle of Safety Valves and its Importance to Trade in Developing Countries***

The principle of safety valves empowers members' governments to waive or suspend trade commitments entered into with other members. [58] That is, WTO agreements have measures which enable governments to restrict certain goods or trade. This is in order to protect human, animal and plant, life or health. [59] The principle of safety valves is also known as 'escape clauses' or 'pressure clauses.' [60] The WTO agreements have made provisions for safety valves, these provisions are categorized into (a) articles allowing for the use of trade measures to attain noneconomic objectives; (b) articles aimed at ensuring fair competition and (c) provisions permitting intervention in trade for economic reasons. [61]

Other provisions related to the principle of safety valves are those provided under safeguards agreement which is one of the WTO agreements. Safeguard clause within a Preferential Trade Agreement (PTA) intends to provide an avenue for temporary escape

from injury due to preferential tariff reductions with a PTA partner. Safeguards measures in safety valves include those on anti-dumping and countervailing duties. [62]

The principle of safety valves provides a means for developing countries to waive trade commitments with other members in order to protect their infant industries that might suffer an injury as a result of such trade commitments. This helps to promote infant industries [63] in developing countries to be able to improve their activities so as to meet competition from the global market mostly controlled by the industrialized countries. It also gives members the right to temporarily suspend or waive trade commitments in order to protect life, property, plants, animals and the environment. This helps to prevent further damages which a member country might suffer if trade commitments are breached.

### **LIMITATIONS OF THE WTO TOWARDS ENHANCING TRADE IN DEVELOPING-MEMBER COUNTRIES**

The WTO right from its legal texts, have made many provisions aimed to promote trade in developing-member countries to facilitate economic growth and development within these countries. The special provisions accorded to developing-country members are equally aimed to ease their integration into the multilateral trading system. These provisions have influenced the participation of developing countries into the WTO trading system. The developing countries for recent years have been at the top of the WTO trade negotiations involving in the different WTO Agreements.

Despite all the special and differential treatments provided in the different WTO agreements for developing-member countries, these provisions have not answered their plight and the objectives of their integration into the WTO trading system remains an aspiration to be realized in the near future. And most of the provisions are regarded by developing countries as hortatory. [64] The limitations are examined beginning from its legal texts, its principles, mechanisms used and

<sup>56</sup>[https://en.m.wikipedia.org/wiki/Transparency\\_in\\_International\\_Trade](https://en.m.wikipedia.org/wiki/Transparency_in_International_Trade) accessed on the 19<sup>th</sup> of April 2025.

<sup>57</sup>Paloma Bernal T. *et al.*, (2014), "A Framework for Transparency in International Trade", NW, Washington DC 20057, USA, Pp 1 to 8.

<sup>58</sup>Ghauri Pervez N. and Usunier Jean-Claude, (2003), *International Business Negotiations*, 2<sup>nd</sup> Edition, International Business and Management Series, Pergamon, P. 227.

<sup>59</sup>This principle has long existed in GATT 1947. See Article XIX: 1(a) of GATT.

<sup>60</sup>Krzysztof J. Pelc, (2009), "Seeking Escape: The use of Escape Clauses in International Trade Agreement." George Town University

<sup>61</sup>Article IX of the WTO Agreement provides cases where agreements may be waived by members.

<sup>62</sup>Messerlin Patrick, "Need for Coherence Among the WTO's Escape Clauses", Gao Henry, Donald Lewis. China's participation in the WTO, Cameroon May, Hal-01030811, Pp.51-75.

<sup>63</sup>These are newly established home industries which are unable to compete with the giant industrialized firms (developed countries).

<sup>64</sup>Hortatory in the sense that most of the provisions are made only to encourage or influence the participation of developing countries into the WTO system

other challenges that equally affects the WTO trading system.

### **Limitations of the WTO Relating to its Legal Provisions**

The so called S&D treatment provided for developing countries in practice have not been fully implemented. They remain aspirations to be attended in the near future. Some of the drawbacks of the WTO relating to its different agreements include the following.

#### ***The Provisions of GATT***

The S&D treatment accorded to developing countries with its legal bases provided in Part IV Article XXXVI: 9 of GATT have been interpreted negatively by developed countries. This is because developed countries in reality are out to protect their interest to the detriment of developing countries. [ <sup>65</sup> ] Also, the refusal of developed countries to abandon high agricultural subsidies and the conditionality that are associated with the S&D treatment provisions in the form of GSP reveal the lack of concern for developing countries.

#### ***The Agreement on Agriculture***

The WTO Agreement on agriculture is accepted by most developing countries because of its presumed benefits in that area which is essential to African products. But in practice these benefits have not been realized, nor is there any hope of more benefits awaiting developing countries in the near future in this area. With regards to the agreement on agriculture, developing countries have the expectations that their market access prospects were going to improve. The Uruguay Round commitments and their implementation by the developed countries has belied their hopes. This is because developed-country members have placed prohibitive tariffs on many products and enhanced their domestic subsidies. They equally make a small reduction in export subsidies. The Agreement on agriculture also requires all members of the WTO to eliminate their non-tariff trade barriers such as direct quantitative restrictions on imports, and this influenced members to convert them into equivalent tariffs. The developed countries used these provisions to have very high tariffs on some products. Some statistics have shown that many developed countries imposed tariffs at levels much higher than would have been required by the equivalence with their non-tariff measures. [ <sup>66</sup> ]

Tariffs and Non-tariffs trade barriers serve as a measure to protect domestic industries (infant industries) and most importantly a source of government revenue. These tariffs have been restricted by the WTO and a ceiling binding has been set for all the members and when a developing country set tariffs beyond that limit, the country is expected to compensate the member who is the supplier. Apart from the compensation to be made to the supplier member in question, the compensation is required to be made to all the other members of the WTO supplying the same product(s). This is in line with the MFN treatment obligation and this can have an adverse effect on a developing country when required to make such compensations to other developed member countries supplying similar products.

The developing countries are free to restrict trade based on quantitative restriction by limiting the quantity of imported goods in order to protect infant industries and also the environment. [ <sup>67</sup> ] The WTO nevertheless, has set rules that prohibit quantitative restrictions. [ <sup>68</sup> ]

#### ***Limitations Relating to Trade in Services (GATS)***

The integration of developing countries into GATS was assured that by complying with the GATS commitments will help to boost Foreign Direct Investment (FDI) flows in these countries. [ <sup>69</sup> ] But these benefits have not been archived by developing countries. Regarding the expected benefits to developing countries, a United Nations Conference on Trade and Development (UNCTAD) study concludes, "There is no empirical evidence to link any significant increase in FDI flows to developing countries with the conclusion of GATS." [ <sup>70</sup> ] The WB has equally provided similar findings. The FDI location decisions are much less sensitive to the protections of GATS than they are to factors like physical infrastructure and nests to local support services.

#### ***Shortcomings of the TRIPS Agreement***

The TRIPS agreement being one of the WTO agreements has the primary objective of encouraging the technological development of developing countries. But this objective has not been materialized in any concrete form regarding the policies or actions of the developed countries. The reasons why most of the objectives involving developing countries have not been taken into actual practice is because there are no direct or specific

<sup>65</sup> Behinack Stella S., (2018), "The World Trade Organization and Developing Countries: A Fair Deal?" PhD Thesis, Faculty of Law and Political Science University of Douala, P. 191.

<sup>66</sup> Bhagirath Lal Das (2001), *WTO: Challenges for Developing Countries in the Near Future*, Third World Network 131, Japan Macalister 10400 Penang, Malaysia, P. 4.

<sup>67</sup> This is also reiterated by the principle of safety valves. Article IX of the WTO Agreement provides cases where agreements may be waived by members.

<sup>68</sup> Article XI: 1 of the GATT 1994.

<sup>69</sup> Robert Hunter W., (2003), "What Strategies are Viable for Developing Countries today? The World Trade Organization and the Shrinking of 'Development Space'" Working Papers series no.1, Development Studies Institute London School of Economics and Political Science

<sup>70</sup> UNCTAD, (2000), *A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations*, New York and Geneva, p. 172.



obligations in the WTO agreements obliging developed countries to such specific measures in that regard. Therefore, there is no enforceable provision that can be the subject of a specific dispute in the WTO.

Another shortcoming of the WTO TRIPS agreement is that, it offers an inappropriate uniform standard across many developing countries. The developed countries already possess suitable levels of Intellectual Property Right protection and yet they are home to the overwhelming majority of Intellectual Property rights-holders who stand to benefit from increased protection. Whereas most developing countries on the other hand, may incur some significant costs from raising domestic standards to the required level, by taking scarce resources away from other important sectors and from the increased payment to be made to developed world rights-holders. [71]

The TRIPS agreement does not actually offer the same range of S&D treatment provided for developing countries as compared to those provided in other WTO agreements, for example the S&D treatment provided under GATT are wider than those provided in the TRIPS agreement. In the TRIPS agreement when the transitional period provided for developing countries expires, they are required to implement the same rules on the scope and duration of protection regardless of circumstances with the advanced developed countries. Some of the provisions of the TRIPS agreement are vague and this vagueness is exploited by developed-member countries which benefits them.

### **Limitations Inherent to the Fundamental Principles of WTO**

The WTO principles have been incorporated into the various WTO agreements and special provisions have been accorded to developing countries. These principles are binding on all the WTO members. Despite this, the principles have a number of shortcomings. The WTO principles have not been respected by all the members because there are still discriminatory practices within the WTO by the developed countries. Most of these countries influence the WTO decision-making process and this is contrary to the fundamental principle of non-discrimination provided in the WTO agreements. Since there is no mechanism to ensure the effective implementation of most of the WTO principles, the developed member countries can easily use their political and economic powers to manipulate the implementation of these principles to the detriment of developing countries that lack the expertise and the necessary resources to effectively implement the rules of the WTO.

The WTO principles have not been effectively implemented in developing countries as a result of inadequate experts to ensure the effective

implementation of the WTO. Most developing countries lack the resources needed to effectively implement these principles and therefore, requires support from the WTO. This support however is lacking and developing countries have not been able to exploit the advantages of such principles. The WTO principles have not been fully implemented, though binding, the WTO do not have effective mechanisms put in place to ensure the implementation and enforcement of these principles. Developing countries especially African countries faced challenges including those due to limited expertise and financial support.

### **Limitations Relating to Dispute Settlement**

The WTO dispute settlement provides developing countries with some relief against unilateral actions and harassments, and they are now able to raise a dispute and pursue it through the panel and appeal processes. Despite this, developing countries are completely handicap in the Dispute Settlement System (DSS) as a result of the high cost involved in raising and defending a dispute within the WTO. Most of the developing countries lack domestic expertise and therefore, have to depend mostly on the legal services of experts from the major developed-country centres.

The success of the WTO dispute settlement system is insignificant with regards to developing countries that actually have a very little interest in participating in the DSS. This is due to the high cost of litigation and their doubts about winning cases against the developed countries that can easily use their expertise to influence the disputes settlement. The centralize nature of the WTO dispute settlement system also limit developing countries from participating in the WTO dispute settlement. The WTO dispute settlement is based in Geneva, Switzerland and this makes it difficult for many developing countries to petition the court for redress.

The special assistance accorded to developing countries in the DSS by the WTO Secretariat as provided in article 27 of the DSU is limited. The Secretariat assists in such a way that permits continuous impartiality. The Secretariat cannot act on behalf of a developing country member. Also, the assistance of the Secretariat is limited only to the preliminary stages of the dispute. Developing member countries only receive effective legal assistance in the dispute settlement procedures from the Geneva-based Advisory Centre on WTO Law (ACWL).

Developing countries face three main challenges if they are to effectively participate in the WTO dispute settlement. Some of the challenges already discussed above can be summarised as; a relative lack of legal expertise in the WTO law and the capacity to recognize information concerning trade barriers and

<sup>71</sup> Ben Willis, (2013), "The Argument For and Against the TRIPS Agreement" University of Plymouth, P. 3.

opportunities to challenge them, limited financial resources needed to hire foreign legal counsel to make effective use of the WTO legal system which has become more costly and lastly fear of political and economic pressure from superpowers such as the United States and the European Communities [72].

Furthermore, before a developing country can make a petition in the DSU, they must prove that there is a particular policy in another member's state which is inconsistent with the WTO rules. Because of this, most developing countries often lack the required legal expertise to establish a causal link between the policies of the other member state.

### Other Challenges of the WTO

The WTO has been criticized from a range of fields including economists such as Dani Rodrik [73] and Ha Joon Chang, [74] and anthropologists such as Marc Edelman [75] are all critics of the WTO. They argued that the institution "only serves the interests of multinational corporations, undermines local development, penalizes the poor countries, [and] is increasing inequality." They equally propound that some agreements about agriculture and pharmaceutical goods have led to restricted access to food and healthcare, thereby causing a large number of deaths [76].

According to Martin Khor developing countries have not benefited from the WTO Agreements of the Uruguay Round and therefore, the credibility of the WTO trading system could be eroded. According to this critic, "one of the major categories of problems of implementation (or not implementing) their obligations agreed to in the various agreements. The Doha Round [77] negotiations is regarded by Martin Khor to "have veered from their proclaimed direction oriented to a development-friendly outcome, towards a 'market access' direction in which developing countries are pressured to open up their agricultural, industrial and services sectors." [78]

### CONCLUSION

International trade is the backbone of a country's economic growth and development. Developing countries especially the African countries in order to protect themselves against the illegal market practices that are common in international trade have

joined the WTO. The WTO is the main institution that regulates trade amongst nations via its different agreements, fundamental principles and other rules. The WTO expressly provides special and differential treatment to developing countries to encourage their integration into the WTO trading system. These special provisions have induced many developing countries to join the institution with the hope of improving their economic growth and development. Developing countries represent 117 of the WTO membership out of 166. Their objectives for joining this institution have not been realized despite the numerous provisions granting them special treatment. The S&D treatment have proven to be ineffective in enhancing trade in developing-member countries. Developing-member countries are the majority members of the WTO but unfortunately, they remain the vulnerable members of the institution. Most of the S&D provisions are vague and contradictory in nature. These vagueness and contradictions are exploited by developed countries to waive their obligations under the S&D provisions. It is therefore recommended that the WTO should establish an effective mechanism to enable the implementation and enforcement of its different agreements, principles and other rules that provides S&D treatment to developing countries. More tariff reduction benefits should be granted to developing countries so as to enable them boost their productivity and have open market access to sell their products.

### REFERENCES

- Behinack Stella S., (2018), "The World Trade Organization and Developing Countries: A Fair Deal?" PhD Thesis, Faculty of Law and Political Science University of Douala, Cameroon.
- Ben Willis, (2013), "The Argument For and Against the TRIPS Agreement" University of Plymouth.
- Bhagirath Lal Das (2001), *WTO: Challenges for Developing Countries in the Near Future*, Third World Network 131, Japan Macalister 10400 Penang, Malaysia.
- Bossche P. Van Den, (2008), *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, Cambridge University Press.
- Dani Rodrik, 2018 "The WTO Has Become Dysfunctional." *Financial Times*, <https://drodrik.scholar.harvard.edu/pdf>.
- Dispute Settlement Understanding

<sup>72</sup>Shaffer Gregory, (2006), "The Challenges OF WTO Law: Strategies for Developing Country Adaptation," University of California, Irine School of Law, Pp. 2-20.

<sup>73</sup>Dani Rodrik, 2018 "The WTO Has Become Dysfunctional." *Financial Times*, <https://drodrik.scholar.harvard.edu/pdf>.

<sup>74</sup>Ha Joon Chang, (2002), "Kicking Away the Ladder: Development Strategy in Historical Perspective." London, Anthem.

<sup>75</sup>Edelman, Marc, (2005), "Bringing the Moral Economy Back into the Study, of 21st Century Transitional Peasant

*Movements*" No.3 ISSN 1548-1433, American Anthropologist, P. 107.

<sup>76</sup>WTO, *Top 10 Reasons to Oppose the World Trade Organization? Criticism, Yes... Misinformation, No*, WTO <https://en.wikipedia.org/w/index.php?> Accessed on the 27<sup>th</sup> of May 2025

<sup>77</sup>Doha Development Agenda of 2001

<sup>78</sup>Khor, Martin, (2006), "The WTO's Doha Negotiations and Impasse: a Development Perspective" Third World Network.

- Edelman, Marc, (2005), *"Bringing the Moral Economy Back into the Study, of 21st Century Transitional Peasant Movements"* No.3 ISSN 1548-1433, American Anthropologist.
- Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPS)
- General Agreement on Tariffs and Trade (GATT)
- General Agreement on Trade in Services (GATS)
- Ghauri Pervez N. and Usunier Jean-Claude, (2003), *International Business Negotiations*, 2<sup>nd</sup> Edition, International Business and Management Series, Pergamon.
- Ha Joon Chang, (2002), "Kicking Away the Ladder: Development Strategy in Historical Perspective." London, Anthem.
- Hoekman B *et al.* (2002), "The WTO, Functions and Basic Principles" Washington DC, USA.
- Khor, Martin, (2006), "The WTO's Doha Negotiations and Impasse: a Development Perspective" Third World Network.
- Krzysztof J. Pelc, (2009), "Seeking Escape: The use of Escape Clauses in International Trade Agreement." George Town University.
- Messerlin Patrick, "Need for Coherence Among the WTO's Escape Clauses", Gao Henry, Donald Lewis. China's participation in the WTO, Cameroon May, Hal-01030811.
- Mitsuo Matsushita *et al.* (2015), *The WTO Law Practice and policy*, 3<sup>rd</sup> Edition, USA, Oxford University Press.
- Paloma Bernal T. *et al.*, (2014), "A Framework for Transparency in International Trade", NW, Washington DC 20057, USA.
- Pefela Gildas N., (2016), "The Principles of WTO and its Contributions to Trade in Developing Countries: the Case of Cameroon," Masters Dissertation, Faculty of Law and Political Science, University of Dschang, Cameroon.
- Robert Hunter W., (2003), "What Strategies are Viable for Developing Countries today? The World Trade Organization and the Shrinking of 'Development Space' Working Papers Series No.1, Development Studies Institute London School of Economics and Political Science.
- Schropp Simon A. B., (2009), *Trade Policy Flexibilities and Enforcement in World Trade Organization: A Law Economic Analysis*, Cambridge University Press.
- Shaffer Gregory, (2006), "The Challenges OF WTO Law: Strategies for Developing Country Adaptation," University of California, Irine School of Law, USA.
- Simon Lester *et al.*, (2012), *World Trade Law Text, Materials and commentary*, 2<sup>nd</sup> Edition, Oregon.
- The WTO agreement (the "Marrakesh Agreement") 1995
- UNCTAD, (2000), *A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations*, New York and Geneva.