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**Transformation of the WTO Dispute Settlement System in Facing the Trends of  
Deglobalization and Protectionism: A Developing Country Perspective**  
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**Abstract**

*The World Trade Organization (WTO) dispute settlement system has been a crucial pillar of the multilateral trading system, ensuring legal certainty and stability in international trade. However, in recent years, this system has faced an unprecedented crisis due to the paralysis of the Appellate Body, triggered by the persistent blockade of judicial appointments, primarily by the United States. This institutional deadlock coincides with the growing trends of deglobalization and economic protectionism, characterized by increasing unilateral trade measures, escalating trade wars, and the erosion of trust in multilateral institutions. These developments have disproportionately impacted developing countries, which rely on a rules-based dispute settlement mechanism to protect their trade interests against more powerful economies. Despite their majority representation in the WTO, developing countries face structural challenges in accessing and utilizing the dispute settlement system effectively, including limited financial and legal resources, procedural complexities, and the risk of economic retaliation. This paper examines the ongoing transformation of the WTO dispute settlement system from the perspective of developing countries, assessing the challenges they face, the proposed reform initiatives, and their implications for global trade governance. Employing a normative legal approach with qualitative analysis, this study highlights the urgency of inclusive reforms to ensure a more equitable and effective dispute resolution mechanism within the WTO framework.*

**Keywords:** *Appellate Body, deglobalization, dispute settlement, developing countries, WTO*

**A. INTRODUCTION**

The World Trade Organization (WTO) dispute settlement system has long been recognized as the “jewel in the crown” of the global multilateral trade architecture.<sup>2</sup> Since its establishment in 1995 from the Uruguay Round, this rules-based system has

become essential for maintaining stability and compliance with trade agreements, providing a predictable legal framework for resolving disputes.<sup>3</sup> In its first two decades, the system successfully handled more than 500 dispute cases, reflecting significant confidence in this multilateral mechanism.

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<sup>2</sup> Kementerian Perdagangan Republik Indonesia, “*Sekilas WTO*,” Ditjen Perundingan Perdagangan Internasional, <https://ditjenppi.kemendag.go.id/organisasi-perdagangan-dunia/tentang-wto/sekilas-wto>

<sup>3</sup> International Institute for Sustainable Development (IISD), “*United States Must Propose Solutions to End WTO Dispute Settlement Crisis*,” IISD, <https://www.iisd.org/articles/united-states-must-propose-solutions-end-wto-dispute-settlement-crisis>.

However, the WTO dispute settlement system now faces an unprecedented existential crisis from interrelated factors threatening its effectiveness and legitimacy.

The most striking crisis is the paralysis of the WTO Appellate Body since December 2019, when the United States consistently blocked new member appointments by raising objections to various aspects of the Appellate Body's function and jurisprudence.<sup>4</sup> This paralysis disrupts the highest judicial function in the WTO dispute settlement system, creating significant legal uncertainty. Without a functioning Appellate Body, appealed panel reports enter a "legal void," as the Dispute Settlement Understanding requires the adoption of panel reports only after completing the appeal process.<sup>5</sup> This inability to resolve appeals has eroded legal certainty and invited potential non-compliance with WTO decisions.

This institutional crisis occurs amid fundamental changes in the global political economy marked by strengthening deglobalization trends and rising economic protectionism. These phenomena manifest in increasing unilateral trade actions, escalating trade wars between major powers like the US and China, proliferating non-tariff barriers, and eroding trust in multilateral institutions. Data shows a significant increase in protectionist policies over the last decade, with more than 1,000 new trade-restrictive measures since the 2008 global financial crisis.<sup>6</sup>

The COVID-19 pandemic accelerated these trends by exposing global supply chain vulnerabilities and prompting many countries to prioritize national economic

resilience over global integration. The convergence between the WTO institutional crisis and structural transformation in international economic relations has created a "perfect storm" threatening the rules-based multilateral trading system.

The implications of this dual crisis disproportionately affect developing countries, which are structurally disadvantaged in global trade architecture. Developing countries have long faced significant barriers in effectively utilizing the WTO dispute settlement system, including limited technical capacity and legal expertise, financial constraints for pursuing complex litigation, concerns about retaliation, and procedural complexities hindering meaningful participation.<sup>7</sup> Although developing countries represent the majority of WTO members, they've only been involved in a small fraction of total disputes, with most never having filed a case. The Appellate Body paralysis further exacerbates these structural inequalities by reducing outcome predictability and increasing non-compliance risk. As major powers increasingly rely on unilateral and bilateral approaches for their trade interests, developing countries, heavily dependent on rules-based systems to protect their interests, face increasing marginalization in global trade governance.<sup>8</sup>

Discussions about reforming the WTO dispute settlement system have been ongoing for years, with various proposals from member states and stakeholders. Reform efforts include initiatives like the Multi-party Interim Appeal Arbitration

<sup>4</sup> World Trade Organization, "Understanding on Rules and Procedures Governing the Settlement of Disputes," [https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm)

<sup>5</sup> CoinUnited, "Perang Dagang AS-China: Kisah Tak Berujung Tarif dan Ketegangan," 19 Maret 2025, <https://coinunited.io/learn/id/us-china-trade-war-the-unending-saga-of-tariffs-and-tensions>

<sup>6</sup> Preliminary Program of the Allied Social Science Associations January 3-5, 2016, San Francisco, CA, accessed January 2, 2016, <https://www.aeaweb.org/conference/2016/preliminary.php>

<sup>7</sup> Bahri, Amrita. "Chapter 1: Developing countries at WTO Dispute Settlement Understanding: strengthening participation: Enabling Developing Countries". In *Public Private Partnership for WTO Dispute Settlement Enabling Developing Countries*, (Cheltenham, UK: Edward Elgar Publishing, 2018). <https://doi.org/10.4337/9781786437495.00010>

<sup>8</sup> Revy S. M. Korah, "Prinsip-Prinsip Eksistensi General Agreement on Tariffs and Trade (GATT) dan World Trade Organization (WTO) dalam Era Pasar Bebas," *Jurnal Hukum Unsrat* 22, no. 7 (2016)

Arrangement (MPIA), established by a group of WTO members to temporarily replace Appellate Body functions.<sup>9</sup> However, MPIA participation remains limited, with many developing countries not joining due to concerns about this temporary arrangement's legitimacy and long-term implications. Meanwhile, formal discussions on reforming the dispute settlement system have made slow progress, reflecting diverse views and interests among member states and challenges in reaching consensus amid increasing geopolitical polarization.

Given these complex challenges, transforming the WTO dispute settlement system becomes urgent not only to address the current institutional crisis but also to build a more inclusive, efficient, and responsive mechanism for contemporary trade realities<sup>10</sup>. A crucial question in this transformation process is how developing countries' interests and perspectives will be accommodated, given inherent power imbalances in multilateral negotiations and the history of marginalization of developing country voices in global economic governance. This article examines the transformation of the WTO dispute settlement system amid deglobalization and protectionism trends, focusing on implications for developing countries. Through analysis of contemporary challenges in international trade dispute resolution, critical evaluation of proposed reform options, and in-depth exploration of developing country perspectives, this research seeks to contribute to the discourse on designing a fairer, more inclusive, and effective WTO dispute settlement system in rapidly changing global trade dynamics.

The novelty of this research lies in its integrated analytical framework that examines three interconnected

dimensions: (1) the institutional paralysis of the WTO dispute settlement mechanism as a governance crisis; (2) the structural vulnerabilities of developing countries in an era marked by deglobalization and economic nationalism; and (3) the transformative pathways that can reconcile procedural efficiency with substantive justice for developing economies. Unlike existing literature that treats these issues separately, this study provides a holistic assessment of how deglobalization trends and protectionist policies specifically undermine developing countries' capacity to utilize trade dispute mechanisms effectively. Furthermore, this research advances the discourse by proposing concrete reform strategies grounded in developing country perspectives, particularly addressing how reforms can enhance transparency, efficiency, and the active role of developing countries in WTO rule-making processes, thereby filling a significant void in both academic scholarship and policy recommendations for inclusive global trade governance.

This article employs doctrinal legal research with a normative-analytical approach to examine the transformation of the WTO dispute settlement system and its implications for developing countries. Data collection was conducted through literature studies of primary sources, including international agreements, WTO documents, and Dispute Settlement Body decisions, as well as secondary sources covering academic literature, international organization reports, and official country positions in WTO forums. The analysis was conducted qualitatively using content analysis techniques and comparative analysis to compare various transformation options. Developing countries' perspectives are integrated through case studies of their experiences in WTO disputes and

<sup>9</sup> World Trade Organization, "The Multi-Party Interim Appeal Arbitration Arrangement (MPIA)," [https://wtoplurilaterals.info/plural\\_initiative/the-mpia/](https://wtoplurilaterals.info/plural_initiative/the-mpia/)

<sup>10</sup> Chaisse, Julien, and Cristián Rodríguez-Chiffelle. "1: WTO's legacy, roadblocks, and future in global economic

regulation: an introduction". In *The Elgar Companion to the World Trade Organization*, (Cheltenham, UK: Edward Elgar Publishing, 2023)

comparative analysis of various reform proposals. This article seeks to identify transformation pathways bridging the gap between procedural efficiency and substantive justice in the WTO dispute settlement system through a comprehensive analytical framework while considering political and economic realities underlying the current reform debate.

## B. LITERATURE REVIEW

### A. WTO Dispute Settlement System

#### 1. History and Development

The WTO dispute settlement system is the result of an evolution from the relatively weak dispute resolution mechanism in the General Agreement on Tariffs and Trade (GATT) 1947. In the GATT era, dispute resolution was more diplomatic than judicial, with a less structured process that was often ineffective. One of the main weaknesses of the GATT system was the use of the “positive consensus” principle, which allowed the losing party to block the establishment of panels, the adoption of panel reports, or the authorization of retaliation. As a result, many disputes remained unresolved, and compliance with panel decisions often could not be effectively enforced.<sup>11</sup>

A fundamental transformation occurred through the Uruguay Round negotiations (1986-1994), which produced the Dispute Settlement Understanding (DSU), a comprehensive agreement governing dispute resolution procedures within the WTO framework.<sup>12</sup> This transformation reflected a paradigm shift from a power-based diplomatic approach to a rule-based judicial approach in resolving international trade disputes. The most

significant change was the replacement of “positive consensus” with “negative consensus,” meaning that panel and Appellate Body reports are automatically adopted unless there is a consensus not to adopt them, effectively eliminating the possibility of unilateral blocking by the losing party.<sup>13</sup>

To provide empirical grounding and comparative analysis, this research examines specific case studies involving developing countries to illustrate the systemic challenges within the WTO dispute settlement framework. The India-Agricultural Products case demonstrates the complex technical and scientific challenges faced by developing countries in disputes related to sanitary and phytosanitary (SPS) standards. This case concerned a US challenge to India's import restrictions on poultry and poultry products from countries affected by highly pathogenic avian influenza (HPAI).<sup>14</sup> India maintained that its measures were necessary to protect animal and human health, consistent with Article 5 of the SPS Agreement. However, the panel and Appellate Body found that India's measures exceeded what was necessary and were inconsistent with WTO rules. This case highlights several key challenges for developing countries: (1) the significant financial and technical resources required to present scientific evidence that meets WTO standards; (2) the difficulty in demonstrating that trade-restrictive measures are based on adequate risk assessment when scientific data is limited; and (3) the expertise gap between developing and developed countries in navigating complex regulatory disputes involving scientific and technical evidence.

<sup>11</sup> Arriza Briella Kurniawardhana, “Sejarah Organisasi Ekonomi Internasional: World Trade Organization (WTO),” *Jurnal Widya Winayata: Jurnal Pendidikan Sejarah* 9, no. 1 (April 2021): 49–53, <https://ejournal.undiksha.ac.id/index.php/JJPS>.

<sup>12</sup> John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* 45 (2d ed. 1997)

<sup>13</sup> Cathleen D. Cimino-Isaacs, *World Trade Organization: Overview and Future Direction*, (Washington, DC: Congressional Research Service, October 18, 2021)

<sup>14</sup> M. Prahadeeswaran, R. Balaji, S. Senthilnathan, S. Moghana Lavanya, and S. Gurunathan. 2022. “Trends in Export of Major Agricultural Commodities and Products from India”. *Asian Journal of Agricultural Extension, Economics & Sociology* 40 (9):367–373. <https://doi.org/10.9734/ajaees/2022/v40i931016>

For developing countries with limited scientific infrastructure and legal capacity, defending regulatory measures against challenges from developed economies becomes particularly burdensome.

The case of Thailand-Cigarettes illustrates how developing countries can successfully navigate the dispute settlement system but also reveals persistent capacity challenges. The Philippines challenged various Thai fiscal and regulatory measures affecting imported cigarettes, arguing they discriminated against foreign products<sup>15</sup>. The Philippines succeeded in demonstrating that Thailand's tax practices violated WTO national treatment obligations. However, this success came at considerable financial and diplomatic cost. The case required extensive legal representation, economic analysis, and sustained engagement over multiple years. For many smaller developing countries, such resource-intensive litigation remains prohibitively expensive. Moreover, even after winning, the Philippines faced challenges in ensuring Thai compliance with the rulings, demonstrating that developing countries' enforcement capacity remains structurally limited. This case underscores that while legal victories are possible, the barriers to entry and effective enforcement in the WTO dispute system disproportionately affect resource-constrained developing nations.

## 2. Dispute Settlement Understanding (DSU)

The Dispute Settlement Understanding (DSU) is the main legal framework governing the WTO dispute settlement system. The DSU establishes the basic principles, institutional structure, and procedures governing all stages of dispute

resolution, from initial consultations to the implementation of decisions.<sup>16</sup> The system regulated by the DSU is comprehensive, integrated, and hierarchical, encompassing various stages designed to resolve disputes efficiently without compromising the quality and legitimacy of decisions.

The main innovative feature of the DSU is the establishment of a permanent Appellate Body that reviews legal aspects of panel reports when one party appeals. The Appellate Body, consisting of seven permanent members elected for four-year terms, has the authority to uphold, modify, or reverse the legal findings and conclusions of panels. Appellate Body decisions are final and binding and must be adopted by the Dispute Settlement Body (DSB) unless there is a consensus not to adopt them.<sup>17</sup>

The DSU establishes strict timeframes for each stage of the dispute resolution process, with the aim of resolving disputes efficiently and in a timely manner. Overall, the process from consultations to Appellate Body rulings is expected not to exceed 15 months, although, in practice, some complex cases require more time. After adopting a report, the losing party must implement the recommendations within a reasonable period, typically at least 15 months. If the losing party fails to implement the recommendations, the complainant may request authorization to apply retaliation in the form of suspension of concessions or other obligations equivalent to the level of nullification or impairment caused by the non-compliance.

## 3. WTO Dispute Settlement Organs

The WTO dispute settlement system consists of several key organs that have different but interrelated functions in the dispute resolution process:

- a. Dispute Settlement Body (DSB)

<sup>15</sup> Jaroensathapornkul, J. (2023) "Structural change in Thailand's tobacco leaf exports: Implications of tobacco control in ASEAN countries" *Asian Journal of Agriculture and Rural Development*, 13(2), 98–105.

<sup>16</sup> World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, WTO

<sup>17</sup> Kusnowibowo, A. S. (2020). *Penyelesaian Sengketa Dagang Antar Negara dalam Free Trade Agreement (FTA) dalam Kerangka WTO dan ASEAN* (Edisi pertama). Jakarta: Kencana, hlm. 29

This is a political forum consisting of all WTO member states and is responsible for (i) establishing panels, (ii) adopting panel and Appellate Body reports, (iii) overseeing the implementation of recommendations, and (iv) authorizing retaliation in cases of non-compliance. The DSB is the WTO General Council functioning in a special capacity to administer the dispute settlement system. DSB decisions are based on negative consensus for adopting reports and authorizing retaliation, but positive consensus is needed for other procedural issues.<sup>18</sup>

#### b. Panels

These are ad hoc tribunals consisting of three or five individuals selected to handle specific cases. Panel members are chosen based on independence, relevant background, and diversity. Panels are responsible for (i) establishing factual findings, (ii) applying relevant WTO law, and (iii) making recommendations. The panel process involves written submissions and oral hearings, with panels having the flexibility to consult with experts and request additional information.<sup>19</sup>

#### c. Appellate Body

This permanent body consists of seven members tasked with reviewing legal aspects of panel reports based on appeal requests. The Appellate Body can uphold, modify, or reverse panels' legal findings and conclusions but cannot add to or diminish the rights and obligations established in WTO agreements. Unlike panels, the Appellate Body is a permanent body with members appointed by the DSB for four-year terms

(renewable once). The Appellate Body's decision-making process is collegial, with members working collectively to ensure consistency and coherence in WTO legal interpretation.<sup>20</sup>

#### d. WTO Secretariat

Provides technical and administrative support for the dispute resolution process, including the Legal Division, which provides legal advice to panels. The Secretariat plays an important role in ensuring the smooth running of the process, particularly in assisting countries with limited technical capacity. Although the Secretariat has no formal authority in decision-making, its technical input often has significant influence, especially in complex cases involving technical issues.

#### e. Arbitrator

In the context of WTO dispute settlement, arbitrators may be appointed to (i) determine a "reasonable period" for implementation if parties do not reach an agreement, (ii) evaluate the level of proposed retaliation in cases of non-compliance, and (iii) resolve disputes in accordance with alternative arbitration procedures regulated in Article 25 of the DSU. Arbitrators may consist of individuals or groups of individuals, depending on the nature of the arbitration<sup>21</sup>.

## B. Trends of Deglobalization and Global Protectionism

### 1. Definition and Manifestations of Deglobalization

Deglobalization can be defined as the process of declining global economic interdependence and integration characterized by weakening trade relations,

<sup>18</sup> Ade Maman Suherman, "DISPUTE SETTLEMENT BODY-WTO dalam Penyelesaian Sengketa Perdagangan Internasional", *Jurnal Hukum & Pembangunan* 42, no. 1 (Maret 2012): 1-20

<sup>19</sup> Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19, no. 4 (September 2008): 655-724, <https://doi.org/10.1093/ejil/chn043>

<sup>20</sup> Maranatha L.H. Fobia, Tri Budiyono, dan Jumiarti, "Pemisahan dan Pembagian Kekuasaan terhadap Appellate

Body World Trade Organization," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 2 (April 2024): 183-202, <https://doi.org/10.24246/jrh.2024.v8.i2.p183-202>.

<sup>21</sup> Ahmad Saleh Kusnowibowo, *Penyelesaian Sengketa Dagang Antar Negara dalam Free Trade Agreement (FTA) dalam Kerangka WTO dan ASEAN*, edisi pertama (Jakarta: Kencana, 2020), h.135

investment, and global value chains.<sup>22</sup> This phenomenon emerges as a reaction to globalization, which is perceived as not providing equitable benefits and causing negative impacts on certain economic sectors and community groups. Unlike globalization, which emphasizes trade liberalization, market integration, and policy harmonization, deglobalization reflects tendencies toward economic fragmentation, supply chain diversification, and strengthening of national economic policies.

In the contemporary context, deglobalization is unfolding through several critical trends that directly affect the WTO dispute settlement system and developing countries. One prominent shift is the rise of economic nationalism, where governments increasingly prioritize domestic industries and employment over global integration. This is reflected in initiatives like “Buy American” in the United States, China’s “dual circulation” strategy emphasizing internal consumption, and the European Union’s push for strategic autonomy. These approaches often involve subsidies, local content mandates, and preferential treatment for domestic firms, measures that may conflict with WTO non-discrimination principles but are increasingly justified in the name of economic security and resilience.

Another defining trend is the regionalization of supply chains, driven by geopolitical tensions and vulnerabilities exposed during the COVID-19 pandemic. Companies and governments are restructuring production networks through “nearshoring” and “friendshoring,” favoring geographic proximity and political alignment over efficiency. This shift challenges the logic of comparative

advantage that underpins multilateral trade liberalization and risks sidelining countries outside these emerging blocs, particularly smaller developing economies. At the same time, skepticism toward multilateral institutions—including the WTO—is growing, as some governments view them as constraints on national sovereignty and ill-equipped to address modern challenges like digital trade, industrial policy, and environmental sustainability. This erosion of political support has stalled reform efforts and weakened the WTO’s dispute settlement mechanism.

## 2. Economic Protectionism Policies

Economic protectionism refers to policies designed to protect domestic industries and workers from foreign competition.<sup>23</sup> In the last decade, there has been a significant increase in the implementation of protectionist policies, reflecting a shift from the neoliberal consensus that supported trade liberalization. Although the use of protectionist instruments is not a new phenomenon in international economic relations, the scale and scope of contemporary protectionism marks an important shift in global trade governance.

## 3. Impact on International Trade

Trends of deglobalization and protectionism have created multidimensional impacts on international trade, changing long-established trade patterns and challenging the basic principles underlying the multilateral trading system.<sup>24</sup> These impacts can be classified into several main categories.<sup>25</sup>

### a. Economic Impact

Slowing global trade growth, disruption of global value chains, and increased transaction costs are direct consequences of rising trade barriers

<sup>22</sup> "Deglobalisasi: Globalisasi Rantai Pasokan Tersekat Social Distancing," *MLRP Update*, 30 April 2021, <https://mlrp.feb.ugm.ac.id/2021/04/deglobalisasi-globalisasi-rantai-pasokan-tersekat-social-distancing/>

<sup>23</sup> Simon J. Evenett, "Proteksionisme, Diskriminasi Negara, dan Bisnis Internasional Sejak Awal Krisis Keuangan Global," *Journal of International Business Policy* 2 (2019): 9–36, <https://doi.org/10.1057/s42214-019-00021-0>

<sup>24</sup> Ahadiani, Annisa, Menur Putria Duwy, and Siti Nurhayati Wergiri. "Dinamika Kebijakan Internasional: Tantangan Dan Peluang Di Era Globalisasi." *Jurnal Akademik Ekonomi Dan Manajemen* 1.4 (2024): 301-310.

<sup>25</sup> : Innayatun Soepartha, Intan, and Nilam Andalia Kurniasari. "Analisis Pengaruh Brexit dan Kebijakan De-Globalisasi Perdagangan Amerika Serikat terhadap Indonesia Ditinjau dari Hukum Perdagangan Internasional." (2017).

and policy uncertainty. Research by international organizations such as the IMF, World Bank, and OECD shows that increased protectionism has negative effects on global economic growth, causing decreases in output, investment, and overall welfare. These studies highlight how trade barriers not only reduce the flow of final products but also disrupt international supply chains that have become a central feature of the global economy.

b. Institutional Impact

Erosion of trust in multilateral institutions such as the WTO and fragmentation of global trade governance are other significant impacts. The deadlock in the WTO's legislative function, reflected in the inability to conclude the Doha Round and produce new multilateral agreements, has weakened the WTO's role as the main forum for trade liberalization. This weakness, coupled with the paralysis of the judicial function with the Appellate Body crisis, has prompted countries to seek alternatives, including preferential trade agreements and unilateral solutions. As a result, the global trade architecture is becoming increasingly fragmented and complex, with serious implications for rule coherence and participation of small and developing countries.

The fragmentation of global trade governance disproportionately affects developing countries in several concrete ways. First, the proliferation of regional trade agreements (RTAs) and preferential arrangements creates a "spaghetti bowl" effect, where overlapping and sometimes contradictory rules impose significant compliance burdens. Developing countries, often with limited administrative and legal capacity, struggle to navigate these complex regulatory environments. Second, as major economies increasingly resolve

disputes through bilateral negotiations or power-based diplomacy rather than through the WTO, developing countries lose the level playing field that multilateral rules theoretically provide. Third, the shift toward mega-regional agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP) often sets standards and rules that reflect the interests of larger members, with developing countries facing pressure to adopt these standards without having meaningfully participated in their formulation.

c. Structural Impact

Reorientation of supply chains, with increased regionalization and reshoring, as well as accelerated digitalization of trade, mark structural changes in the organization of global production and trade. Multinational companies respond to increasing policy uncertainty and trade costs by diversifying and reducing the complexity of their supply chains, often at the expense of efficiency. The COVID-19 pandemic accelerated these trends, with many companies prioritizing supply chain resilience over cost optimization. These developments are changing patterns of global specialization and trade composition, with significant implications for the role of developing countries in the global economy.

d. Geopolitical Impact

The use of trade instruments as geopolitical tools and increasing strategic competition between economic blocs are becoming increasingly prominent, changing the character of international trade relations. National security considerations and competition for technological superiority increasingly influence trade policies, leading to what some observers call the

"weaponization" of trade. This is reflected in restrictions on exports of sensitive technologies, more stringent reviews of foreign investment, and the use of economic sanctions. These developments mark a shift from a rules-based trade order to a more power-centered approach with a geopolitical orientation. Developing countries often find themselves caught in the crossfire of major power competition, facing pressure to align with one bloc or another and experiencing collateral economic damage from sanctions and counter-sanctions in which they have no direct stake.

### C. Position of Developing Countries in the Multilateral Trading System

#### 1. Asymmetric Conditions in Global Trade

Although globalization has opened trade opportunities for developing countries, global trade remains characterized by asymmetries limiting their ability to gain full benefits. These asymmetries have interrelated economic, political, and institutional dimensions.<sup>26</sup>

From an economic perspective, developing countries face structural constraints limiting competitiveness, including inadequate infrastructure, limited financing and technology access, and difficulties meeting technical standards in major markets.

From a political perspective, developing countries face power imbalances in trade negotiations. Large economies have a disproportionate influence in shaping global trade rules, while smaller countries often must accept rules negotiated by dominant powers.

These asymmetries affect developing countries' participation in multilateral

trading and dispute settlement. Statistics show that despite representing most WTO members, developing countries participate in fewer disputes, with most LDCs rarely using the dispute settlement system.

Various factors contribute to limited participation. High financial costs create significant barriers. Studies show litigation costs can reach millions for complex cases beyond many developing countries' budgets.<sup>27</sup> Power imbalances affect strategic decisions about initiating disputes. Many developing countries hesitate to challenge stronger partners. When developing countries win cases, implementation challenges arise due to limited retaliation capabilities. The WTO retaliation mechanism is less effective when smaller countries try to enforce compliance from larger economies.<sup>28</sup>

#### 2. Special and Differential Treatment (S&DT)

In response to structural inequalities, the WTO system includes special and differential treatment provisions designed to accommodate developing countries' needs and facilitate their integration into the multilateral trading system.<sup>29</sup> In practice, technical assistance and capacity building have become the main instruments supporting developing country participation. The WTO and other organizations provide training and support. Initiatives like the Advisory Centre on WTO Law (ACWL), providing subsidized legal advice, have improved system accessibility.<sup>30</sup> However, the coverage and resources of these initiatives remain limited.

### III. CRISIS OF THE WTO DISPUTE SETTLEMENT SYSTEM

<sup>26</sup> Nia, Zairotul Ma'rifah, Fitriyah Fitriyah, and Maretha Ika Prajawati. "Analisis reaksi pasar terhadap perubahan auto rejection 15% menjadi auto rejection simetris." *Jurnal Ecogen* 6.4 (2023): 616-626.

<sup>27</sup> Romli Atmasasmita, S. H. *Hukum kejahatan bisnis: Teori & praktik di era globalisasi*. Prenada Media, 2016. hlm. 8

<sup>28</sup> Solikhin, Riyadus. "Sistem Penyelesaian Sengketa Dagang Internasional dalam Kerangka WTO: Mekanisme, Efektivitas Pelaksanaan Putusan dan Tindakan Retaliasi sebagai Upaya

Pemulihan Hak." *Padjajaran Law Review* 11.1 (2023): 114-127.

<sup>29</sup> Hoda, Anwarul. *WTO reform: Issues in special and differential treatment (S&DT)*. No. 406. Working Paper, 2021.

<sup>30</sup> Meagher, Niall. "Representing developing countries before the WTO: the role of the Advisory Centre on WTO Law (ACWL)." *Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS* (2015).

### A. Paralysis of the Appellate Body

The crisis in the WTO dispute settlement system reached its peak on December 10, 2019, when the Appellate Body effectively lost the quorum required to process new cases.<sup>31</sup> With the end of the terms of two of the three remaining members, the Appellate Body, which should consist of seven members, experienced functional paralysis as it was left with only one member, far below the minimum three members required to hear appeals.

The paralysis of the Appellate Body has profound implications for the WTO dispute settlement system as a whole. Without a functioning Appellate Body, appealed panel reports enter a "legal void," as the DSU stipulates that panel reports cannot be adopted until the appeal process is completed. This essentially allows the losing party to prevent the final resolution of disputes by appealing "into the void," defeating one of the most innovative features of the WTO system: the ability to reach authoritative and binding decisions in trade disputes. This development has created significant legal uncertainty in the multilateral trading system and threatens to erode the norm of compliance with WTO rules.

### B. Increase in Unilateral and Bilateral Actions

Along with the weakening of the WTO dispute settlement system, there has been a noticeable increase in unilateral and bilateral actions taken by member states to pursue their trade interests.<sup>32</sup> These actions, which are often conducted outside the parameters of WTO rules, threaten the integrity of the multilateral trading system and create risks of further fragmentation in global trade governance. This trend reflects a broader shift from multilateralism to

unilateralism and multilateralism in international economic relations.

Developing countries, which have relatively weak bargaining power in bilateral negotiations with major economic powers, tend to be particularly disadvantaged by the shift toward unilateralism and bilateralism. The WTO's rules-based system, despite its shortcomings, at least theoretically provides legal equality and provides a forum where small countries can challenge the actions of large countries based on mutually agreed rules. In an environment dominated by unilateralism, developing countries often lack the resources or influence to effectively protect their interests. As a result, they face the risk of being left behind in an increasingly fragmented and power-based trading system.

The increasing reliance on unilateral and bilateral approaches both reflects and reinforces the crisis of confidence in multilateralism in general and the WTO dispute settlement system in particular.<sup>33</sup> While such approaches may offer pragmatic short-term solutions for countries with significant economic power, they potentially undermine the rules-based trade order that has played an important role in enhancing global trade and promoting economic growth for several decades. Restoring confidence in the multilateral system and containing the shift toward unilateralism thus becomes a crucial challenge in addressing the WTO dispute settlement system crisis.

### C. Impact on Developing Countries

The WTO dispute settlement system crisis has disproportionate implications for developing countries, which have historically been disadvantaged in the

<sup>31</sup> "WTO Akan Hidupkan Lagi Pengadilan Banding," *Tempo.co*, 26 April 2023, <https://www.tempo.co/ekonomi/wto-hidupkan-lagi-pengadilan-banding-825531>.

<sup>32</sup> Ana Peres, "WTO: Challenges and Opportunities," Research Briefing, (March 25, 2024),

<https://commonslibrary.parliament.uk/research-briefings/cbp-9942/>

<sup>33</sup> J.C. Morse and R.O. Keohane, "Contested Multilateralism," *Review of International Organizations* 9, no. 4 (2014): 385–412, <https://doi.org/10.1007/s11558-014-9188-2>

global trade architecture.<sup>34</sup> The combination of Appellate Body paralysis increased unilateralism and bilateralism, and the proliferation of regional trade agreements creates a “perfect storm” that threatens to further marginalize the voice and interests of developing countries in global trade governance. The impact is particularly significant given these countries' greater dependence on a rules-based system to protect their trade interests against larger economic powers.

1. The Appellate Body paralysis reduces WTO dispute settlement predictability, particularly harming developing countries with limited legal resources. Without consistent interpretations of trade rules, these countries struggle to understand and enforce their rights.
2. The shift to unilateralism and power-based trade relations disadvantages countries with less economic power. “Raw power diplomacy” replacing “legal diplomacy” strengthens parties with greater bargaining power, as seen with US steel tariffs imposed on “national security” grounds.
3. Procedural uncertainty discourages developing countries from initiating disputes, as opponents can appeal “into the void.” This requires substantial resources with no guaranteed resolution, as demonstrated in the Venezuela versus Brazil case.
4. Regional trade agreements create challenges for developing countries, imposing capacity burdens to negotiate and implement various rules. Countries excluded from major RTAs risk marginalization, while the fragmented dispute settlement architecture widens the resource gap between developed and developing nations.

5. Trade disputes between major powers disproportionately affect developing countries. The US-China trade war created negative externalities through trade diversion and uncertainty while diverting attention from development issues like special treatment provisions and aid programs.
6. WTO's declining authority threatens developing countries' participation in global economic governance. Unlike exclusive forums like G7 or G20, the WTO offers a greater voice through its one-country-one-vote principle. WTO is weakening risks in governance dominated by “clubs” of powerful countries, marginalizing developing world perspectives.

#### IV. ANALYSIS OF THE TRANSFORMATION OF THE WTO DISPUTE SETTLEMENT SYSTEM

##### A. Urgency of Reform in Facing Deglobalization

In the context of trends of deglobalization and increasing protectionism, transforming the WTO dispute settlement system is no longer merely an option but an urgent necessity to maintain the rules-based multilateral trading order.<sup>35</sup> The continuing deadlock in the function of the Appellate Body, increased unilateralism, and fragmentation of global trade architecture have created a critical situation that threatens the foundation of the multilateral trading system. The transformation of the dispute settlement system becomes increasingly important as the world economy faces severe challenges such as post-pandemic recovery, supply chain disruptions, and increasing geopolitical tensions.

The paralysis of the WTO dispute settlement system has created an institutional vacuum in global trade governance. Without a functioning appeal

<sup>34</sup> Maslihati Nur Hidayati, “Analisis Tentang Sistem Penyelesaian Sengketa WTO: Suatu Tinjauan Yuridis Formal,” *Lex Jurnalica* 11, no. 2 (Agustus 2014): 155-170

<sup>35</sup> *Ibid* hal.40

mechanism, the system loses its ability to definitively resolve disputes and create coherence in WTO law interpretation<sup>36</sup>. This vacuum accelerates the erosion of compliance with multilateral trade rules, with countries increasingly relying on unilateral or plurilateral approaches. Restoring an effective dispute resolution function becomes a prerequisite for maintaining the relevance and legitimacy of the WTO as a central institution in global trade governance.

Trends of deglobalization and protectionism present new substantive challenges that require adaptive responses from the dispute settlement system. Phenomena such as state-driven industrial policies, extensive subsidies during and after the pandemic, and measures to relocate and regionalize supply chains create a potential for new trade conflicts that the existing WTO framework may not adequately regulate.<sup>37</sup> The dispute settlement system requires transformation to effectively address these contemporary forms of trade conflict while maintaining the basic principles of open and non-discriminatory multilateral trade.

The geopolitical reshaping and reorientation of trade policies in many countries, particularly the more assertive US trade policy and the rise of China as a major economic power<sup>38</sup>, necessitate reconciliation of different views on the proper role of the dispute settlement system. The success of system reform will depend on the formation of a new balance between national sovereignty and multilateral oversight that is acceptable to the entire WTO membership, including key actors whose views on trade governance have evolved significantly since the establishment of the WTO.

The shift from tariff-driven liberalization to a greater focus on non-tariff barriers and regulatory convergence requires a more sophisticated institutional framework to manage trade conflicts.<sup>39</sup> Contemporary trade disputes increasingly involve complex exchanges between trade interests, domestic regulatory considerations, and non-economic values such as environmental protection, labour standards, public health, and national security. The dispute settlement system must adapt to effectively handle the complex interactions between trade liberalization commitments and domestic regulatory policy space.

Structural inequalities in the global trading system and the limited ability of many developing countries to fully utilize the dispute settlement system require a transformative approach that makes inclusivity a central goal of reform.<sup>40</sup> While much attention is focused on addressing US objections to the Appellate Body, fully inclusive reform must also address participation barriers faced by developing countries, ensuring that the transformed system not only restores its function but also enhances its accessibility and legitimacy for the entire membership.

Transparency in the dispute settlement process is essential for legitimacy and accountability, particularly for developing countries that may lack the resources to actively monitor proceedings. Reforms should include: (a) mandatory publication of all written submissions, panel and Appellate Body reports, and arbitration decisions in a timely manner, with limited exceptions for genuinely confidential business information; (b) allowing broader access for civil society organizations, academic institutions, and the private

<sup>36</sup> *Ibid* hal.114

<sup>37</sup> *Ibid* hal.96

<sup>38</sup> Denan Reina Andini Suhradi, *Kebijakan Perdagangan Amerika Serikat Terkait Kebangkitan Tiongkok di Kawasan Asia Tenggara* (Tesis, Universitas Katolik Parahyangan, 2019)

<sup>39</sup> Ashley Schram et al., "Kerangka Konseptual untuk Menyelidiki Dampak Perjanjian Perdagangan dan Investasi

Internasional terhadap Faktor Risiko Penyakit Tidak Menular," *Kebijakan dan Perencanaan Kesehatan* 33, no. 1 (Januari 2018): 123–136, <https://doi.org/10.1093/heapol/czx133>

<sup>40</sup> Otom Mustomi et al., *Globalisasi dan Perubahan Sosial Politik* (Medan: PT Media Penerbit Indonesia, 2024), hal.70

sector to observe proceedings and submit *amicus curiae* briefs, ensuring diverse perspectives are considered; and (c) establishing regular reporting mechanisms where the DSB provides updates to the full WTO membership on the status of disputes, implementation progress, and systemic issues identified through case law. Enhanced transparency empowers developing countries by democratizing access to information and enabling them to learn from disputes to which they are not parties.

### **B. Options for Transforming the Dispute Settlement System**

In addressing the WTO dispute settlement system crisis, member states, legal experts, and other stakeholders have proposed various transformation options. These options range from incremental procedural reforms to significant structural overhauls, reflecting diverse perspectives on the main sources of problems and the solutions needed. Each option offers a different approach to balancing sometimes conflicting objectives: maintaining a rules-based system, accommodating concerns about sovereignty and judicial activism, enhancing accessibility and inclusivity, and ensuring procedural efficiency and effectiveness.

#### **2. Multi-party Interim Appeal Arbitration Arrangement (MPIA)**

In response to the paralysis of the Appellate Body, a group of WTO members developed an interim solution in the form of the Multi-party Interim Appeal Arbitration Arrangement (MPIA). The MPIA operates as an “optional” system where participants agree not to appeal “into the void” against panel reports in disputes among them but instead will use the MPIA arbitration procedure to review legal issues<sup>41</sup>. The

MPIA represents an important institutional innovation that demonstrates how WTO members can respond to the crisis through plurilateral cooperation within the multilateral framework.

From the perspective of developing countries, the MPIA presents a mixture of opportunities and challenges. On one hand, it offers a way to maintain access to an appeal mechanism for countries that choose to participate. On the other hand, developing countries' participation in the MPIA is relatively limited, with only a handful of developing countries joining the initiative. This reflects various factors, including concerns about the additional resources required to engage with a new system, uncertainty about the compatibility of the mechanism with existing dispute settlement strategies, and political concerns about the broader implications of supporting a plurilateral approach to a multilateral institutional problem.

Although the MPIA may not be a comprehensive solution to the WTO dispute settlement system crisis, it offers valuable insights into how potential reform elements, such as filtering procedures, stricter time limits, and more flexible approaches to dispute resolution, can operate in practice.<sup>42</sup> Thus, it can serve as a “laboratory” for procedural and substantive innovations that can later be integrated into more comprehensive reforms. Experience with the MPIA also underscores the importance of ensuring that any solution to the crisis is inclusive and considers the needs of various WTO members, including developing countries that rely on a rules-based system to protect their trade interests.

### **C. Developing Country Perspectives in Transformation**

<sup>41</sup> Rani Sri Wahyuni, Zulfikar Jayakusuma, dan Ledy Diana, “Eksistensi Multi-Party Interim Appeal Arbitration Arrangement sebagai Arbitrase Pasca Kekosongan Anggota Appellate Body World Trade Organization,” *Pattimura Legal Journal* 3, no. 3 (Desember 2024): 144–158, <https://doi.org/10.47268/pela.v3i3.15745>

<sup>42</sup> Emmy Latifah, “Eksistensi Prinsip-Prinsip Keadilan Dalam Sistem Hukum Perdagangan Internasional,” *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 2, no. 1 (2015): 64–85, <https://doi.org/10.22304/pjih.v2n1.a5>

In transforming the WTO dispute settlement system, developing countries' perspectives are essential to ensure that reforms result in a system that is effective but also inclusive, and fair. Despite this diversity, several shared interests and perspectives influence the positions of developing countries in transformation discussions.

### **1. Specific Interests and Needs**

Developing countries have specific interests and needs in the dispute settlement system that shape their perspectives on reform. First, as countries with more limited economic and political bargaining power, many developing countries have a fundamental interest in maintaining and strengthening a rules-based dispute settlement system. A strong system provides important protection for smaller and less powerful countries against unilateral actions by larger economies. Therefore, many developing countries support the quick resolution of the Appellate Body crisis and the restoration of the normal function of the two-tier system, emphasizing that continued paralysis brings disproportionate disadvantages to smaller and more vulnerable members.

Developing countries are strongly interested in ensuring that the transformed system enhances, rather than reduces, accessibility and inclusivity. Reforms that substantially increase the complexity, cost, or resources required to participate in the system risk further marginalizing countries with limited legal and administrative capacity. Many developing countries thus emphasize the importance of procedural simplification, reduction of litigation costs, and strengthening of technical assistance and capacity-building mechanisms as core components of transformation.

Developing countries have specific needs related to procedural and substantive flexibility in the system. In terms of procedure, more flexible timeframes and simpler documentation requirements are often needed to

accommodate capacity limitations. In terms of substance, many developing countries argue that the interpretation of WTO agreements should recognize different development contexts and provide adequate "policy space" for development strategies. The balance between trade liberalization and broader development goals becomes an important consideration in developing countries' perspectives on reform.

Developing countries have special interests in strengthening implementation and enforcement mechanisms. Given their limited ability to apply effective retaliation against larger economies, many developing countries support reforms to enforcement mechanisms to address this imbalance. Proposals such as collective retaliation, adjustments to the calculation of retaliation levels for smaller members, and alternative compensation mechanisms have received support among developing countries.

Some developing countries, especially larger developing economies, also need to maintain regulatory autonomy and national policy space, which sometimes aligns with concerns expressed by advanced economies such as the United States. However, their specific substantive priorities often differ, with a greater focus on defending policy flexibility in the context of development strategies and addressing pressing socio-economic needs.

### **2. Effective Participation in the Negotiation Process**

Effective participation of developing countries in the negotiation process on the transformation of the dispute settlement system is essential to ensure inclusive and sustainable outcomes. However, such participation faces several structural and procedural challenges. Limited capacity to engage in complex technical negotiations, especially for smaller delegations with few trade law specialists, restricts the ability of many developing countries to substantively engage in reform discussions. Additionally, decentralized and fragmented negotiation processes, with various formal and informal

forums running parallel, create additional coordination and participation challenges.

The involvement of non-state actors, including academics, civil society organizations, and the private sector from developing countries, can also enrich reform discussions by providing additional perspectives and expertise. However, it is important to ensure that interactions with these stakeholders do not duplicate existing power inequalities in intergovernmental engagement. A balance must be sought between leveraging diverse expertise and ensuring that negotiations remain member-driven and conducted with strong process legitimacy.

### 3. Case Studies: Developing Country Experiences in WTO Disputes

The historical experience of developing countries in the WTO dispute settlement system is highly informative for understanding their challenges and the needed reforms. A series of case studies illustrate how structural inequalities in the system have affected developing countries' ability to effectively protect their trade interests.

The India-Agricultural Products case demonstrates the complex technical and scientific challenges faced by developing countries in disputes related to sanitary and phytosanitary standards. This case concerns the US import ban on Indian poultry products due to concerns about avian influenza.<sup>43</sup> highlights the difficulties in developing robust scientific evidence to support sanitary and phytosanitary measures when there is scientific uncertainty and limited technical resources. The case also underscores the expertise gap that can exist between developing and developed countries in complex regulatory areas.

The Pakistan-DRAMS case represents an example of dispute diversion due to resource limitations and concerns about relative power. Pakistan initially considered

a WTO dispute regarding the European Union's anti-dumping investigation on imports of dynamic random access memory chips from Pakistan. Still, it ultimately decided not to proceed with a formal case. This decision was partly driven by considerations of the financial costs and inter-agency coordination required and concerns about implications for bilateral relations with an important trading partner.

#### A. Substantive Reforms for Equal Access

Transformation of the WTO dispute settlement system must begin with a series of substantive reforms designed to ensure equal access for all members, regardless of their level of economic development. These reforms must address the structural barriers that have limited the effective participation of developing countries in the system.

#### B. Institutional Design Responsive to Developing Country Needs

Institutional design that is responsive to developing countries' needs should include several key elements. First, Appellate Body reform must ensure a more balanced geographical representation, with increased members from developing countries. The selection process should be enhanced in transparency and reduce politicization, with criteria that guarantee diversity of backgrounds and experience. Second, the institutional infrastructure of the WTO Secretariat should be strengthened to support developing countries, including expanding the Legal Aid Division. Third, an inclusive oversight structure should be established to monitor the effectiveness of the system from the perspective of various members, particularly developing countries.

#### C. Strengthening Technical Assistance and Capacity Building Mechanisms

Strengthening technical assistance and capacity-building mechanisms is an important component of inclusive transformation. This includes substantial

<sup>43</sup> Irna Nurhayati dan Aminoto, "Kebijakan Impor Indonesia Atas Produk Hewan Pasca Putusan Mahkamah Konstitusi

Nomor 129/PUU-XIII/2015," *Jurnal Konstitusi* 19, no. 1 (Maret 2022): xx, <https://doi.org/10.31078/jk1917>

strengthening of funding and mandate for the ACWL to expand its services, including pre-litigation support and trade analysis. Comprehensive training programs for developing country government officials should be enhanced with the development of standardized curricula and accessible distance learning. Long-term capacity-building programs are also important, including mentoring programs, internships, and exchanges between member countries to facilitate the transfer of knowledge and experience.

#### **D. Multistakeholder Approach in Dispute Settlement**

A multistakeholder approach can enrich and strengthen the WTO dispute settlement system. This includes mechanisms for the involvement of the developing country's private sector, particularly SMEs that often lack channels to identify and advocate for addressing trade barriers. Partnerships with academic institutions from developing countries are also important to enhance research on trade issues relevant to these countries. Additionally, dialogue forums between government, business, and civil society can help build broader consensus on reform of the dispute settlement system.

## **VI. CONCLUSION AND IMPLICATIONS**

### **A. Conclusion**

The transformation of the WTO dispute settlement system is occurring at a critical time in the evolution of the multilateral trading system. The Appellate Body crisis, combined with broader trends of deglobalization and protectionism, has created an imperative for reform that not only restores the function of the system but also strengthens its inclusivity and fairness. This research has identified the main challenges developing countries face in the current system and evaluated various reform options from the perspective of their interests and needs.

The analysis shows that successful reform requires a comprehensive approach that addresses the dispute settlement

system's procedural and substantive aspects. Procedural reforms can facilitate participation, such as simplifying documentation requirements and clarifying review standards. However, without substantive reforms that address structural imbalances and enhance developing country capacity, this transformation will not address the underlying inequalities in the system.

The recommendations acknowledge that truly inclusive and equitable transformation requires changes beyond technical adjustments to existing mechanisms. A more ambitious reform approach is needed that addresses systemic barriers to participation, strengthens implementation mechanisms, and ensures that developing countries' voices and interests are fully considered in the transformed system. Such reforms may face resistance from some members who benefit from the status quo but are necessary to guarantee the long-term legitimacy and effectiveness of the WTO dispute settlement system.

### **B. Theoretical Implications**

This research has several important theoretical implications.

1. It expands the literature on international trade law by exploring the interaction between institutional reform, developing country participation, and trends of deglobalization.
2. This research contributes to the debate on the legitimacy and effectiveness of international institutions in global power asymmetries, highlighting the tension between power-based and rules-based approaches in trade governance.
3. This research develops an analytical framework for evaluating inclusivity in institutional design, which can be applied to analyze reforms in other international regimes.

### **C. Practical Implications**

The findings of this research have several practical implications.

For policymakers in developing countries, this research highlights the importance of coordination and coalition in advocating for more inclusive reforms.

This research identifies concrete approaches for trade negotiators and diplomats to accommodate different interests while advancing the reform agenda.

For civil society organizations and academics, this research underscores the important role of advocacy and research in influencing the design of multilateral systems.

#### D. Recommendations for Further Research

Further research can deepen the analysis in several areas. Empirical studies on the distributive impact of various reform options would provide valuable insights into their practical implications. Comparative research on dispute settlement mechanisms in regional trade agreements can identify potential innovations that can be applied at the multilateral level. An in-depth analysis of the political and economic impacts of WTO accession protocols on developing country policies would also contribute to a better understanding of the interaction between WTO membership and domestic reform.

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