

## **WORLD TRADE ORGANIZATION (WTO) AND FAIR TRADE PRACTICES AMONG MEMBER STATES: ISSUES AND CHALLENGES**

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### **ABSTRACT**

The World Trade Organization (WTO) came into being in 1995. It was formed with the purpose of enabling trade transactions to flow without controls and obstacles from among the member states. This is to be achieved through laid down principles, especially principles of fair trade, concepts and established institutions guiding the operations of the WTO. This paper therefore examines critically using both descriptive and analytical approach these structures and roles of the WTO by which it maintains fair trade practices among member states. The effort so far made in this study shows that certain challenges hinder the operations of fair trade by this body. These include the seemingly imposition of ideas of the advanced nations (The North) on the less advanced nations (The South), dominance of vested interest by the United States (US) and European Union Member Countries (EU), internal incapacity of Less Developed Countries (LDC) member states to mobilize resources for WTO complaints, poor export sector and lack of qualified manpower to cope with external trade transactions etc. The paper thus concludes that for fair trade practices to be maintained by the WTO, the developed countries should not be allowed to operate protectionist or trade restrictive measures as against the path of liberalization which the developing countries are advised to follow; and that the proposed reform of the Organization which aims at making it to be appropriate to the development strategies of the less advanced nations should be quickened.

### **Preamble**

The World Trade Organization (WTO) came into lime light as a trading body in 1995. Before then, a General Agreement on Tariffs and Trade (GATT) was formed in 1997 by some nations of the world to organize and enable a hitch free trade among the agreed countries across the globe. A significant series of rounds of negotiations were held under the GATT by the nations concerned including the developed and the developing countries. The WTO is based in Geneva Switzerland. It is a global economic policy – making body; and the watchdog and enforcer of international trade agreement (Todaro & Smith, 2015). Yunus (2008) wrote that “global trade is like a hundred lane highway criss-crossing the world. If it is a free-for-all highway with no stop lights, speed limits, size restrictions, or even lane markers, its surface will be taken over by the giant trucks from the world most powerful economies. Appropriate policies and agreements are needed to forestall such potential problems”.

So in 1995, the World Trade Organization (WTO) as it is known was established with the chief aim of ensuring that trade flows easily and freely among trading partners of WTO. It was also to facilitate higher standard of living, greater employment opportunities and increased output of goods and services of member states, facilitate optimal utilization of world's resources for sustainable development, promote fair trade among participating nations by choosing the principle of fair trade practices and the promotion of an inclusive equitable trade pattern. The factor endowment theory of foreign trade under the factor price equalization of Samuelson (1948) which proposes that due to the fact that nations trade at an occurring international price ratio, that factor prices among trading partners will tend to equalize, lends credence to the above aims and objectives. It should be noted that the World Trade Organization (WTO) does not claim to be a "Free Market" organization. Although it is often explained as a "free trade" organization, but that is not completely true. The trading pattern sometimes allows taxes on imports and exports and in some other cases allows a few protections.

In order to discharge its mandate effectively, the WTO was structured to be a legal entity where all members are deemed to be equal. There is a kind of understanding among member countries such that every country has equal vote which counts. The agreements are binding on all and are administered by the WTO itself who also handles trade negotiation and settles her trade dispute through the prescribed mechanisms.

But the unfortunate thing however is the fact that in the face of all these laid down aims and objectives, principles and institutional framework, most member countries especially the developing countries still experience unequal treatment in trade (a situation where what is accruable to the developing nations and that which the advanced nations should do, are not enforceable; while that which the developing countries should do and what is accruable to the advanced nations are enforceable (Wade, 2003). Secondly, there is a seemingly veto power which the developed countries like the United States (US) and European Union (EU) members exercise over the developing nations on certain issues. This study therefore probes deep into the issue of fair trade practices among member states of the WTO and the challenges facing it. This is the main aim of this paper.

The paper is structured into six sections. Thus section two discusses the historical brief of the WTO alongside the review of related literature, section three examines the conceptual clarifications while section four examines the principles of WTO and the specific principles of fair trade. Section five discusses the institutional framework of WTO in ensuring fair trade practices while section six examines the challenges faced by the WTO and her members and finally the suggestions for improvement and conclusion.

### **The WTO: A Historical Brief**

The World Trade Organization is an offshoot of the General Agreement on Tariffs and Trade (GATT), established in 1947. GATT along with the World Bank and the IMF were products of the Bretton Woods Negotiations. A series of Rounds of trade talks known as GATT Rounds started after the Second World War. The purpose was to reduce tariffs to enable global trade flourish. The rationale for GATT was aimed at helping countries obtain most favoured nation-like status such that no single nation can have undue advantage to her trading relationship with the rest of the world. So, in 1995 world Trade Organization replaced GATT as the World's global trading body. The organization is made up of 164 member countries as at 2017 that deal with the rules of trade between nations.

The World Trade Organization can be seen as a product of globalization and has come to be recognized as one of the most vital organizations in today's unified world of ours (Todaro & Smith 2015). The goal of this organization is to assist in the movements of goods and services across national boundaries with less difficulties. Furthermore, it aims to foster economic and political peace and harmony among nations through its multilateral trading pattern based on consenting member states, which means that they operate on consensus. Kwa (2002) has described the WTO as centre for research and analysis on economic activities, especially trading pictures on specific topics round the globe are made public in magazines and newspapers.

As gathered from the Literature of the WTO, Dani (2001) strongly expressed his opinion that the agenda of trade openness is made by the advanced countries of the world. As a result a relatively proportionate gains of trade has gone to them, which has in some cases made the less advanced countries to be at loss.

According to World Bank (2002), the United States and Europe have gained enormously from these trade transactions than the Sub – Sahara Africa. The trade negotiations opened the markets of the Sub-Sahara Africans to the goods produced by the developed countries. While as it did not give room for the primary products of the less developed countries to enter the market of the developed or advanced countries. The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement was pushed forward by a few industries mainly pharmaceutical, software and Hollywood – who stand to gain a lot from the protections, whose interest the United States oversees”.

It is unbelievable that bonds agreed upon to suit the advanced countries enterprises, including the Motion Picture Association and the Wall Street/City of London are good for the world (Kwa, 2002).

Anthony, (2003) investigated the issue of regional integration (as of European Union) on international affairs and concluded that regions stand to gain when they integrate. This means that such integration makes regions to speak in one voice in such international organizations as WTO and others.

### **Conceptual Clarifications**

The analysis and clarifications of the under-mentioned concepts will help us assess the issue of fair trade practices the more.

- i. **Trade Related Aspects of Intellectual Property Rights (TRIPS):** The concept of TRIPS came up as a result of the discussions held at Uruguay over the period 1986-1994. One of the agreements reached was the protection of copyrights, trademarks, industrial designs, data secrets including patents on (narcotics, electronics, mechanical devices, etc). However, copyrights and patents were regarded as very vital. This agreement came into effect in 1994. Patent rights allow WTO members to bring into use the least standards for intellectual property protection. It also contains a dispute settlement and enforcement methods. The least standard restricts states' power to prevent patent to some kinds of goods; at least a period of twenty years for all license to make or use, as the states' power could impose. However, one of the economic handicaps of this concept is that it makes the consumers of patentable knowledge to pay higher prices. Unfortunately, the less developed nations are the consumers while the advanced nations are mainly the producers. The World Bank has estimated that the United States companies make additional net profit of \$19billion Dollars a year from royalties if the TRIPS agreement is fully followed. And that the US has ownership of a good percentage of patents in many

countries required to fasten firmly intellectual property protection, while as the same concept does not tighten US patent law (World Bank, 2000).

Politically, the 'rights' of the developing nations and the duties of the developed nations are not obeyed, while the developing nations duties and the developed nations 'rights' are obeyed or put into force (Wade, 2003).

ii. **Trade Related Investment Measure (TRIMS):**

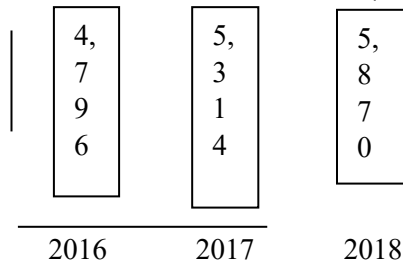
This agreement is another product of Uruguay Round. It covers a broader swath of the economic activities of developing countries. The central point of TRIMS is that it moves trade rules from principle of "avoid discrimination" between nations the "(Most Favored Nation" principle of the Old General Agreement on Tariff and Trade), to "avoid trade and investment distortions", (e.g. performance requirements on foreign firms). Under this concept, the performance requirements on local firms are banned. This included other areas like balancing of trade, export requirements and even requirement on public agencies to obtain products from domestic sources. Any nation that goes outside this law will be required to face the law and will eventually lose the case. The US and the European Union dominate in this area which eventually negates the principle of fair trade.

iii. **General Agreement on Trade and Services (GATS):**

This agreement extends WTO rules from trade in products to trade in services. This included everything from banking to education, rubbish collection, health delivery, water supply tourism and sanitation (Wade, 2003). GATS is an investment agreement and contains that a government must treat firms from all WTO members equally. It also requires "national treatment" such that all Foreign Service providers must be treated at least as well as domestic firms. This is one of the ways of ensuring fair and equitable trade. But GATS also contains that government can specify limitations on some of the commitments they make in a particular government laws or regulations from GATS (Wade, 2003). A further aspect of GATS is that it requires "market access" which prevents a government from putting a limit on the number of service suppliers or outlets as well as where they operate. These are done in the name of fairness. However, not much has been achieved in the aspects of promised benefits to the least developed countries. The United Nations Conference on Trade and Development (UNCTAD) concluded in its studies that "there is no empirical evidence to link any significant increase in FDI flows to developing countries with conclusion of GATS". (UNCTAD, 2000).

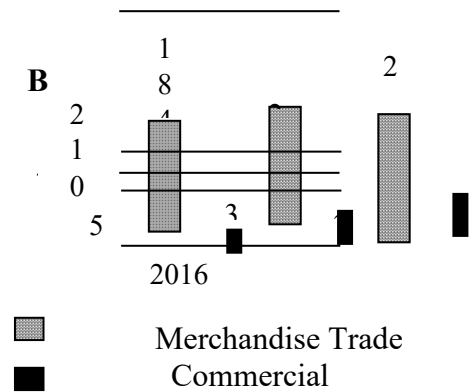
Data relating to Trade and Analysis

**A Merchandise Trade (European Union)**



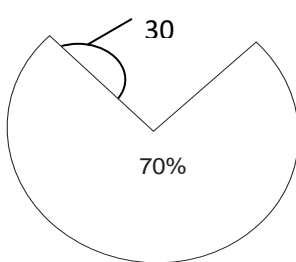
Services

**B**



Source: WTO Secretariat

**C Manufactured goods**



Source:

The above data shows the Trade in merchandise, commercial services and manufactured goods as it affects the developed and least developed countries.

The graph ‘A’, illustrates merchandise trade of the European Union. This accounts for about 30 percent of global trade in 2018 and having a value of US\$5870 billion.

Note, European Union member countries are among the developed countries who are members of the World Trade Organization (WTO). About two-thirds of merchandise trade was mostly driven by Europe and Asia in 2018. Merchandise trade is measured as the average of exports and imports.

The top ten exporters (namely; China, France, Germany, India, Ireland, the United States, the United Kingdom, Netherlands, Japan and Singapore) accounted for over 50 percent of global export in 2018. This represents commercial services exports. While the rest of the member countries accounts for less than 50 percent.

Graph ‘B’, illustrates merchandise trade of least developed countries (LDCs). This accounted for US\$231 billion in 2018. The LDCs commercial services exports had less value than that of the DCs.

From graph ‘C’ we discovered that trade in manufactured goods represents 70 percent of world merchandise exports. The manufactured goods are mainly exported by the developed

nations while the less developed nations (LDCs) exports mainly agricultural or primary products which have lesser trading value. The market of the United States and Europe are not opened to the primary products in which the less developed nations are favoured comparatively. This shows that there is no fair trade practices among the members of WTO.

#### 4. Principles of World Trade Organization (WTO)

There are known fundamental principles which are found in all the documents of agreement in the WTO. The multilateral trading pattern is guided by these principles. They include the following:

- a) **Trade without Discrimination:** This principle calls for treating everyone equally. In the WTO agreement, no country can discriminate against any other country within the trading partners. If one country grants a special favour to another, she must do the same to all other countries within the WTO. This principle is found in GATT and it is a first article. It governs trade in goods and it is also important in the GATS, (Article 2). Furthermore it is also important in the arrangement on the aspect of intellectual property rights known as (TRIPS), (Article 4). Still under these principles we have what is referred to as “National Treatment” in which case both imported good and the ones made at home should be seen as the same. This principle of “national treatment” is seen in all the three main documents of the organization. Firstly, it is seen in Article 3 of GATT, secondly, it is also seen in Article 17 of GATT and thirdly, in Article 3 of TRIPS. However, countries are also allowed to make their own free trade arrangements which will only apply to products bought and sold within the organization, thus, taxing goods from outside the organization.
- b. **Transparency:** This has to do with ensuring that countries make the rules of trade very understandable. According to WTO, this helps to ensure that the day – to – day running of the organization with its ‘dos’ and don’ts are made public including punishments legally meted out to defaulters.
- c. **Promoting Fair Competition:** This principle of free and fair trade makes WTO to be looked at as a “free trade” organization. Though it is not so, as it permits some degree of tax as a form of protection. Some of the rules as contained in the documents of “most favoured nation” and “national treatment” are to ensure that trade transactions are carried out equitably.
- d. **Promotion of Economic Reform and Development:** The WTOs system is aimed at carrying out some trade reforms that will bring about development. The system thus provides a kind of support in the area of reduction in prices or trade discount to the less developed countries.
- e. **Safety Values:** This provides for restriction of trade under certain circumstances as contained I the WTO agreement. This act is geared towards protecting the environment as well as public health, animal health and plant health.

These principles of WTO as outlined above aim at encouraging the involvement of emerging nations in multi-lateral trade system with its attendant benefits accruing to the developing and less developed countries through increased access to agricultural products.

This is in consonance with the Vent-for-Surplus Theory of Foreign Trade; which contends that globalization of international market for less developed countries via

foreign trade helps the countries to put to better use the formally underutilized factors of production (especially land and labour) to produce more for export.

### **Principles of Fair Trade**

WTO through the World Fair Trade Organization (WFTO) has provided the following principles of fair Trade.

- i. **Create Opportunities for Economically Disadvantaged Producers** – This Principle stipulates that the small marginalized, producers, should be supported whether as Sole Proprietor Business or Cooperatives.
- ii. **Payment For A Fair Price** – This is generally accepted to all the parties by means of dialogue which gives room for equity of returns to all producers.
- iii. **Transparency and Accountability** – This is very important in any organization. Communication must be accessible to all both vertically and horizontally. This is also applicable to management and commercial relations.
- iv. **Commitment to Non-Discrimination-** In accordance with the MFN and National Treatment principle, this specifies that there should be no differences either in race or sex and also in payments.
- v. **Good Working Condition-** There should be safe and healthy working condition for all. Others include capacity building, respect for the environment and promotion of fair trade.

### **Institutional Frame-Work**

The WTO has statutory institutions through which it strives to achieve its aims and objectives as contained in their lengthy and complex agreements. Among the goals/objectives are the facilitation of higher Standard of living, full employment of resources including human resources, non distortion of trade and removal of all forms of unfair trade practices. The main institutions through which the organization carries out its functions or duties include

- a. Ministerial Conference
- b. General Council and c. The Secretariat.

### **The Ministerial Conference**

This is the supreme governing body and is made up of Ministers of trade from all the member countries. Decisions taken by this body is binding on all members, and the body meets bi-annually. The chief executive of the WTO comes from this body through election. The Conference of Ministers supervises the activities of the General Council.

### **The General Council**

This council oversees the daily activities of the WTO and does the work of the Conference of Ministers when there is no sitting. It is constituted by representatives of member states and they also serve in other component areas as committee members. For instance, we have the dispute settlement panel that administers justice on trade, disputes between two or more countries.

Other committees include Budget, Balance of Payment Restrictions Committee, etc.

**The WTO Secretariat**

This body conducts the administration of the WTO. It has as its head, the Director General (DG) who is chosen by the Conference of Ministers for a fixed period of four years.

The seat of the Secretariat is in Geneva – Switzerland and it supplies specialized aids to other various councils and committees. It handles all correspondences of the organization and also assists legally in dispute settlement.

**Functions of World Trade Organization (WTO):**

Analysts have regarded these functions below as the most important of the WTO in maintaining fair trade practices:

- i. The WTO ensures that the facts agreed upon are followed to the last letter.
- ii. It gives room for talks and harmonization of differences.
- iii. It promotes new ideas on trade policies and guides against distortion of such policies through close watch of global economic policies.

**The other functions include:**

- iv. To put into effect the intended meaning of the guidelines controlling the settlement of disputes.
- v. To put into effect new ways of handling trade matters.
- vi. To enhance the effectiveness and general overview of the aims upon which the trade arrangements between countries were reached.
- vii. The WTO also provides opportunities for peace talks within the members of the organization on matters relating to the issues dealt with in the agreement.

**Challenges/Criticisms Faced by WTO and her Members**

In 1999 there was a protest with the inscription on the placard written at the doors of the Third Conference of the Ministerial Council which took place in Seattle, Washington. Such protests had earlier taken place in Spain, Switzerland, Canada and Italy.

These protests arose as a result of the establishment of a system of trading which involves many countries.

Those who hold different opinions concerning WTO policies see it as not being democratic saying that it lacks clear and understandable discussions upon which agreements are reached.

The WTO is faced with other competitors who have argued that the functions of WTO as it affects trade globally especially in the area of altering internal trade policies of other countries, has tempered with national sovereignty (Andrew 2002).

The WTO is also accused of allowing only the wealthy nations to manage the affairs of the organization for themselves; hence the problems of the developing nations are not taken care of.

According to Wade (2003), “developing countries as a group are faced with constraints in their national development strategies which emanates from reproduced regulations that are made by advanced countries and enforced by international organizations. And that these new controls are made to ensure that the developed countries have many options to go in and out of the markets without obstacles and introduce their technologies for their own benefits.



Furthermore, the organization does not give room for fair representation during settlements of trade misunderstandings. Though the disputes settlement procedure resembles that of a court or tribunal.

The WTO has the powers to force independent states to make changes in their rules and regulations which in their (WTO) opinion break the rule or agreement of free trade. This action mostly affects the developing nations. It should be noted that the tenets guiding the organization appears to be more difficult now for development plans to be in line with internal and the external integration.

In analyzing the impact of WTO on developing countries like Nigeria, some writers have argued that the full liberalization policy and full adoption of WTO treaty have made Nigeria's economy vulnerable to the pressures of foreign made goods which could otherwise be produced locally. The Nigerian economy is oil dependent and so the local market has consequently been flooded with foreign made goods and services from more efficiently developed economies. (Amadi & Olulu, 2017).

It should be noted that international trade transactions are based on the theory of comparative cost advantage to which this work makes reference. But the markets of the developed countries are not comparatively opened to the products of the developing countries which make trade relations to be unfair. So the issue of specializing in areas where countries have comparative cost advantage is negated at the expense of the developing countries.

Still on the challenges, Todaro and Smith (2015), observed that the WTO Director's own 2001 report after the "Doha Development Round, eight trade liberalization rounds, "Doha Development Round" whereby issues discussed were agreed upon, in Nov. 2001, that the less developed countries should be given more attentions developmentally, that there are still obstacles in trade especially on primary products and textiles. These goods affect the less developed nations mostly.

Finally, the challenge sometimes comes in the form of threats. Recently, President Trump of the United States had made a threat to pull out of the organization, thus referring to it as a "disaster". In a situation where the US decides to pull out the huge amount of dollars in global trade, there might be disruption of trade at the global level. This goes a long way to tell us that the United States (US) and the European Union (EU) are influential in decision making at the WTO. Many a times, the developing countries have little or nothing to do to counter the United States or European Union statements of intention to withhold favours on tax benefits or external aid, even food assistance should the poor countries challenge a United States or European Union Trade measures; these political tactics weakens the developing countries' faith in the efficacy of the legal system (Shaffer, 2005).

## **CONCLUSION**

This work tried to showcase how the WTO runs the affairs of global trade. The organization, as a constituted global trading body has laid down rules and regulations with which the system is being driven. Its multilateral trading system offers greater potential for mutual gains as it involves more participants. It is also observed that the WTO offers equal opportunities to all its members, whereby the poor nations are given equal opportunities to air out their views either through the ballot papers in order to maintain fair trade practices.

Though noticeable improvements have been recorded through the World Trade Organization and its bilateral offers, it is still observed that there is protection of special interests and this has not augured well for growth of the less developed countries (LDCs).

This has tended to make the technologically advanced producers and exporters richer than the developing countries who remain more of importers and consumers.

However, more talks over the plans to improve the WTO through necessary changes for the good of developing nations is still in progress. What is left is for developing countries to make attempt to attain self-sufficiency through internal integration in order to gain mutual respect from their international counterparts. Following this a near equal relationship in trade can be achieved as they observe the rules (principles) of fair trade.

### **Suggestions / Recommendations**

In the light of this work and based on the analysis, we hereby make the following suggestions or recommendations.

- i. The WTO should put in more effort in assisting the less developed countries to realize the promised benefits which can increase investments from outside the LDCs for higher economic growth and development.
- ii. The WTO should ensure that the developing countries' privileges and the developed countries' duties are enforceable in order to achieve fairness in trade relations.
- iii. The dominance of manufactured goods over primary / agricultural products should be harmonized for fairness in trade to be achieved.
- iv. Developing countries are advised to form strong regional integrations like the European Union. This will help them to strengthen their bargaining power in trade and as well speak with one voice during deliberations. Thus, they can push for the kind of changes they want.
- v. The legal system of the WTO should make it possible for the developing countries to have access to present their cases in the court and defend them during dispute settlements. Developing countries do not have resources to hire the most effective (and expensive) lawyers while the developed countries with their resources hire these lawyers who influence justice with their wealth of experience to their own advantage.
- vi. The developed countries should not be allowed to operate protectionist or trade restrictive measures while developing countries are asked to follow the path of liberalization.

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