

Global Fairness Unveiled: Navigating Justice in The World Trading System

Asmita Tiwari*

Abstract

According to the website of World Trade Organization (WTO), there are total 164 members, out of which two third are developing countries (includes, both developed and developing countries) and 35 are Under Developed Countries. WTO is now targeting to integrate 8 Least Developed Countries to its trading system. This shows that, participants under 'Uniform and Liberalized trade Policy of WTO' are divergent in many aspects; basically, the capability. Accordingly, the benefit shared by developed countries from the bilateral and multilateral treaty arrangements under WTO, is comparably vast and more efficacious for them than that shared by the Least Developed Countries and Developing Countries. This paper has attempted to analyse the fairness doctrine associated within various aspects of trading practice of WTO. This paper is expected to be significant to understand the importance of justice in world trading. To analyse this, firstly, the implication of doctrine of Fairness as advocated by John Rawls and Amartya Sen have been argued in relation to the world Trade. In this regard, it has analysed whether this fairness advocated by them in domestic institutional order is possible to be invoked at international institutional order. If yes, how they can be integrated in global trading practice. Here, analogy of fairness is made with reference to 'Difference Principle' of John Rawls and 'Capabilities Approach' of Amartya Sen. Similarly, this paper has attempted to analyse the implication of fairness in pertaining to the major issues of WTO like: Protectionist measures, bargaining power, National Treatment Principle and dispute settlement. Lastly, it has aimed to find out whether, there is special treatment under the Trading policy, meant for developing and least developing economies considering their capability and available resources. To sum up, it is expected to unveil the prospect of justice implication in WTO Trading.

Keywords: Fairness, WTO Trading, Developed economy, Under Developed Economy, Difference Principles, Capability Approach, Special Treatment

I. Introduction

The rationale and moral ground behind trade liberalization i.e., free trade, was utilitarian.¹ This means, irrespective of differences of the nation states in terms of their human and natural

* Asmita Tiwari is an Advocate, Nepal Bar Council. She is pursuing LL.M. from Gujarat National Law University, India. The author can be contacted at email2atiwari@gmail.com.

¹ John Toye, *Order and Justice in the International Trade system*, Oxford University Press, 2009, p.105.

resources, the trade without any constraints would generate the maximum welfare in all trading countries.² On the background of liberalized policy in globalizing world, the roles of international organization in global justice becomes significantly important. With globalization, the views on cosmopolitanism are getting stronger. To a certain extent, the goals of international organizations like: the World Trade Organization (WTO) align to the goals of Cosmopolitanism. Issue of global justice becomes more stringent in the context of global governance compared to the governance of justice in national institutional order.

The WTO as an important institutional order in the globalizing economy, is posed with so many challenges. WTO being a prominent international trade governing organization, has member states of divergent backgrounds with different economic interests. However, it has equal responsibility towards every state to institute justice in every function that are administered under its bilateral and multilateral agreement. The WTO, the only legally binding system of global governance, was created in 1994 as a potent new organization for international trade. In regard to the situation, economic data, including data from the World Bank and other proponents of this model of WTO, however demonstrates that, countries that have adhered to the rules the most strictly have seen their per capita income growth dramatically slow down, whereas countries that have continued to break the rules have seen the highest rates of poverty reduction. Though equality is in the root of WTO functioning, the questions over the fairness from the ground of equity is equally pertinent.

The national treatment principle and most favoured nation principles are mostly in debate. Similarly, the justice, especially procedural justice, is another question in dispute settlement under WTO. Moreover, the protectionist measures i.e. anti-dumping duties, concessions, subsidies available to developed countries are contested from the perspective of justice and critics are of the opinion that they should not be availed to developed states. Hence, this paper is concerned to analyse the concept of justice by connecting them to major issues debatable under WTO namely: National Treatment Principle, Protectionist Measures, Dispute Settlement and special and differentiated treatment that WTO has introduced. To draw the conclusions, an assumption is drawn whether the term justice that Rawls introduced in the context of domestic institutional order, be used to analyse justice in a global context. To sum up, the chances of implication of justice in debated issues of World trading have been studied through this research project and conclusions have been drawn accordingly.

II. World Trade Organization and Multilateral Rules

The world today we live is a form of “global economic association”.³ The fluctuation in one economic market of a country has now effect upon the market of the next country. Trade relations among the vast majority of nations are currently regulated by multilateral rules. In this era of Globalization, the treaties and agreements of the World Trade Organization (WTO) have governed world trade globally. The WTO powerfully shape economic prospects of Countries.⁴ Today, WTO is one of the prominent examples of global institutional order formed with the motive of world trade liberalization. The objective of WTO agreements and principles is to

² Ibid.

³ Darrel Mollendor, ‘The World Trade Organization and Egalitarian Justice’, *Meta philosophy*, vol. 36:2, 2005.

⁴ Ibid.

create a level playing field which means establishing an equitable and fair environment for all member nations, irrespective of their scale or economic status.

The World Trade Organization (WTO) is tasked with overseeing multilateral trade agreements, notably the GATT 1994. This encompasses the revised GATT 1947, the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Intellectual Property Rights (TRIPS).⁵

WTO as the umbrella organization for trade of all kinds of countries works under following principles:

- Trade without discrimination which includes, Most favoured nation Treatment and national treatment;
- Freer trade gradually through negotiations;
- Predictability through binding and transparency;
- Promoting fair competition;
- Encouraging development and economic reform.⁶

These all principles are integrated to regulate current world trade. The main aim of integrating these principles in trading system is developing a uniform system of liberalized trade. Grounded in neo-classical economic theory, the concept of liberalized trade is fundamentally cantered on the idea that global competition serves as a stimulus for efficient production.

Marx advocated for free trade, partially citing the efficiency gains of capitalism achieved through the continual revolutionizing of the means of production. These gains formed the foundation of his vision for socialism.⁷

Trade liberalization is sometimes perceived with great scepticism, not only within countries traditionally refractory to liberalism, but also within countries commonly pictured as its initiators and chief beneficiaries.⁸ A trade liberalization strategy that causes poor producers unjustified harm is unacceptable from an egalitarian standpoint.⁹ One of the examples to counter this would be to advance agricultural trade liberalization, the WTO must establish mechanisms for providing income support to displaced farmers. This necessitates the development of taxation and transfer institutions.¹⁰

III. Impact of WTO

The impact of Global institutional order impacts the lives of individuals in two ways i.e. directly

⁵ Ibid.

⁶ 'Principles of the Trading system', *World Trade Organization*, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm, accessed on 24 September 2023.

⁷ Ibid.

⁸ Sylvie Loriaux, 'Fairness in Trade and Protectionist Policies: some Reflections', *Archives for Philosophy of Law and Social Philosophy*, 2018.

⁹ Mollendor (n 3).

¹⁰ Ibid.

and indirectly. Directly with its rules and indirectly as it co shapes national institutional order where individuals live.¹¹ Accordingly, such influenced and co-shaped laws and policies of states affect the distribution of economic benefits and burdens in their societies consequently, affecting justice.

Critics have mentioned about the background of states that joined WTO stating, “It would be quite unacceptable to learn that being a member of the WTO was somehow so essential than declining as this would leave a state in a severely bad situation. So not being a member of WTO would be like leaving a single job offer that is available, as an unpleasant alternative.”¹²

The practical application of independent countries joining WTO initially was their own welfare maximization, benefit from their participation rather than to maximize global welfare.¹³ The divergent background of countries at that initial stage shows inequity reflected in the organization structure. Thus, this shows that WTO has subjects of divergent background as its members who share different economic and political status from its inception of different rounds of negotiations.

The impact of the WTO in the global context is undeniably huge. In this era of globalization and economic liberalization, the entire trading system of the vast majority of the world is based upon the principles of WTO and the agreements administered thereunder.

IV. Fairness at global level from philosophical perspective

To argue from the perspective of Rawls and Amartya Sen’s theories of Justice, a question that, ‘Whether their theory of Justice can be applied at global Level’ is pertinent. However, some arguments on John Rawls’s principles state that, originally formulated for matters of domestic justice—specifically, the “*Fair Equality of Opportunity Principle and the Difference Principle*”—ought to be extended to a global context.¹⁴

Borrowing directly from domestic political theory might be the simplest way to use its materials to create an international theory of justice.¹⁵ This is called the exporting strategy. The egalitarian principles advocated by our chosen domestic theory of justice should be seamlessly extended to all international contexts where political concerns about equality arise.¹⁶ Specifically, Rawls argues that as long as there exist institutions allowing citizens to live decent lives universally, any lingering global inequality is not a source of moral concern.¹⁷ The globally privileged have the capacity to leverage their superior position to shape the rules governing international institutions, such as trade practices. This influence can potentially open doors for additional advantages, posing

¹¹ Ibid.

¹² Darrel Mollendorf, ‘Cosmopolitan Justice Reconsidered’, *Theoria: A Journal of Social and Political Theory*, 2002, p.104.

¹³ Andrew G. Brown & Robert M. Stern, ‘Fairness in the WTO Trading System’, *University of Michigan: Research Seminar in International Economics*, 2010.

¹⁴ Brock, Gillian & Hassoun, ‘Global Justice’ *The Stanford Encyclopaedia of Philosophy*, 2023, available at <https://plato.stanford.edu/archives/fall2023/entries/justice-global>, accessed on 23 September 2023.

¹⁵ Adam S. Chilton & Ryan W. Davis, ‘Equality, Procedural Justice, and the World Trade Organization,’ *Intercult Human Rights Law Review*, 2012, vol. 7, p. 277.

¹⁶ Ibid.

¹⁷ Hassoun (n 14).

a threat to the well-being of individuals in distant lands and their ability to lead decent lives¹⁸ Advocates of Rawls' the Difference Principle are best understood as advocating for changes to our fundamental institutional structures that would enhance the lifetime prospects of those in society who are least advantaged.¹⁹ Similarly, Sen argues that if we are to value equality of condition, we should value equality of real freedom. To a high extent, basic functional capacity is to be valued more specifically.²⁰

Libertarian critics of egalitarianism contend that institutional frameworks, designed to enhance the prospects of the most individuals, often exploit persons advantaged as mere source to benefit the disadvantaged, such as improving the prospects of the underprivileged.²¹

V. Significance of Fairness in Trading

The utilitarian perspective on fairness asserts that as long as no country experiences a net loss, there are no logical reasons to oppose measures aimed at trade liberalization that contribute to the overall well-being of the global economy.²² The Significance of fairness in trading is huge. Fairness as substantive justice and procedural justice being the basis of respectful and non-discriminatory treatment, its prevalence in trading helps attain an egalitarian international community. Given the distinction between broad bases of justice: results or outcomes are given priority in substantive theories, and a good procedure is one that keeps track of these results. According to procedural theories, good outcomes are those that come about as a result of a justified procedure that results in the equitable distribution of resources, economic benefits or opportunities among cooperating states.

Given the focus of procedural justice, wealthy states benefit from a number of institutional advantages which are available from international institutions under its formal or informal procedures. These benefits later let the subjects benefitted to perform comparatively better or secure a more share of the collective advantages of cooperation. Hence, the procedural equality approach suggests reforming the institutions to stop outcomes from being influenced by differences in wealth or power.

Liberalized trade without barrier of any kind produces efficiency. But this efficiency does not account for liberalized or free trade on egalitarian grounds. Accordingly, free trade induced -market distribution alone cannot realize the aim of egalitarian justice.²³ Thus, market liberalization alone in this respect is not sufficient to realize egalitarian goals. Consequently, market inequality is created, through which other social problems are created as argued by egalitarians. This kind of market inequalities that can result due to different economic backgrounds and capabilities of states can be remedied by institutions, one of which can be the World Trade Organisation.

¹⁸ Ibid.

¹⁹ Lamont, Julian and Christi Favor, 'Distributive Justice', *The Stanford Encyclopaedia of Philosophy*, 2017, available at <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>, accessed on 23 September 2023.

²⁰ Richard Arneson, 'Egalitarianism', *The Stanford Encyclopaedia of Philosophy*, 2013, available at <https://plato.stanford.edu/archives/fall2023/entries/justice-global/>, accessed on 23 September 2023.

²¹ Mollendor (n 3).

²² Stern (n 13).

²³ Ibid.

VI. Fairness in WTO Trading

But before arguing over these aspects, a question that is pertinent is whether the trading practices under WTO are fair?

As it has been mentioned earlier, the applicability of principles is based on the doctrine of non-discrimination. Along with these principles of reciprocity binds the member countries within their reciprocal duties and obligations towards each other under the multi or bi-lateral agreements. Moreover, the WTO being formed through a series of rounds of negotiations and consensus based international trading organization, is perceived to be working for the welfare of everyone round the globe. However, the proceedings under the administration, socio economic background of member states, the impact of strong economies towards the rules and agreements manifested through the bargaining power posits some reasons to think that trading under WTO is not independent from the vices of influences of different kinds.

Whenever this question is raised, this kind of dilemma is defended based on liberalization and rules-based multilateral framework grounds. Another defending answer is, promoting the interests of less developed nations.²⁴ WTO clarifies the criticisms of unfair trading systems to be part of misinformation about WTO. Similarly, applicability of rules equally to everybody is another argument as complementary defence against the fairness questions. However, they are not backed by socio economic measures of tackling the problems, which the developing countries face to come to the level playing field.

Where there are calls for freer and fairer trade, the various measures adopted by WTO becomes debatable. Critics of globalization frequently highlight the inherent inequities within the current global system, particularly in the realm of world trade. Specifically, the World Trade Organization ("WTO"), emblematic of trade liberalization, has frequently been labelled as an exclusive association for the affluent.²⁵ One of the prominent examples manifested through free trade is growing establishment of Multi-National Companies whose primary objective of establishment in poorer economy being, taking benefit of cheap raw materials including their cheap labour force and large market and transferring their advanced technologies, creating job and help them harness their natural resources to increase their profit margin.²⁶ In general, the motivation is not producing long term benefit for the general people of the host countries.²⁷

Similarly, though the concept of equality of opportunity in the context of free trading is basic, as agreed by John Rawls too, however it cannot result in justice with the time being when the individual capabilities to use the opportunity becomes different due to varying causes as stated by Amartya Sen. As an argument upon this trade liberalization, Friedrich List stated that "the case for free trade had to be modified if some nations were still developing" meaning that differentiated status of the countries had to be taken seriously given that prosperity of a country entails ability to support invention, the arts and the sciences but not the material possession.²⁸ So based on the above arguments, it can be stated that equality alone does not account for

²⁴ Mollendor (n 3).

²⁵ Nam-Ake Lekfuangfu, 'Rethinking the WTO Anti-Dumping Agreement from a Fairness Perspective', *Cambridge Student Law Review*, 2009, vol. 4, p. 300.

²⁶ Shrinivas Tripathi, 'Trade territory and Technology: Economic Crisis in Global Economy', *New Century Publication*, 2012, p.70.

²⁷ Ibid.

²⁸ Toye (n 1), p.107.

justice. Also debates on fairness in trading under WTO exist. This can be inferred to generate an assumption that the trading is not necessarily fair.

VII. Some Aspects of WTO requiring fairness principles

As there are 2 broad classes of justice i.e., substantive and procedural,²⁹ The principles of WTO are based on substantive equality principles rather than procedural equality as it has been critiqued. Fairness principles like non-discrimination and national treatment have influenced these interactions and are ingrained in the WTO trading system.

Friedrich List argues, without protection for the economies that are less developed, free trade serves the purposes of developed economies at best.³⁰ Similarly, Justice as fairness in WTO can be discussed under three major headings i.e.: Democracy, Legitimacy and Accountability. The determinative aspects of Justice under those headings are: i) Rule making and applying pursuant to participants perspectives through the right and satisfactory process i.e. legitimacy and ii) the satisfaction of the participants upon the degree of just distribution of costs and benefits among them are met or not as per the duly made rules and their expectation (substantive aspect of fairness i.e., equity). Within the context of international trade, reciprocity is also considered to be one of the fundamental elements of fairness.³¹ Most importantly, differentiated status of the countries has to be taken seriously in trading, given that prosperity of a country entails ability to support invention, the arts and the sciences but not the material possession.³² Accordingly, some components and aspects of WTO have been discussed from the perspective of justice.

A. National Treatment Principle

World trading practice under WTO is influenced by this principle substantially. The conformity to national treatment rule is required to be abided by the member states, which stipulates that, after the goods are imported, those foreign goods should not be treated less favourably³³ to protect domestic production³⁴ by exposing them to various forms of taxes different from those applied to domestic goods.³⁵ National treatment is currently closely associated with the negotiation of border barrier reductions. This principle is an integral part of non-discrimination which applies to all countries equally i.e.: without discrimination. The supervision of national practices that may be deemed partial i.e., discriminatory, has increased in recent decades as border constraints have decreased and more focus has been placed on the role that domestic regulations play in restricting trade. In fact, since the WTO Dispute Settlement Body's founding in 1995, a sizable number of complaints have focused on the issue of national treatment.³⁶ The national treatment

²⁹ Chilton (n 15) p. 277.

³⁰ Toye (n 1), p. 107.

³¹ Nam-Ake Lekfuangfu, 'Rethinking the WTO Anti-Dumping Agreement from a Fairness Perspective', *Cambridge Student Law Review*, 2009, volume 4, p. 300.

³² Toye (n 1), p. 107.

³³ *General Agreement on Tariff and Trade*, 1947, art III (4).

³⁴ *GATT*, art. III (1).

³⁵ *GATT*, art. III (2).

³⁶ Stern (n 13).

principle of Trade Related Intellectual Property Goods (TRIPS) under WTO is contested. This principle is applicable to developing, least developed and under-developed countries equally, thus being contestable from the perspective of fairness.

B. Argument in WTO Protectionist Measure

One way to understand how the rules of the global institutional order may affect people more directly is to look at the current WTO Treaty system, which allows the wealthy countries to protect their markets against cheap imports (agricultural products, textiles, steel, and much more) through quotas, tariffs, anti-dumping duties, export credits, and subsidies to domestic producers.³⁷

Protectionist measures employed by wealthier nations have faced criticism for exacerbating poverty in developing countries. This is particularly evident when affluent economies are granted the ability to shield their markets through mechanisms such as quotas, tariffs, anti-dumping duties, and subsidies for domestic producers, hindering the entry of inexpensive imports of agricultural products and textiles.³⁸

Where the trading system is based on categorisation of poor producer country and rich producer country backed by subsidies, developing countries which are rich producers but less efficient are supposed to undersell their products to poor country producers which are more efficient. So, in both ways, the trade policy under WTO is not beneficial for developing countries. Anti-dumping practices when used excessively can also be cause of equitable unfairness.

Governments of developed nations would not have grounds to justify maintaining or implementing specific protectionist barriers to trade.³⁹ To oversee international trade and mitigate excessive protectionism, the World Trade Organization (WTO) establishes a range of rules and regulations. However, developed nations maintain specific options within the WTO framework, including subsidies, tariffs, quotas, and anti-dumping measures.

Despite the persistent divergences, thinkers of global justice tend to accept that fairness in international trade calls for the removal of protectionist constraints, especially on the part of developed countries.⁴⁰ Although countries may enact protectionist measures, it is crucial for them to stay within the WTO's guidelines in order to avoid legal issues and preserve a stable international trading environment. Non-compliance can result in trade disputes and have an effect on international diplomatic and economic relations. However, the World Trade Organization supervises and regulates global trade, functioning to maintain a balance between promoting fair and free trade and giving nations some latitude to address domestic economic issues.

C. Bargaining power

The ability of nations to shape and influence trade agreements and policies is especially important in the context of international trade and organizations like the World Trade Organization (WTO)

³⁷ Ibid.

³⁸ Ibid.

³⁹ Sylvie Loriaux, 'Fairness in Trade and Protectionist Policies: some Reflections', *Archives for Philosophy of Law and Social Philosophy*, 2018, p. 104.

⁴⁰ Ibid.

can be understood as bargaining power. It is influenced by various factors like: economic status, volume of trade, alliance or blocs if any, trade diversification, advancement in technologies, political power, policy influence and diplomacy and soon. The status of developing and underdeveloped countries is relatively lower in these aspects of WTO where they might be represented less in policy aspects. The WTO agreements and policies are the results of numerous rounds of negotiations among nations, each of which had a different set of interests and bargaining power. Although they have not always been dominant, fairness considerations have never been completely absent from these negotiations because the system is based on voluntary cooperation.

D. Dispute settlement body

Impartiality in the dispute settlement process accounts for an important part of procedural justice. As long as the settlement process is without prejudice and fair (due process of law), fairness issue is not a matter. However, the most heard complaint in this aspect of WTO is: It requires expertise which are both legally specialized and expert in terms of information to present and argue a case. This requirement has placed many smaller countries and those which are less affluent at a considerable disadvantage.⁴¹ The challenge becomes more when they have many other competing claims with limited resources and they are not able to even represent themselves in dispute settlement process where they are the concerned party. It has also been argued that smaller countries are at no advantage in disputed issues with larger countries due to their lack of bargaining power. Other issue disregarding fairness in dispute settlement is seen when, there is no compensation provision on part of loser after settlement of dispute, whose impact is huge upon poor states after fighting over the case for two years.⁴²

The Dispute Settlement Body's ability to enforce its decisions is minimal. If a country that is small, is given permission to increase its import taxes against a country which is large because it disobeys a ruling, the action will have a much smaller impact than if the positions were reversed.⁴³ Advises on efforts to be made to expand the capacity of advisory centres along with establishing further centres to grant legal consultations to aid less affluent and poor states to defend their rights⁴⁴, include payment of damages under the remedies available under WTO dispute resolution system,⁴⁵ making countermeasures tradable⁴⁶ when rights have been violated in course of actions under agreements.

E. Specialised and Differentiated Treatment

Since the initiation of the Doha Round in 2001, numerous members of the World Trade Organization (WTO), along with commentators and non-governmental organizations (NGOs), have advocated for an increased focus on Special and Differential Treatment (SDT) tailored for developing nations within the WTO. This proposal aims to enhance developmental support

⁴¹ Stern (n 13).

⁴² Toye (n 1), p. 107.

⁴³ Ibid.

⁴⁴ Chilton (n 15) p. 277.

⁴⁵ Ibid.

⁴⁶ Ibid.

and rectify imbalances in the global trade landscape.⁴⁷ Member governments agreed in the Doha Declaration, that all “special and differential treatment” provisions are necessary to the WTO agreements and that these provisions should be viewed repeatedly in order to build and improve their functionality. These measures are commonly known as 'special and differential treatment (S&D) provisions. The justification for this provision was rooted in the recognition that "treating unequal economies equally perpetuates economic inequality. These treatments are made to integrate the Least Developed countries in multi-lateral trading system too."⁴⁸

This principle of equity fairness was developed by GATT to make sure that the least developed economies are provided notably preferential market access as a special preference, such that they can compete and gain benefits from market like other countries. However, this kind of preferential treatment being procedural in nature is far from the real impact.

Accordingly, the developing countries are granted special rights under the special clauses of the agreements and which allow the developed nations to treat the developing nations more kindly than other members of WTO.⁴⁹ For instance, longer timelines for agreements and commitments implementation, along with these measures to improve trading opportunities for developing nations, initiatives aimed at expanding trading opportunities, requirements for all WTO members to protect the trade interests of developing countries, assistance in enhancing the capacity of developing nations to engage in WTO activities, manage disputes, and implement technical standards and so on. Similarly, for least developed countries, some of the provisions thereunder are, improving opportunities of market access and providing leniency in implementing the rules of WTO.⁵⁰ Some of the scholars argue that specialized and differential treatment are important but they need to be operationalized.⁵¹

VIII. Analysis and Conclusion

Specifically, numerous developing nations encounter challenges in the implementation of WTO agreements, navigating the adjustment costs associated with trade liberalization, and actively participating in international trade to fully harness the advantages of WTO membership.⁵² From the perspective of fairness, the SDG treatment is necessary however, more challenging to give it an effect in current scenario of globalization induced convoluted trading practices. While maintaining this argument, the undeniably huge impact of the WTO cannot be disregarded. In fact, its impact upon the individual in direct as well as indirect forms posits the requirement that, this institutional order to be guided by the principle of fairness. Fairness as justice and vice versa is an inherent requirement that every legal system has ingrained into their system. Thus, it

⁴⁷ Andrew D. Mitchell and Tania Voon 'Operationalizing Special and Differential Treatment in the World Trade Organization: Game Over?', *Global Governance*, 2009, vol.3, p. 15.

⁴⁸ Boosting trade opportunities for least-developed countries: Progress over the past ten years and current priorities, *World Trade Organization*, available at https://www.wto.org/english/res_e/publications_e/boottradeopp22_e.htm, accessed on 30 September 2023.

⁴⁹ Nam-Ake Lekfuangfu, 'Rethinking the WTO Anti-Dumping Agreement from a Fairness Perspective', *Cambridge Student Law Review*, 2009, volume 4, p. 300.

⁵⁰ Boosting trade opportunities for least-developed countries: Progress over the past ten years and current priorities, *World Trade Organization*, available at https://www.wto.org/english/res_e/publications_e/boottradeopp22_e.htm, accessed on 30 September 2023.

⁵¹ Andrew D. Mitchell and Tania Voon 'Operationalizing Special and Differential Treatment in the World Trade Organization: Game Over?', *Global Governance*, 2009, vol.3, p. 15.

⁵² *Ibid.*

is a mandatory requirement for WTO like global institutional order which currently counts as a form of cosmopolitanism⁵³ to be bound by virtue of Justice. Especially when it governs trade among various countries of divergent background, the norms of equity and equality must be duly adhered; where the peculiarities of all states are respected and their economic needs are addressed through appropriate rules.

The philosopher John Rawls through his theories on justice have stated that equality is a basic requirement to justice. Karl Marx also endorsed free trade, recognizing the gains of efficiency of capitalism through the continuous transforming the methods of production. He considered these gains as the foundational elements of socialism. Drawing these propositions, it can be said that trade liberalization under WTO is a required ingredient to global welfare. The question is only whether the agreements and administrations under it are capable of meeting the satisfaction of individual countries with which motivation they have joined.

The various issues concerning WTO like bargaining power, level playing field, national treatment rule, protection measures, dispute settlement, special and differentiated treatment cannot be autonomously looked at, disregarding the concept of justice. Where the main aim is to provide a level playing field. WTO is required to work upon making the countries of all kinds capable of standing on their own, to integrate to the rules of the system voluntarily accompanied by their active and equal representation. This seeks for the active role of WTO as it has now been availed through the special and differential treatment approach. The protectionist measure adopted by the developed country should instead grant benefits to the least advantaged countries instead of aggravating their situation to the dire of poverty. The access to justice in dispute settlement procedure is to be made affordable for the poorer countries.

The WTO's requirement for fairness suggests that the organization's institutional structure be changed rather than just emphasizing non-discrimination principles in order to benefit the least advantaged communities. One of these strategies could be the special, differentiating treatment that is currently being used.

Competition is fair and democratic when parties of equal capability take part to compete in a healthy manner, where transformation is positive. There is development of ideas and technologies accompanied by free share of the information. But, when the poorer countries which have less resources or are less efficient to compete with others by being of equal capabilities, the dominance suppresses the spirit of growth and such poorer countries are further push to poverty leading to impoverishment. This in no way can be the idea of global justice. For there to be equal opportunity for influence on the democratic political process, all members of society must have the same desire to influence politics and the same capacity for organizing and persuasion.

Thus, through capability enhancement approach and ensuring procedural justice, the motivation of global justice can be achievement. A trade liberalization policy that adversely affects impoverished producers without providing compensation is objectionable from an egalitarian perspective.⁵⁴ Similarly, a trade regime that permits developed countries to safeguard their agriculture at the expense of agriculture from developing nations is objectionable from an egalitarian standpoint.⁵⁵ It should ensure the growth of every human beings regardless of any background then only the idea of cosmopolitanism through WTO can be effective.

⁵³ Chilton (n 15) p. 277.

⁵⁴ Mollendor (n 3).

⁵⁵ Ibid.