

The Importance of Developing Countries Joining GATT 94 / WTO

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ABSTRACT

The establishment of the World Trade Organization (WTO) framework signifies a pivotal milestone in aligning member countries' trading regulations with the WTO's provisions. Developing countries' participation in the WTO fosters equitable competition and contributes to global development. WTO agreements offer flexibility for developing nations to adhere to WTO regulations, providing specialized assistance to the least developed countries (LDCs) and trade concessions in line with GATT regulations. Moreover, the WTO ensures predictability in the business environment, encouraging investment, job creation, and fair competition. Its multilateral trading system fosters peace by facilitating constructive conflict resolution between nations, regulating trade through appropriate mechanisms, and reducing tariffs and non-tariff barriers to enhance affordability.

Keywords: International trade, Developing Countries, GATT, WTO.

ABSTRAK

Pembentukan kerangka World Trade Organization (WTO) menandai tonggak penting dalam penyelarasan regulasi perdagangan negara-negara anggota dengan ketentuan-ketentuan WTO. Partisipasi negara-negara berkembang dalam WTO mendorong persaingan yang adil dan berkontribusi pada pembangunan global. Perjanjian-perjanjian WTO menawarkan fleksibilitas bagi negara-negara berkembang untuk mematuhi regulasi WTO, memberikan bantuan khusus kepada negara-negara paling miskin (LDCs), dan konsesi perdagangan sesuai dengan regulasi GATT. Selain itu, WTO memastikan prediktabilitas dalam lingkungan bisnis, mendorong investasi, penciptaan lapangan kerja, dan persaingan yang sehat. Sistem perdagangan multilateralnya mendorong perdamaian dengan memfasilitasi penyelesaian konflik yang konstruktif antar negara, mengatur perdagangan melalui mekanisme yang sesuai, dan mengurangi tarif serta hambatan non-tarif untuk meningkatkan keterjangkauan.

Kata kunci: Perdagangan internasional, negara berkembang, GATT, WTO.

Article History

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1. Introduction

Trade policy is an integral part of national development, which considers phenomena and developments in other countries that affect the national economy. Current developments have created a diverse and competitive national economy. The national economy has been able to produce increasingly diverse products in both quantity and quality. The primary interest of the national economy is the availability of a broad, free, and open market that follows the increasing global economic developments, as well as the system of international trade management and government policies that create a healthy climate (Gerald, et.al, 2018).

International trade is a crucial factor for every country. Nations or other legal entities engaged in trade have various motives for engaging in international transactions. The international trade conducted by influential countries significantly impacts the size and

prosperity of nations worldwide, as exemplified by China's past glory, which is inseparable from its renowned trade policy known as the Silk Road or the Silk Route (Apritha & Adhitya, 2020).

International trade is characterized by commercial relations conducted across national borders by business entities following a specific and particular system. In international trade, the existence of a system serves as a pattern that shapes and directs trading activities towards desired objectives. International trade plays a significant role in the economic growth of a country. Moreover, trade can act as an engine for growth. If international trade activities involve exports and imports, then one or both of these components can serve as a driving force for growth. Furthermore, international trade provides better opportunities for a society compared to an economy that relies solely on its own strength (Yustiawan, 2011).

International trade transactions are a crucial factor and represent a fundamental freedom. Therefore, orderly and fair trade relations between countries are necessary. Justice embodies universal moral values that are the basic rights and needs of humanity worldwide. The moral value of justice becomes the aspiration of every nation, representing the interests of various groups. In this regard, justice becomes the consensus among various elements of society desiring a fair and prosperous statehood. Similarly, in the system of international trade law, which is one of the social systems, to achieve order and justice in the field of international trade, rules are needed that can safeguard and uphold the rights and obligations of international trade actors. The international legal framework governing trade relations between countries is contained in the GATT (Geraldi, et.all, 2018).

The formation of GATT after World War II was an effort to provide a rule of the road for international trade relations that had been disrupted by tariff wars and trade conflicts in the pre-war era. The system that emerged was initially considered an interim system, capable of evolving pragmatically into something complex and expanded, both in terms of substantive scope and institutional arrangements. After the Uruguay Round negotiations (1986-1994) concluded, GATT member states agreed to establish a new institution called the World Trade Organization (WTO) as the successor to GATT (La Djanudin, 2013).

2. Method

This research is a normative study, characterized by descriptive analysis. The research approach utilized legislative and conceptual approaches. Secondary data, including primary, secondary, and tertiary legal materials, were employed, gathered through a literature review using document study techniques. After data collection, qualitative analysis was conducted.

3. Result & Discussion

The first internationally recognized international trade agreement was the General Agreement on Tariffs and Trade (GATT) in 1948. Initially, GATT aimed to establish the International Trade Organization (ITO), a specialized UN agency. The Bretton Woods Conference, or the United Nations Monetary and Financial Conference, held in July 1944 in Bretton Woods, New Hampshire, United States, was attended by representatives from forty-

four countries to formulate the financial arrangements necessary for rebuilding the world economy and enhancing international trade post-World War II. It highlighted three main pillars supporting global economic growth: a unified global monetary system to ensure monetary stability and exchange rates by providing short-term financial assistance to countries facing balance of payments difficulties, realized through the establishment of the International Monetary Fund (IMF). Additionally, it aimed to provide long-term funding for countries requiring foreign assistance for their economic development needs, achieved through the establishment of the International Bank for Reconstruction and Development (World Bank). (Putra, 2016)

Another main pillar supporting global economic growth is the functioning of a free and open international trade system, initially intended but unsuccessfully realized through the establishment of the International Trade Organization (ITO). Although the formation of the International Trade Organization, intended as one of the pillars of the Bretton Woods system alongside the International Monetary Fund (IMF) and the World Bank, was not successful, the nations of the world have operationalized the General Agreement on Tariffs and Trade (GATT), which was designed alongside the charter of the International Trade Organization, and it has become the principal institution for international trade (Geraldi, et.al, 2018).

GATT functions as a comprehensive framework, a platform, and an international body within the realm of trade. Its inception dates back to 1947, with active operations commencing in 1948. The establishment of GATT originated from the harsh lessons learned during the global economic depression of the 1930s, followed by the adoption of trade protectionism by leading nations. Between 1948 and 1994, GATT conducted 7 rounds of multilateral trade negotiations with the objective of facilitating global trade. Throughout these negotiations, a series of agreements addressing non-tariff barriers emerged, some of which provided new interpretations of existing GATT regulations (Geraldi, et.al, 2018).

The shift from GATT to the WTO has had extensive repercussions on the realm of international trade law due to the broader and more intricate regulatory domain of the WTO. It now encompasses not only tariffs and goods but also extends to services, intellectual property rights, investment, environmental concerns, and various other aspects. Historically, international trade law emerged from the customs and practices of merchants, known as *lex mercatoria* or the law of merchants. Initially, *lex mercatoria* arose from regulations observed during trade fairs and evolved from maritime customs and dispute resolution practices in trade. Additionally, the role of notaries or public notaries in providing legal services in commerce contributed to its development (Fitrah, 2020).

The establishment of the WTO during the Uruguay Round in 1994 marked its significance as one of the influential international organizations within the framework of the international regime and economic globalization. Through the Uruguay Round Trade Agreement (September 27, 1994), countries signing the WTO agreement became part of the global economy obliged to adhere to the international regime. The trading system under the WTO framework is a rule-based system with multilateral agreements that are collectively

agreed upon and integrated, forming a single undertaking. One of the most crucial elements of the rules-based multilateral trading system within the WTO framework is the dispute settlement mechanism (Linda, 2022).

The World Trade Organization (WTO), as a global trade body, aims to achieve trade liberalization through various means, including the elimination of trade barriers, both tariffs and non-tariffs, as well as reducing discriminatory practices in international trade relations (Paragraph 3 of The Marrakesh Agreement Establishing the World Trade Organization). However, the process of trade liberalization has raised concerns about fairness, particularly among developing nations. Developing countries often face pressure to swiftly and extensively open their markets, while developed countries tend to collaborate to protect their markets from competitive products originating from developing countries, such as agricultural, textile, and apparel items. Additionally, the limited resources and information available to developing countries often hinder their ability to effectively utilize trade liberalization (Barutu, 2018).

The establishment of the WTO is aimed at encouraging trade flows between nations by reducing tariffs and trade barriers and restricting discriminatory practices in international trade relations. The WTO has several key objectives in international trade, including promoting trade flows between nations by minimizing and eliminating various barriers that might disrupt the smooth movement of goods and services. Additionally, it seeks to facilitate negotiations by offering a more permanent negotiation platform, given that international trade negotiations have historically been intricate and time-consuming processes. Moreover, it endeavors to resolve disputes, as trade relations often lead to conflicts of interest. Despite existing agreements within the WTO membership, differences in interpretation and violations remain possible, necessitating neutral and mutually agreed-upon procedures for legal dispute resolution (Diphayana, 2018).

Regarding the functions of the WTO, it serves to support the implementation, regulation, and administration of agreements reached to achieve the objectives of those agreements. Additionally, it acts as a negotiation forum for member countries concerning the agreements reached, including their annexes, along with decisions made subsequently during ministerial-level negotiations, and it regulates the implementation of provisions regarding trade dispute resolution. Furthermore, the WTO regulates mechanisms for reviewing trade policies and creates a framework for determining global economic policies in collaboration with the International Monetary Fund (IMF) and the World Bank, as well as affiliated bodies (Article 3 of The Marrakesh Agreement Establishing the World Trade Organization). The WTO also reviews the implementation of agreements by each member country and imposes sanctions for violations of the provisions within the agreements. The WTO possesses tools to compel member countries to adhere to its provisions. With these functions, the WTO serves as a forum for future negotiations in multilateral agreements. The presence of the WTO is expected to enforce all established provisions, thereby promoting honest, open, and fair free trade (Gerald, et.al, 2018).

Article XVI paragraph 4 of the Agreement Establishing the World Trade Organization serves as a crucial indicator of how the WTO obliges its member countries to adjust their trading rules or laws in accordance with the rules set forth in the Annexes of WTO agreements. Article XVI also requires its member countries to adapt their administrative procedures to match WTO administrative procedures.

Within the framework of the WTO, there exist several regulations known as Basic Principles. These include the General Agreement on Tariffs and Trade (GATT), which oversees the trade of goods, the General Agreement on Trade in Services (GATS), which governs the trade of services, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which addresses aspects of free trade concerning Intellectual Property Rights (Hadiarianti, 2019).

Article VIII of the Marrakesh Agreement states that the WTO's status as an international organization grants it legal personality to implement its organizational functions. The provision specifically mentions that “(1) The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions; (2) The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions; (3) The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO; (4) The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947; (5) The WTO may conclude a headquarters agreement”. (Blackhurst, 1998)

WTO agreements encompass various fields such as agriculture, textiles, and apparel, financial services, telecommunications, industrial standardization, sanitary and phytosanitary regulations, intellectual property rights, and others. Despite the multitude of agreements within the WTO, several fundamental principles are embedded in these agreements. These principles serve as the foundation of the multilateral trading system.

Developing countries had hoped that the Uruguay Round negotiations would result in a stronger, law-based multilateral trading system, with full authority to resolve trade disputes and provide more assistance to implement domestic reforms. They also expected the system to contain specific provisions benefiting the interests of developing countries in all WTO agreements. This system was anticipated to alleviate political and economic pressures on low-income developing countries from larger nations (Geraldi, et.al, 2018).

The WTO influences international trade by promoting the principles of free competition. It serves as a system that regulates open, fair, and healthy competition. The implementation of the Most Favored Nation (MFN) principle and national treatment is designed to maintain fair trade practices, including issues related to dumping and subsidies.

Essentially, the agreements aim to support healthy competition in trade of goods, agriculture, intellectual property rights, and services. Moreover, the WTO encourages reforms in development and economics. Experts in economics and trade recognize that the WTO system has the potential to contribute to development. WTO agreements also incorporate regulations concerning the flexibility granted to developing nations in implementing WTO provisions. Furthermore, these agreements include clauses enabling the least developed countries (LDCs) to receive specialized assistance and trade concessions, similar to the regulations outlined in GATT (Geraldi, et.all, 2018).

Most of the WTO members, about three-quarters, consist of developing countries and countries in transition towards market economies. During the seven and a half years of the Uruguay Round, countries engaged in trade liberalization, making them highly active and influential in trade negotiations compared to previous rounds of talks. This development indicates that the multilateral trading system is not only intended for industrialized nations but also for developing countries. By the end of the Uruguay Round, developing countries, like developed ones, were prepared to implement WTO agreements, albeit with different implementation timeframes. Developed countries were also required to expedite the implementation of market access commitments for exports from developing and least developed countries and enhance technical assistance to these nations (Geraldi, et.all, 2018).

WTO also enhances predictability. The establishment of a multilateral trading system is the WTO members' effort to create a stable and predictable business environment. With stability and predictable policies, investments can be made, job opportunities can be created, and consumers can benefit from a fair competition system. Within the WTO, when a country agrees to open its markets to goods and services, it signifies an increase in its commitment. For the goods sector, this is tied to the highest customs tariff rates, but it is still possible for a country to impose lower import duties than its bound tariff commitments. This is often practiced by developing countries (Candrawijaya, 2023).

A country can alter its tariff commitments after negotiating with its trading partners and providing compensation to those partners adversely affected by the changes in commitments. One concrete outcome of the multilateral trade negotiations of the Uruguay Round is increased trade due to the expansion of bound tariff commitments. In the agricultural sector, all agricultural products now have bound tariffs. The result of all these measures is a significant level of market security for businesses and investors (Tampubolon, 2020).

Example of multilateral trade aims to enhance the consistency and stability of international trade. One method is by reducing the use of quotas to limit imports. Another approach is by increasing transparency in a country's trade regulations. Through this system, clear and open trade rules can be formulated. Many provisions in the WTO Agreement encourage member governments to explain their policies and objectives to the public and report them to the WTO. Regular monitoring of national trade policies through the trade

policy review mechanism is a way to enhance transparency, both domestically and multilaterally.

Developing countries need to address cross-border trade issues by ensuring that adjustments in their domestic policies are in line with WTO principles. They also need to prioritize their preparations to engage in multilateral trade negotiations. The goals they need to achieve include the ability to effectively voice their views, safeguard national interests within the WTO framework, influence the future direction of the organization, and actively participate in future multilateral trade negotiations.

Developing countries need to strengthen their trade institutions and enhance human resource development in the context of trade policies. This should be a priority achieved through international financial assistance, technical cooperation, and internal efforts of the countries themselves. They need to identify key issues important to their interests. For example, they should advocate for tariff negotiations to reduce peak tariffs in developed countries and lower protection levels in some advanced developing nations. Additionally, they should aim to decrease tariff escalation across all trading partners. The WTO trade system promotes peace, handles disputes constructively, facilitates trade between nations, reduces tariffs and barriers, offers diverse product choices to consumers, boosts income and economic growth. Consistent application of WTO principles enhances efficient trade and protects governments from unhealthy competition, fostering clean governance.

4. Conclusion

The Agreement Establishing the World Trade Organization (WTO) serves as a crucial framework for member countries to align their trading rules with the provisions outlined in WTO documents. Article XVI also mandates member countries to adjust their administrative procedures to align with those set by the WTO. The presence of developing countries in the WTO has a positive impact on international trade by promoting fair competition. The WTO regulates fair, open, and healthy competition and contributes to development. WTO agreements provide flexibility for developing countries to implement WTO rules, including special assistance for the least developed countries (LDCs) and trade concessions as agreed in GATT regulations. Additionally, the WTO enhances predictability by creating a stable and predictable business environment. Investment can be made, jobs can be created, and consumers can benefit from fair competition. The WTO's multilateral trading system also promotes peace by addressing conflicts between countries constructively, facilitating trade between countries through appropriate regulations, and reducing tariffs and non-tariff barriers to lower the cost of living.

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