



An Overview of World Trades Organizations - Dispute Settlement Mechanism

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Abstract: In the growing economic world, almost every country is involved in imports and exports. Though everything is done through a contract or an agreement, there are often many disturbances between buyers and sellers. These issues, however, cannot be resolved by a particular state unless mentioned in the agreement or contract; an external body with nil partiality should resolve it. Hence, the GATT and WTO were raised and were in the extremely best position in resolving the issues between the trade countries.

Hence, in this paper, the author mainly concentrates on the overall working, establishment, and procedure of WTO's Dispute Settlement Mechanism.

Index Terms - GATT, WTO, DSU, Dispute Settlement, Conciliation, Mediation, Arbitration.

I. INTRODUCTION

International dispute resolution and procedures evolved in parallel with the substantive remedies accessible under domestic law. The rule of law is not guaranteed. The authors of GATT recognized that disagreements between contractual parties regarding how to implement the code and what to do about infractions might develop. Article XXIII makes no explicit provision for how a disagreement addressed to the contracting parties should be handled, save that the contracting parties must quickly investigate and make suitable suggestions.

Furthermore, Article XXIII focuses on harm, which means that the complaining party must allege and eventually prove that a benefit due to it under the General Agreement is being nullified or impaired. There was no provision in the original GATT or subsequently for an organization-initiated complaint mechanism.¹

¹ Discuss the Dispute Settlement Mechanism under WTO.(12.5 marks, I.P. University,2012)

Resolution of Inter-State Conflicts:²

Prior to the establishment of Dispute Settlement under GATT, the conflict. Member-nation disputes were settled either through the World Court or through other means through Interstate Arbitration.

- a) **The World Court:** The International Court of Justice is a court to which all members of the United Nations and a few different governments are parties. However, the court's jurisdiction depends on the parties' permission, and being a party to the court's statute does not constitute assent to the jurisdiction under a treaty that allows for the filing of disputes arising under the treaty.

The World Court considers disputes referred to by special ad hoc agreements between the parties. Article 94(1) of the UN Charter states that each member of the UN commits to implement the decision of the International Court of Justice in any case in which it is a party, and Article 94(2) authorizes the Security Council to make recommendations or decide on measures to give effect to a Court judgment.

- b) **Inter-Treaty Arbitration:** Many international treaties allow for the adjudication of disputes arising from the interpretation or application of a treaty by use of mediation Agreements allowing for state-to-state arbitration, whether established in a treaty or in a submission agreement created after the conflicts emerge, call for each side to select an arbitrator and for the two arbitrators thus appointed to appoint the third or presiding arbitrator. In some cases, an appointing authority, such as the President of the International Court of Justice, the Secretary-General of the Permanent Court of Arbitration, or the Secretary-General of the Organization of American States, makes the selection of the presiding arbitrator.

CONCEPTION OF DISPUTE SETTLEMENT UNDER GATT:

The 1948 Havana Charter was the first attempt to create a comprehensive International Commercial Organization to control trade ties between member governments. Under Chapter VIII of the Charter, members whose benefits have been reduced or eliminated may submit written recommendations for an amicable resolution of the harm. This is the option for consultation. Referral to arbitration under conditions agreed upon by the members is another option accessible to disputants. If these steps fail, any member may bring the situation to the Executive Board, investigating whether a treaty infringement occurred as soon as possible. If a violation is discovered, the Board may take significant action. If a significant infringement is detected, the Board relieves the affected member from the duty or grant of privileges to any other member or members to the amount and on such terms as it deems suitable and compensating, taking into account

² Salient features of the dispute resolution mechanism under WTO. (12.5 marks, I.P. University, 2009, 2013 and 2015)

the benefit which has been nullified or damaged. Any such Executive Board decision may be appealed to the Conference for confirmation, modification, or reversal.

GATT DISPUTE PRACTICES:

The GATT 1947 did not envisage a precise mechanism for resolving a disagreement, nor did it define legal rules as to when a breach or breach would amount to a violation of a rule, giving rise to a dispute. The GATT was even quiet about forming a tribunal to settle genuine disputes. Nevertheless, disputes over breaches of substantive norms of GATT and its Articles and the issue of interpretations were persisting phenomena over the years, and remarkably, GATT 1947 resolved many more disputes and evolved umpteen interpretations and interpretative methods to make the GATT functional.³

Working committees established by the Council at the request of a contractual party develop their operating guidelines. Such working groups meet at least twice to debate the issue and once to reach conclusions. Any contractual party interested in resolving a dispute is welcome to join the party. Since 1952, contracting parties have chosen panels to handle disputes under GATT. The GATT secretariat receives proposed panel nominations from the relevant parties, which confirms or refuses nominees, resulting in the formation of a three or five-member panel with the approval of the concerned parties. If no settlement is attached, a panel must include findings of fact, a decision to apply a GATT Article, and its reasoning for any recommendations or findings.⁴

WTO Dispute Resolution System:⁵

The World Trade Organization (WTO), consisting of Dispute Settlement Understanding (DSU), originated from the inefficient ways of resolving issues among members under the GATT. Under the GATT, methods for resolving conflicts were ineffectual and time-consuming, as a single nation, including the nation whose acts were the subject of the complaint, could successfully obstruct or delay every level of the dispute resolution process. It remains to be seen if nations will cooperate with the new WTO dispute settlement mechanism, although the procedure has been quite successful.

The WTO's improved dispute resolution process was intended to have the capacity to define the "thin line between national prerogatives and capable trade barriers." It is the essential pillar of the multilateral trade system and the WTO's distinctive contribution to global stability. The rules-based system would be less attractive if there were no way to settle conflicts since the rules could not be enforced. The WTO approach emphasizes the rule of law and makes the trading system more safe and predictable. The system

³ AUTAR KRISHEN KOUL, GUIDE TO THE WTO AND GATT ECONOMICS, Law and Politics, Satyam Law International (pp. 46-47)

⁴ ISHITA CHATTERJEE, INTERNATIONAL TRADE LAW, Central Law Publications 9pp. 18-20)

⁵ The Structure and procedure of the dispute settlement mechanism under WTO(12.5 marks, I.P. University, 2011)

is built on well- defined principles, including schedules for finishing a case. A panel issues the first judgments, approved (or rejected) by the WTO's entire membership. Law-based appeals are conceivable. However, the purpose is not to pass judgment. The priority is to settle disagreements, preferably through discussions.^{6 7}

Overview of DSU:

The Dispute Settlement Understanding (DSU), known colloquially as the Understanding on Rules and Procedures Governing the Settlement of Issues, defines rules and procedures for resolving different disputes under the Covered Agreements of the Uruguay Round's Final Act. It applies to all WTO member nation-states and is the sole legal entity that may bring and file lawsuits with the WTO. The Dispute Settlement Body (DSB), comprised of all WTO members, was established by the DSU to handle dispute settlement procedures.

It sets appeals mechanism to standardize the interpretation of specific reasons of the agreements and imposes strict time limitations for the dispute resolution procedure. It also allows for the automatic formation of a panel and the automatic approval of a panel report to prevent nations from simply dismissing objections and thereby halting progress. Strengthened norms and procedures for the dispute resolution process seek to provide "stability and predictability to the multilateral trading system by obtaining "a negotiated settlement to the parties' dispute per covered agreements." The essential steps of conflict settlement were comprehension consultation, Appellate Body review, and remedies.⁸

Time Period for Dispute Settlement:⁹

The approximate times for each stage are the intended figures. Furthermore, nations that settle their disputes through a dispute resolution system are target figures. Furthermore, the nations have the option of resolving their disagreement on their own at any time.

TIME PERIOD	STAGES
60 Days	Consultations, mediation, etc.
45 Days	Panel set-up and panelists appointed
6 Months	Final panel report to parties
3 Weeks	Final panel report to WTO members
60 Days	Dispute Settlement Body adopts
	report(if no appeal)
Total = 1 Year	(without appeal)
60 to 90 Days	Appeal report

⁶ The Role of WTO as a Dispute Settlement Body under WTO(I.P. University, 2014)

⁷ The Sanctions and Remedies Provided under DSU for Non-compliance with the WTO Agreement (I.P. University, 2009)

⁸ The Salient features of the understanding on settlement of disputes. (I.P. University, 2010, 2013)

⁹ NIHARIKA VIJ, INTERNATIONAL TRADE LAW, Universal Law Publications (ed. 1 pp. 123, 2017)

30 Days	Dispute Settlement Body adopts appeals report
Total = 1 year 3 months	(with appeal)

1. **Consultation (up to 60 days) :**

Before pursuing any additional action, the disputing countries must first talk to each other to determine if they can resolve their problems on their own. If that fails, parties might ask the WTO's director-general to mediate or assist in any other manner.

2. **Panel phase :**

If consultation fails to resolve the problem, the complaining party may request that a panel be formed.

"Unless the DSB determines by consensus not to establish a panel at that meeting," the DSB must form a panel. Panels should be formed of well-qualified governmental and non-governmental people to ensure the independence of the members," and whose countries are not parties to the issue, unless the parties to the dispute agree differently. A panel comprises three panelists unless the parties agree to have five members.

When many parties request the formation of a panel for the same topic, the DSU expresses a clear preference for the formation of a single panel "to consider these complaints while taking into account the rights of all members affected." The DSU allows any member who has "a strong interest in a subject before a panel" (and informs the DSB of its interest) to "be heard by the panel and submit written contributions to the panel."

"The panel shall present its conclusions to the DSB throughout the form of a written report." Generally, it should not take more than six months from establishing the panel to the submittal to the DSB. In circumstances of extreme urgencies, such as those involving perishable commodities, the limit is lowered to three months. The panel presents an interim report to the parties at the interim review stage. If the parties submit written remarks, the panel "must convene a subsequent discussion with the parties." If no comments are received from the parties during the comment period, the report shall constitute the final report and shall be promptly disseminated to the members. The report should be accepted at a DSB meeting within sixty days of its distribution to members, only if a party to the dispute formally informs the DSB of its determination to appeal or the DSB determines by agreement to alter the report.

The main stages are:

Before the first hearing: each party in the dispute submits theirs in writing to the panel.

First hearing: the case for the complaint nation and defending at the panel's first hearing, the reporting country (or countries), the replying country, and the that have declared an interest in the dispute make their case.

Rebuttals: At the panel's second meeting, the countries involved submit written rebuttals and deliver oral arguments.

Experts: If one of the parties raises scientific or other technical issues, the Court may consult experts or form an expert review panel to submit an advisory report.

First draft: The panel sends the report's descriptive (factual and argument) to both parties, giving them two weeks to comment. The findings and conclusions are not included in this report.

Interim report: The panel then provides an interim report to the two parties, outlining its findings and conclusions, and gives them one week to request a review.

Review: The review period cannot be longer than two weeks. The panel may meet with both parties again in the future.

Final report: A final report is presented to both parties and distributed to all WTO members three weeks later. If the panel determines that the contested trade measure violates a WTO agreement or obligation, it advises that the measure be modified to comply with WTO standards. They may make suggestions as to how this may be accomplished.

The report becomes a ruling: Unless a consensus rejects it, the report becomes the Dispute Settlement Body's judgment or recommendation within 60 days. Both parties have the right to file an appeal against the report (and in a few cases, both sides do).

3. Review by an Appellate Body :

The DSB creates a permanent Appellate Body to handle appeals from panel cases. "The Appellate Body shall be constituted of seven members, three of whom shall serve on any one matter," is according to the statute. Those who serve on the Appeal Body must be "persons of recognized authority with demonstrable competence in law, international commerce, and the broad subject matter of the Covered Agreements Only "questions of law discussed in the panel and legal interpretations established by the panel" will be considered by the Body. Its proceedings will be private, and its reports will be anonymous. The Appellate decisions may sustain, alter, or overturn the legal findings and conclusions of the panel. The DSB and the parties must accept the Appellate report without modification. "Unless the DSB unanimously chooses not to adopt the Appellate Body report within thirty days of its distribution to members."

4. Conciliation, Mediation, and Good Offices :

In contrast to consultation, in which "a complainant can compel a respondent to answer and consult or face a panel," good offices, conciliation, and mediation "are conducted freely if the parties to the conflict so agree." There are no requirements for them regarding form, timing, or method. They can be initiated or terminated at any moment by any party. "If the parties to the issue mutually agree that the good offices, conciliation, or mediation procedure have failed to settle the problem," the complaining party may request the establishment of a panel. Thus, the DSU understood that what was vital was that the nations concerned in a dispute reach a reasonable agreement on how to continue and that the official WTO dispute resolution procedure was not always the best means to achieve such an agreement. Therefore, no country could ignore its commitments under international trade treaties without risking the attention of a WTO tribunal.

5. Arbitration :¹⁰

Members may seek arbitration via the WTO as an alternative dispute resolution method "to assist the resolution of some disputes involving issues that both parties specify." Those parties must agree on arbitration and the processes that will be followed. Prior to starting the arbitration procedure, all members must be advised of the agreed-upon arbitration. Third parties may join the arbitration "only with the agreement of the parties who have agreed to resort to arbitration." "Arbitration awards shall be reported to the DSB and the Council or Committee of any contractual obligation where any party may raise any issue about that," the parties to the action must agree."¹¹

6. Remedies :

There are sanctions for a member whose measure or trade practice is deemed by a panel or Appellate Body to violate the Covered Agreements. The dispute panel advises how a country might bring itself into conformity with trade accords. If the member state fails to do so within the "reasonable length of time," the complainant may pursue compensation discussions. Suppose appropriate compensation is not agreed upon after twenty days of the end of the reasonable amount of time. In that case, the aggrieved party "may request authorization from the DSB to seek application to the member concerned of restrictions or other responsibilities under the Covered Agreements."

First, retaliation must be restricted to the same sector. If the compliant party believes the reprisal is insufficient, it may seek revenge from a third party. The DSB "must provide authorization to suspend concessions or other obligations within thirty days of the expiration of the reasonable time" unless the DSB unanimously rejects the proposal. The defendant may oppose the proposed levy suspension." If no members of the original panel are present, the director-general will appoint an arbitrator "may initiate arbitration.

¹⁰ The Scope of Arbitration in Dispute Settlement Resolution (I.P. University, 2011)

¹¹ Arbitration in Dispute Settlement Resolution. (I.P. University, 2014)

WTO's Dispute Settlement System in Operation:¹²

Now since the WTO's Dispute Settlement processes are in effect. It is conceivable to do a preliminary examination of the influence of the international trading system's institutional evolution. The WTO dispute settlement processes have addressed a wide range of disputes. These include accusations from agricultural countries as modest as Guatemala and as significant as the European Union.

- Japan Alcohol case
- The cotton Underwear Case
- The Gasoline Case
- European Hormone Case

CONCLUSION:¹³

- The regime has played a critical role in allowing trade liberalization, laying the groundwork for economic development, prosperity, and general stability in the global economy.
- It has ensured the development of a rules-based framework to control international commerce, which has proven durable in the face of global economic crises.
- Even the WTO's most enthusiastic proponents would struggle to argue that it has achieved optimum levels of participation or optimal outcomes for the world's poorest countries and people.
- However, no honest assessment of the WTO could overlook the quantum jump that it has achieved (since the days of the GATT, and compared to most other international institutions) in assuring greater inclusion and emphasizing development.
- All of the chapters in this collection acknowledge these accomplishments in some way.

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¹² NIHARIKA VIJ, INTERNATIONAL TRADE LAW, Universal Law Publishing

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