
DISPUTE SETTLEMENT MECHANISM OF WTO

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ABSTRACT

Many WTO (World Trade Organization) member countries have used the WTO dispute resolution mechanism. Nonetheless, the debate over the effectiveness of this mechanism continues, and it is an important topic to discuss. The purpose of this article is to explain the effectiveness of the World Trade Organization's dispute settlement mechanism. Its timeline, participation (particularly from developing countries), and accomplishments are used to assess its effectiveness. This article concludes that the WTO's dispute settlement mechanism effectively resolves member disputes.

Keywords: effectiveness, dispute settlement mechanism, WTO.

Research Hypothesis:

A more democratic WTO dispute settlement system would result in better representation of developing countries' interests.

- Understanding and analyzing the structure and operation of the WTO Dispute Settlement system.
- To assess the impact of changing the Panel and Appellate Body constitutions to more democratic representation on developing countries' interest in the Dispute Settlement system.

Research Objective:

- To comprehend and analyze the structure and operation of the World Trade Organization's Dispute Settlement System.
- To assess the impact of changing the Panel and Appellate Body constitutions to more democratic representation on developing countries' interest in the Dispute Settlement system.

Research Methodology:

Research Methodology: The methodology used in this study is doctrinal and analytical in nature. Primary and secondary sources will be used in the analysis. The primary materials shall include: WTO legal instruments; DSB Panel, Appellate Body, and Arbitration reports on remedies; and the Dispute Settlement Understanding charter. Furthermore, the study will examine secondary materials such as books, article reviews, and comments from experts' publicists, among other things.

Research Questions:

- Is the WTO's Dispute Settlement system's legal framework biased against developing countries?
- What are the emerging constraints that member countries, particularly developing countries, have faced in WTO dispute settlement proceedings?

- What should the contours of WTO Dispute Settlement Understanding reforms be in order to make it more relevant in today's world?

INTRODUCTION TO WTO DISPUTE MECHANISM

Disagreements and differences have always been a part of human society. With the advent of World War II, there was a growing desire for a unified system for regulating the global trading system. The proposal to establish an International Trade Organization was tabled at the Bretton Woods Conference. The very goal of this organization was to regulate international trade, but it was unable to do so for long. The charge for achieving the very objective of this organization was further carried out by the GATT. This became the principle agreement for regulating the multilateral trading system for almost three decades. Hence with the increasing participation of the nation in international trade the complexities also grew with the passing time. There were the provisions in the GATT mandated to regulate the trading system but it couldn't fare the interest of the developing member nation to the fullest because of certain drawbacks and deficiencies within it. Hence with the aim and intention of revitalizing and regulating the global trading system the whole new organization was established in the Uruguay Round negotiation i.e. World Trade Organisation.

Dispute Settlement Mechanism under WTO

After the breakdown of ITO, the GATT became the principle agreement for regulating international trade with the basic goal to promote free international trade. However there are many provisions in the GATT but Article XXII and XXIII are the primary provisions which initiate the proceedings of dispute settlement under GATT. Article XXII of GATT provides a platform for consultation to the disputing parties to accord their differences.

Important Articles

Article XXIII, further provides for amicable forum for consultation of any GATT matter irrespective of whether a benefit under GATT is denied. It provides dispute resolution in cases where a benefit accruing to contracting party under the GATT is nullified or impaired, or the achievement of any such objective under GATT is impeded. Nullification or impairment of a benefit under the GATT may follow from the following actions of a contracting party.

- the failure to carry out its obligations under the GATT by infringing specific provisions of the GATT on the application of any measure, whether or not it conflicts with GATT provisions or the existence of any other situation¹
- The parties first try to settle their differences through negotiations, however, if it fails, they may resort to GATT Article XXIII, which is GATT's basic dispute settlement procedure. Article XXIII is the core of the GATT dispute settlement which introduces the 'nullification or impairment' of benefits expected under the GATT or the impediment of any of its objectives as the grounds of complaints in the GATT dispute settlement. Once the complaint is made the process of consultation gets started and by any means if consultations fails to settle a dispute within sixty days, than the parties can request for establishing a panel to chairman of contracting working parties².

Evolution and Development of Dispute Settlement System under WTO:

The Uruguay Round of negotiation marks a significant change in the multilateral trading system. As the GATT was known for its passive participation of the members in one hand and in the other, the WTO was seen as an organization of maximum participation of member nations. The signing of the Marrakesh Agreement on 15 April 1994 represented the end of the UR and the establishment of the WTO, an institution with legal personality to deal with trade issues among its Members arising from the application of the WTO Agreement and the Annexed Agreements.

The WTO legal framework is considered to be the major improvement in the international trading system for developing and developed countries alike.³

Defects in GATT affecting the participation of developing nations:

GATT was the first agreement which elucidated the concern for resolving disputes by way of designing the provisions for consultation and ensuring the platform for its resolution. But however it had certain birth defects which affected the interest of member nations. The very

¹ Decision on Improvements to the GATT Dispute Settlement Rules and Procedures, GATT BISD, 36th Supplement, 61 (1989)

² Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, (L/4907), Adopted on 28 November 1979.

³ Ernest Petersmann, International Trade Law and the GATT/WTO Dispute Settlement System, (Kluwer Law International, London, 1997).

creation of GATT was laid on the foundation of agreement, which does not give any effectiveness to the dispute settlement system. The General Agreement was not a treaty among nations but was, instead, a simple agreement that each country acceded by means of the protocol of Provisional Application.

A. Consensus Rule:

The major defect which affected the significance of GATT is consensus rule. The decisions in the GATT were taken by way of consensus by virtue of which the defendant parties could block any decision at any stage i.e. establishment of the panel or adoption of the panel report. The consensus rule under GATT worked as Veto Power in the UN Security Council. Consequently, developing countries experience power tactics practiced by developed countries.

B. Lack of Transparency affecting developing nations:

- Under GATT 1947, smaller trading nations often perceived a lack of transparency concerning agreements reached between the major players. The developing nations were the participator to the system but were not a rule maker. The system was predominated by the developed member nations and had regulated the system within their own chambers of interest. The agendas were not firmly placed, rather it was dictated to the sub-ordinate member nations.⁴

C. Poor standing of developing countries as compared to developed nations

It has been argued that the GATT was unsuccessful in providing equal status to the developing nations as compared to developed nations. The major role was played by the economic consideration which placed the developed nation in a better position to use the system. The unequal economic powers between the two sides meant that the ability of developing countries to impose an effective suspension of concessions against developed countries was very limited and had very little impact. The GATT dispute settlement system failed to adopt any procedure that compensated developing countries for their limited retaliatory powers.⁵

⁴ Marc Busch and Eric Reinhardt, 'Developing Countries and the GATT/WTO Dispute Settlement', Vol.37 (4) Journal of World Trade, (2003).

⁵ The Annexed Agreements include the Multilateral Agreement on Trade in Goods, the General Agreement on Trade in Services (GATS), TRIPS, DSU, and the Trade Policy Review Mechanism, which are binding on all WTO Members.

Effectiveness of WTO dispute mechanism: A brief overview

In order to bolster the claims that state, an explanation of the successful and unsuccessful cases seems to be an important component of this discussion. There are still some cases that have taken a long time to resolve or where there has been no final ruling, even though many cases have been successfully settled using the WTO dispute settlement procedure⁶.

Successful cases in which WTO was able to resolve dispute effectively

Costa Rica's Successful Case — Restrictions on Imports of Cotton and Man-Made Fibre Underwear (Dispute DS24). Costa Rica filed the complaint in this case, and the United States and India were the respondents. Since this case demonstrated how the dispute resolution procedure operated under a legal power approach, which successfully solved the issue, scholars have hailed it as a successful case.

On December 22, 1995, Costa Rica re-requested talks with the US regarding US import restrictions on Costa Rican textiles. These limitations, according to Costa Rica, were against the ATC agreement. Due to Costa Rica's request, the DSB (Dispute Settlement Body) created a panel at its meeting on March 5 1996

Findings:

- First: ATC Art. 6.10 (transitional safeguard measures - prospective application): The Appellate Body reversed the Panel's finding and concluded that in the absence of express authorization, the plain language of Art. 6.10 create a presumption that a measure may be applied only prospectively, and thus may not be backdated so as to apply as of the date of publication of the importing Member's request for consultation.

US – Zeroing (Korea)

Main Dispute

Because the United States, the respondent, completely implemented the DSB's recommendations and decisions within the reasonable time frame agreed upon by the parties on December 19, 2011, this is another case that went well for South Korea. Korea defeated the

⁶ Article 3.2 of DSU.

United States in this issue after adhering to all stages of the dispute resolution procedure, which began with consultation on 24 November 2009 and panel formation on 18 May 2010. Korea requested consultations with the United States regarding their use of zeroing in three antidumping cases involving certain products from Korea, namely, stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades and parts thereof.

Panel Decision

Finally, the Panel concluded that the United States violated the first clause of Article 2.4.2 by applying the zeroing methodology to the three original investigations at issue in order to determine some dumping margins..⁷

Cases where wto dispute mechanisms failed to resolve disputes .

1) EC and Certain Member States –Large Civil Aircraft Case

The Dispute

It is acknowledged that this case has significant stakes, significant issues, and that it has been prolonged and appears to have failed in the WTO dispute settlement process. The United States (the complainant) has been in contact with the governments of Germany, France, the United Kingdom, and Spain (the "member states") since October 6, 2004, when the case known as European Communities — Measures Affecting Trade in Large Civil Aircraft (Dispute DS316) was first initiated.in regards to policies influencing the trade in large civil aircraft, particularly with the European Communities ("EC") (respondent). Measures by the EC and the member States give subsidies that are in conflict with their responsibilities under GATT 1994, according to the United States' request for consultations: Subsidies and Countervailing Measures: Art. 1, 2, 3.1, 3.2, 5, 6.3, 6.4. Art. III:4, XVI:1, XXIII:1.

The Panel constituted

Because there was a different panel constituted on June 13, 2005, the panel for this case was established on July 20, 2005, more than two months after the United States requested the

⁷ Kantchevski, P.D., 'The Differences Between the Panel Procedures of the GATT and the WTO: The Role of GATT and WTO Panels in Trade Dispute Settlement', Vol.3(1):BYU International Law & Management Review 79, (2006).

creation of a panel. The third-party rights of Australia, Brazil, Canada, China, Japan, and Korea are reserved. The DSB then began the processes outlined in Annex V of the SCM Agreement at a meeting on September 23, 2005. One of the United States' demands is that the panel be put up by the Director-General on October 7, 2005. But on October 17, 2005, the Director-General disqualified himself in this regard, and the Deputy Director took his position to assemble the panel. At this point, it appears that the complexity of the issues has influenced the delay in forming the panel.⁸

Due to the substantive and procedural complexities involved in this dispute, the panel would be unable to complete its work within six months of 13 April 2006. The panel, however, completed its work by the end of April 2010. In this regard, the WTO dispute settlement appears to be prolonging. This is the case. Furthermore, the outcome of this case was still on the status of ongoing compliance proceedings, indicating that the case has not yet been resolved. It is clear from the implementation stage that the United States claimed that the European Union and certain member states had failed to comply with the DSB's recommendations and rulings, so they requested DSB approval to take countermeasures under Article 22 of the DSU and Article 7.9 of the SCM Agreement on December 9, 2011.

US – Shrimp and Sawblades Case

This case which was known as United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China (Dispute DS422) seems to be unsuccessful case. Although the current status released by WTO as implementation notified by respondent which was United States, China as complainant did not share the United States' view, thereby, China pressed the United States to respect its obligation. This case began with China requested consultations On 28 February 2011 with the United States regarding the latter's anti-dumping measures on certain frozen warm water shrimp from China. China alleged that the US Department of Commerce's ("USDOC") use of zeroing in the original investigation and several administrative reviews to calculate dumping margins for the subject imports is inconsistent with the United States' obligations under Article VI:1 and VI:2 of the GATT 1994 and Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.2, 9.3, and 9.4 of the Anti-Dumping Agreement

⁸ Supra note 7.

At its meeting on 25 October 2011, the DSB established a panel. The European Union, Honduras, Japan, Korea, Thailand and Vietnam reserved their third party rights. Following the agreement of the parties, the panel was composed on 21 December 2011. On 8 June 2012, the panel report was circulated to Members with some summary key findings as follows:

- Therefore the Panel concluded that the United States had acted inconsistently with its obligations under this provision⁹.
- The Panel rejected China's claim concerning the separate rate, but noted that the calculation of the separate rate on the basis of individual margins calculated with zeroing necessarily incorporated the WTO-inconsistent zeroing methodology.

At its meeting on 23 July 2012, the DSB adopted the panel report. Then, on 27 July 2012, both parties had agreed that the reasonable period of time for the United States to implement the DSB recommendations and rulings shall be 8 months. Accordingly, the reasonable period of time expired on 23 March 2013. Finally, in terms of implementation of adopted reports the United States informed the DSB that it had implemented the DSB recommendations and rulings within a reasonable period of time at the DSB meeting on 26 March 2013. However, China did not agree with the United States' view that it had fully implemented the DSB recommendations. Furthermore, China advocated the United States to honor its obligation.

CONCLUSION

In summary, it has been demonstrated that WTO dispute settlement is an effective tool for resolving disputes between WTO member countries. The system operates in a proper and orderly manner in terms of timeframe. The increased participation, particularly from developing countries, and the outstanding success in resolving disputes enabled this system to effectively achieve its main goal, namely, to settle disputes between member states in order to provide security and predictability to the multilateral trading system.

⁹ Article 17.14 of DSU.