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DISPUTE SETTLEMENTS UNDER THE WTO: THE ISSUES AND CHALLENGES

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October 2023

Chapter 1

INTRODUCTION

The General Agreement on Tariffs and Trade (GATT), which was formed in 1947 to support the development of the world economy after World War II, was subsequently replaced by the World Trade Organisation (WTO). This began with mediation by working groups of trade ambassadors, which gradually gave way to increasingly rules-based adjudication by panels of independent specialists. However, it was founded on the notion of "positive consensus," which allowed any participant to veto any aspect of the procedure. Despite its early success, its main flaw was that it moved slowly and regularly got stopped, which encouraged parties to forge unilateral or bilateral agreements instead, which frequently failed to consider the interests of third parties and frequently led to new problems.[1]

The dispute resolution mechanism (DSM) of the World Trade Organisation (WTO), which was founded in 1995, was primarily considered the "jewel in the crown." The DSM has become even closer to the center of attention after fifteen years. The public's interest in the WTO's handling of trade disputes has grown. The body of knowledge on the WTO's dispute settlement processes has also greatly increased.[2]

Even if GATT dispute settlement is continued by the DSU[3], several new components aim to strengthen the current one. There are deadlines for various phases of the dispute procedure, a

[1] Payosova, Tetyana, Gary Clyde Hufbauer, and Jeffrey J. Schott. The dispute settlement crisis in the World Trade Organization: causes and cures. No. PB18-5. 2018.
[2] Thomas Bernauer, Manfred Elsig et.al., The World Trade Organization's Dispute Settlement Mechanism – Analysis and Problems (the Center for Comparative and International Studies (ETH Zurich and University of Zurich),2010)
[3] GATT Articles XXII and XXIII, the GATT consultation and dispute settlement articles, continue to serve as the legal basis for dispute settlement under WTO agreements on trade in goods. See, e.g., Agreement on Agriculture art. 19.

"reverse consensus" voting rule at key points in the process, legal review of panel decisions by a new Appellate Board, and heightened multilateral oversight of compliance. Almost all WTO agreements are subject to the same dispute resolution processes under the DSU's integrated dispute settlement system, except for any additional or unique provisions in a particular agreement.

The automaticity of WTO dispute settlement is its defining feature. A WTO member may file a complaint against another WTO member. Members have accepted the authority of the WTO dispute settlement mechanism by becoming a party to the WTO accords. Once filed, the matter is heard quickly, and the final judgment, whether by a panel or the Appellate Board, is binding. Of course, there may be delays in selecting panel members and issuing panel or Appellate Body findings, but a member who alleges that another Member has violated its WTO commitments will be able to take the issue to a binding conclusion. This is due to the reverse consensus rule.[4]

The application of the law is one of the most crucial aspects of modern statehood. However, until relatively lately even OECD states—members of the Organisation for the Cooperation in Economics and Development—were solely subject to domestic legal obligations on an internal basis, suggesting that they were not also subject to obligations under international law. There was not a comparable worldwide tribunal until recently to ensure that state actors met their international legal obligations, even while the court provides the institutional security that induces them to follow domestic legal standards. However, there are indications that a worldwide rule of law is progressively complementing the regional rule of law as issue-specific global judiciaries emerge.

The WTO offers an important benefit to the stability of the international economy. The regulations-based system would prove less effective if there was no method to resolve problems since its regulations could not be enforced. Dispute settlement is the fundamental tenet of the multilateral trading system. The WTO process strengthens law application while enhancing trade system predictability and safety. The method is based on clearly stated standards and completion dates for cases. The WTO's whole organization votes to accept (or reject) the initial judgments made by a panel. Legal challenges can be made.[5]

[4] Dispute Settlement Understanding Arts. 16.4, 17.14
[5] Bernhard Zangl, Judicialization Matters! A Comparison of Dispute Settlement Under GATT and the WTO 825–854(International Studies Quarterly (2008))

The global trading system is under unprecedented challenges on several fronts. The trade and tariff conflict erodes from accepted trade standards and intensifies against a complex backdrop of factors. They include the rise of economic rivalry between China and the United States, a rise in protectionist measures, and a deadlock in trade negotiations between developed and developing countries.[6]

Pressure on the multilateral trading system is at an all-time high and coming from many directions. Despite a complex web of factors, the trade and tariff conflict is expanding and departing from accepted trade norms. They include the intensifying economic rivalry between the United States and China, the rise of protectionist policies, and the deadlock in trade negotiations between developed and developing countries. The Appellate Board will then evaluate the legal issues and legal interpretations raised by the panel report. It has the power to uphold, modify, or reject the panel's findings. Following that, the Dispute Settlement Body (DSB), which is comprised of delegates from each of the WTO's Members, adopts the findings in a process that is close to automatic. If all parties (which incorporates the party that has prevailed) agree to reject the report, adoption is "quasi-automatic". The party being sued will have to comply with the referenced agreement within an appropriate period, usually no longer than 15 months, if a trade practice is found to violate WTO law. The complaint may ask the defendant to enter into compensation negotiations if they refuse to comply, or it may ask the DSB to suspend releases or other obligations to the respondent in an amount commensurate to the injury suffered. The DSU provides for extra evaluation of the implementation measures if the appropriateness of implementation is questioned. When permitted, retribution frequently comes in the form of punishment duties on a specific amount of the defendant's imports that the complaint makes.[7]

The Uruguay Round Agreements' DSU was frequently referred to as their "crown jewel." A major development in GATT dispute resolution was the elimination of the previous consensus requirement, which prevented a defendant from accepting an unfavorable conclusion. The DSU's principles have been utilized to resolve over 300 complaints on a wide range of topics ever since it went into effect on January 1, 1995.[8]

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[6] Madhumitha, Dharmapuri Selvakumar. "WTO-Analysis of Issues with the Dispute Settlement Mechanism." Beijing L. Rev. 11 (2020): 879.
[7] Tirkey, Aarshi. "The WTO dispute settlement system: An analysis of India’s experience and current reform proposals." (2019).
[8] Hauser, Heinz, and Thomas A. Zimmermann. "The challenge of reforming the WTO dispute settlement understanding." Available at SSRN 666983 (2003).

LITERATURE REVIEW

1. Chad P. Bown; On the Economic Success of GATT/WTO Dispute Settlement. *The Review of Economics and Statistics* 2004; 86 (3): 811–823.

The institutional and economic elements that underpin the defendant governments' dedication to trade liberalization are examined in this paper. This article cites a large body of data in favor of the claim that power strategies, such as the plaintiff's threat of retaliation, lend authority to allow respondent governments to maintain their pledges. However, it finds little proof that certain organizational or procedural elements outside of the main GATT/WTO arbitration forum itself have any bearing on the swift and cost-effective resolution of trade disputes.

2. Gabrielle, Marceau. "WTO dispute settlement and human rights." *Challenges in International Human Rights Law*. Routledge, 2017. 399-460.

The World Trade Organization's (WTO) resolution of disputes procedure may be used to resolve a dispute that includes human rights claims or justifications favorable to either a complaint or a defense. How would the WTO adjudicating body handle this situation? It is argued that WTO law must evolve and be implemented in a manner that is in keeping with international law, including human rights laws.

3. Garrett, G., & Smith, J. M. (2002). The Politics of WTO Dispute Settlement. UCLA: International Institute. Retrieved from https://escholarship.org/uc/item/4t4952d7

Since the 1995 institutionalization of the World Trade Organization's Dispute Settlement Understanding (DSU), it has been widely hailed as a triumph of impartial law over national sovereignty. The complained-about nations commonly stay away from providing cases where the offender is likely to reject an adverse decision by the Appellate Body, the Appellate Body itself continually extends the rules of the WTO when addressing powerful defendants, and losing plaintiffs usually drag their feet past established deadlines for compliance, according to the authors, who claim that three key elements of the judicial authority of the WTO's Appellate Body fall a little of the constitutional model.

4. B.com Llb (Hons), D. (2020) WTO-Analysis of Issues with the Dispute Settlement Mechanism. *Beijing Law Review*, 11, 879-888.

The World Commerce Organisation is one of the most significant international organizations for rules controlling global commerce. Controlling and negotiating the exchange of goods and

services between exporters and importers is the main goal of the WTO. This organization offers a venue for the governments to step in and propose their agreements to address their differences in the case of a dispute. The World Trade Organisation is not a stand-alone entity with a name; rather, it is a system run by member nations. By providing Multi-Lateral agreements, the WTO significantly contributed to promoting economic growth and mending governmental relations. The development of GATT and the Silk Road are the forerunners of the WTO. Despite the DSP having a substantial influence on the expansion of trade relations, the dispute resolution mechanism inside the WTO system has been beset by several problems involving the forum's judgment, competency, qualification, and bias within the forum to assist the favoring nations. Ambassador Sunanta's yearly report for the DSB Chair is available. The papers asserted that there were problems with resource occupation, convoluted conflict resolution, and situations with too many reported unresolved cases, using the Airbus and Boeing procedures as examples. A 2019 survey found that total economic activity in the world of trade decreased. The report looks at issues with the WTO's dispute settlement procedure as well as potential remedies.

5. Bohl, Kristin. "Problems of developing country access to WTO dispute settlement." Chi.-Kent J. Int'l & Comp. L. 9 (2009): 1.

Since many international trade experts consider the World Trade Organization's ("WTO") dispute settlement mechanism to be successful, the concept of "success" varies on the viewpoint and experiences of each Member state. The system is used to varied degrees by developed (and some emerging) nations including the United States, the European Union (EU), Brazil, and India. Nonetheless, Member States with less developed economies or in different phases of development either avoid engaging in conflicts altogether or are unable to use the system. This may be due to a lack of funding, institutional weakness, or political inertia, among other things. Others have noted that while there may be fewer chances for disputes generally, smaller trade volumes also contribute to poorer nations using the system less frequently.

6. Rolland, Sonia E. Development at the WTO. Oxford University Press, 2012.

This book's objective is to examine the nature and scope of developing countries' rights at the WTO to ascertain whether they could evolve from their current status as exceptions to a more complete set of rules fully incorporated into the WTO legal regime that would more effectively address developing countries' demands. Normatively, it argues that the WTO has to build a conceptual framework for the relationship between trade and development if the multilateral regime is to remain relevant for its members.

7. Srinivasan, T. N. "The Dispute Settlement Mechanism of the WTO: A Brief History and an Evaluation from Economic, Contractarian and Legal Perspectives." World Economy 30.7 (2007): 1033-1068.

After reviewing their history and evaluation, the article analyses the effectiveness of the two DSMs using relevant standards. Political-diplomatic, legal-economic, and social dimensions are all considered simultaneously. The examination of the remaining issues with the WTO's DSM's operation and the likelihood of their resolution in the ongoing Doha Round of global trade talks serves as its conclusion.

8. Bartels, Lorand. "Applicable law in WTO dispute settlement proceedings." Journal of World Trade 35.3 (2001).

This article looks at the extent to which Panels and the Appellate Body may employ rules and ideas of international law acquired from sources other than the WTO-covered agreements. The central thesis of the article is that all sources of international law are potentially applicable as WTO law, subject to a de facto restriction brought about by the limited jurisdiction of the Panels and the Appellate Body, as well as the conflict rule outlined in Articles 3.2 and 19.2 of the DSU, which provides that Panels may not alter the rights and obligations of Members outlined in the covered agreements.

9. Hillman, Jennifer. "Conflicts between dispute settlement mechanisms in regional trade agreements and the WTO-What should WTO do." Cornell Int'l LJ 42 (2009): 193.

This article, which has already sparked a lot of debate among scholars, discusses how various free trade agreements, tariff unions, or regional trade deals (RTAs) relate to the WTO's Dispute Settlement Understanding. This debate is expected to get hotter and more relevant as bilateral free trade pacts and regional trade agreements (RTAs) expand.

10. Mercurrio, Bryan, and Mitali Tyagi. "Treaty interpretation in WTO dispute settlement: the outstanding question of the legality of local working requirements." Minn. J. Int'l L. 19 (2010): 275.

This article examines the meaning of treaties in dispute resolution at the World Trade Organisation (WTO) to determine whether local working requirements—domestic funding that allows the grant of a compulsory license when a patent is not "worked" in that country—are authorized under the global commerce regime. The position is still unclear since it appears that local labor regulations go against Article 27 of the Agreement on Trade-Related Aspects of

International Property Rights (TRIPS), and these prevent discrimination based on "whether products are imported or locally produced." TRIPS Article 2.2, which still covers the majority of the Paris Convention, includes Article 5(A)(2) of the Paris Convention, which would specifically contain labor standards. After carefully following the rules of treaty interpretation that guide the WTO's Dispute Settlement Body's decision-making, the conclusion is that the incorporation of Article 5(A)(2) of the Paris Convention cannot be read down and that working requirements are in line with the TRIPS Agreement. The legal basis for local working requirements is not examined in this article; rather, it is a technical study that evaluates and settles a legal dispute using all pertinent legal sources.

11. Davey, William J. "The WTO dispute settlement mechanism." Available at SSRN 419943 (2003).

The result performing paper begins by discussing topics about conflict resolution theory, namely whether the method is more effective: one that emphasizes dialogue to resolve disagreements or one that emphasizes more judicial-like procedures. The GATT dispute settlement mechanism is then reviewed, together with its advantages and disadvantages, as the General Agreement on Tariffs and Trade (GATT) dispute resolution framework. The article's main body thoroughly describes the World Trade Organization's (WTO) dispute resolution guidelines.

In the final part, it examines how the WTO dispute settlement system has operated thus far and addresses several modifications that have been suggested, such as the creation of a permanent panel body and various strategies to increase the efficacy of remedies in situations of non-compliance with WTO judgments.

12. Zimmermann, Thomas A. "WTO dispute settlement at ten: evolution, experiences, and evaluation." Aussenwirtschaft 60.1 (2005): 27-61.

On January 1st, 1995, the DSU, or Understanding of Rules and Procedures Governing the Settlement of Disputes, went into force. In its first ten years, the DSU has already dealt with 324 complaints, which is more instances than the GATT 1947's dispute settlement system dealt with in more than 50 years. Both practitioners and academic literature concur that the method generally works effectively. But it additionally revealed certain flaws. Although discussions to examine and restructure the DSU (the "DSU review") have been proceeding since 1997, little advancement has been made thus far. WTO Members and determining authorities were able to

significantly enhance the mechanism in the meantime by modifying practices. The comparatively ineffective political decision-making and the increasingly significant mismatch between it and the relatively effective judicial decision-making in the WTO (as reflected in the DSU) represent a danger to the long-term viability of the system. While using this strategy, the DSU text's practical flaws may be addressed. This article summarises the first ten years of DSU practice, the continuing DSU review negotiations, and the issues with the dispute settlement system.

13. Busch, Marc L., and Eric Reinhardt. "The evolution of GATT/WTO dispute settlement." Trade Policy Research 143 (2003): 2003.

This discovery defies accepted thinking, and the danger of the panel and the Appellate Body's (AB) decisions in favor of the plaintiff, which are more significant under the WTO, as would be anticipated more early settlement, yet this is not taking place. in addition to proof of noncompliance with rulings more broadly, this evidence challenges the claim that The WTO's legal changes as a whole should be credited for the DSU's successes. Instead, it appears that the WTO's improving record is due to the broader definition of "actionable" instances under new rich complainants' proclivity to enter into agreements and over developing nations, with the latter more likely to be accused in WTO cases rather than GATT ones. These findings call for careful attention while assessing reforms to the Doha Development Agenda for conflict settlement.

14. Zangl, Bernhard. "Judicialization matters! A comparison of dispute settlement under GATT and the WTO." International Studies Quarterly 52.4 (2008): 825-854.

By studying disputes across the United States and the EU under the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO), respectively, the paper shows how the judicialization (or legalization) of international dispute settlement procedures (IDSPs) can help states comply with (these) dispute settlement mechanisms. In this article, four groups of disputes between the United States and the EU are compared that were pairwise similar. These four groups are referred to as the Residential Worldwide Sales Business Enterprises case (under GATT), the Foreign marketing profession Organisations case (resolved using WTO procedures), the Steel case, the Patents case, the two Growth Hormones cases (under GATT, and the WTO, respectively), the Lime case, and the Bananas case. In every one of the four cases, the United States acted in a manner that was more consistent with the parliamentary GATT processes than with the appeals-based WTO dispute settlement systems.

We may thus claim that, contrary to realist assumptions, the legalization of IDSPs may increase their effectiveness. Contrary to idealistic expectations, the legalization of IDSPs may not always lead to greater effectiveness. However, institutionalists contend that because of its ethical and strategic implications, judicialized IDSPs are preferable to diplomatic IDSPs in preserving states' cooperation with these procedures.

15. Khan, Pervaiz, and Mohammad Asif Khan. "GATT (1947) and WTO Dispute Settlement Systems: A Comparative Analysis." JL & Soc'y 49 (2018): 13.

In contrast to its predecessor, the General Agreement on Tariffs and Trade (GATT) of 1947, the World Trade Organisation (WTO) of 1995 has been successful in providing its developing nation members with a more rules-based dispute settlement mechanism. The WTO dispute resolution system supports the rule aspects of law, is less vulnerable to political interference, and is simpler to access than the dispute process system created by the GATT in 1947, all of which are designed for promoting developing nations' increased membership in the system.

16. Lacarte-Muro, Julio, and Petina Gappah. "Developing Countries and the WTO Legal and Dispute Settlement System: A view from the bench." Journal of International Economic Law 3.3 (2000): 395-401.

In this article, the appeals panel, or the judge, will give a brief explanation of how developing countries engage in WTO dispute settlement. It looks at how developing nation members participate in appeals processes, how they contribute to the development of basic and practical WTO legal issues, and how they safeguard their particular interests.

17. Rosendorff, B. Peter. "Stability and rigidity: politics and design of the WTO's dispute settlement procedure." American Political Science Review 99.3 (2005): 389-400.

It is shown that the increased "legalization" intrinsic in the World Trade Organization's (WTO) revised Dispute Settlement Procedure (DSP) is a structural change that increases the likelihood that states will temporarily suspend their legal obligations in situations of unanticipated, but increased, domestic political pressure for protection. The system's enhanced flexibility reduces states' per-period collaboration while also decreasing the possibility of the regime's total collapse. It has been shown that rigidity and steadiness during global establishment trade-offs can be detrimental when dealing with unexpected yet occasionally very significant domestic political pressure. It is demonstrated that in a case study with a WTO that plays both a communication and adjudicatory function, contracts with DSPs are autonomous, more stable,

and suitable to a wider variety of states than accords without DSPs. Information on advantageous trading agreements is used to support the major ideas.

18. Pauwelyn, Joost. "WTO dispute settlement post 2019: what to expect?." Journal of International Economic Law 22.3 (2019): 297-321.

What implications does the impending dissolution of the WTO Appellate Body (AB) have for the resolution of present and upcoming trade disputes? In this editorial, two "unlikely solutions," at least shortly, are discussed. The US removes its veto on AB nominations, and a WTO body breaks the deadlock. According to (contested) Rule 15 of the AB Working Procedures, appeals that are still pending as of December 10th, 2019, will likely be carried over. There are four main scenarios for panel reports released after that date: (i) appeals "into the void" blocking the panel report; (ii) no appeal ex-post or ex-ante pacts; (iii) arbitration under Article 25; and (iv) "floating" panel reports (preliminary or final), which are not adopted or subject to an appeal or block. It took fifty years for the GATT to become the WTO. In a few months, regular veto powers in the resolution of trade disputes could be returning. Losing the AB is one thing, but going back to the pre-WTO dispute resolution system, where panel decisions are not always binding and power dynamics matter far more, is quite another. However, it would be incorrect to assume that the demise of the WTO's rules-based system would result from a (temporary?) return to GATT-style dispute resolution.

19. Kim, Moonhawk. "Costly procedures: divergent effects of legalization in the GATT/WTO dispute settlement procedures." International Studies Quarterly 52.3 (2008): 657-686.

Different consequences on member nations result from the increasing legalization of international organizations. While legalization reduces ambiguity and fosters more convergence among nations in their expectations of international results, it puts costs on nations by making processes more complicated and challenging for them to use. More legalization advantages nations with the administrative competence to adhere to complex processes. The potential advantages are outweighed for nations without such capabilities, especially poor nations, by their inability to adhere to the processes. I look at this defense of the institutional modifications made to the dispute resolution processes during the shift from the General Agreement on Tariffs and Trade (GATT) to the World Trade Organisation (WTO). Developed nations, those with higher capability, are significantly more likely than poor nations to use WTO dispute settlement than they were during the GATT era. Gains from the structural

reforms in the WTO's dispute resolution processes have flowed to the majority of its developed members.

20. Bronckers, Marco, and Naboth Van den Broek. "Financial compensation in the WTO: improving the remedies of WTO dispute settlement." Journal of International Economic Law 8.1 (2005): 101-126.

Under the WTO's current system of remedies, members have the choice of retaliation or trade compensation. In contrast to retaliation, which has the disadvantage of requiring the offending participant to "shoot itself in the foot" by reducing purchase and thereby compromising its users in industry, importers, and consumers, trade compensation is only practical with the consent of the in contradiction country which often remains theoretical. Such reprisal restrictions cause harm to innocent third parties overseas as well since they bar them from export markets. It is significant to note that the current strategy does not provide enough compensation for losses suffered by the WTO members and the impacted private parties. For rising countries, these problems are far more urgent. Due to their small economies and the fact that the effects of such acts would be felt proportionally by their financial systems and firms, many of them cannot take effective corrective action. Introduce cash prizes as one tactic. Trade is not prohibited, and financial assistance to injured Members and businesses assists with compliance more effectively while also preventing injury to innocent bystanders and companies. This study assesses the advantages and disadvantages of monetary reimbursement before describing what financial recompense in the WTO would imply. It also examines the shortcomings of current solutions.

21. Mohd Zin, Sharizal, and Ashraf U. Sarah Kazi. "An analysis of customary international law and the importance of dispute settlement: A study of environmental law exceptions under article XX." Macquarie Journal of International and Comparative Environmental Law 7.1 (2011): 39-80.

The Disputes Settlement System of the World Trade Organisation (WTO) mainly depends on customary international law. Additionally, WTO jurisprudence has become significantly important and has a big effect on international law, which has caused new jurisprudence to arise. This paper is significant because it explores the relationship between customary international law and the WTO Disputes Settlement System. It focuses on state sovereignty, the role of customary international law in WTO disputes, and the application of that law. It also looks at how international customary law treats the non-intervention principle. This study tests

the sovereignty and non-interference principles in the context of economic coercion. The status of the principle of precaution in WTO case law and whether unilateral trade restrictions are covered by necessity are other issues that are discussed. Finally, it evaluates the reliability of WTO decisions and examines pertinent legal precedents on WTO Agreement environmental exclusions.

22. Zimmermann, Thomas Alexander. Negotiating the review of the WTO Dispute Settlement Understanding. Cameron May 2006.

The DSU, or the Understanding of Rules and Procedures Governing the Settlement of Disputes, became effective on January 1, 1995. Although efforts to examine and restructure the DSU (the "DSU review") have been ongoing since 1998, little progress has been made so far. The goal of this study is to examine the current state of the DSU review discussions and the suggestions put forth.

An overview of the dispute resolution mechanism's economic, legal, and political components, as well as its development and practical use, is provided to provide the groundwork for the debate.

The research then provides a summary and analysis of the negotiation process in its larger context. The history, the substance, and the possible ramifications of the negotiation offers on stage-specific and horizontal concerns of the dispute settlement process are also provided and thoroughly examined.

The challenges that negotiators experienced when finishing the DSU review are examined in the third stage. There are policy suggestions for future discussions, and the likelihood of an agreement is assessed.

Last but not least, the study aims to provide a single point of entry for further scholars who seek to go deeper into particular facets of the DSU evaluation. To that goal, thorough documentation of all references available on the DSU review exercise has been made.

23. Oesch, Matthias. "Standards of Review in WTO dispute resolution." Journal of International Economic Law 6.3 (2003): 635-659.

In this article, the requirement of examination in WTO dispute resolution is a subject that is

covered. Guidelines of review have recently acquired an unmatched political and structural relevance in the group and Appellate Body proceedings. They show a deliberate vertical power allocation between national authorities and WTO adjudicating bodies when making decisions about factual and legal issues. The discussion about the way the WTO's legal system engages with its members is greatly enhanced by this article. In Section I, the typical of the review problem is defined. In Section II, the grounds for respecting members' interpretation of their obligations under the WTO are discussed. Before going on to Section IV, which addresses the current state of legislation and practice, Section III provides further detail on the Uruguay Round debates. The analysis of the case law to date reveals that Committees and the Appellate Body have often utilized intrusive standards of scrutiny. Such a conclusion holds for both factual conclusions and the literal reading of WTO law in particular. According to some, the overly intrusive policy is correct legally, but it clashes with the many justifications for the deferential approach.

24. Davey, William J. "The WTO dispute settlement system: the first ten years." Journal of International Economic Law 8.1 (2005): 17-50.

The first 10 years of the WTO dispute settlement system's existence—from 1995 to 2004—are explored in this article. A study of the experiences of several key system users, including the United States, the European Communities, Canada, Japan, Brazil, and India, is presented after a brief system introduction. The effectiveness of these users in promoting their main trade policy issues is then evaluated on a thematic and country-by-country basis. Particular bilateral alliances, like the one involving the US and the EC, are given specific scrutiny. The study's following section evaluates the system's efficiency in resolving disputes, specifically whether disputes have been rapidly resolved by mutually agreeable solutions or the use of panel/Appellate Body reports. The study concludes that since the mechanism's inception in 1995, it has operated largely successfully in giving WTO Members a method to settle issues, both during the period of consultation and after the end of formal dispute settlement proceedings. The method hasn't always achieved its goal of promptness, though.

25. Horn, Henrik, Petros C. Mavroidis, and Håkan Nordström. Is the use of the WTO dispute settlement system biased? Vol. 2340. London: Centre for Economic Policy Research, 1999.

For the first four years of its existence, the WTO Dispute Settlement mechanism was primarily utilized by the bigger trade states. This has sparked a discussion regarding whether the DS

system favors larger, wealthier countries over smaller, more developed ones, for example, due to a lack of retaliatory power and legal capacity. This study demonstrates that the dispute pattern may be explained rather well by a straightforward model in which countries file lawsuits according to the variety and value of their exports. While "power" concerns do not appear to matter, differences in legal capacities do appear to have some influence.

26. Cheng, Hu. Dispute settlement practice on safeguard measures under the WTO. Diss. KDI School, 2003.

It emphasizes the significant as well as legal problems that were extensively discussed during the panel and Appellate Body processes, including the terms of reference, the state standard review new, whether the applicability of Articles XIX and XIII in the context of the Safeguard Agreement, unanticipated developments, increased imports, domestic industry, serious in the Try and threat of such injury, causal link and non-attribution, the necessary extent of application, notification, and consultation, and so on. The document also discusses the final four dispute settlement problems. The GATT defenses the non-discrimination application of safeguard measures, structural adjustment, procedural fault of the dispute settlement involving safeguard, and conflict judgments disputed matters include In general, numerous ambiguous matters were clarified by the panel and the Appellate Body.

27. Yerxa, Rufus, and Bruce Wilson. Key Issues in WTO Dispute Settlement. WTO: World Trade Organization, 2005.

In this book, the WTO dispute settlement system's first ten years of operation are examined in detail. It includes a cross-section of the problems and circumstances that WTO Members have encountered in the Dispute Settlement Understanding. The book is distinctive in that contributions are provided by almost all of the actors involved in the daily operation of the WTO dispute settlement system, including Member government representatives, private solicitors who represent Member governments in court proceedings, members of the Appellate Body, staff members of the Appellate Body Secretariat, and employees of the WTO Secretariat. Several schoSeveralttentively monitors meticulously examine everything that occurs within the system and has also contributed to it. Therefore, it offers intriguing insights into how the system has worked as well as how the lessons learned from the first ten years might be used to make the system even more effective in the years to come.

28. Schoenbaum, Thomas J. "WTO dispute settlement: praise and suggestions for reform." International & Comparative Law Quarterly 47.3 (1998): 647-658.

The Uruguay Round of trade negotiations led to the establishment of the World Trade Organization's (WTO) dispute-resolution system on January 1st, 1995. By all standards, this method of resolving disputes is a huge success. The WTO has been consulted on a sizable number of topics; as of the conclusion of 1997, 25 cases were currently being settled at the conversation stage, 61 of those cases were still being debated, and 36 cases had either advanced through the panel-appeal system or had already finished it. The newly formed Appellate Body has decided nine cases, and the general caliber of the committees' conclusions is fairly excellent. The decisions and recommendations issued by the WTO's dispute settlement body are followed by all of the organization's member nations.

29. Sykes, Alan O., and Warren F. Schwartz. "The Economic Structure of Renegotiation and Dispute Resolution in the WTO/GATT System." (2002).

There is a growing body of theoretical work on the positive political economy that is related to the World Trade Organisation (WTO), which consists of the General Agreement on Tariffs and Trade (GATT) and in addition compromises on trade in commodities, the General Agreement on Trade in Services (GATS), and the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS). The primary source of data for this article is the Dispute Settlement Understanding (DSU), commonly referred to as the Understand of the Regulations and Processes Governing the Settlement of Disputes. Its objective is to create an economic justification for the legislative and procedural framework of the DSU.

30. Wilson, Bruce. "Compliance by WTO members with adverse WTO dispute settlement rulings: the record to date." Journal of international economic law 10.2 (2007): 397-403.

Due in significant part to the Members' comparatively strong track record of diligently adhering to unfavorable rulings made by the panels, the Appellate Body, or both, the WTO dispute settlement mechanism has been effective to this point. In almost 90% of the approved reports, Panels and/or the Appellate Body have discovered one or more violations of WTO standards. The data reveals that the WTO Member determined to be in violation performed so in a large number of cases, even though it has nearly always stated that it wants to bring itself into compliance. Although unexpected, it is noteworthy that compliance has increased where WTO

violations may be handled administratively rather than through legislation. Even though both The participants have occasionally run into some lingering compliance issues, a closer look at the compliance histories of the US and the EU, which collectively have been involved in the matter of roughly half of all unfavorable rulings, shows that these Members have usually been profitable in bringing themselves into accordance with such rulings. Last but not least, the small number of occasions in which States have asked for and received approval to deploy punitive measures reflects and reinforces the Members' overall positive track record of adhering to unfavorable WTO judgments.

RESEARCH QUESTION

1. What issues do developing countries have with the WTO's dispute resolution process, and how may these issues be resolved to ensure a fair and efficient resolution of disputes?
2. In light of recent geopolitical and economic events, what are the effects of the World Trade Organization's (WTO) dispute settlement system's effectiveness and credibility?
3. How do public participation and accessibility affect the legitimacy and effectiveness of the World Trade Organisation (WTO) dispute settlement procedure?
4. Does the globalization of dispute resolution processes have an impact on the World Trade Organization's (WTO) dispute settlement system, and what are the implications for the multilateral trading system's long-term viability?

RESEARCH OBJECTIVES

1. To look at the underlying reasons and consequences of the issues the WTO dispute settlement system is having, including the system's increasing politicization, the nationalization of dispute resolution processes, the role of developing countries, and the system's applicability to non-trade issues.

2. To determine what modifications could be made to the WTO dispute settlement system's institutional structure, legal foundation, procedural guidelines, or political environment to improve its effectiveness and credibility.

3. To find out the difficulties that developing nations have been facing while trying to access and make use of the dispute resolution under WTO.

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4. To recognize and evaluate the problems the World Trade Organization's (WTO) dispute settlement mechanism is facing.

5. To investigate the causes of the issues, such as the influence of politics, the dynamics of power among the participating nations, and the changing nature of global commerce.

6. To look into other remedies or reforms that might increase the credibility and effectiveness of the conflict resolution process, such as changes to the institutional framework, the judiciary, and procedural rules.

HYPOTHESIS

Although WTO claims that it has established rules and regulations for trade to treat all countries equally, these rules are primarily designed to favor powerful multinationals and developed countries.

SIGNIFICANCE OF THE STUDY

To raise awareness and knowledge of the relevance of the WTO's dispute settlement system and its role in sustaining an international trading system based on rules, it is significant to write an essay about dispute settlement under the WTO and its concerns and challenges.

The WTO's multilateral trade framework, which aims to promote and liberalize international commerce, critically depends on its dispute settlement process. Yet, the system confronts several difficulties and problems that may limit its ability to uphold WTO regulations and settle disputes between member nations.

RESEARCH METHODOLOGY

The present research work is doctrinal in nature. The main analytical method is the study based on various primary and secondary sources like books, journals, newspapers, and the Internet, etc. A few case studies also have been undertaken to find out the nature of issues pending before the WTO.

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BRIEF CHAPTALISATION

- **CHAPTER 2 – A Historical Perspective WTO :**

To create a more complete framework for global trade, the World Trade Organisation (WTO) took the place of the General Agreement on Tariffs and Trade (GATT) in 1995. The WTO's main responsibilities are to negotiate trade agreements, ensure compliance, and support member countries in putting them into effect. It has been crucial in advancing trade liberalization, settling conflicts, and removing impediments. The WTO is still essential for controlling international trade and promoting economic expansion, despite criticism.

- **CHAPTER 3 – A Comparative Analysis of Dispute Settlement Mechanism under WTO and GATT :**

The World Trade Organization (WTO) dispute settlement system replaced the General Agreement on Tariffs and Trade (GATT) procedure, with several key distinctions. The WTO system is binding, unlike the non-binding GATT process. It also has stricter time limits, a panel and appellate body, greater transparency, and an enforcement mechanism through trade sanctions. These improvements make the WTO more successful and effective in resolving trade disputes compared to GATT.

- **CHAPTER 4 – The Trade Dispute under the WTO: Case Studies :**

i. The United States implemented higher tariffs on steel and aluminum imports in 2018, which were challenged at the WTO. A panel found that the US breached its commitments, highlighting the importance of fulfilling WTO obligations and resolving trade conflicts through dialogue.

ii. The US imposed tariffs on Chinese imports in 2018, leading to a trade spat. Negotiations have taken place to settle the conflict, with intermittent removal or reduction of tariffs, highlighting trade tensions between the two economies.

iii. China retaliated with higher tariffs on American goods in response to US tariff measures. These additional levies exacerbated trade tensions and affected industries in both countries, prompting negotiations and changes to the tariffs.

iv. The US imposed tariffs on various Chinese products as part of an ongoing trade dispute. Intellectual property concerns and trade imbalances were key reasons behind the tariffs, affecting global trade dynamics and prompting negotiations for a resolution.

v. India enacted tariff treatment on certain ICT goods to promote domestic manufacturing,

leading to trade conflicts. Negotiations have been ongoing to address concerns and find a win-win solution.

vi. India imposed higher taxes on US imports as a response to trade disagreements. Both countries have been engaging in talks to settle the disputes and promote a fairer trading partnership.

vii. A case between India and the US highlighted disagreements over renewable energy policies and compliance with international trade laws. The conflict between encouraging renewable energy use and following trade agreements was brought to the forefront.

viii. Several countries, including China, challenged the US safeguard measure on imports of photovoltaic products. A WTO panel found that the US violated its duties, shedding light on the complexities of safeguard regulations and their impact on global commerce.

❖ CHAPTER 5 – Conclusion and Observation :

The World Trade Organization's (WTO) dispute resolution process has been instrumental in settling trade disputes and providing a roadmap for resolving differences based on trade conventions and commitments. However, challenges exist that need to be addressed. The increasing number of complaints and prolonged resolution time hinder the system's effectiveness. Implementing judgments, especially against powerful nations, can be politically delicate. Concerns about bias and impartiality have also been raised. Despite these difficulties, the WTO dispute settlement system remains vital for resolving international trade issues, thanks to its binding judgments, strict deadlines, and enforcement measures. It is important to address these challenges to maintain the system's efficacy and relevance in an evolving global trading system.

Chapter 2

A Historical Perspective World Trade Organization (WTO)

The World Trade Organisation (WTO), an administrative organization, oversees international trade. The Marrakesh Agreement, which was signed by 123 nations on April 15, 1994, replaced the General Agreement on Tariffs and Trade (GATT), which was established in 1948, with the World Trade Organisation (WTO) on January 1, 1995.[9] By providing a structure for establishing trade agreements and a dispute resolution process intended to enforce the commitment of participants to WTO agreements, which are agreed upon by participants of the member nations and ratified by their parliaments, the WTO regulates trade between participating countries. The Uruguay Round of talks (1986–1994) in particular is to blame for the majority of the WTO's present worries.

In response to other new multilateral organizations focused on cooperation in the economy, most notably the Bretton Woods organizations known as the World Bank and the International Monetary Fund, the General Agreement on Tariffs and Trade (GATT), which was the predecessor of the World Trade Organisation, was established after World War II. The World Trade Organisation, a comparable global trade organization, was founded as a result of successful talks. The International Trade Organisation (ITO) was envisioned as a specialized arm of the UN that would deal with issues relating to both direct and indirect trade, including employment, investment, unfair business practices, and commodity agreements. The ITO agreement, however, was never implemented because the United States and a small number of other members did not support it.[10]

- **GATT negotiations rounds**

The lasting effect of the current WTO agreements is the commitments that countries have frequently and voluntarily agreed with other countries in the many years after 1947. Understanding the causes of the present patterns of protection for imports across WTO members, as well as across various commodities and businesses within those countries, necessitates taking a close look at the past.

[9] Hauser, Heinz, and Thomas A. Zimmermann. "The challenge of reforming the WTO dispute settlement understanding." Available at SSRN 666983 (2003).
[10] Fergusson, Ian F. (9 May 2007). "The World Trade Organization: Background and Issues". Congressional Research Service. p. 4. Retrieved 15 August 2008.

The 1930s and 1940s respectively and World War II periods serve as important reminders of the final depressing chapter of protectionism in the development of globalization. The Smoot-Hawley tariffs imposed by the United States and a worldwide outcry led to a near end to international commerce in the 1930s.

23 countries, including the United States, Canada, and the United Kingdom[11], negotiated the General Agreement on Tariffs and Trade towards the close of World War II. The goal was to come to an agreement that would ensure postwar stability and prevent the same mistakes from happening in the future, like the Smoot-Hawley tariffs and retaliatory measures, which ultimately contributed to the disastrous economic climate that led to the Second World War's loss of life and destruction. The 1947 GATT created a new core foundation of standards and exceptions to regulate international trade between members, as well as locking in the first reductions in tariffs that these countries agreed to implement. Even as early as 1952, the tariff reductions dramatically cut average rates.

- **The GATT's and the WTO's Fundamental Principles**

The General Agreement on Tariffs and Trade created the framework for multilateral trade rounds that would eventually be used to negotiate tariff reductions throughout the ensuing decades. The early discussions also produced an agreement that defined a set of fundamental guidelines and standards that member nations were to adhere to and a platform for dispute resolution if nations departed from them. The fundamental concept of reciprocity and the two nondiscrimination principles of most-favored-nation treatment and national treatment are maybe the most significant and durable of these fundamental principles included in the GATT of 1947.

The core GATT idea of reciprocity is incorporated into the agreement in a variety of formal and informal ways.[12]

First, these discussions were often conducted on a reciprocal basis—often between nations with a primary providing export interest in the other's import market—as was covered above in the

[11] Irwin, Douglas A., Petros C. Mavroidis, and Alan O. Sykes. "The Genesis of the GATT." (2008).
[12] Bagwell, Kyle, and Robert W. Staiger. 1999. "An Economic Theory of GATT." American Economic Review, 89 (1): 215-248.

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section regarding the GATT rounds' procedure. Although this particular negotiating strategy was effective, it was more of a general guideline during the negotiation stage. Nothing in the GATT articles mandates that nations negotiate market access liberalization on a reciprocal basis.

Second, reciprocity did become a statutory guideline for renegotiations if a contractual party later decided to back off from its pledge to open up access to its market. Countries have generally broken their promises in two different ways, and the GATT/WTO[13] response to both has often been based on reciprocity.

The first situation occurs when a nation tries to adhere to GATT/WTO legal processes when increasing its import tariffs over the "bound" obligations (or restrictions) it had pledged to provide to the rest of the membership during a previous negotiation round. Trading partners who have been negatively impacted are then allowed to negotiate a change in reciprocal market access in a different area of interest. Although it's possible that rebalancing may happen through more trade liberalization in a different industry that the impacted exporter is interested in, it usually happens through a new "market closing," which, although punitive, is constrained by this reciprocity principle to rebalance the deal.

The second situation occurs when a nation backs off of promises to expand market access in a way that is not "GATT/WTO legal," in which case negatively impacted trade partners utilize the dispute resolution procedure to get a court decision that enables them to rebalance market access obligations. Case law that has developed as a consequence of the formal trade dispute resolution processes decided at the WTO has also led to the application of the reciprocity rule in situations where compensation must be given to exporters who have been negatively affected as a result of legal violations of the GATT/WTO agreement. This second argument suggests that reciprocity is a fundamental concept when it comes to the problem of conflicts, and as a result, the subject will be covered in more detail in the following chapters.

- **<u>From Geneva to Tokyo</u>**

Seven rounds of negotiations made up the GATT process. Further tariff reduction was the goal

[13] Joost Pauwelyn, THE LAW, ECONOMICS, AND POLITICS OF RETALIATION IN WTO DISPUTE SETTLEMENT, Chad P. Bown, ed., Cambridge University Press, 2009

of the first actual GATT trade discussions. The GATT anti-dumping Convention and a development clause were then developed by the Kennedy Round in the course of the 1960s. The Tokyo Round, which took place in the 1970s, was the first serious attempt to reduce non-tariff trade obstacles and enhance the system. It negotiated several non-tariff barrier agreements that, in some circumstances, adhered to GATT standards and, in other instances, established new precedents. Because the whole GATT organization did not ratify them, these multilateral agreements are often referred to as "codes" informally. A few of these standards were altered during the Uruguay Round and turned into multilateral agreements that all WTO members subsequently ratified. There were just two plurilateral agreements left after the bovine meat and dairy agreements were canceled by the WTO in 1997.14

- **Uruguay Round**

The GATT's participants concluded that the framework was having trouble adjusting to a new, globally integrated economy before it turned 40. In response to the problems provided in the 1982 Ministerial Clarification (structural flaws, spillover effects of some countries' policies on international trade GATT could not manage, etc.), the eighth GATT round, commonly referred to as the Uruguay Round, officially began in September 1986 in Punta del Este, Uruguay.[15]

The discussions aimed to reform trade in the delicate sectors of harvesting and textiles as well as expand the trading framework into several new disciplines, especially trade in technology and intellectual property[16]. The original GATT papers were all available for review. It was the greatest trade negotiation mandate ever approved. The Final Act, known as the Marrakesh Agreement, was agreed upon on April 15, 1994, at the ministerial meeting held in Marrakesh, Morocco. It officially put an end to the Uruguay Round and established the WTO framework.[17] The Uruguay Round conversations resulted in changes to the GATT, which is still in force as the main agreement governing trade in goods within the World Trade Organisation (WTO). This modification is known as GATT 1994 and distinguishes it from GATT 1947, the initial arrangement that still forms the basis of GATT 1994. The GATT of 1994 was not the only legally enforceable agreement incorporated in the Marrakesh Final Act, which also recognized over 60 other agreements, annexes, rulings, and understandings. The agreements are broken

[14] Joost Pauwelyn, THE LAW, ECONOMICS, AND POLITICS OF RETALIATION IN WTO DISPUTE SETTLEMENT, Chad P. Bown, ed., Cambridge University Press, 2009
[15] Gallagher, Peter. The first ten years of the WTO: 1995-2005. Cambridge University Press, 2005.
[16] The Uruguay Round, WTO official site
[17] "Legal texts – Marrakesh agreement". WTO. Retrieved 30 May 2010.

down into a framework of six parts:

1. The WTO Establishment Agreement
2. The Multilateral Agreements on Trade in Goods, notably the GATT of 1994 and the Trade-Related Investment Measures (TRIMS), and investments in goods
3. The General Agreement on Trade in Services (GATS) relates to services.
4. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regulates intellectual property.
5. Settlement of disputes (DSU)[18]
6. Trade policy review mechanisms (TPRM)[19]

According to the WTO's concept of tariff "ceiling-binding" (No. 3),20 the Uruguay Round was successful in increasing binding commitments by both wealthy and poor countries, as seen by the number of duties committed before and after the 1986–1994 discussions.

- **Ministerial conferences**

The WTO's main decision-making body, the Ministerial Conference, normally meets every two years. Whether they are nations or tariff unions, it operates as a collective for all WTO members. The Ministerial Conference must decide on every aspect of any multilateral trade deal.

  - The first ministerial gathering was place in Singapore in 1996[21]. The "Singapore issues"[22] are the four subjects that were the focus of conflicts between largely developed and developing countries during this summit.
  - The second ministerial gathering took place in Geneva, Switzerland, in 1998.[23]
  - The third conference (1999) [24]in Seattle, Washington, was a disaster that brought attention to the massive demonstrations and crowd-control tactics used by the police and National Guard on a global scale.

[18] Erskine, Daniel H. "Resolving Trade Disputes, the Mechanisms of GATT/WTO Dispute Resolution." Santa Clara J. Int'l L. 2 (2004)
[19] Overview: a Navigational Guide, WTO official site. For the complete list of "The Uruguay Round Agreements," see WTO legal texts, WTO official site, and Uruguay Round Agreements, Understandings, Decisions, and Declarations, WorldTradeLaw.net
[20] Principles of the Trading System, WTO official site
[21] World Trade Organization Ministerial Conference of 1996
[22] Fergusson, Ian F. "World trade organization negotiations: the Doha development agenda." LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE, 2008.
[23] "The Second WTO Ministerial Conference". World Trade Organization. Retrieved 2008-08-1
[24] WTO Ministerial Conference of 1999

- In 2001, Doha, Qatar, a nation in the Persian Gulf, hosted the fourth ministerial meeting. The Doha Development Round was discussed at the conference. The conference also gave its approval for China to become the 143rd member and join.
- The fifth ministerial gathering in 2003 in Cancun, Mexico, aimed to find agreement on the Doha round. The so-called "Singapore issues"[25] were the focus of demands from the North, while the G20 developing nations, a group of 22 southern states led by India, China,[26] Brazil, and ASEAN, requested an end to agricultural subsidies in the EU and the US. The discussions came to a close without any resolution.
- From December 13 to 18, 2005[27], Hong Kong hosted the sixth WTO ministerial conference. [28]It was deemed important if the four-year-old Doha Development Round negotiations were to make enough progress to finish the round in 2006. Countries agreed to cease all agricultural export subsidies by the end of 2013 and cotton export subsidies by the end of 2006 at this summit. One of the extra concessions granted to developing countries was an agreement to provide duty-free, tariff-free access for goods from the Least Developed Countries following the European Union's Everything But Arms program. Only 3% of tariff lines, though, would be exempt. More agreements on other key subjects were expected to be finished by the end of 2010.

The seventh WTO Ministerial Conference will take place in Geneva from November 30 to December 3, 2009[29], the WTO General Council determined on May 26, 2009. The Doha Round's failure in 2005 led to a violation of the rule mandating twice-yearly "regular" meetings, and Amb. Mario Matus addressed this in a statement. According to the announcement, the conference would not be confrontational and would instead "focus on transparency and open discussion rather than on small group processes and informal bargaining techniques." The major topic of discussion was "The WTO, the Multilateral Trading System, and the Current Global Economic Environment".

[25] Fergusson, Ian F. "World trade organization negotiations: the Doha development agenda." LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE, 2008.
[26] Farah, Paolo Davide. "Five Years of China's WTO Membership. EU and US Perspectives on China's Compliance with Transparency Commitments and the Transitional Review Mechanism." Legal Issues of Economic Integration 33.3 (2006).
[27] WTO Ministerial Conference of 2005
[28] WTO Ministerial Conference of 2001
[29] WTO to hold 7th Ministerial Conference on 30 November-2 December 2009 WTO official website

- **Doha Round**

The current round of negotiations, known as the Doha Development Round, was formally launched by the WTO when the fourth ministerial conference took place in Doha, Qatar, in November 2001. This was an ambitious endeavor to widen globalization's influence and help the world's poor, particularly by removing barriers and agricultural [30]subsidies. The first agenda called for the creation of new rules as well as economic liberalization, and it was backed by promises to give impoverished countries a sizable amount of money.[31]

The discussions have been rather heated. Conflicts persist over several crucial issues, including farm subsidies, which became urgent in July 2006.[32] In reply to a statement made by the European Union, it was mentioned that the 2008 Ministerial meeting encountered a breakdown due to a disagreement between agricultural bulk commodity exporters and countries with a considerable number of subsistence farmers. This disagreement revolved around the specific conditions of a "special maintenance measure," which aimed to protect farmers from sudden surges in imports. [33]The successful completion of the Doha discussions would underline the crucial importance of multilateral liberalization and rule-making, according to the European Commission. It would reaffirm the WTO's effectiveness as a barrier against the return of protectionist policies. Despite lengthy talks at many ministerial conferences and other sessions, there is still no compromise and the deadlock exists as of August 2013. The chairman of the agriculture discussions revealed "a proposal to relax price support disciplines for public stocks of developing countries and domestic pp aid" on March 27, 2013. We are not yet close to an agreement, he said, and the serious discussion of the idea is only getting started.[34]

- **The Evolution of WTO Dispute Settlement**

Dispute resolution under the World Trade Organisation (WTO), while making its debut under the General Agreement on Tariffs and Trade (GATT) with little fanfare, has been referred to as the "backbone of the multilateral trading system." The GATT's dispute resolution system could not have been more defective,[35] whereas the WTO's Dispute Settlement Understanding (DSU)

[30] "In the twilight of Doha". The Economist. 27 July 2006. p. 65.
[31] European Commission The Doha Round
[32] Fergusson, Ian F. "World trade organization negotiations: the Doha development agenda." LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE, 2008.
[33] WTO trade negotiations: Doha Development Agenda Europa press release, 31 October 2011
[34] "Members start negotiating proposal on poor countries' food stockholding". WTO official website. 27 March 2013. Retrieved 2 September 2013.
[35] Busch, Marc L. "Democracy, Consultation, and the Paneling of Disputes under GATT." Journal of Conflict Resolution 44.4 (2000): 425-446.

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is largely credited for fostering trust in a world economy that is becoming more and more governed by rules.[36] Why are the perspectives on GATT and WTO dispute resolution so radically different? According to prevailing thinking, the more juridical design of the WTO has replaced the GATT's diplomatic standards, [37]creating a system where "right triumphs over might"[38].Unsurprisingly, many commentators think that the improvements brought about by the DSU and the WTO's increased legal certainty have led to more Members—and developing nations in particular—achieving more favorable outcomes in dispute settlement.

- **WTO Dispute Settlement**

The GATT[39] is seen as an important obstacle to the DSU, which is seen as a major advancement in institutional architecture.[40] The DSU has been hailed as "perhaps the most significant success of the Uruguay Round discussions, introducing what may be the most sophisticated dispute settlement mechanism in any contemporary treaty regime.[41] It is hard to make a case for the contrary, by all accounts. In any case, the DSU's more stringent deadlines, the right to a group (carried over from the Improvements), natural ratification of indicates (absent negative consensus), and examination by an Appellate Body (AB), to name a few of its more notable provisions, seem to correct many of the GATT's most glaring design flaws.

First, swifter processes with rigorous deadlines are supposed to increase faith in the DSU, providing "justice" faster and outpacing several unilateral measures, including US Section 301, that operated on a clock that was infamously faster than the existing GATT system. Second, the right to a panel eliminates the possibility of blocking, a strategy that was long seen as essential to power politics throughout the GATT era (except for one meeting of the Dispute Settlement Body). Third, the system as an entire benefits from consistent terms of reference and the automatic acceptance of panel findings, which eliminate the prospect of a unilateral "veto" by a stubborn defendant. Fourth, the possibility of evaluation by the AB offers more uniformity in judgments and a more knowledgeable corpus of case law to analyze the grounds

[36] Busch, Marc L., and Eric Reinhardt. "Developing countries and general agreement on tariffs and trade/world trade organization dispute settlement." J. World Trade 37 (2003): 719.
[37] Jackson, John H. The jurisprudence of GATT and the WTO: insights on treaty law and economic relations. Cambridge University Press, 2007.
[38] Lacarte-Muro, Julio, and Petina Gappah. "Developing Countries and the WTO Legal and Dispute Settlement System: A view from the bench." Journal of International Economic Law 3.3 (2000): 395-401.
[39] Moore, Mike. "The WTO, Looking Ahead." Fordham Int'l LJ 24 (2000): 1.
[40] Busch, Marc L., and Eric Reinhardt. "Developing countries and general agreement on tariffs and trade/world trade organization dispute settlement." J. World Trade 37 (2003): 719.
[41] Palmeter, David. "The WTO as a legal system." Fordham Int'l LJ 24 (2000): 444.

of a disagreement ex-ante[42]. These changes taken together are anticipated to encourage errant defendants to become more liberal in a timely way.

Regrettably, the DSU's legal changes may also increase the transaction costs associated with resolving disputes by creating additional avenues for delay, boosting the incentives for litigation dithering, and encouraging defendants to put off concessions[43]. Although each stage of the process now follows a stricter schedule, this is outweighed by the new possibility—indeed, the inevitability[44]—of succeeding stages. sessions of dispute in the same issue, a 15-month grace period to enact as the conclusion[45], and the potential for Following arbitration over an Article 22.6 committee assigned with arbitrating the quantity and nature of retaliation, as well as an Article 21.5 "compliance" panel review (and potential appeal thereto). Put simply, Before facing final legal condemnation, a determined offender can milk three years of delays out of the system, more than enough time for "temporary"[46] measures—like the US steel safeguards from 2002—to limit competition without the possibility of back pay[47]. The additional stages of litigation, strict enforcement of the terms of reference, legal restrictions for disclosure, and standing rules all place the onus on the parties and third parties to ethically mobilize as soon as they're able to avoid losses later on due to technicalities.

The fear of post-ruling delays, in especially, has the impact of undercutting early settlement at the beginning of a dispute. This is particularly true if the rush to a lawsuit involves third parties or extra disputants[48], whose participation has been found to lessen the likelihood that a defendant will make concessions[49]. The DSU's supremacy over the GATT in gaining compliance after a judgment is likewise much exaggerated[50]; the challenge, in this case, has

[42] Howse, Robert. "The Canadian Generic Medicines panel: A dangerous precedent in dangerous times." The Journal of World Intellectual Property 3.4 (2000): 493-507.
[43] Busch, Marc L., and Eric Reinhardt. "Developing countries and general agreement on tariffs and trade/world trade organization dispute settlement." J. World Trade 37 (2003): 719.
[44] Dispute, W. T. O. "United States—Section 110 (5) of Copyright Act."
[45] Gleason, Carolyn B., and Pamela D. Walther. "The WTO Dispute Settlement Implementation Procedures: A System in Need of Reform." Law & Pol'y Int'l Bus. 31 (1999): 709.
[46] Pauwelyn, Joost. "Enforcement and countermeasures in the WTO: rules are rules-toward a more collective approach." American Journal of International Law 94.2 (2000): 335-347.
[47] Mavroidis, Petros C. "Remedies in the WTO legal system: between a rock and a hard place." European Journal of International Law 11.4 (2000): 763-813.
[484848] Stewart, Terence P., and Mara M. Burr. "The WTO's First Two and a Half Years of Dispute Resolution." NCJ Int'l L. & Com. Reg. 23 (1997): 481.
[49] Busch, Marc L., and Eric Reinhardt. "Bargaining in the shadow of the law: early settlement in GATT/WTO disputes." Fordham Int'l LJ 24 (2000): 158.
[50] Valles, Cherise M., and Berndan P. McGivern. "Right to Retaliate under the WTO Agreement, The." J. World Trade 34 (2000): 63.

never been securing legal authority per se[51], but rather generating the political will[52]—and possessing the market power—to react[53]. This is because, in fact, "the 'legalization' of disputes under the WTO stops, roughly where non-compliance starts," as one eminent observer put it[54].

- **Dispute Settlement Reform**

The Agenda for Doha Development has received a plethora of recommendations from members for changing WTO dispute resolution. The majority of these recommendations center on dynamics at the meeting stage, from creating a permanent panel of panelists[55] to calculating the legal expenses of poor nations to those complainants from industrialized nations who lose their cases[56].

This chapter's primary policy recommendation is that initiatives should improve the chances of an early settlement. Ex-Director General Mike Moore echoed this, saying, "I believe that Members should be provided the possibility to resolve their disputes through discussion whether possible[57]." Moore's proposal was meant to raise awareness of DSU Article 5's emphasis on "good offices, conciliation, and mediation," which is something that many developing nations also stress. For instance, Paraguay has suggested that using Article 5 as a last resort in conflicts with poor nations be "mandatory"[58], while Jamaica has just asked for "more frequent use" of this often ignored article[59]. Given that the disputants seem to be worried about the message that Article 5's invocation sends, the fact that it has never been used should serve as a warning against making it necessary.

Similar circumstances apply to DSU Article 25 arbitration, which was employed in this latter

[51] Hudec, Robert E. "The new WTO dispute settlement procedure: an overview of the first three years." Minn. J. Global Trade 8 (1999): 1.
[52] Reinhardt, Eric. "Adjudication without enforcement in GATT disputes." Journal of Conflict Resolution 45.2 (2001): 174-195.
[53] Cottier, Thomas, and Petros C. Mavroidis. Regulatory barriers and the principle of non-discrimination in world trade law: Past, present, and future. Vol. 2. University of Michigan Press, 2000.
[54] Pauwelyn, Joost. "The transformation of world trade." Mich. L. Rev. 104 (2005): 1.
[55] Body, Dispute Settlement, and Special Session. Contribution of the European Communities and Its Member States to the Improvement of the WTO Dispute Settlement Understanding. TN/DS/W/1, Annex, para. 10 (Mar. 13, 2002)[hereinafter EC's Proposals], 2002.
[56] Alavi, Amin. "African countries and the WTO's Dispute Settlement Mechanism." Development Policy Review 25.1 (2007): 25-42.
[57] Busch, Marc L., and Eric Reinhardt. "Developing countries and general agreement on tariffs and trade/world trade organization dispute settlement." J. World Trade 37 (2003): 719.
[58] Busch, Marc L., and Eric Reinhardt. "The evolution of GATT/WTO dispute settlement." Trade Policy Research 143 (2003): 2003.
[59] Busch, Marc L., and Eric Reinhardt. "The evolution of GATT/WTO dispute settlement." Trade Policy Research 143 (2003): 2003.

instance (US— Section 110(5) of the Copyright Act) as an Article 22.6 panel but twice during the GATT years and once under the WTO. Expeditious arbitration within the WTO as an additional method of dispute resolution "can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties," according to Article 25.1 of the WTO[60].

- **Issues with Enforcement in WTO Dispute Resolution**

The World Trade Organization's (WTO) dispute settlement system's compliance issues and examines solutions that can enhance compliance. The WTO dispute settlement process has a stellar history of compliance. An analysis of the implementation history of WTO judgments during the first ten years of WTO dispute resolution has discovered an 83%[61] compliance rate. Several of the 10 unresolved issue instances at the time of the research have subsequently been resolved, even though new problem cases continue to emerge[62]. For an international state-to-state conflict settlement mechanism, this compliance rate is excellent[63]. Also noteworthy is the consultation success percentage in WTO instances when neither adopted panel nor Appellate Body findings are produced[64].

However, the situation is not as positive when one considers the effectiveness and efficiency of compliance measures in addition to basic statistics. By "quality of the compliance actions," I mean how a WTO ruling was carried out and if the infraction measure was rescinded. There was probably no issue with the compliance action's quality if the infringing measure was discontinued. Alternatively, the compliance action could not have been wholly adequate if the infringing measure was changed or eliminated. When I talk about "timeliness of compliance," I mean that I want to know if the implementing action was carried out within the allotted amount of time. The term "timeliness" also refers to questions about whether the panel and appeal processes adhered to the deadlines outlined in the WTO Dispute Settlement

[60] Kennedy, Matthew, and Hannu Wager. "WTO dispute settlement and copyright: the first seven years." ALAI Copyright–Internet World, Report on the Neuchâtel Study Session (2002): 223-249.
[61] Davey, William J. "The WTO dispute settlement system: the first ten years." Journal of International Economic Law 8.1 (2005): 17-50.
[62] JOHN H. JACKSON ET AL., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 284 (5th ed. 2008).
[63] Lowenfeld, Andreas F. "Enforcing International Trade Law: The Evolution of the Modern GATT Legal System. By Robert E. Hudec. Salem, NH: Butterworths, 1993. Pp. 630. Index. $125." American Journal of International Law 89.3 (1995): 663-666.
[64] Davey, William J. "Evaluating WTO dispute settlement: what results have been achieved through consultations and implementation of panel reports?." Illinois Public Law Research Paper 05-19 (2005).

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Understanding (DSU)[65].

Some intriguing trends may be seen when the time and quality of compliance are analyzed over the initial ten years of the World Trade Organisation (WTO) system for settling disputes. Cases involving the Agreement on Tariffs and Trade, also known as GATT, and Trade-Related Aspects of the Protection of Intellectual Property (TRIPS) frequently end with the disputed measure being withdrawn promptly[66]. The primary exceptions to this pattern are the two TRIPS lawsuits taken towards the United States of America and the European Communities - Bananas[67] case[68]. In other words, in GATT and TRIPS cases, the intended outcome has typically been obtained. In safeguard and textiles instances, challenged measures have frequently been quickly withdrawn, although they frequently remained in place for all or a large portion of the originally planned term of effectiveness. [69]The WTO procedure took so long that compliance was not particularly significant in terms of practical application, even if it was timely in adhering to the acceptable length of time for implementation stipulated by the WTO dispute settlement process.[70] In 75% of cases involving trade remedies, the average outcome has been an adaptation of the assessment, which 50% of the time does not lead to a major change in the applicable duty. Trade remedy lawsuits sometimes need a lot of time and nearly half of the Article 21 period. There have been 5 trade remedy cases engaged in compliance proceedings.[71] Disputes over modifications and compliance are also frequent in situations involving subsidies, agriculture, and geographic and phytosanitary (SPS) issues. As a result, compliance in these cases—particularly in trade remedy cases—is frequently late and may not have a significant practical impact.

[65] Rules, Dispute Settlement. "Understanding on rules and procedures governing the settlement of disputes." Marrakesh Agreement Establishing the World Trade Organization, Annex 2 (1994): 1869.
[66] Davey, William J. "Compliance problems in WTO dispute settlement." Cornell Int'l LJ 42 (2009): 119.
[67] Anderson, K., S. Harbinson, and C. Haberli. "European Communities--Regime for the Importation, Sale and Distribution of Bananas: Report of the Panel, complaint by the United States." (1997).
[68] Davey, William J. "Evaluating WTO dispute settlement: what results have been achieved through consultations and implementation of panel reports?." Illinois Public Law Research Paper 05-19 (2005).
[69] Christakos, Helen A. "WTO Panel Report On Section 110 (5) of the US Copyright Act." Berkeley Tech. LJ 17 (2002): 595.
[70] Davey, William J. "Compliance problems in WTO dispute settlement." Cornell Int'l LJ 42 (2009): 119.
[71] Body, Dispute Settlement. "Overview of the State of Play of WTO disputes." DSB, Overview (2000).

Chapter 3

A Comparative Analysis of Dispute Settlement Mechanism Under WTO and GATT :

- **A description of the WTO dispute procedure**

When a member state of the World Trade Organization (WTO) believes that another member is violating WTO rules or agreements, it can initiate a formal dispute procedure72 by requesting the involvement of the Dispute Settlement Body (DSB). This is the initial step required in the WTO dispute process. Both parties involved are obligated to engage in negotiations aimed at resolving the conflict and finding a solution that satisfies all parties. The responding nation, upon receiving the request for consultations, 73must respond within 10 days and, unless otherwise agreed, commence discussions within 30 days. If the country fails to respond within the specified timeframe or if the discussions do not result in a mutually acceptable resolution within 60 days from the acceptance of the request, the complaining WTO member has the option to request74 the establishment of a panel by the WTO DSB to examine the disputed issue.

During the initial meeting following the request, the WTO Dispute Settlement Body (DSB) reviews the complainant's proposal for the establishment of a panel[75]. Unless a consensus is reached to the contrary, a panel is formed. Additionally, any other member country of the WTO, commonly known as a "third party," that holds a significant interest in the matter under consideration by the panel, is allowed to present its views and submit written statements, even if it has not previously participated as a third party in the discussions.

Typically, a World Trade Organization (WTO) panel comprises three neutral experts, unless the

[72] Lennings, Nicholas. "Appellate body report, Australia-measures affecting the importation of apples from New Zealand, WTO Doc WT/DS367/AB/R (29 November 2010)." Australian International Law Journal 18 (2011): 241-249.
[73] Latif, Muhammad Ijaz. "Uruguay Round of GATT and Establishment of the WTO." Pakistan Horizon 65.1 (2012): 53-70.
[74] Marceau, Gabrielle. "Rules on Ethics for the New World Trade Organization Dispute Settlement Mechanism–The Rules of Conduct for the Understanding of Rules and Procedures Governing the Settlement of Disputes." Journal of world trade 32.3 (1998).
[75] Cendra, Javier de. "Can Emissions Trading Schemes be Coupled with Border Tax Adjustments? An Analysis vis-à-vis WTO Law 1." Review of European Community & International Environmental Law 15.2 (2006): 131-145.

main parties involved in the dispute agree to a panel of five experts. [76]After thoroughly examining the factual and legal aspects of the case, the panel issues a decision or report.[77] The complainant is expected to submit its response to the panel before the respondent,[78] unless the panel, after consulting with both parties, determines that they should submit their initial responses simultaneously. Both parties are then required to submit any additional written arguments concurrently.[79]

As per Article 12.8 of the Dispute Settlement Understanding (DSU), the panel is mandated to issue its final report within six months from its formation, or within three months in urgent cases involving time-sensitive disputes such as perishable goods. If the panel determines that meeting the specified deadlines is not feasible, these time limits can be extended. In such instances, the panel must deliver its report, even in urgent situations, within nine months of its establishment.[80] However, in practice, the process often takes approximately one year.[81] It is important to note that even as the dispute progresses through subsequent stages, there remains a possibility for both parties to arrive at a mutually satisfactory resolution before a final decision is reached.[82]

In case either the complainant or the respondent is unsatisfied with any aspect of the panel's decision, they have the option to appeal the decision to the Appellate Body (AB). The AB consists of seven members, with three members assigned to each appeal. It's important to note that third parties involved in the dispute cannot appeal [83]a panel report; only the main parties in the litigation have the right to do so.[84] The focus of such an appeal is limited to the panel's legal interpretations and the legal issues addressed in the panel report, comprising the exclusive

[76] Young, Margaret A. "Fragmentation or interaction: the WTO, fisheries subsidies, and international law." World Trade Review 8.4 (2009): 477-515.
[77] Doelle, Meinhard. "Climate Change and the WTO: Opportunities to motivate state action on climate change through the world trade organization." Review of European Community & International Environmental Law 13.1 (2004): 85-103.
[78] Voon, Tania. "UNESCO and the WTO: A Clash of Cultures?." International & Comparative Law Quarterly 55.3 (2006): 635-651.
[79] Van den Bossche, Peter. "NGO involvement in the WTO: A comparative perspective." Journal of International Economic Law 11.4 (2008): 717-749.
[80] Voon, Tania. "UNESCO and the WTO: A Clash of Cultures?." International & Comparative Law Quarterly 55.3 (2006): 635-651.
[81] Taubman, Antony. "The Process–Stages in a Typical WTO Dispute Settlement Case." (2004).
[82] Taubman, Antony. "Dispute Settlement without Recourse to Panels and the Appellate Body." (2004).
[83] Switzer, Stephanie, and Joseph A. McMahon. "EU biofuels policy—raising the question of WTO compatibility." International & Comparative Law Quarterly 60.3 (2011): 713-736.
[84] Voon, Tania. "UNESCO and the WTO: A Clash of Cultures?." International & Comparative Law Quarterly 55.3 (2006): 635-651.

subject matter of the appeal.[85]

An appeal can only be filed before the adoption of the panel report, which occurs 60 days after the report is circulated to the WTO members. The appellant is required to submit[86] a written argument[87] on the same day as the notice of appeal. Similarly, the appellee(s) and any external state(s) have 18 and 21 days, respectively, from the filing date of the notice of appeal to submit their written arguments. Within a timeframe of 30 to 45 days after a party files a notice of appeal, the Appellate Body (AB) conducts an oral hearing[88]. The AB must conclude its proceedings within 90 days from the filing of the notice of appeal[89]. Subsequently, the AB issues its final report or judgment, which must be accepted by all parties, unless the Dispute Settlement Body (DSB) decides otherwise.

If the Appellate Body (AB) rules in favor of the complainant or if the panel rules in favor of the complainant and the respondent does not file an appeal before the panel report is adopted, the dispute proceeds to the implementation phase. The recommendations made by the panel or the AB are implemented under the supervision of the World Trade Organization (WTO) Dispute Settlement Body (DSB). If rapid implementation is not feasible, the responding party is granted a reasonable period to comply. The duration considered reasonable is either recommended by the relevant member and accepted by the DSB or mutually agreed upon by the disputing parties in the absence of such approval. If consensus cannot be reached or if approval of a reasonable duration is not obtained, arbitration is employed to determine what is considered reasonable. According to the arbitration agreement, the timeframe for implementing panel or AB proposals should not exceed 15 months from the approval of the panel or AB report. However, depending on the specific circumstances, this period may be shorter or longer[90].

If the panel or Appellate Body (AB) rules in favor of the complainant and the respondent fails

[85] Stoler, Andrew. "Crisis in the WTO Appellate Body and the Need for Wider WTO Reform Negotiations." Policy Brief 1 (2019).
[86] Body, Appellate. Working Procedures for Appellate Review. WT/AB/WP/6, 16 August 2010, Rule 3 (2), 2005.
[87] LENZERINI, FEDERICO, and MASSIMILIANO MONTINI. "The Activity of the World Trade Organization (2001)." The Italian Yearbook of International Law Online 11.1 (2001): 191-214.
[88] Cendra, Javier de. "Can Emissions Trading Schemes be Coupled with Border Tax Adjustments? An Analysis vis-à-vis WTO Law 1." Review of European Community & International Environmental Law 15.2 (2006): 131-145.
[89] DSU art 17(5).
[90] Van den Bossche, Peter. "NGO involvement in the WTO: A comparative perspective." Journal of International Economic Law 11.4 (2008): 717-749.

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to bring its regulations or plans into compliance within a reasonable timeframe, the complainant has two temporary options available. These options are compensation and the suspension of concessions or other obligations, commonly known as "retaliation" under the relevant agreements. Compensation is discretionary and can only be determined by the relevant agreements of the parties involved in the dispute. If the complainant and respondent are unable to reach an agreement regarding appropriate compensation, the complainant may seek authorization from the WTO Dispute Settlement Body (DSB) to retaliate against the non-compliant respondent. However, it is generally preferable for the respondent to fully comply with the decisions or recommendations of the WTO DSB, thereby avoiding the need for either payment or retaliatory measures[91].

- **Legalistic Aspects of the WTO Dispute Resolution Process**

In the subsequent section, we will explore the more legalistic aspects of the WTO Dispute Settlement System (DSS) in comparison to its predecessor, the General Agreement on Tariffs and Trade (GATT) 1947.

- Mandatory and Exclusive Jurisdiction

Unlike the GATT 1947, the WTO Dispute Settlement Understanding (DSU) establishes an exclusive and obligatory procedure for member states to resolve trade disputes[92], along with provisions for specific timeframes within which parties can seek resolution. Under the WTO framework, a member state that accuses another member of violating trade obligations cannot unilaterally take action to address the issue. This distinction sets the WTO dispute mechanism apart from the system under GATT 1947. A WTO member that has been aggrieved has the option to resort to the WTO Dispute Settlement System (DSS), following the rules and procedures outlined in the DSU, to seek redress under the WTO agreements. This recourse supersedes any alternative dispute resolution system, as outlined in Articles 23(1)[93] and 23(2)(a)[94] of the DSU, as well as paragraph 7.43 of the Panel's report in the US — Section 301-

[91] Biukovic, Ljiljana. "Selective adaptation of WTO transparency norms and local practices in China and Japan." Journal of International Economic Law 11.4 (2008): 803-825.
[92] Van den Bossche, Peter, and Wener Zdouc. Law and Policy of the World Trade Organization: Peter Van Den Bossche, Werner Zdouc. Cambridge University Press, 2013.
[93] DSU art 23(1)
[94] Klopschinski, Simon. "The WTOs DSU Article 23 as guiding principle for the systemic interpretation of international investment agreements in the light of TRIPs." Journal of International Economic Law 19.1 (2016): 211-239.

310 of the Trade Act 1974 (US — Section 301 Trade Act) dispute[95]. However, this limitation does not prevent WTO member states from amicably resolving their trade disputes without resorting to the WTO DSS, such as through diplomatic negotiations. In contrast to the GATT 1947, a WTO member is not permitted to directly impose its laws on another WTO member. Renato Ruggiero, the first Director-General of the WTO, remarked:
The Dispute Settlement mechanism considered a fundamental pillar of the multilateral trade system and one of the most notable contributions of the WTO to global economic well-being, is an essential component to assess the achievements of the organization. It serves as a crucial safeguard for ensuring fair trade, particularly for nations with relatively less economic power, by curbing the potential for unilateral actions[96].

Moreover, every member nation of the WTO is assured access to the dispute settlement mechanism provided by the WTO. Utilization of the WTO Dispute Settlement System (DSS) is mandatory, and no respondent nation, regardless of its strength or weakness, can evade the jurisdiction of the WTO DSS or impede the dispute settlement process without the endorsement of the WTO Dispute Settlement Body (DSB). In practical terms, such occurrences are highly unlikely, distinguishing them from the practices observed under the GATT 1947[97].

- Consultations' Function

Similar to the GATT 1947, the WTO Dispute Settlement Understanding (DSU) includes provisions for mandatory consultations between the parties involved, allowing them an opportunity to address the disputed matters before resorting to a panel. The WTO promotes a bilateral and mutually agreed-upon settlement as the preferred approach for resolving disputes among member states, as outlined in Article 3.7 of the DSU[98]. Even if the initial discussions fail to produce a mutually acceptable resolution, the parties retain the freedom to settle on their own at any subsequent stage of the proceedings[99]. Thus, the authors of the WTO DSU aimed to prioritize, promote, and strengthen resolutions based on mutual agreement, rather than

[95] Khan, Pervaiz, and Mohammad Asif Khan. "GATT (1947) and WTO Dispute Settlement Systems: A Comparative Analysis." JL & Soc'y 49 (2018): 13.
[96] Ruggiero, Renato. "The Future Path of the Multilateral Trading System." Speech delivered to the Korean Business Association, Seoul 17 (1997).
[97] Kufuor, Kofi Oteng. "From the GATT to the WTO–The Developing Countries and the Reform of the Procedures for the Settlement of International Trade Disputes." Journal of World Trade 31.5 (1997).
[98] DSU art 3(7)
[99] DSU arts 11, 12(7), 12(12)

relying solely on decisions rendered by panels or the Appellate Body (AB)[100].

Generally, a mutually agreed-upon solution offers several advantages, including lower resource utilization, cost-effectiveness, faster outcomes, and greater effectiveness. It enables the parties to maintain cordial diplomatic relations[101] and allows the complaining party to secure better concessions from the respondent[102]. This is particularly beneficial for smaller or less developed economies that often lack the resources to pursue a WTO case and may be reluctant to initiate WTO proceedings against their significant trading partners due to concerns about jeopardizing those relationships.

While the GATT 1947 provided options for resolving disputes through discussions, its non-adjudicatory processes lacked formal regulation and had a quasi-judicial nature[103]. The respondent had more leeway to impede the dispute resolution process under the GATT 1947, as there were no established deadlines for issue resolution. In contrast, under the WTO, parties engaging in discussions are more aware that the WTO's legal procedures can automatically come into play if negotiations reach an impasse, thereby giving added impetus to consultations between the parties[104].

Former WTO Director-General Pascal Lamy expressed this sentiment on November 2, 2009:
Out of the approximately 400 WTO cases filed to date, approximately half have been successfully resolved through amicable means, utilizing the mandatory consultation process established by the system, without resorting to formal litigation. Among the remaining cases, 169 have proceeded to panel proceedings, and if appealed, to the Appellate Body. Currently, 17 cases are undergoing adjudication, while 12 cases are actively being negotiated by the involved parties[105].

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[100] Parlin, C. Christopher. "Operation of consultations, deterrence, and mediation." Law & Pol'y Int'l Bus. 31 (1999): 565.
[101] Lowenfeld, Andreas F. "Enforcing International Trade Law: The Evolution of the Modern GATT Legal System. By Robert E. Hudec. Salem, NH: Butterworths, 1993. Pp. 630. Index. $125." American Journal of International Law 89.3 (1995): 663-666.
[102] Busch, Marc L., and Eric Reinhardt. "Developing countries and general agreement on tariffs and trade/world trade organization dispute settlement." J. World Trade 37 (2003): 719.
[103] Kuruvila, Pretty Elizabeth. "Developing countries and the GATT/WTO dispute settlement mechanism." J. World Trade 31 (1997): 171.
[104] Kuruvila, Pretty Elizabeth. "Developing countries and the GATT/WTO dispute settlement mechanism." J. World Trade 31 (1997): 171.
[105] Variath, Adithya Anil. "Maintaining Global Stability through Arbitration: An Analysis of World Trade Organization's Dispute Settlement Process Vis-À-Vis Article 25." Available at SSRN 4226934 (2021).

When considering trade disputes that have been resolved peacefully or cooperatively among member states without formally involving the WTO, the percentage of voluntary settlements further increases. This highlights the significant number of cases that have been successfully resolved through mutual agreement, emphasizing the effectiveness of voluntary settlements in addressing trade disputes.

- The Panel's and the Appellate Body's Functions

In contrast to the dispute process under GATT, the WTO Dispute Settlement Understanding (DSU) establishes an independent Appellate Body (AB) that handles appeals based on legal grounds against the panel's findings[106]. The inclusion of the AB as a crucial component in the WTO dispute resolution process is considered one of the significant achievements of the Uruguay Round.

Through the AB, both the complainant and the respondent have the opportunity to appeal any aspect of the panel's report if they are dissatisfied with it. Furthermore, the panel is encouraged to provide a more comprehensive legal justification for its decisions[107]. This stands in contrast to the GATT dispute procedure, where the panels played a more diplomatic role, focusing on providing reports with solutions acceptable to both parties through political discussions and mediation[108], rather than extensive legal analysis.

The inclusion of the AB in the WTO DSU ensures a more robust and legally grounded dispute resolution process, enhancing the credibility and effectiveness of the system.

The introduction of the WTO DSU, particularly the establishment of an independent Appellate Body (AB), marked a significant departure from the practices of the GATT 1947. To minimize the likelihood of their reports[109] being overturned by the AB, WTO panels are now required to incorporate more extensive legal analysis in their findings. As a result, the inclusion of the AB has fostered the development of a more effective dispute resolution system compared to the GATT, characterized by a greater emphasis on legal evaluation within the WTO's dispute

[106] Taubman, Antony. "WTO Bodies Involved in the Dispute Settlement Process." (2004).
[107] Zangl, Bernhard. "Judicialization matters! A comparison of dispute settlement under GATT and the WTO." International Studies Quarterly 52.4 (2008): 825-854.
[108] Van den Bossche, Peter. "NGO involvement in the WTO: A comparative perspective." Journal of International Economic Law 11.4 (2008): 717-749.
[109] Van den Bossche, Peter. "NGO involvement in the WTO: A comparative perspective." Journal of International Economic Law 11.4 (2008): 717-749.

settlement process. Locater and Gapped assert the following:
It is worth emphasizing that the WTO dispute settlement process provides economically disadvantaged smaller members with the opportunity to challenge trade policies implemented by more economically powerful members. The Appellate Body serves as a vital element of a rules-based and "judicialized" conflict resolution process, ensuring predictability and transparency. While all members benefit from this system, it particularly safeguards the interests of the more vulnerable members who, in the past, often lacked the political or financial capacity to assert their rights and protect their interests[110].

- Consensus-based implementation

One of the fundamental flaws in the dispute settlement system established by the GATT in 1947 was the requirement for "positive consensus" among all GATT member nations, including the disputing parties, for reaching or approving a judgment. This meant that any individual GATT member, even the losing party, had the legal right to challenge or obstruct the convening of a panel, acceptance of a panel report, or authorization of remedies against the non-implementing respondent[111]. These practices cast doubt on the suitability of the GATT 1947 dispute system as a venue for effective dispute resolution. Concerns about this veto authority led many complainants to refrain from filing disputes during the GATT 1947 era[112]. Member nations with significant resources, such as the United States (US) and the European Commission (EU), increasingly obstructed unfavorable GATT panel reports, particularly in the 1980s.[113] Recognizing these shortcomings, the WTO has sought to address these issues and improve the dispute settlement process.

The WTO DSU changed the "positive consensus" norm to "negative consensus" to handle this scenario. The veto of one member has effectively been replaced by the rule that the action must be implemented or authorized, unless there is an agreement of all the member countries of the WTO not to do so, via the adoption of a rule of negative consensus. As a result, unless there is an agreement of the DSB or all WTO member states regarding it, which is implausible to occur in practice, a WTO member can no longer block the creation of a panel or AB, the

[110] Lacarte-Muro, Julio, and Petina Gappah. "Developing Countries and the WTO Legal and Dispute Settlement System: A view from the bench." Journal of International Economic Law 3.3 (2000): 395-401.
[111] World Trade Organization, Historic Development of the WTO Dispute Settlement
[112] World Trade Organization, Historic Development of the WTO Dispute Settlement System.
[113] Khan, Pervaiz, and Mohammad Asif Khan. "GATT (1947) and WTO Dispute Settlement Systems: A Comparative Analysis." JL & Soc'y 49 (2018): 13.

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implementation of their reports, or the authorization of alternatives against the non-implementing respondent.[114] essentially, when developing nations are the complainants, wealthy countries no longer have a veto over judgments that are adverse to them. [115]This is due to the WTO dispute procedure, which is administered automatically or routinely and includes the creation of committees and the AB, the approval of their recommendations, and the authorization of fines against non-compliant responses.

- People from the Private Sector as a Form of Legislative Delegated authority

In contrast to the GATT 1947, the WTO DSS permits private outside solicitors to stand for an affiliated member in the dispute resolution procedure. In the EC — Regulation for the Importation, Sale, and Distribution of Bananas (EC — Bananas III) conflict, WTO/DS/27, the complaining parties argued that member states' delegations to WTO dispute settlement hearings should not be permitted to include private solicitors or counsel.[116] The complainants assert that government attorneys or government trade specialists have always made all submissions in dispute processes, dating back to the GATT's inception in 1947. They contended that because a dispute occurs between member states, the DSU protects the privacy of the parties to the case throughout the dispute procedure. The WTO must address several issues relating to integrity, conflicts of interest, the professional obligations of lawyers, and the representation of several governments if member states are permitted to have private solicitors represent them in WTO proceedings, they said. However, the AB in the case (the EC — Bananas III dispute) made it abundantly clear that there is nothing in the WTO agreements, conventional international law, or the accepted procedure of the international tribunals that restricts a WTO member from selecting the members of its delegation in WTO dispute settlement meetings.58Simply said, the WTO DSS permits its member nations to use and depend on the services of outside private legal counsel to assist them during WTO dispute procedures, in contrast to the GATT 1947. In reality, it is customary in WTO litigation for private legal counsel to appear in the WTO DSS on behalf of a government delegation, including to help with the preparation of papers and oral arguments. Governments often use the services of outside private solicitors is a significant practice, especially in nations with a dearth of domestic trade solicitors and few resources.

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[114] Rosendorff, B. Peter. "Stability and rigidity: politics and design of the WTO's dispute settlement procedure." American Political Science Review 99.3 (2005): 389-400.
[115] GIBOGWE, Vincent, Ayine RS NIGO, and Karen KUFUOR. "Foreign Direct Investment and Economic Growth in the Southern African Development Community." Journal of Applied Economic Sciences 17.4 (2022).
[116] Anderson, K., S. Harbinson, and C. Haberli. "European Communities--Regime for the Importation, Sale, and Distribution of Bananas: Report of the Panel, a complaint by the United States." (1997).

Instead of keeping them on as government workers for an extended period, some nations choose to hire the services of specialized international trade attorneys on an as-needed basis.

- The Function of the WTO Compliance Advisory Institution

The Consultative Centre on WTO Law (ACWL), a body independent from the WTO, was founded in 2001 by the Agreement Regarding the ACWL to take into account the limited financial resources available to impoverished nations to cover the expenses of WTO litigation.[117] The GATT era, which began in 1947, did not include this entity. In WTO dispute resolution processes, the ACWL offers legal representation to WTO emerging and Least Development Country (LDC) participants at discounted or subsidized prices. Among the services offered by the ACWL are legal advice on WTO issues, the writing of legal documents, filings to the panelist or AB, and representation of clients in front of the panel of the WTO or the AB.[118] Additionally, the ACWL offers WTO law internship programs and brief training courses to delegates from its establishing and LDC member countries[119], including trade attorneys. Pascal Lamy, a former director general of the WTO, stated:
The ACWL supports the efficiency of the WTO system of law, particularly its dispute settlement methods, and the fulfillment of the WTO's development objectives by making sure that the legal advantages of the WTO are shared among all Members.[120]

32 WTO members were participating developing countries in the ACWL as of March 2016.[121] The ACWL divides developing nations into three groups (A, B, and C) based on their proportion of global commerce with an upward modification for per capita income.[122] The purpose of categorizing developing nations into three groups is to calculate the rate of expenses due by a developing nation for the services provided to it by the ACWL as well as to establish the developing country's contribution (one-time charge upon membership) to the Endowment

[117] Islam, Rizwanul. The South Asian preferential trade agreements: the historical, legal, and economic perspective of sub-regional trade liberalization and integration. Diss. Macquarie University, 2022.
[118] Khan, Pervaiz, and Mohammad Asif Khan. "GATT (1947) and WTO Dispute Settlement Systems: A Comparative Analysis." JL & Soc'y 49 (2018): 13.
[119] Donmez, Alara. Developing countries' participation in the WTO Dispute Settlement System: how to facilitate? MS thesis. University of Cape Town, 2017.
[120] de Carvalho, Maria Izabel V., and Carlos Henrique Canesin. "The Role of Institutional-Legal Capacity and Power in Explaining the Performance of Developing Countries in WTO Disputes against the G2." Contexto Internacional 40 (2018): 161-184.
[121] Advisory Centre on WTO law, Members<http://www.acwl.ch/membersintroduction/>.
[122] Agreement Establishing the Advisory Centre on WTO Law Annex II

Fund.[123] All WTO LDCs have access to its offerings without having to join.[124]

Developed nations can join even though they are not eligible for its services. Eleven developed WTO members now participate and have significantly increased the endowment money for the ACWL[125]. Approximately 50 WTO disputes, comprising WTO consultations, have received the ACWL's legal help at reduced rates to date from developing and LDCs.[126]

- Guidelines for Separate and Special Prevention

Determining the degree of development of impoverished countries to assess their eligibility for Special and Variation Treatment (S&DT)[127] was a crucial part of the GATT in 1947, and it remains so under the WTO. The WTO S&DT provisions, which have evolved since the GATT 1947, are viewed as being essential for determining the developmental needs of 96 developing countries, especially LDCs.[128] By recognizing the differences in economic development between developed and developing nations, these S&DT regulations grant developing countries special rights, enabling them to be treated more favorably than the other countries[129] that participate in the WTO system, allowing them to fully benefit from the rules of international trade. Currently, the WTO has around 150 S&DT provisions that go beyond explicit assurances of equality and approve proactive measures to promote developing countries' capacity to lessen developing countries' unequal capacity[130] to participate in international trade on a correspondingly beneficial basis.

Similar to other WTO agreements, the WTO DSU provides specific mechanisms to treat developing countries on special and differentiating grounds in the WTO DSS. The WTO DSU provides developing countries, particularly LDCs, S&DT at virtually every stage of the dispute

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[123] Khan, Pervaiz. Effective utilization of the WTO dispute settlement system by Pakistan: a public–private partnership approach. Diss. UNSW Sydney, 2016.
[124] Advisory Centre on WTO law, Members<http://www.acwl.ch/membersintroduction/>.
[125] Khan, Pervaiz, and Mohammad Asif Khan. "GATT (1947) and WTO Dispute Settlement Systems: A Comparative Analysis." JL & Soc'y 49 (2018): 13.
[126] Donmez, Alara. Developing countries' participation in the WTO Dispute Settlement System: how to facilitate? MS thesis. University of Cape Town, 2017.
[127] Mitchell, Andrew D. "A legal principle of special and differential treatment for WTO disputes." World Trade Review 5.3 (2006): 445-469.
[128] Khan, Pervaiz, and Mohammad Asif Khan. "GATT (1947) and WTO Dispute Settlement Systems: A Comparative Analysis." JL & Soc'y 49 (2018): 13.
[129] Nurhayati, Irna. "The implementation of the WTO Agreement on the application of sanitary and phytosanitary measures in selected Southeast Asian developing countries: a comparative analysis and evaluation." (2017).
[130] Moon, Gillian. "Trade and Equality: A relationship to discover." Journal of International Economic Law 12.3 (2009): 617-642.

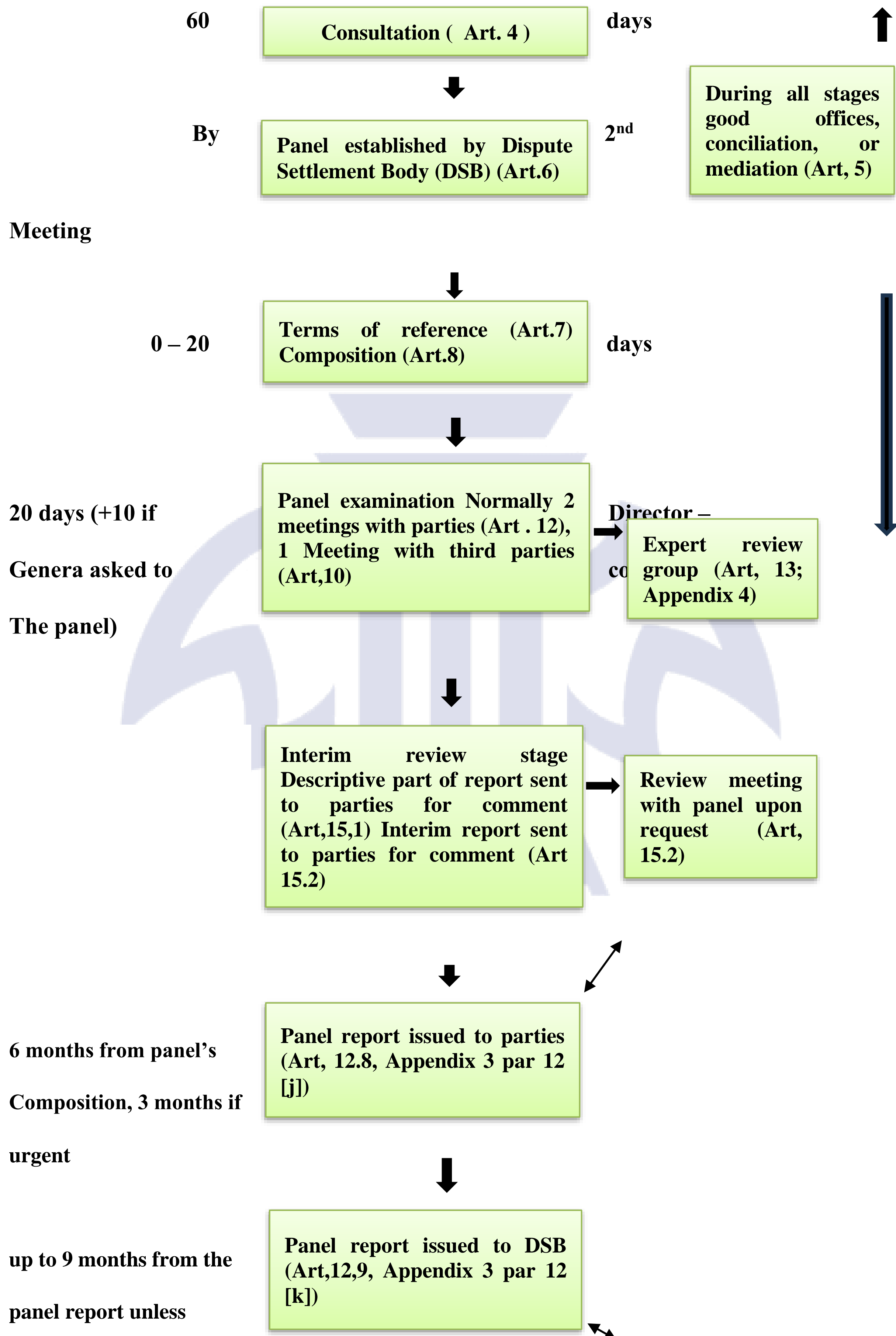
resolution procedure while also taking into account their particular needs and limitations within the context of WTO litigation.[131] For instance, the DSU stipulates that a developing country's particular concerns and preferences must be given special consideration when speaking with other member nations. Where there is a dispute between an undeveloped nation and an industrialized nation,[132] the developing party to the dispute should seek that the panel consists of at least one member from a developing nation. By the DSU, the Secretary-General may, at the request of a party country in need, appoint a qualified legal advisor from the WTO technical assistance provider to assist with legal costs and concerns of a developing country about WTO litigation. Simply put, the DSU is made up of special provisions that promise to give developing nations preferential treatment during the dispute resolution process while taking into account their level of economic development, to further strengthen the rule of law in the dispute[133] resolution process, and to encourage greater participation by developing countries throughout the WTO DSS.[134]

- The steps that are reflective WTO dispute case process

The many steps that a dispute might go through in the (WTO) dispute settlement mechanism are all explained in the following section. Once a WTO complaint has been made, there are two primary routes to resolve a dispute: (i) through adjudication, including the following implementation of the panel and Appellate Body reports, which are obligatory upon the parties once accepted by the DSB; and (ii) during the period of bilateral talks, during which the parties come to a mutually agreeable resolution. The WTO dispute resolution procedure has three key phases: among the parties, (i) consultations; (ii) decision-making by panels and, if necessary, by the Appellate Body; and (iii) implementation of the decision, which may include countermeasures if the losing party fails to carry out the decision.

[131] Ewart, Andrea M. "Small Developing States in the WTO: A procedural approach to special and differential treatment through reforms to dispute settlement." Syracuse J. Int'l L. & Com. 35 (2007): 27.
[132] DSU art 4(10)
[133] Bartels, Lorand. "The WTO Legality of the EU's GSP+ Arrangement." Journal of International Economic Law 10.4 (2007): 869-886.
[134] Cendra, Javier de. "Can Emissions Trading Schemes be Coupled with Border Tax Adjustments? An Analysis vis-à-vis WTO Law 1." Review of European Community & International Environmental Law 15.2 (2006): 131-145.

- **Process model for dispute resolution**



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appealed…

Appellate review (Art, 16.4 and 17)

Max 90 days

DSB adopts panel / appellate report(s) including any changes to the panel report made by the appellate report (Art. 16.1, 16.4, and 17.14)

60 days for panel report

Unless appealed…

…30 days for appellate

report

'Reasonable period

: determined by: Member

Proposes, DSB agrees, or

Parties in dispute agree,

or

arbitrator

Implementation report by losing party of proposed implementation within 'reasonable period of time (Art,21,3)

Dispute over implementation ; Proceedings possible, including referral to initial panel on implementation (Art, 21.5)

Total for report adoption: Usually up to 9 months (no appeal), or 12 months(with appeal) from establishment of panel to adoption of report (Art.20)

In cases of non-implementation parties negotiate compensation pending full implementation (Art,22.2)

90

30 days after "reasonable

period" expires

Retaliation if no agreement on compensation, DSB authorizes retaliation pending full implementation (Art, 22) Cross-retaliation; same sector, other sectors, other agreements (Art, 22.3)

Possibility of arbitration on the level of suspension procedures and principles of retaliation (Art, 22.6 and 22.7)

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Chapter 4

The Trade Dispute under the WTO: Case Studies :

1. United States — Certain Measures on Steel and Aluminium Products (2018)

The case's facts, issues, and an overall summary of the ruling are as follows: The United States — Certain Measures on Steel and Aluminium Products case is a World Tra de Organisation (WTO) issue in which various nations are disputing a greater level of import taxes being imposed by the US on steel and aluminum.

FACT :

i. The United States announced in March 2018 that it will apply additional tariffs of 25% on imports of steel and 10% on imports of aluminum under Section 232 of the Trade Expansion Act of 1962.

ii. By demanding talks with the US, several nations, including Canada, China, the European Union, Mexico, Norway, Russia, and Turkey, among others, challenged these measures at the WTO.

iii. The Section 232 measures, according to the complainants, were unwarranted, in violation of WTO regulations, and constituted protectionist measures that would hurt international commerce.

ISSUES :

i. The major issue was whether the US's imposition of additional steel and aluminum import taxes conformed with WTO regulations.

ii. Article XXI of the General Agreement on Tariffs and Trade (GATT) 1994's exemption for the safety of the nation, according to the complainants, was violated by the United States.

iii. There were also questions regarding whether the United States' actions were by several WTO regulations, such as those about non-discrimination and tariff bindings.

JUDGMENT:

The report from the WTO panel convened to hear the dispute was released on November 30,

2020. It decide that the United States had broken several of its WTO devotion by imposing extra taxes at the border on steel and aluminum. Here are a few key findings from the panel's examination:

i. The panel determined that the explanation and supporting evidence presented by the United States for the application of the national security protection under Article XXI of the GATT 1994 were insufficient.
ii. In particular, the unbiased principle and tariff bindings were judged to conflict with the United States' duties under the GATT 1994 by the panel.
iii. The panel did, however, reject several of the complainants' arguments, such as those concerning the assessment of the effects of the restrictions on international trade and the imposition of additional taxes on specific products. It's significant to note that an appeal might be filed against the panel's report. Therefore, until the appeals procedure is over, the judgment could not be regarded as final.

Please be aware that the material is based on what is known as of September 2021, and that there may have been further developments in this case after then.

COMMENT:

The issue over the United States' application of new tariffs on steel and aluminum imports is highlighted by the United States — Certain Measures on Steel and Aluminium Products case at the World Trade Organisation (WTO). Several nations filed a lawsuit challenging the legality of these restrictions and their compliance with WTO rules.

The United States has broken certain WTO rules, by the WTO panel's findings, which were published in November 2020. The panel concluded that there was insufficient reason for or evidence to justify the United States use of the constitutional exception. Additionally, it concluded that the United States had broken its GATT 1994 commitments, particularly those about equality and tariff bindings, with the Section 232 measures.

The tribunal raised worries about the United States' activities and their possible effects on international commerce even if it dismissed several of the complainants' arguments. It's significant to remember that the ruling was appealable and that further events can affect how the matter is resolved.

The intricacy, tensions and WTO's role in resolving international trade disputes are demonstrated by this case. As trade dynamics and policies continue to evolve, it will be crucial for states to uphold their WTO commitments and engage in productive dialogue to decrease trade conflicts and advance a more transparent and equitable global trading system.

2. United States — Tariff Measures on Certain Goods from China (2018)

At the World Trade Organisation (WTO), China lodged a protest against the United States about the imposition of additional levies on several Chinese goods. This case is referred to as the United States — Tariff Measures on Certain Commodities from China. The case's facts, issues, and an overall summary of the ruling are as follows:

FACT :

i. In response to worries about China's intellectual property practices and coerced technology transfer, the United States increased taxes on some products imported from China in 2018.

ii. China contested these actions at the WTO and asked for talks with the US, claiming they were against WTO regulations and inconsistent with US responsibilities.

iii. Three sets of tariffs covering over $250 billion worth of Chinese imports were imposed by the United States.

ISSUES :

i. The main question was whether the United States' decision to impose higher tariffs on several Chinese commodities complied with its duties under the WTO accords.

ii. China disputed these steps at the WTO and requested negotiations with the US, arguing they violated WTO rules and went against US obligations.

iii. China expressed worry about the United States' exploitation of the diplomatic exception under Article XXI of the GATT 1994.

JUDGMENT:

The WTO panel's report on this matter had not yet been released at the time of my knowledge cutoff in September 2021, hence there was no precise judgment available. It's vital to remember that the WTO dispute settlement procedure has several steps, including panel formation, panel deliberations, and panel report publication. Review and appeal are available for the ruling in

its entirety.

It is salient to note that the United States and China have been engaged in continuing conversations and negotiations over their trade disputes, including the tariffs placed on particular items. Outside of the regular WTO dispute settlement procedure, a resolution is sought in these conversations.

Please be mindful that the material is based on what is known as of September 2021, and that there may have been further developments in this case after then. It is advised to refer to official sources including the WTO website for the most recent information on this matter.

COMMENT:

The United States — Tariff Measures on Certain Goods from China case had not yet resulted in a particular decision from the WTO panel as of the information supplied up until September 2021. The case draws attention to the ongoing trade conflict between China and the US over the placement of further tariffs on several Chinese imports.

The disagreement is a reflection of greater tensions between the two nations on issues including technology transfer, intellectual property practices, and trade imbalances. The WTO's participation, in this case, serves as a reminder of the value of multilateral organizations in resolving trade disputes and enforcing global trade regulations.

The two countries' ongoing conversations and negotiations outside of the formal WTO dispute settlement procedure show that they are both eager to find a solution and resolve their trade issues bilaterally. The results of these negotiations may affect the case's conclusion and the direction of future commercial ties between the two countries.

Keeping up with the most recent developments in this issue is crucial given the fluidity of international trade disputes. The most recent information on any rulings, agreements, or developments in the resolution of this dispute will be available by keeping an eye on official sources and the WTO website.

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3. China — Additional Duties on Certain Products from the United States (2018)

FACT :

At the World Trade Organisation (WTO) on July 16, 2018, China sought negotiations with the United States about additional levies the United States levied on select goods imported from China. These additional duties were imposed following Section 301 of the U.S. Trade Act of 1974 investigations of China's intellectual property practices and technology transfer regulations.

ISSUE :

The key issue, in this case, was determining whether the United States' imposition of additional tariffs on certain goods imported from China conformed with its obligations depending on the General Agreement on Tariffs and Trade (GATT) 1994 along with additional relevant agreements. China voiced concern that the US's higher tariffs would violate its WTO commitments.

JUDGMENT :

As of the knowledge cutoff in September 2021, the panel's report and the appellate body's ruling in China — Additional Duties on Certain Products from the United States case are not yet public. The WTO dispute settlement procedure might take a while since it involves panel hearings, discussions, and potential appeals. It is advised to refer to the official website of the WTO or other trustworthy sources for the most recent information and the final ruling on this issue.

COMMENT :

Sadly, the panel report and judgment for China — Additional Duties on Certain Products from the United States case have not yet been released as of my knowledge cutoff in September 2021. The WTO dispute resolution mechanism’s efficacy and efficiency are called into question by the protracted delay in obtaining a conclusion.

The dispute, notably the application of higher levies on several Chinese goods, brings to light the ongoing trade tensions between China and the US. The fundamental problems with intellectual property laws and technology transfer regulations are important and need to be

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carefully thought out.

Sadly, the parties concerned were unable to reach an early settlement through the WTO's formal mechanisms. Indefinite uncertainty hinders corporate planning and economic stability for both Chinese exporters and American imports.

The resolution procedure has to be sped up, and it needs to be made clear if the extra responsibilities are lawful or not. Fostering a fair and predictable business environment for all parties engaged depends on transparency and conformity to international trade regulations.

It is advised to attentively follow the developments in this issue by consulting the official website of the WTO or other trustworthy sources. Maintaining confidence and sustaining the ideals of fair and free commerce throughout the world depend on swiftly resolving such conflicts.

4. United States — Tariff Measures on Certain Goods from China II (2018)

FACT:

The United States imposed several tariffs on various goods imported from China as a response to what it perceived as unfair trade practices, which included copyright infringement and forced technology transfer. These acts were part of a broader trade spat between the two countries, which also involved several rounds of tariffs imposed on goods with a value of billions of dollars.

ISSUE:

The question at hand was whether or whether the United States' tariff actions on certain Chinese imports complied with its commitments under international trade agreements, notably the WTO's regulations. China contested American moves, claiming they were against WTO regulations and unfairly singled out Chinese goods.

JUDGEMENT :

The WTO has seen several stages and proceedings in the dispute between the United States and China over tariff measures. The ultimate decision or judgment in this particular case has not yet been reached, as of the deadline.

The possibility of several procedures, conversations, and even appeals in trade disputes must be kept in mind. The particulars and outcomes of this case may be altered. If you want the most up-to-date and accurate information, it is suggested that you utilize authoritative WTO articles, legal databases, or reliable news sources that cover international trade conflicts involving the United States and China.

COMMENT :

The "United States — Tariff Measures on Certain Goods from China II" case has been a significant and contentious issue in the area of international trade. The trade disputes between China and the United States, two economic juggernauts with competing interests, are shown. The United States levied tariffs on a range of Chinese items due to worries about unfair trade practices such as intellectual property misappropriation and forced technology transfer. These moves were seen as a strategy to protect American companies and balance the trade imbalances between the two countries.

The case does, however, bring up significant issues about the respect for international trade agreements, notably those set forth by the World Trade Organisation (WTO). China said that the American tariffs went beyond WTO guidelines and unfairly singled out its goods. How international trade regulations are read and put into practice will be greatly influenced by the final result of this case.

This disagreement must be resolved fairly and in both nations' interests. Global supply networks can be disrupted and far-reaching economic effects from trade conflicts might occur. Finding common ground and promoting a more stable and predictable international trade environment need dialogue, negotiation, and collaboration.

5. India — Tariff Treatment on Certain Goods in the Information and Communications Technology Sector (2019)

FACT :

i. On specific semiconductor items, among other things, as well as on associated services and technology, the US placed restrictions.
ii. Import limitations, export restrictions, and licensing requirements for particular semiconductor goods were some of these measures.

iii. The US said that these measures were necessary to protect the country's interests and satisfy concerns about the unauthorized transfer of critical technologies.

iv. China, one of the biggest exporters of semiconductor products, was among the nations impacted by the sanctions.

v. China complained about these measures to the World Commerce Organisation (WTO), claiming that they were against the laws of international commerce.

ISSUE :

Whether the country's limits on particular electronic devices, among other products, solutions, and technology, comply with the WTO's regulations for international trade is the crucial question in this situation.

JUDGEMENT :

The decision in the United States — the matter concerns Restrictions on Particular Technology and other Services, as well as the associated Services and Technologies — would be rendered by the appropriate adjudicating authority, such as a WTO dispute settlement panel or the Appellate authority (if it were still in operation). The judgment would consider the arguments and evidence presented by both parties, assess whether the measures complied with WTO rules, and make a decision on the matter. For the most recent and correct information on the decision in the case, it is advisable to examine authorized WTO articles, reports, or legal databases.

COMMENT :

Measures on Specific Technological and Other Items and Related Businesses and Technologies case raises important issues regarding international trade rules and national security grounds. The United States has placed restrictions on specific semiconductor products, including purchase bans, tariffs, and licensing requirements, to protect sensitive technology and protect national security interests.

But the question of whether these restrictions are compliant with global trade laws has been raised by China through the submission of a complaint to the WTO. The main question at hand is whether the sanctions imposed by the US comply with the WTO's established norms and commitments.

The competent adjudicating authority would make its ultimate decision after considering the arguments and supporting documentation offered by both sides. For the most recent details on the ruling and its effects, it is advised to examine official WTO publications, news sources, or legal databases. As it strikes a sensitive balance between national security considerations and adherence to international trade norms, the conclusion of this case will probably have important repercussions for international commerce.

6. India — Additional duties on certain products from the United States (2019)

FACT :

i. On several imports from the United States, India levied extra taxes.
ii. As retaliation for the United States imposing higher tariffs on specific Indian exports, these extra charges were applied.
iii. Agricultural products, steel, and aluminum products, as well as a variety of other goods, were among the items subject to higher charges.
iv. India argued that the WTO rules—specifically, the clauses relating to retaliation and safeguard measures—justified the increased levies.
v. By submitting an objection to the World Trade Organisation (WTO), the United States contested these new tariffs because they were against trade agreements.

ISSUES :

The crucial query in this instance, is whether India's placement of extra taxes on specific American products complies with the WTO's rules for international trade, notably those about retaliation and safeguard measures.

JUDGEMENT :

A WTO dispute settlement board or the Court of Appeal (if it were still in existence) would be the appropriate adjudicating body and would render the decision in India — Additional tariffs on some items from the United States case. The court's ruling would address the issue and determine whether India's extra obligations adhered to WTO regulations.

It is advised to consult official WTO publications, news sources, or legal databases to find the most up-to-date and accurate information about the case's ruling. The decision would affect

bilateral economic relations internationally and be important in determining the legality and acceptability of India's retaliatory steps toward the tariffs applied by the United States.

COMMENT :

The instance of India—Additional tariffs on certain American products—illustrates the intricate dynamics of global commerce and the application of punitive measures. India responded to the increased tariffs levied by the United States on some Indian exports by imposing extra charges on particular commodities purchased from the United States. Important problems regarding the compliance of such measures with the WTO's established norms are raised by this case.

The main question at hand is whether India's application of extra taxes complies with the WTO's rules for international trade, notably about retaliation and safeguard measures. Invoking the obligation to respond and defend its interests, India claims that the higher levies are permissible under WTO rules.

The decision in this matter, which will be made by the appropriate WTO adjudicating authority, will be crucial in evaluating the legitimacy of India's conduct. The verdict will significantly affect bilateral commercial relations involving the United States and other countries. and India as well as how retaliatory actions are perceived generally in the context of global trade laws.

7. United States — Certain Measures Related to Renewable Energy (2018)_

FACT :

i. The United States put into effect a few renewable energy-related policies.
ii. These initiatives, which promoted the use of renewable energy sources, included domestic content requirements, subsidies, and incentives.
iii. The United States made the case that these actions were required to encourage the expansion and development of its renewable energy sector and lessen reliance on conventional energy sources.
iv. Concerns about the possible discriminatory implications of these policies on imported renewable energy goods and services were expressed by several nations, including WTO members.

v. Several nations, including those that were negatively impacted by the restrictions, complained about the United States' activities to the WTO.

ISSUES :

The key issue, in this case, is whether the local content necessities, incentives, and incentives for renewable energy in the United States comply with the WTO's regulations for global trade.

JUDGEMENT :

The appropriate WTO determining body, such as the Appellate Body or a dispute settlement panel, would render the decision in the United States — Certain Measures Related to Renewable Energy case. The court's judgment would address the issue by evaluating how well the United States' actions align with WTO regulations.

It is advised to consult official WTO publications, news sources, or legal databases to find the most up-to-date and accurate information about the case's ruling. The judgment will be a key factor in evaluating whether American policies on renewable energy are compliant with international trade laws, and it will have an impact on how renewable energy sources are promoted and governed globally.

COMMENT :

The United States — Certain Measures Related to Renewable Energy case presents important issues regarding how renewable energy regulations and global trade laws interact. Other WTO members are concerned that the United States' promotion of renewable energy policies, including domestic content requirements, subsidies, and incentives, may have a discriminatory impact on imported renewable energy goods and services.

The key issue in the lawsuit involves if the United States' actions adhere to the WTO-established rules of international commerce. The WTO's adjudicating body will evaluate how well these measures adhere to WTO regulations and provide a decision in the judgment it issues.

The verdict, in this case, will have significant ramifications for the global advancement and promotion of renewable energy sources. Fostering sustainable energy transitions requires

striking a balance between the objectives of assisting domestic renewable energy companies and guaranteeing fair and nondiscriminatory trade practices.

8. United States — Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products (2018)

FACT:

i. A protection precaution was put in place by the US for items made of crystalline silicon photovoltaic (CSPV).

ii. The protective action involves placing tariffs and quantitative limitations on CSPV imports from several nations.

iii. According to the United States, the safeguard action was required to defend the domestic CSPV sector from the sudden increase in imports, which the domestic industry was said to have suffered severe harm from.

iv. Several nations whose exports of CSPV goods were adversely impacted by the policy complained to the World Trade Organisation (WTO), claiming that the United States had broken international trade laws.

ISSUES:

Whether the United States' protection measures against imports of solar devices made of crystalline silicon conform to the WTO's rules for global trade is the main issue at stake in this case.

JUDGEMENT :

The case about the Maintain Establish on Imported goods of transparent Silicon Solar power plants Products would determine whether the protection procedure put in place by the United States complied with WTO regulations. The suitable WTO determining body, such as the appeals commission or the body that decides appeals (if it continues to be present), would render its ruling in the United States.

It is advised to consult official WTO publications, news sources, or legal databases to find the most up-to-date and accurate information about the case's ruling. The ruling will be important in assessing the legitimacy and acceptability of the US safeguard measure on CSPV goods as well as how it would affect global commerce in the solar energy industry.

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COMMENT :

The Safeguard Measure on Importation of Crystalline Silicon Photovoltaic Products case demonstrates how challenging it is to reconcile protecting the domestic industry while following global trade standards. To protect its domestic CSPV sector from claimed substantial harm brought on by an enlarge in imports, the United States implemented a safeguard measure that included tariffs and quantitative limits on imports of crystalline silicon photovoltaic (CSPV) goods.

The main question at hand is whether the safeguard mechanism put in place by the United States complies with the WTO's standards for international commerce. The WTO's adjudicating body will deliver a ruling on the case after carefully examining whether the United States' move concurs with these regulations.

The decision of this lawsuit will have a big impact on trade dynamics and the worldwide solar energy industry. It is crucial to strike the proper balance between safeguarding home businesses and making sure that there are fair and level playing fields for international commerce. It is advised to consult official WTO publications, news sources, or legal databases for the most recent details on the case's ruling.

This decision serves as a reminder of the value of the WTO's dispute resolution process in settling commercial disputes and preserving an orderly global trading system. It also emphasizes the difficulties in resolving domestic industry issues while respecting the ideals of free and fair trade.

Chapter 5

Conclusion And Recommendations :

CONCLUSION :

The dispute resolution processes of the World Trade Organisation (WTO) were crucial for maintaining an international trading system based on rules. However, there are a few issues and challenges that come with this process. The findings highlight many significant aspects of the WTO dispute resolution procedure.

First, there are considerable obstacles posed by the complexity and amount of conflicts that are growing. As commerce between nations grows increasingly intertwined, disagreements include more parties and concerns, complicating and lengthening the settlement process. Due to this complexity, the WTO's dispute settlement body must effectively manage its resources and look for methods to speed up the resolution procedure.

Second, there have been complaints about the WTO's dispute resolution process. Some members raise concerns about its effectiveness, openness, and infringement on national sovereignty. To solve these issues and increase the system's overall efficacy, demands for modifications and enhancements have been made in response to these critiques.

Thirdly, it continues to be difficult to enforce judgments and guarantee that settlement agreements are followed. Some nations postpone enforcing judgments, which damages the system's legitimacy and efficacy. To keep the WTO dispute settlement system dependable, enforcement procedures must be improved, and a compliance culture must be promoted.

Finally, there are new trade difficulties that have emerged as well as shifting global dynamics. The WTO must change to successfully meet modern concerns including digital commerce, intellectual property rights, and non-tariff obstacles. The dispute settlement system must be flexible, responsive, and keep up with changing trade dynamics to be relevant and successful.
The WTO dispute settlement system has several issues and difficulties, even though it has been crucial in maintaining stability and resolving trade disputes. The system must be improved by dealing with the complexity of conflicts, reacting to complaints, bolstering enforcement measures, and adjusting to shifting trade dynamics. The WTO can make sure that its dispute resolution system stays strong, transparent, and capable by actively addressing these issues.

RECOMMENDATIONS :

The World Trade Organisation (WTO) plays a vital role in promoting international commerce and resolving conflicts among member nations. However, several challenges need to be addressed to ensure an efficient and fair dispute-resolution process. Here are some recommendations for enhancing the WTO's procedures:

- Enhancing Representation: It is crucial to foster greater participation and representation of developing nations in the dispute resolution process. This can be achieved by promoting diversity, ensuring an equitable distribution of resources, and eliminating any biases that may undermine the interests of developing nations.

- Balancing Power Dynamics: The WTO dispute settlement mechanism should carefully consider power imbalances. Efforts should be made to level the playing field by addressing disparities in power and resources between industrialized and developing nations. Providing support and assistance to emerging economies can help reduce the power asymmetry.

- Streamlining and Simplifying Procedures: The complexities and lengthy nature of the dispute resolution process should be analyzed and addressed. Simplification of procedures, shorter timelines, and increased transparency can alleviate the burden on developing nations with limited resources. This would enable their more effective participation and expedite dispute resolution.

- Ensuring Compliance: The issue of adherence to WTO judgments and rulings needs to be examined to ensure compliance. Member states often face challenges in implementing and enforcing regulations, particularly when influential countries resist or delay compliance. Strategies should be developed to promote prompt adherence and alleviate concerns about the effectiveness of the dispute-resolution process.

- Addressing Non-Trade Issues: The inclusion of non-trade concerns in the dispute resolution process, such as intellectual property rights, environmental laws, and labor standards, can pose difficulties. Policies and frameworks should be created to effectively handle these complications and ensure the overall efficiency of the system.

- Capacity Building for Developing Nations: Identifying and addressing the capacity-building needs of developing nations is crucial for their meaningful participation in the dispute settlement process. Support in the form of legal knowledge, technical resources, and financial assistance should be provided to empower these nations and enable their active engagement.

- Exploring Alternative Approaches: Alternative strategies and potential updates should be explored to address the challenges faced by the WTO's dispute resolution system. Examining suggestions for enhancing representation, simplifying processes, and ensuring an efficient and equitable resolution of disputes, especially for developing nations, can strengthen the system and enable it to adapt to evolving demands in international trade.

Implementing these recommendations can improve the WTO's dispute resolution procedures while effectively addressing the difficulties faced by member nations. This will foster confidence, cooperation, and global economic progress by promoting a more efficient and equitable global trade system.

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