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## **ABOUT US**

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# **Role of Dispute Settlement Body in Relation to World Trade under WTO**

Authored By - Varshini B. I.

## **ABSTRACT:**

International trade is highly complex, and is more complex than domestic trade. International trade involves more than one national law, rules and policies. There are over 200 countries in the world trading with other countries in a large number of goods and services. No country can be self-sufficient, whatever may be its size and resources. Every country, whether small or big, wants to gain through trade with other countries through the mechanism of international trade rather than by remaining closed economies. Besides, international trade plays multifarious functions, such as high production, increased market share, high profit, acquisition of modern technology, increase in standard of living, socio economic welfare, division of labour, large scale economies, optimum and proper utilization of rare economics resources etc. The WTO dispute settlement procedure has been used by several WTO (World Trade Organization) members. Nevertheless, there is ongoing discussion over this mechanism's usefulness, which is a crucial topic. The purpose of this article is to describe the efficiency of the WTO dispute settlement process. Its duration, involvement (especially from poor nations), and accomplishments are used to gauge its efficacy. This article's conclusion is that the WTO's dispute settlement process successfully settles issues amongst its members. Keywords: WTO, dispute resolution process, and efficacy.

**KEY WORDS:** Role and principles of DSB, Principles of DSB under WTO, The WTO DS process.

## **LITRATURE REVIEW**

**1. IS THE SUE PF THR WTO DISPUTE SETTLEMENT SYSTEM BIASED?**

URL. <http://www.cepr.org/pubs/dps/DP2340.asp>

During the WTO DSS's first four years in operation, the larger trading nations were primarily its users, which sparked a discussion about whether the DSS is unfair to smaller, poorer nations. The Dispute Settlement Understanding clearly outlines the ability to file complaints. The panel inquiry's first decisions may be appealed, but the Appellate Body's review is final and cannot be overturned by the respondent. However, no proof is shown that large countries attack tiny nations disproportionately or that small countries complain about large countries less frequently than would be expected.

**2. THE DISPUTE SETTLEMENT SYSTEM 1995-2010**

Henrik Horn, Louise Johan, Petros C. Mavroidis

Journal of world trade

The WTO is currently the busiest state-to-state court for settling disputes. A perpetual second instance court and third-party adjudication are included. The author makes an effort to shed light on how the system is actually used by WTO members. However, the WTO members are split into five separate groups in order to assess their involvement in terms of the agreements they frequently use as a legal standard to contest the actions of other WTO members. The observation period runs from the start of the WTO in 1995 until the conclusion of 2010.

**3. SAVING THE WTO FROM THE RISK OF IRRELEVANCE: THE WTO DISPUTE SETTLEMENT MECHANISM AS A COMMON GOOD FOR RTA DISPUTES . by, Henry Gao, C. L. Lim**

URL. <https://doi.org/10.1093/jiel/jgn036>

In this article the author has discussed the possibility of using the WTO dispute settlement system as common good for RTA disputes. the author has separated the doctrinal analysis from the recommendations for reform that is what could be done to use the WTO dispute settlement system as a common good for RTA disputes under the WTO legal framework as it stands, versus how the current WTO legal framework should be changed to make it more useful.

**4. PARTICIPATION OF DEVELOPING COUNTRIES IN THE WTO DISPUTE SETTLEMENT SYSTEM**

URL. <https://doi.org/10.1017/S0021855303002080>

The author of this article compiles a concise statistical summary of developing member involvement in the WTO DSS. The WTO DSS participation of developing countries will be examined, followed by an emphasis on how the WTO's dispute settlement procedures have argued for and considered the developing condition. However, the WTO DSS did take some of the requested improvements into account.

## 5. DISPUTE SETTLEMENT AND THE WTO

URL. <https://doi.org/10.1093/jiel/1.3.329> John H Jacks Journal of International Economic Law.

This article briefly analyses the Appellate reports' expressions of the current WTO dispute settlement system's growing jurisprudence. It makes some hazy generalisations regarding the Appellate Body's methodology, including a potential attitude of national state regulations judgments to provide those decisions more latitude than is commonly suggested in first-level panel reports. The author also highlights the potential constitutional risks of the WTO's inclination to too rely on the dispute system to fill in the numerous uncertainties and loopholes in the new trading system. Uruguay elliptical texts.

## INTRODUCTION:

WTO is an international body dealing with the rules and regulations of trade among nations. The main object of WTO is to liberalise trade among nations. It tends to move towards the goal of free and fair trade. However, the Uruguay Round Agreement, and ultimate setting up of the WTO are expected to bring about substantial gains in world trade, and to increase income from liberalization, improved market access and greater export opportunity, besides greater predictability of the trading environment.

It is estimated that the entire world trade exceeds 7000 billion dollars per annum. The Indian share in the total export is about 0.7%, which comes to only 44.8 billion dollars. At present India is exporting about 7500 commodities to 290 countries and importing about 600 commodities from 140 countries of the world. The agreements of WTO established an autonomous body for settlement of disputes among member countries of the WTO in trade matters at the government level. This body or institution is known by the name Dispute Settlement Body (DSB) this system of dispute settlement of WTO is considered as the best

international agreement on matters of trade disputes at the international level.

Settlement of dispute on time and structured basis is important. By having trade conflicts settled based on laws rather than having power determine the outcome, this approach serves to alleviate the disparities between both the economically rich and poor WTO member countries and prevent the negative impacts of unsolved international trade wars. The DSS quickly gained practical significance after it was established as more of its members turned to it to resolve their trade issues. It offers a venue for ongoing trade discussions and acts as the supreme lawful power of the world trading system. The WTO is in charge of managing a complicated web of international agreement law. The most intricate and possibly most significant international dispute settlement procedure is run and carried out by it.

## **STATEMENT OF THE PROBLEM.**

WTO has become one of the most interesting and important global trade organisations of the time at the intergovernmental level. It does not act as a forum for continued trade negotiations highlighting the importance of global economy. It operates as the most important global dispute settlement system.

Despite the importance and prominence in trade dispute settlements, WTO is poorly understood by many. Hence there arises a need for an explanation on the basis of the WTO and how it functions as an organisation, and the scope of its authority and powers. It also requires to explain the role of the dispute settlement mechanism under the WTO, which will be discussed in the fourth chapter.

## **➤ OBJECTIVES OF THE STUDY**

1. To study the existing system of settlement of international trade disputes and suggest measures for improvements.
2. To ascertain the major differences between GATT and WTO in the dispute's settlement process.

## **➤ ROLE AND PRINCIPLES OF DISPUTE SETTLEMENT:**

The WTO sets the number rules and regulations governing the export and import

relating to goods and services.

The WTO Institutions for resolving disputes operate very much like an international trade court. It possesses mandatory jurisdiction. Its own set of laws apply. The parties must abide by its rulings, and sanctions may be applied if they are not followed. To resolve disagreements between WTO Members on their rights and obligations under the WTO Agreement, the WTO has an unique mechanism in place.

Since January 1st, 1995, the WTO's dispute settlement process has been in operation. A total of 369 disputes were submitted to the WTO for resolution between 1 January 1995 and 1 December 2007<sup>1</sup>, while the WTO's predecessor received a total of 368 conflicts. Some of the cases that have been submitted to the WTO dispute settlement system have generated a great deal of controversy and public discussion, as well as significant media coverage.

As an illustration, a disagreement over national legislation protecting the environment or public health has arisen such as:

1. the EC-Hormones dispute on the European communities, import ban on meat for cattle treated with growth hormones.<sup>1</sup>
2. the US-shrimp dispute on the US import ban on shrimp harvested with nets that kill sea turtles.<sup>2</sup>
3. the EC approval and Marketing of Biotech Products, dispute on measures affecting the approval and marketing of genetically modified products in the European Union.<sup>3</sup>

## **PRICIPLES OF DISPUTE SETTLEMENT UNDER WTO:**

The WTO has a robust framework in place to settle trade disputes amongst its members. The following components of the system:

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<sup>1</sup> EC Hormones Complaints by the US and Canada Ibid pp.

<sup>2</sup> US-Shrimp Complaint by India, Malaysia, Pakistan and Thailand, Ibid See pp

<sup>3</sup> Ibid pp. EC Approval and Marketing of Biotech Products, Complained by the US; Canada and Argentina.

The goals and objectives of the WTO dispute resolution process. The numerous techniques used to resolve WTO disputes such as:

1. Access to the WTO dispute settlement system.
2. The WTO dispute settlement system's jurisdiction
3. A chronological timeline of the WTO dispute resolution procedure.
4. The burden of proof and rules of interpretation that apply to WTO dispute resolution
5. The confidentiality of and guidelines for WTO dispute resolution.
6. The remedies available for violations of WTO law
7. Special guidelines and support for members from developing countries.

## **OBJECT AND PURPOSE OF THE DISPUTE SETTLEMENT SYSTEM UNDER WTO:**

The primary goal of the WTO dispute settlement mechanism is to quickly resolve disputes between WTO Members about their rights and obligations under the UN law.

The fast resolution of such disputes "is fundamental to the successful functioning of the WTO and the maintaining of proper balance between the rights and obligations of Members," according to Article 3.3 of the DSU.

### **Article 3.2 of the DSU states:**

A key component in giving the multilateral trade system security and predictability is the WTO's dispute settlement process. The Members acknowledge what appears to maintain the rights and obligations of Members under the covered agreement and to make the provisions of those agreements more understandable in accordance with the accepted principles of interpretation of public international law.<sup>4</sup> The DSU is one of the WTO's most crucial tools for ensuring the security and predictability of the Multilateral Trading System, according to the US Section 301 Trade Act Panel.

## **SETTELEMENT OF DISPUTE THROUGH MULTILATERAL PROCEDURES:**

The aim and goal of the conflict resolution process is for members should use the DSU's

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<sup>4</sup> Article 3(2) of the Dispute Settlement Understanding.

multilateral processes rather than unilateral action to resolve disputes with other Members. According to Article 23.1 of the DSU, " When seeking redress for a breach of commitments, another nullification under the covered agreements, or an obstruction to the achievement of any aim of the covered agreements, Members shall have recourse to and abide by the rules and processes of this understanding."

## **SETTELEMENT OF DISPUTE THROUGH CONSULTATION IF POSSIBLE.**

The purpose of the dispute settlement process, comes under article 7 of DSS, it is to find the solution that is mutually acceptable by both the parties' disagreement and favoured if it is in line with the agreement covered.

## **SETTLEMENT OF DISPUTE IN GOOD FAITH:**

The dispute settlement process comes under article 3.10. the members of WTO shall take part in this process of settlement. In other words, it is part of the goal and purpose of the WTO dispute settlement system that parties interested in the process engage with a sincere desire to see the dispute resolved.

In US-FSC, the Appellate Body determined that the United States had acted in bad faith by failing to bring procedural errors to the knowledge of the complainant and the panel "reasonably and expeditiously" so that remedy, if necessary, might have been made.

## **METHODS OF DISPUTE SETTLEMENT:**

There are four ways to resolve disputes between WTO Members, as stated in the DSU, including

1. Consultation or negotiation.
2. Panel and Appellate Body Decisions
2. Mediation; and
4. Sincere efforts, negotiation, and mediation

The DSU gives consultations as the primary option for resolving problems. Therefore, before proceeding with adjudication, consultation—or at least an attempt at consultation should be made.

If negotiation fails to resolve the conflict, the complaint may turn to a panel's adjudication; if either side to the conflict wants an appeal to the panel's conclusions, then The last option is to have the Appellate Body decide the case.

The DSU's Articles 4 and 6 through 20 provide the procedures for resolving disputes. However, the WTO dispute resolution mechanism offers quick "arbitration" as an alternative method of resolving disputes. However, if a covered agreement disagreement arises, it may be preferable to use arbitration rather than the processes outlined in Articles 4 and 6 to 20 of the DSU. In that instance, the parties must specify the disputes to be arbitrated and agree on a specific course of action. 21 The arbitration award must also be accepted by both parties. The arbitration award must adhere to the WTO agreement in accordance with Article 3.5 of the DSU.

## **USE OF GOOD OFFICES, CONCILIATION OR MEDIATION:**

The DSU's Article 5 stipulates that disputes may be resolved through the employment of good offices, conciliation, or mediation. Any party may ask for good offices, conciliation, or mediation at any moment. They also may start and end whenever it pleases.

If both parties agree, conciliation or mediation can continue while the panel process is underway.<sup>5</sup>

## **JURISDICTION OF THE WTO DISPUTE SETTLEMENT SYSTEM:**

The WTO dispute settlement system is actively maintained thanks to its extensive jurisdiction, which is also mandatory, exclusive, and contentious. Here I would like to investigate the extent and type of the WTO dispute settlement system's jurisdiction.

## **COMPULSORY JURISDICTION:**

The WTO dispute settlement system's jurisdiction is mandatory by nature, according to Article 23.1 of the DSU. Where Members request a resolution for a violation. They shall follow

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<sup>5</sup> Article 5.5 of DSU

the rules and regulations if there are any or other nullification, benefits which are covered under this agreement.

This clause mandates that any disagreement arising under the covered agreement be submitted to the WTO dispute resolution system by the complaining Member. Alternatively put, a response.

According to the law, the Member cannot refuse to recognise the WTO dispute settlement system's authority.

In relation to the latter, Article 6.1 of the DSU stipulates, "If the complaining party so requests, a panel shall be created at the latest at the DSB meeting following that at the latest time the complaining party submits a complaint."

Contrary to other international dispute settlement systems, the parties to a dispute arising under covered agreements are not required to consent to the WTO dispute settlement system's jurisdiction to decide that dispute, starting on the date the request first appears as an item, in a separate declaration or separate agreement. Membership in the WTO is contingent upon acceptance of the Dispute settlement system.

## **EXCLUSIVE JURISDICTION:**

In the US-Section 301 Trade Act case, the Panel determined that Article 23.1 of the DSU requires all Members to use the multilateral process outlined in the DSU when they seek correction of a WTO contradiction. Members may be obliged to solely employ the DSU in specific circumstances, rejecting all the other methods, particularly those that entail the unilateral implementation of WTO rights and obligations.

A crucial new component of the Members' rights and obligations under the DSU is thus what can be described as the exclusive dispute resolution clause, or clause 117.

As a result, Members must use the WTO dispute resolution process instead of any alternative process. The exclusive use of the WTO is guaranteed by Article 23.1 of the DSU. Compared to other international forums, and while defending the multilateral system to prevent unilateral behaviour.

## **CONTENTIOUS JURISDICTION:**

Only contentious, not advisory, disputes may be resolved through the WTO dispute settlement process.

## **IN US-SHRIMP, THE APPELLATE BODY RULED:**

"It could be a good idea to emphasise right away that only WTO Members have access to the WTO's dispute resolution procedure. Under the WTO, this access is not permitted.

To specific people or international organisations, both governmental and non-governmental, as they are currently in existence. Only Members may establish a panel as a party to a dispute on their behalf, and only Members who have a significant stake in the issue at hand may intervene as third parties in a panel's deliberations.

Therefore, only Members who are parties to the dispute or who have informed the DSB of their interest in doing so are legally permitted to submit claims under the DSU.

## **THE WTO DISPUTE SETTLEMENT PROCESS:**

The WTO dispute settlement process has four major steps, such as

1. Consultation
2. Panel proceedings
3. Appellate review proceedings and
4. Implementation and enforcement

The dispute settlement process begins with consultations or at least an attempt by the complainant to involve the respondent in consultations to resolve the dispute in a very cordial way. If that isn't practicable, the complainant has the option of referring the issue to a panel for resolution. The panel's deliberations will bring about a panel report. This Appellate Body will hear appeals about this report. The panel report will either be upheld, modified, or reversed as a consequence of the appellate review proceedings. The Dispute Settlement Body will adopt the panel report or the Appellate Body report in the event of an appeal.

If the respondent is found to have violated WTO regulations after the reports are accepted, they must follow the DSB's recommendations and decisions. The final significant element in the WTO dispute settlement process is the implementation and enforcement of the agreed recommendations and decisions.

## **CONCLUSION:**

Another important area for future research is the forum where developing nations contest the WTO incompatibility of their wealthier counterparts-research.

Even though it is challenging, it is possible to examine the current situation and get a close-to-certain conclusion on how the DSB and the yearly publishing of Trade Policy Review (TPRS) reports relate in the current framework.

However, based on the instances examined in the preceding chapters, it is clear that a lot more publications are required in order to increase the reach of the Appellate Body reports, which are released annually. One may regard the annual release of the Trade Policy Review report from the WTO as a carefully crafted backgrounder for the developing nations. This-benefits emerging markets.

## **SUGGESTIONS:**

There is a severe crisis in WTO dispute resolution. The US has prevented nominations to the Appellate Body, that has prevented most panel reports from being appealed into effect and left the matter unresolved. As a result, the appeals process is not working. The WTO members currently find it very challenging to enforce WTO requirements through complaints against actions they regard to be in breach. By adding other issues to the mix, it is also feasible to resolve the conflicts brought up by the Appellate Body dilemma. The WTO members' conflicts may be successfully settled using this strategy.

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