

Supplementary Reading for

Chapter 7 The WTO Dispute Settlement as a Model for

International Government

The World Trade Organization (WTO)

and Dispute Settlement Procedures

Last Updated: 4/24/2004

The World Trade Organization (WTO) was established in 1995 in the final round (Uruguay Round) of the General Agreement on Tariffs and Trade (GATT) negotiations. The WTO is not a simple extension of GATT, but a complete replacement of it with a different character. The WTO embodies the negotiated results of the Uruguay Round and is the successor to GATT. The WTO is responsible for enforcing the GATT agreements, which are designed to reduce barriers to world trade. During the trade negotiations global rules for international trade were improved and extended to most trading nations on an equivalent basis and responsibility for enforcing these rules was entrusted to the newly created WTO. Additionally, the WTO provides procedures for negotiating additional reductions of trade barriers and for the prompt and effective settlement of disputes in all policy areas covered by the new world trade agreement. The Uruguay Round established dispute settlement procedures for the WTO. This was called the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

THE STRUCTURE OF THE WTO

The Structure of the WTO is dominated by its highest authority, the Ministerial Conference, composed of representatives of all WTO members, which is required to meet at least every two years and which can take decision on all matters under any of the multilateral trade agreements. The day-to-day work of the WTO is carried out by a number of subsidiary bodies; primarily the General Council, which is also composed of all WTO members, which is required to report to the Ministerial Conference. As well as conducting its regular work on behalf of the Ministerial Conference, the General Council convenes in two particular forms - as the Dispute Settlement Body (DSB), to oversee the dispute settlement procedures, and as the Trade Policy Review Body to conduct regular reviews of the trade policies of individual WTO members.

The General Council delegates responsibility to three other major bodies: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade Related Aspects of Intellectual Property. The Council for Trade in Goods oversees the implementation and functioning of all the agreements covering trade in goods, though many such agreements have their own specific overseeing bodies. The other two Councils are responsible for their respective WTO agreements and may establish their own subsidiary bodies as necessary.

The WTO General Council convenes as the DSB to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round. The DSB is solely authorized to establish panels, adopt panel and appellate reports, maintain surveillance of implementation or rulings and recommendations, and authorize retaliatory measure in cases of non implementation of recommendations.

The WTO dispute settlement mechanism gives the possibility of appeal to either party in a panel proceeding. Appeals are heard by a standing Appellate Body established by the DSB. This Appellate Body is composed of seven persons which broadly represent the WTO's membership. They serve four year terms. are required to be persons of recognized standing in the field of law and international trade, and can not be affiliated with any government.

The WTO Secretariat, which is located in Geneva, Switzerland, has a staff of about 500 and is headed by a Director General and four Deputy Directors General. Its responsibilities include the servicing of WTO delegate bodies with respect to negotiations and the implementations of agreements. It has a particular responsibility to provide technical support to developing countries, and especially the least developed countries. WTO economists and statisticians provide trade performance and policy analysis while its legal staff assist in the resolution of trade disputes involving the interpretation of WTO rules and precedents. Much of the Secretariat's work is concerned with accession negotiations for new members and providing advice to governments considering membership.

THE DIFFERENCE BETWEEN WTO AND GATT

The principle differences between WTO and GATT are:

- GATT was a set of rules, a multilateral agreement, with no institutional foundation, only a small associated secretariat which had its origins in the failed attempt to establish the International Trade Organizations in the 1940s. The WTO is a permanent institution with its own secretariat.
- GATT was applied a "provisional basis" even though it lasted more than forty years and governments chose to treat it as a permanent commitment. The WTO commitments are full and permanent.
- GATT rules applied to trade in merchandise goods. In addition to goods, the WTO covers trade in services and trade related aspects of international property.
- GATT was a multilateral instrument, by the 1980s many new agreements had been added of a plurilateral, therefore selective, nature. The agreements which constitute the WTO are almost all multilateral and involve commitments for the entire membership.
- The WTO dispute settlement system is faster, more automatic, and less susceptible to blockages, than the old GATT system. The implementation of WTO dispute findings will be more easily assured.

DISPUTE SETTLEMENT PROCEDURES

The WTO's dispute settlement process underscores the rule of law, and it makes the trading system more secure and predictable. The procedures are clearly structured, with flexible timetables set for completing a case. First rulings are made by a panel and final rulings are endorsed (rejected) by the WTO's full membership. Appeals that are based on points of law are possible. No single country can block these.

The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), both continues and modifies prior GATT dispute practices. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system and WTO members commit themselves not to take unilateral action against perceived violations of the trade rules but to seek recourse in the multilateral dispute settlement system and to abide by its rules and findings.

Settling disputes is the responsibility of the Dispute Settlement Body (DSB) (the DSB is the WTO General Council acting in a dispute settlement role). The DSB has the sole authority to establish "panels" of experts to consider a case, and to accept or reject the panels' findings or the results of an appeal. The DSB monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

FIRST STAGE - CONSULTATION (UP TO 60 DAYS):

Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, the two countries can also ask the WTO Director General to mediate or try to help in other way.

SECOND STAGE - THE PANEL (UP TO 45 DAYS FOR A PANEL TO BE APPOINTED, PLUS 6 MONTHS FOR THE PANEL TO CONCLUDE):

If consultations between the countries fail, the complaining country can ask for a panel to be appointed. The country that has been accused of wrongdoing can block the creation of a panel once, but when the DSB meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).

Panels are much like tribunals. Unlike tribunals, however, the panelists are usually chosen in consultation with the countries in dispute. When the two sides are unable to agree on the composition of panelists, the WTO Director General then has the authority to appoint them. This happens rarely. Panels consist of three (sometimes five) experts from different countries who examine the evidence and decide who is right and who is wrong. The panel's report is passed to the DSB, which can only reject the report by consensus.

Panelists for each case can be chosen from a permanent list of well qualified candidates, or from elsewhere. They serve in their individual capacities. They cannot receive instructions from any government.

Officially, the responsibility of a panel is to help the DSB make rulings or recommendations. However, since the panel's report can only be rejected by consensus in the DSB, its conclusions are difficult to overturn. The panel's findings have to be based on the agreements cited.

The panel's final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

The following breaks down the main stages of the panels work:

- **Before the first hearing:** each side in the dispute presents its case in writing to the panel.
- **First hearing: the case for the complaining country and defense:** the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.
- **Rebuttals:** the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.
- **First draft:** the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report:** The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.
- **Review:** The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final Report** A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.
- **The report becomes a ruling:** The report becomes the Dispute Settlement Body's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (sometimes both parties do).

APPEALS

Either side has the opportunity to appeal the ruling by the panel. In some cases, both parties have appealed the panel's ruling. Appeals are based on legal points such as legal interpretation - they cannot be based on the reexamination or existing evidence or the examination of new evidence.

Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the DSB and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They must be individuals who possess a recognized standing in the field of law and international trade, and not affiliated with any government.

An appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with the maximum being 90 days.

The DSB must accept or reject appeals report within 30 days. Rejection of the appeals report can only be done by consensus.

CONCLUDING ACTIONS

After the case has been decided, the losing party or "defendant" needs to bring its policy into conformity with the DSB's ruling or recommendations. The dispute settlement agreement states that "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members".

If the country that is the target of the complaint loses, it must then follow the recommendations of the panel report or the appeals report. The country must state its intention to comply at a DSB meeting held within 30 days of the reports adoption. If it is impractical to comply immediately, the member will be given a "reasonable period of time" to do so. If it fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation.

If after 20 days, no satisfactory compensation has been agreed to, the complaining side has the option of asking the DSB for permission to impose limited trade sanctions ("suspend concessions or obligations") against the other side. The DSB should grant this authorization within 30 days of the expiry of the "reasonable period of time" unless there is a consensus against the request.

In principle, the sanctions should be imposed in the same sector as the dispute. If for some reason this is not practical or if it cannot be effective, the sanctions can be directed to a different sector of the same agreement. If this is also not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement. The goal is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective

In conclusion, the DSB monitors how adopted rulings are implemented. Any outstanding case remains on its agenda until the issue is resolved.

Questions for Discussions:

1. What is WTO?
2. Can you describe the structure of the WTO?
3. What is the function of the Council for Trade in Goods?
4. Are there any differences between WTO and GATT? What are they?
5. What are the WTO's disput settlement procedures? Please specify the different stages.
6. How are panelists chosen?



7. Who hears appeals?
8. Can an appeal uphold, modify or reverse the panel's legal findings and conclusions?