International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 11 PAGES: 7-16
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

Journal Website: https://theusajournals.com/index.php/ijlc

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Research Article

IMPORTANCE OF WTO AS DISPUTE RESOLUTION MECHANISM: SUCCESSES AND CHALLENGES

Submission Date: October 26, 2024, **Accepted Date:** October 31, 2024,
Published Date: November 05, 2024
Crossref doi: https://doi.org/10.37547/ijlc/Volume04Issue11-02

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ABSTRACT

In this thesis, the role of the World Trade Organization in international trade, its importance in the peaceful settlement of disputes between countries, its difficulties and successes are analyzed.

KEYWORDS

GAAT, Dispute Resolution, enforcement, Appellate Body.

INTRODUCTION

The World Trade Organization (WTO) plays a critical role as a global dispute resolution mechanism, ensuring that international trade flows smoothly by helping its members settle disputes based on agreed-upon trade rules. The World Trade Organization (WTO), established in 1995, plays a crucial role in maintaining a rules-based international trading system. At the heart of its operations lies the dispute settlement mechanism, which has been hailed as the "jewel in the crown" of the WTO. The WTO's dispute settlement system is considered one of the most advanced and binding systems of its kind, designed to handle conflicts among member states in a structured, rule-based manner.

Importance of the WTO as a Dispute Resolution Mechanism

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The WTO's dispute resolution mechanism is vital for maintaining the stability and predictability of international trade. Through its formalized procedures, countries are able to bring trade disputes to a neutral body for review, which ensures that trade conflicts are managed based on agreed-upon principles rather than unilateral actions.

The WTO's dispute settlement system is designed to provide a structured framework for resolving trade disputes between member countries. It operates through the Dispute Settlement Body (DSB), which oversees the entire process from consultations to implementation of rulings.

The world trade organization (WTO) has been in existence for slightly more than five years. Its predecessor, the General Agreement on Tariffs and Trade (GATT), operated for almost fifty years as a provisional treaty and institution, but the WTO has a definitive organizational structure recognized under international law. By most accounts, the WTO has been an enormous success, and it has provided and begun to implement the appropriate infrastructure for the massive treaty results of the Uruguay Round of multilateral negotiations (1986–94). The WTO has the unparalleled responsibility of overseeing a treaty of some thirty-thousand pages, including approximately one thousand pages of dense and often ambiguous treaty text. (The remainder largely comprises schedules of concessions regarding goods and services.) However, increasing concerns have arisen about the direction and the long-term viability and strength of the WTO, particularly during the last year or two, accentuated by the failure of the 1999 Third Ministerial Conference in Seattle.

A central feature of the WTO is its dispute settlement mechanism. Indeed, the statesmen involved in the Uruguay Round, as well as current WTO officials and ambassadors, take considerable pride in this feature. The WTO dispute settlement system has had an enormous impact on the world trade system and trade diplomacy. It is unique in international law in its juridical and legalistic system for disputes, with virtually automatic, binding application of its decisions and reports to its members. Unlike some of the more specialized systems of this type, these attributes are nested in an extraordinarily broad and comprehensive jurisprudence. In addition, the questions posed to the dispute settlement system often strike at the heart of the tension between the protection of nation-state sovereignty and the globalization of national economies, which require more expansive cooperative mechanisms in order to succeed internationally.

The WTO dispute settlement system builds upon the GATT dispute settlement procedures, a mechanism inherently flawed in part because GATT was intended to be part of an International Trade Organization that never came into being. The International Trade Organization's draft charter called for a rigorous dispute settlement procedure that contemplated the use of voluntary arbitration, while providing for appeal to the World Court in some circumstances.

In general, a WTO dispute settlement procedure (outlined in figure A-1) is launched at the request of one or more member governments for a consultation regarding complaints against defending members. This process is entirely government-to-government and available only to WTO members in procedures against other members. The DSU provides that all members will settle their differences regarding the covered agreements by referring those disputes to the procedures of the WTO as elaborated in the DSU.

When such a request is made and transmitted to the secretariat, a DS number is assigned to the dispute, and all documents relating to that particular process will

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bear that DS number. On some occasions, other complaints will be combined for a proceeding, and, in such a case, there may be more than one DS number to a particular set of issues involving complaints against different WTO members. If more than one country brings a complaint against the same measure, the complaints are consolidated and reviewed by a single panel.

In some books, it is provided that throughout GATT's history, there was disagreement over whether its dispute settlement system should be more or less "judicial" in nature. Some critics of the system argued that it should be more judicial so as to promote more precise decisions on the merits of disputes and more effective implementation of decisions. At the same time, other critics argued that the nature and basic philosophy of GATT dictated that the system should be used only to the extent it facilitated negotiated settlements of trade disputes. These two conflicting viewpoints are often referred to as the "legalistic" model, which stresses adjudication, and the "pragmatic" or "anti-legalistic" model, which emphasizes negotiation and consensus. Put simply, the legalistic view is that the GATT and now the WTO Agreement are codes of conduct and embody a balance of concessions.

If a WTO Member violates the code or tips the balance, it is appropriate to penalize such behavior and put pressure on that Member to conform to the code or right the balance, if necessary by allowing the complaining Member to take offsetting countermeasures. On the other hand, the anti-legalistic position is that the WTO Agreement is not a code of conduct per se, but more of a commitment by the Members to deal with each other in trade matters so as to work out mutually acceptable solutions to any disagreements. As discussed below, until the closing period of the Uruguay Round, the United States was generally perceived to have supported the legalistic position, while Japan and the EC were considered supporters of the opposing position. Many smaller countries tended to support the legalistic position because they saw that approach as a more effective protector of small-country rights.

The hallmark of WTO dispute settlement is its automaticity. A WTO Member has a right to bring a case against any other Member. By becoming a party to the WTO agreements, Members have accepted in advance the jurisdiction of the WTO dispute settlement process. Once brought, the case is heard in accordance with a relatively strict timetable and the ultimate decision, whether by a panel or the Appellate Body, is binding. Of course, delays can occur in selecting panel members and in handing down panel or Appellate Body rulings, but a Member that claims that another Member is in violation of its WTO obligations will be able to pursue the matter to a binding decision. This is a consequence of the reverse consensus rule.

Implementation of WTO rulings is less automatic and considerable delays can occur before implementation takes place, or before compensation or retaliation are authorized and carried out. Nonetheless, WTO dispute settlement is binding dispute settlement and as such was a major step, moving the WTO well beyond the GATT, and, in fact, well beyond most other forms of dispute settlement between states.

There are a number of key features of the WTO dispute settlement system. First, the system is used frequently, perhaps far more frequently than originally anticipated, by both developed and developing states. This includes both the initiation of cases before panels and appealing the outcome to the Appellate Body.

Second, treaty interpretation in the WTO is driven by a common methodology articulated by the Appellate

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Body on the basis of the customary principles of interpretation of public international law as reflected in Article 31 of the Vienna Convention on the Law of Treaties: words in an agreement are to be given their ordinary meaning in their context and in the light of the object and purpose of the agreement as a whole. This has resulted in an orderly approach to the process of interpreting the WTO agreements. It has provided guidance to Members both on how they should interpret their own obligations and on what basis they should decide whether another Member is in breach and should be brought to dispute settlement.

The World Trade Organization (WTO) plays a critical role in international trade by providing an organized and rule-based system for resolving disputes between its member states. Its dispute resolution mechanism, known as the Dispute Settlement System (DSS), is vital for maintaining fairness and stability in global commerce. This system offers countries a platform to resolve trade disagreements through a structured legal process that includes consultations, panel reviews, and appellate procedures.

One of the key strengths of the WTO's DSS is its capacity to handle disputes based on legal frameworks, ensuring that trade disputes are resolved according to agreed-upon rules rather than through political or economic coercion. The system has successfully managed numerous disputes since its inception in 1995, with a high resolution rate. For example, data from 1995 to 2000 showed that of the 219 disputes raised, 154 were resolved, demonstrating the mechanism's effectiveness in settling international trade disputes peacefully and predictably.

However, there are limitations. Enforcement of rulings can be problematic, particularly for developing countries that may lack the economic or political power to compel compliance from stronger trading partners. The system also lacks traditional remedies like reparation for past damages, which can undermine its authority in ensuring compliance. Despite these challenges, the WTO's dispute resolution mechanism remains a cornerstone of international trade governance, helping prevent trade conflicts from escalating into more severe economic or diplomatic confrontations.

Successes of the WTO Dispute Settlement Mechanism

Since its inception in 1995, the WTO dispute settlement mechanism has received over 600 complaints. As of 2024, the exact number stands at 614 disputes. This high volume demonstrates the trust member countries place in the system and its effectiveness in addressing trade concerns.

Unlike its predecessor, the General Agreement on Tariffs and Trade (GATT), the WTO's dispute settlement system provides binding rulings that must be complied with. This is a significant advancement as it ensures that member states adhere to international trade rules.

The WTO's framework for dispute resolution reduces the risk of trade disputes escalating into trade wars. Through formal consultations, panel hearings, and appellate reviews, it offers multiple stages for parties to negotiate and reach a resolution before implementing retaliatory measures. Moreover, the vast majority of WTO rulings are respected by member states, with countries making efforts to align their trade practices with WTO recommendations. This high compliance rate underscores the system's effectiveness in enforcing international trade rules.

By providing a rules-based system for resolving disputes, the WTO mechanism has helped prevent the escalation of trade conflicts into full-blown trade wars.

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For example, the long-standing Boeing-Airbus dispute between the US and EU, while protracted, was largely contained within the WTO framework, preventing unilateral actions that could have severely disrupted global trade.

On top of that, the dispute settlement process is transparent, with rulings published for public access. This ensures accountability and reinforces the legitimacy of the WTO as an institution that upholds the rule of law in international trade.

Professor Hudec has made a careful statistical analysis of the results of GATT dispute settlement in an attempt to answer assess the effectiveness of the system. He concludes that the system yielded positive results – full or partial satisfaction for the complainant – in almost 90% of all cases. Interestingly, he found that there was a marked increase in negative outcomes in the 1980's, a period that has often have been considered by many to be one of the more successful periods of GATT dispute settlement. His analysis indicates, however, that there was a great increase in the volume of disputes considered in the 1980's and that in the first half of the decade, there were many successes.

By the end of the decade, the situation had changed and he found an increasing number of cases with were negative outcomes, i.e., a respondent had been found to have violated GATT rules but either did not accept the loss (by blocking adoption of the panel report) or did not implement corrective action to remove the offending measure. Professor Hudec's study ended as of the end of 1989, and it appears that the trend toward more negative outcomes that he identified in the later 1980's became even more pronounced in the early 1990's, in part because of the bringing of more controversial cases into the system and in part because of the pendency of negotiations on some issues. Nonetheless, for most of its history, the GATT system scores quite well in terms of providing for the effective vindication of rights.

The GATT dispute settlement system also contributed greatly to clarifying GATT obligations. GATT dispute settlement panels had the occasion to consider all of the basic obligations of the General Agreement and their decisions led to a great refinement of those obligations. Moreover, panel reports frequently cited other panel reports, thereby leading to the creation of a system of precedent that reinforced their interpretations of GATT obligations. While the notion of precedent does not mean that panels never reached conclusions differing from those of prior panels, panels generally followed past panel decisions so long as they were well reasoned and were accepted in the GATT system as correct. Thus, from this perspective – the creation of a legal system of relatively stable precedents interpreting and clarifying GATT obligations – the GATT dispute settlement system was quite successful.

One commonly held view in the literature is that the success of early settlement under the GATT is increasingly less evident under the WTO, especially in consultations. While bargaining in the shadow of the law proved efficacious under the GATT's more diplomatic system, the argument is that the DSU's reforms may have made litigation attractive, motivating complainants to push for a definitive verdict. As evidence, many observers point not only to the caseload at the panel stage, but the frequency of appeals to the AB. Moreover, the received wisdom is that consultations are pro forma at best.

In fact, the proportion of cases paneled differs little across the GATT/WTO years; the WTO's greater caseload reflects growth in the institution's membership and in the volume of world trade. In terms of the transatlantic relationship, more specifically,

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early settlement is perhaps more important than ever, a point quite evident in Figure 3, which graphs the level of concessions achieved in WTO disputes ending at various stages of escalation.

As Robert Hudec's work has discussed in depth, GATT began handling disputes at its inception and by 1949 had developed the practice of referring disputes under Article XXM:2 to working parties. A working party is a negotiating body that includes the parties interested in an issue, that does its business by face-to-face interaction, and whose objective is agreement. In the early years, almost all GATT business was conducted during month-long sessions that took place approximately annually. Pushed by the GATT Secretariat, working parties began to act like third-party adjudicators, drawing up reports recording the views of the two disputing parties but treating the votes of the neutral members as dispositive. Starting in 1952, the working party format mutated into a standing group of neutrals, which would hear complaints and then draw up its report in camera with Secretariat assistance. Bit by bit, through small successes, the procedures gathered legitimacy and began to make a difference in persuading defending governments to remove problem measures. Dispute settlement was still a process conducted between repeat players in an occupational community, and dependent on the defending party's cooperation. Very many cases were settled bilaterally and only the hard-core cases were referred to panels.

A case may also be settled when the complaining party abandons some or all of its claims after it discovers that the claims lack sufficient factual basis, the measure no longer exists, or the legal arguments supporting the claim are not likely to prevail. A defending party may be able to persuade the complaining party that success in litigation will be more difficult than predicted, that success in litigation may be fruitless, or that a practical solution to the trade problem at issue is better achieved through a negotiated solution.

Since there is usually more than one way to comply with a given WTO obligation, it may be entirely rational to abandon a claim if the complaining party believes that it cannot prevent the defending party from complying in a manner that is useless to the stakeholder. In another variation, a defending party may change its law to provide the same protection in a manner that it believes is more defensible. Claim abandonment may also, of course, reflect pure arm-twisting and pressure politics.

DSU Article 5 does provide for good offices, conciliation, or mediation if the parties to a dispute agree-implicitly limiting these forms of settlement to situations in which a complainant has already committed itself to bringing a dispute. A July 2001 proposal from the WTO Director-General for procedures to operationalize Article 5 noted that Article 5 had never been used. There has still been no mediation to date within a dispute. The only known mediation to date, regarding EC preferences for canned tuna, occurred instead of dispute settlement proceedings. The mediation successfully settled the differences between the parties, due to a number of factors: the use of unique leverage by the complainants to get the EC's attention to their problem, skilled mediation by a veteran dealmaker who suggested a practical solution, goodwill on the part of the EC in promptly implementing the solution increasing the complainants' market access, and the fact that the problem was framed not in terms of legal rights but as a question of impairment of interests.

Challenges Facing the WTO Dispute Resolution Mechanism

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The growing number of trade disputes has placed significant pressure on the WTO's dispute settlement mechanism. Delays in the resolution process, particularly at the appellate level, have been a recurring problem.

Despite having fixed timetables, WTO disputes often take years to resolve. On average, the process from the request for consultations to the adoption of a panel report takes about 14 months, with appeals adding another 3-4 months. Complex cases can take much longer, stretching over several years.

One of the most significant challenges the WTO faces is the paralysis of its Appellate Body, which has been unable to function since 2019 due to the United States blocking appointments to it. This has weakened the entire dispute resolution system, as countries can no longer appeal panel rulings, leading to a backlog of unresolved cases.

Besides, while the system is structured and thorough, some countries find the procedures complex, time-consuming, and costly. For smaller or developing nations, navigating the WTO's legal intricacies can be challenging without sufficient resources. Additionally, while the system is rule-based, geopolitical pressures can sometimes influence the process. Larger economies may exert political leverage to delay compliance or avoid unfavorable rulings, undermining the system's neutrality.

While compliance rates are high, the WTO lacks strong enforcement mechanisms for cases where countries do not comply with rulings. The primary recourse is allowing the complainant to impose retaliatory measures, which can sometimes harm the complainant's own economy.

The WTO struggles to address new and complex trade issues arising from technological advancements and changing global economic structures. Areas such as digital trade, state-owned enterprises, and environmental concerns pose challenges to the existing framework.

The challenge, then, both domestically and within the WTO system is to balance the independence and objectivity of a judicial body capable of making final and binding decisions with public perceptions of the legitimacy of the results of the judicial process. Where there is a widespread perception of illegitimacy of the results of judicial decision-making, change is likely to occur. But this is not so in the case of WTO dispute settlement.

Decisions regarded by some Members as 'judicial activism' are regarded by others as proper interpretations of the relevant agreement. The perception by some that safeguard measures have been rendered unusable through Appellate Body interpretation is countered by the perception by others that Appellate Body rulings have given appropriate content to the provisions of the Safeguards Agreement and thus made the taking of safeguard measures subject to proper discipline. On this issue, concerns about legitimacy are not universal.

Besides, the inability of WTO Members to mount jurisdictional challenges to cases brought against them has meant that much of the jurisprudence of these other international dispute settlement bodies is simply irrelevant to the WTO.23 Moreover, it is interesting to note that the procedural developments introduced by the Appellate Body, such as burden of proof, judicial economy and 'completing the analysis', were not based on procedural law developed in other international tribunals. WTO dispute settlement had GATT law and practice to provide context for the rules of the DSU, but apart from that there was essentially a clean slate. In respect of substantive law, there is, of

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course, the whole corpus of customary international law on which to draw, and the Appellate Body has done this.24 But the scope for supplementing the obligations of the WTO agreements with rules of public international law remains controversial.

While having significant success, the WTO dispute settlement process is also undergoing difficulties that are common to processes of binding third-party dispute settlement. Many of these are irritants that impair the functioning of the system but do not pose a fundamental challenge to it. Resolving them would be helpful but not essential to the long-term survival of WTO dispute settlement. There are, however, some particular challenges that face the WTO. In the short term there are challenges relating to trade remedies and transparency. In the longer term there are challenges relating to the adequacy of third-party settlement and challenges arising from changes within the international system itself.

The second major short-term challenge for WTO dispute settlement is the issue of transparency. The failure to open panel and Appellate Body hearings to the public and to allow public access to the pleadings of the parties undermines the legitimacy of the system. Furthermore, there is no rational basis for it. It cannot be justified on the ground of confidentiality because other judicial bodies can successfully negotiate a path between transparency and confidentiality. Nor is the argument that closed sessions encourage governments to speak frankly particularly compelling. As participants in WTO dispute settlement know, the proceedings are more stylized than frank. Presentations are made on the basis of prepared texts, and even in the Appellate Body where there is a continuous exchange of views between Appellate Body members and counsel, there is little deviation from prepared positions. The idea of governments 'grandstanding' before a public audience in a panel or Appellate Body hearing seems highly implausible.

The longer-term challenges for WTO dispute settlement are both internal, relating to the process of WTO dispute settlement, and external, involving political factors in the broader international system. Although these considerations are separate, they are also linked. The internal challenge concerns the viability of the system as it presently functions, but in part this results from the failure of Cancun which itself is linked to broader political considerations.

The submission of cases involving either untested areas of the agreements or public policy questions that are controversial also poses challenges for WTO dispute settlement. The approach of the Appellate Body has been to interpret the agreements in any case brought before it. It has not refused to decide a case because the issue was also before a political organ of the WTO or because it was a matter of controversy between WTO Members. But this raises the question whether all issues of controversy are appropriate for submission to third-party dispute settlement. At the time that the WTO was coming into effect, Joel Trachtman wrote, 'The flow of human history is not unidirectional toward strongly enforceable legal rules.' He went on to say that there are some circumstances where reduced binding force is called for. Similarly, more recently Robert Howse and Susan Esserman have commented that not every case can be resolved appropriately through judicial decision-making.

A turning away from dispute settlement processes as a consequence of a greater resort to unilateralism in international affairs will represent a challenge for WTO dispute settlement. Equally, turning to bilateral and regional approaches to trade liberalization could lead to a proliferation of dispute settlement organs and conflict between WTO and other dispute settlement

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bodies. But a challenge will also result from increased multilateralism, with more frequent resort to WTO dispute settlement. Whether the existing system could handle substantially more cases is doubtful.

CONCLUSION

The WTO's dispute resolution mechanism is a cornerstone of the global trading system, helping to maintain order, predictability, and fairness in international trade relations. Its successes in delivering legally binding, transparent decisions have made it a critical tool for resolving trade conflicts and preventing the escalation of disputes. However, the challenges it faces, particularly the Appellate Body crisis, risk undermining the credibility and functionality of the system. Resolving these challenges will be essential for the WTO to continue playing its central role in global trade governance.

The WTO's dispute settlement mechanism has played a vital role in maintaining order in the global trading system. Its successes in handling a high volume of cases, ensuring diverse participation, and maintaining a high compliance rate are commendable. However, challenges such as the lengthy process, the Appellate Body crisis, and difficulties in addressing new trade issues threaten its effectiveness. As global trade continues to evolve, reforming and strengthening this crucial mechanism will be essential for the future of international trade relations.

Trade agreements play a vital role in reducing or eliminating barriers to trade, such as tariffs and quotas, and establish guidelines for the exchange of goods, services, and investments. However, despite the benefits of international trade, disputes inevitably arise due to differing legal systems, policies, and interests among nations. Issues such as tariffs, non-tariff barriers, intellectual property protection, and regulatory compliance create significant challenges for businesses and governments alike.

The effectiveness of international dispute resolution mechanisms, including arbitration, negotiation, litigation, WTO's Dispute Settlement Mechanism (DSM), and bilateral or multilateral agreements, is crucial for maintaining trust and stability in international trade. However, enforcement of decisions, especially arbitral awards, remains a persistent challenge, particularly when parties are reluctant to comply due to political or economic reasons.

While mechanisms like the New York Convention have facilitated greater enforcement of arbitral awards, gaps still exist, as demonstrated in various enforcement cases. The continued evolution of international trade dispute resolution mechanisms will be essential in addressing these challenges and ensuring a stable, fair, and efficient global trading system.

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