

WTO DISPUTE SETTLEMENT MECHANISM

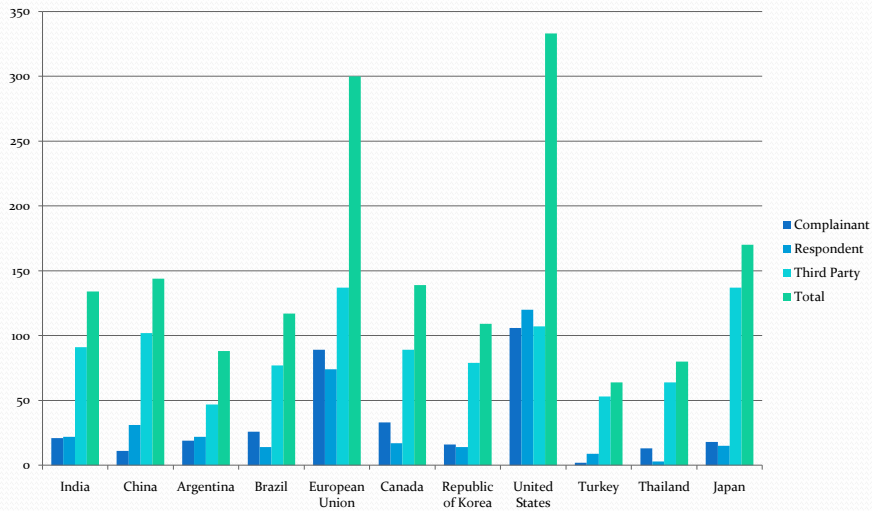
INTRODUCTION, OVERVIEW & STRUCTURE

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OUTLINE

- I. Origins of WTO Dispute Settlement-GATT Days**
- II. Objectives of the WTO Dispute Settlement System**
- III. Features of the WTO DSM**
- IV. Role of Various Bodies**
- V. Stages in WTO Dispute Settlement**
 - I. Consultations**
 - II. Panel**
 - III. Appellate Body**
 - IV. Implementation: Surveillance Compliance**
 - V. Retaliation**
- VI. Special and Differential Treatment**
- VII. DSU Reforms in Brief**

MAJOR USERS OF THE WTO DSM BETWEEN 1995-2013



Source: www.wto.org

DISPUTE SETTLEMENT TIMELINE

- 60 days ➤ Consultations
- 45 days ➤ Panel establishment and composition
- 6 months ➤ Final report to parties
- 3 weeks ➤ Final report to WTO Members
- 60 days ➤ Adoption of pan. report by DSB (No appeal)

Total= 1 year Without appeal

60-90 days Appellate Body report

30 days Adoption of AB report

Total= 15 months
With appeal

ORIGINS OF THE DSU

GATT

- Art. XXII/Art. XXIII of GATT
- Ministerial Decisions in 1966, 1979, 1982, 1984, 1989
- Positive consensus requirement
 - 101 out of 150 reports adopted
- No appellate mechanism
- Diplomatic character
- Weak form of dispute settlement

OBJECTIVES OF THE DSU

- Secure compliance with covered agmts (Art 3.7)
- Prompt settlement of disputes (Art 3.2)
- Rights/obligations of Members under covered agreements (Art 3.2)
 - Preserve
 - Not add or diminish
- Ensure predictability and security in the multilateral trading system (Art 3.2)
- Clarify the provisions of the covered agreements (Art 3.2)
- Secure a positive solution to a dispute (Art 3.7)

FEATURES OF THE DSM

- **CORNERSTONE, CROWN JEWEL OF THE WTO; WHAT MAKES THE WTO WORK**
- **COMPULSORY JURISDICTION**
 - *Mexico-Softdrinks*
- **NO UNILATERAL ACTION**
 - **Strict resolution to procedures of the DSM (ex. trade rem.)**
 - *US - Section 301-310; US-India Special 301 issue*
- **STATE-TO-STATE DISPUTE SETTLEMENT MECHANISM**
 - **No private right of access**
 - **Right to private counsel (*EC-Bananas*: Nothing in DSU prevents governments from determining composition of delegation)**
- **DETAILED PROCEDURES/TIMELINES**
- **QUASI-AUTOMATICITY OF PROCEDURES**

FEATURES OF THE DSM

- **RIGHT TO SEEK INFORMATION (Art. 13)**
 - **Amicus Curiae participation**
 - **Controversial (Inter-govt nature of DSM; hidden agenda)**
 - **Briefs accepted but not considered**
 - *US-Shrimp; EC-Asbestos*
- **PROSPECTIVE NATURE OF REMEDIES**
 - **No scope of retrospective remedies**
 - **No provisional measures available**
- **APPELLATE SYSTEM**
- **THIRD PARTIES**
- **ALTERNATIVE MODES OF DISPUTE RESOLUTION**
 - **Article 5**
 - **Arbitration; Conciliation; Mediation; Good Offices of DG**
 - **Rarely Used**

ROLE OF VARIOUS BODIES

WTO SECRETARIAT

- Assists panels
- Assists developing countries

DIRECTOR-GENERAL

- Appointment of panelists
- Good offices

APPELLATE BODY SECRETARIAT

Assists Appellate body

DISPUTE SETTLEMENT BODY

- Alter-ego of General Council
- Separate Chair
- Adoption of panel and AB Reports
- Authorization to retaliate
- Surveillance of implementation

CONSULTATIONS

- **DSU (Art 4)**
- **Arts. XXII; XXIII of GATT**
- **Other Agreements**
- **Request for consultations-initiation of dispute**
- **Written form**
- **Identification of measures; indication of legal basis**
- **Without prejudice to the rights of any Member in further legal proceedings**
- **Objective-Mutually Objective Solution**
- **Other Benefits- Information Exchange ; Clarification of Facts; Defines Scope of Dispute**
- **Confidentiality**

CONSULTATIONS

- Day 0:** Request: Date of receipt
- Day 10:** Defendant's reply
- Day 30/agreed moment in time:** Beginning of consultations
- Day 60/agreed moment in time:** End of consultations
- **Mutually extendable timeline of 60 days**
- **Failure to adhere to timelines-panel request**

THIRD PARTY PARTICIPATION

- **Substantial trade interest in dispute**
- **Only with consent of respondent**

PANEL STAGES

- **Failure of consultations**
- **Request for establishment of panel**
 - **Writing**
 - **Similar to request for consultations**
- **Establishment of panel by DSB (Article 6)**
 - **Can be blocked once**
- **Composition of panel (Article 8)**
 - **3-5 panelists**
 - **Ad-hoc basis**
 - **Member-driven**
 - **Most compositions by DG**
 - **Government, non-governmental officials; academicians**

PANEL

PANEL PROCESS

- Objective assessment of the matter before it (Art. 11)
- Obj. asmt. of facts and conformity with WTO provns.
- Questions of fact/Questions of Law
- 2 Written Submissions/2 Hearings
- Questions from the Panel/Answers from Parties
- 6 Months-9 Months
- Clubbing of Multiple Complaints (Article 9)

THIRD PARTY PARTICIPATION (Art. X)

- Substantial interest in dispute
- Make written submissions
- Panel hearing in first meeting
- Receive C/R submissions in first meeting

APPELLATE BODY

BACKGROUND

- 7 Members
- Ad-hoc bench of 3 for each case
- Drawn from various regions
- AV Ganesan (Former); US Bhatia (Current)

MANDATE

- Uphold, modify, reverse findings of panel
- Issues of law covered in panel report
- Legal interpretations developed by panel
- Exchange of views

APPELLATE BODY

THIRD PARTY

- Only panel third parties can participate
- File written submissions; participate in oral hearing
- Cannot appeal

IMPLEMENTATION AND COMPLIANCE

IMPLEMENTATION

- Emphasis on prompt compliance with panel and AB rulings (Art. 21.1)
- Compliance immediately; or
- within reasonable period of time (RPT)
 - Proposed by respondent and accepted by DSB
 - Mutually agreed to by both parties
 - Arbitration

COMPLIANCE (Article 21.5)

- Disagreement as to existence or consistency with covered agreement of measures taken to comply with panel/AB rulings
- Determination of compliance- arbitration proceedings
- Report to be circulated within 90 days of referral.

IMPLEMENTATION AND COMPLIANCE SURVEILLANCE

- DSB meets every month
- DSB to maintain surveillance of implementation of adopted rulings/recommendations
- Complainant may raise issue at DSB meeting anytime after adoption of panel/AB report
- To be placed on DSB agenda 6 months after det. of RPT
- Status report by Member 10 days before such meeting

COMPENSATION AND RETALIATION COMPENSATION

- Voluntary Measure
- Negotiated mutually between parties
- Notable example: *US - Upland Cotton*

SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS (Article 22)

- Voluntary Measure
- Suspension of concessions or other obligations by complainant
- Complainant to seek authorization of DSB
- Retaliation request to be made within 30 days of expiration of RPT

COMPENSATION AND RETALIATION

SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS (Article 22)

- Equivalent to level of nullification or impairment of benefits
- Arbitration panel to determine level of retaliation
- Retaliation sequence
 - Same sector
 - Else, different sector, same agreement
 - Else, different agreement
- Problems for small sized developing country: "shooting yourself in the foot"
- Notable examples: *US-Online Gambling*

SPECIAL AND DIFFERENTIAL TREATMENT

- S&DT provisions in DSU
 - Expedited Procedures (Art 3.12)
 - Consultations (Art 4.10)
 - Composition of Panel: Devg. Ctry Panelist (Art. 8.10)
 - Panel Process (Arts. 12.10 and 12.11)
 - Implementation (Art. 21.2)
 - Special Procedures Involving LDCs (Art. 24) [ADR/Due Restraint]
 - Assistance by the WTO Secretariat (Art. 27.2)
- Hortatory in nature

ACWL

1. Inter-governmental body est. in 2001
2. Renders assistance to DCs are low costs
3. India-user in the past. Now self-reliant.

DSU REFORMS

- Full review by 1999 not completed
- 2001 Doha Declaration: decoupling from Single Undertaking
- 2011 Geneva Ministerial Conference: Renewed Mandate
- Spl Session of the DSB: Forum for DSU Review Negotiations
- Latest draft DSU text as of the year 2008

KEY PROPOSALS

1. Remand
2. Sequencing: Compliance Before Retaliation
3. Third Party Rights
4. Cross-Retaliation and Counter-Retaliation
5. Fund for developing country litigation

THANK YOU!