Dispute Settlement Mechanism in International Trade

Dr. Bipin Kumar
National Law University, Jodhpur

Outline

- Nature of the dispute settlement of the WTO
- Kinds of settlement of disputes under International trade law
- Rights and obligations of the WTO Members
- Dispute Settlement Understanding of the WTO
- Basic rules of WTO law and policy
- Weakness of the GATT system and Improvements by the DSU
- Purpose and objectives of the DSB
- Settlement of Disputes at WTO level
- Reforms in the DSU
- India and settlement of trade disputes
- Possible disputes

Methods of Settlement of disputes under International Trade

- Diplomatic
  (a) Negotiation
  (b) Good Offices
  (c) Mediation
  (d) Inquiry and fact finding
  (e) Conciliation
- Legal: Arbitration and Courts
- ICSID
- DSU

Importance of the DSU to the WTO

- Backbone of today's multilateral trading regime.
- Created by Member governments during the *Uruguay Round* in the conviction that a stronger, more binding system to settle disputes would help to ensure that the WTO's carefully negotiated trading rules are respected and enforced.
- The system referred as the "WTO's unique contribution to the stability of the global economy", is based on, but constitutes a major improvement over, the previous GATT dispute settlement system.

Structure of the DSU

- 27 Articles
- 4 Appendix
- Jurisdiction of the dispute
- Jurisdiction of the DSU

When a Dispute arise in WTO?

- A dispute arises when a WTO Member government believes that another Member government is violating a *WTO agreement* or a *commitmen*t that it had made in the WTO
- A special agreement is there in the WTO to solve the dispute
- The rulings, recommendations and judgement s are binding on the parties

Weakness of the GATT, 1947 and Improvements by the DSU

- Positive consensus to negative consensus
- Introduction of the more precise and shorter time duration
- Independent review by the Appellate Body
- Prohibition of the unilateral measures
- Positive Integration of the individual agreements with DSU
- Introduction of the separate agreement on dispute settlement

Functions, objectives and key features of the DSU of the WTO

- DSU is the central element in providing security and predictability to the multilateral trading system
- Preserving the rights and obligations of the WTO Members
- Clarifications of rights and obligations thorough interpretations
- Mutually agreed solution as the preferred solution
- Prompt solution of disputes
- Prohibitions against unilateral determinations
- Exclusive and compulsory jurisdiction

Stages for settlement of the Dispute

- Bilateral consultations
- Formation of the Panel
- **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 defence**: 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 (and in some cases both sides do).

Kinds of the Complaints and remedies under WTO

Complaints

- Violation complaints
- Non-violation complaints
- Situational complaints

Remedies

- Cessation of the illegal measures
- Restitution in kind
- Reparation by equivalent
- Satisfaction and guarantees of non- repetition
- Retaliation
- Countermeasures

Participants in the DSU Proceedings

- Member Governments only
- WTO Secretariat, WTO observer and other international organizations, regional or local governments cannot initiate the disputes
- Role of individuals
- Role of amicus curie

WTO bodies involved in the dispute settlement process

- Parties
- Third Parties
- Dispute Settlement Body (DSB)
- Panel
- Appellate Body
- WTO Secretariat
- Director General of the WTO
- Arbitrators
- Independent experts
- Several specialized institutions

Functions of the DSB

- What is DSB
- Establish Panels
- Adopt Panel reports
- Adopt Appellate Body reports
- Maintain surveillance of implementations of the rulings and recommendations
- Suspension of obligations under the covered agreements

Meeting of the DSB

- As often as necessary to adhere to time frames as provided under DSU
- Usually one meeting per month
- When a WTO Member so requests, the DG convenes additional special meetings

Process of the Decision making at DSB

- Consensus

(a) Positive consensus

(b) Negative consensus

Three stages of dispute resolution

- Consultations
- Panel
- Appellate Body

Consultations

- Article 4 of the DSU
- Importance of the consultations
- Purpose and objectives of consultations
- Panel without consultations ?
- Form and content of the consultations
- Timeframe of the consultations
- Shortening the period of consultations process

Workings of the Panel

- Status
- Responsibility: Adjudicate the dispute between Members at the first instance
- Composition: Three to five
- Experts can be appointed as an ad-hoc basis
- No permanent panel
- Different panel for different disputes
- Qualification of the Panel Members- Article 8

Workings of the Appellate Body

- Status
(a) Permanent
(b) Second and Final stage
- To review the legal aspects of the reports issued by the panel
- DSB appoints the AB members by consensus
- Term 4 years
- Re-appointment is possible only once
- Qualifications of the members of the AB- Article 17

Matter referred before the Panel

- Measure at issue—only Governmental , such as a law or regulation
- Legal basis of the dispute
- Measure changed during proceedings
- Change in the legal justification
- Measure no longer in effect
- Regional and local government measure

Locus standi and Review of jurisdiction in the dispute

Locus standi

- Requirement of the legal or economic interest
- Exhaustion of local remedies
- Participation by *amicus curie*

Review of jurisdiction

- Challenge of jurisdiction by parties
- Ex- officers review of jurisdiction
- Res judicata
- Estoppel

Question relating to the validity of the municipal laws

- India- Patents case
- US- Anti-Dumping Measures on certain hot Rolled Steel Products from Japan case
- US- Section 211 of the Appropriations Act case

Principles of interpretations in the dispute

- Article 3.2 of the DSU
- Good Faith
- VCLT became the customary principle of International Law
- Only under special circumstances the supplementary materials be used to assist the interpretation
- Historical background of the treaty can be referred
- Reading of all the provisions of the treaty required

Timeframe for settling a dispute

- Consultation—60 days
- Panel formation—45 days
- Final panel report to parties –6 months
- Final report to WTO Members—3 weeks
- Adoption of the report by the DSB—60 days(without appeal)
- Appeals report– 60–90 days
- Adoption of the AB report – 30 days
- Total 1 year (without appeal)
- With appeal 1 year and 3 months

Reforms in the DSU

- Sequencing
- Flexibility and Member
- Transparency and Amicus Curiae briefs
- Mutually Agreed Solutions (MAS)
- Effective Compliance
- Post Retaliation
- Developing Country interests including special and differential treatment
- Remand
- Third Party Rights
- Panel Composition
- Time Frame
- Strictly Confidential Information

India at WTO DSB

As complainant India has requested consultation concerning 24 matters

As defendant India faced 32 cases

- 6 mutual settlement
- 5 lost

As Third Parties

- 179 cases

Some possible dispute

- REACH Regulation
- Visa case
- Ponni rice issue
- Distilled spirit issue
- Generic drugs case
- Child labor related issue

Thank You!!!