

WTO - DISPUTE SETTLEMENT MECHANISM

Contributed by Ms Asha S Kumar, CS Finalist

The WTO..... In brief

The World Trade Organization (WTO) is the international organization dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.

Location: Geneva, Switzerland

Established: 1 January 1995

Created by: Uruguay Round negotiations (1986-94)

Membership: 152 countries on 16 May 2008

Budget: 182 million Swiss francs for 2007

Secretariat staff: 625

Head: Pascal Lamy (Director-General)

Functions:

- Administering WTO trade agreements
- Forum for trade negotiations
- Handling trade disputes
- Monitoring national trade policies
- Technical assistance and training for developing countries
- Cooperation with other international organizations

What is the World Trade Organization?

The Uruguay Round of multilateral trade negotiations under the auspices of GATT (General Agreement on Tariffs and Trade, based on a 1947 agreement) established the World Trade Organization. The WTO's rules — the agreements — are the result of negotiations between the members. Upon ratification of the Round's Final Act by members, the WTO replaced GATT as the global multilateral trade organization, and a series of agreements associated with, but legally distinct from GATT were also placed under the WTO umbrella (such as the GATS, TRIPS, the Agreement on Agriculture, on Textiles and Clothing, on Rules of Origin, etc.).

A Negotiating Forum ... Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986-94 negotiations

called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease.

It’s a set of rules ... At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system’s overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be “transparent” and predictable.

Dispute settlement Mechanism... This is a third important side to the WTO’s work. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

THE PRINCIPLES

The trading system should be...

- **Without discrimination** — a country should not discriminate between its trading partners (giving them equally “most-favoured-nation” or MFN status); and it should not discriminate between its own and foreign products, services or nationals (giving them “national treatment”);

- **Freer** — barriers coming down through negotiation;
- **Predictable** — foreign companies, investors and governments should be confident that trade barriers (including tariffs and non-tariff barriers) should not be raised arbitrarily; tariff rates and market-opening commitments are “bound” in the WTO;
- **More competitive** — discouraging “unfair” practices such as export subsidies and dumping products at below cost to gain market share;
- **More beneficial for less developed countries** — giving them more time to adjust, greater flexibility, and special privileges.

BENEFITS & MISUNDERSTANDINGS

<u>THE TEN BENEFITS OF WTO</u>	<u>THE TEN MISUNDERSTANDINGS</u>
<ol style="list-style-type: none"> 1. The system helps promote peace. 2. Disputes are handled constructively. 3. Rules make life easier for all. 4. Freer trade cuts the costs of living. 5. It provides more choice of products and qualities. 6. Trade raises incomes. 7. Trade stimulates economic growth. 8. The basic principles make life more efficient. 9. Governments are shielded from lobbying. 10. The system encourages good government 	<ol style="list-style-type: none"> 1. The WTO dictates policy. 2. The WTO is for free trade at any cost. 3. Commercial interests take priority over development. 4. Commercial interests take priority over the environment. 5. Commercial interests take priority over health and safety. 6. The WTO destroys jobs, worsens poverty. 7. Small countries are powerless in the WTO. 8. The WTO is the tool of powerful lobbies. 9. Weaker countries are forced to join the WTO. 10. The WTO is undemocratic

DISPUTE SETTLEMENT

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced.

The system encourages countries to settle their differences through consultation. Failing that, they can follow a carefully mapped out, stage-by-stage procedure that includes the possibility of a ruling by a panel of experts, and the chance to appeal the ruling on legal grounds. Confidence in the system is borne out by the number of cases brought to the WTO — around 300 cases in eight years compared to the 300 disputes dealt with during the entire life of GATT (1947–94).

Panels:- Panels are like tribunals. But unlike in a normal tribunal, the panelists are usually chosen in consultation with the countries in dispute. Only if the two sides cannot agree does the WTO director-general appoint them. Panels consist of three (possibly 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 Dispute Settlement Body, 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.

Appeals:- Either side can appeal a panel's ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot re-examine existing evidence or examine new issues. Three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO memberships hear each appeal. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

The appellate body can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The Dispute Settlement Body has to accept or reject the appeals report within 30 days— and rejection is only possible by consensus.

If all else fails, two more possibilities are set out in the DSU:

If a member fails within the "reasonable period" (refer annexure I) to carry out the recommendations and rulings, it may negotiate with the complaining state for a mutually acceptable compensation.

If no agreement on compensation is reached within twenty days of the expiry of the "reasonable period", the prevailing state may request authorization from the DSB to suspend application to the member concerned of concessions or other obligations under the covered agreements. In contrast to prior GATT practice, authorization to suspend concessions in this context is semi-automatic, in that the DSB "shall grant the authorization within thirty days of the expiry of the reasonable period", unless it decides by consensus to reject the request.

CRITICISMS OF DISPUTE SETTLEMENT MECHANISM

- ❖ Expanded coverage of WTO jurisdiction, commercial rules are loaded with subjective decisions about health, safety or environmental protection required.
 - ❖ Decisions taken by regional or local governments or authorities considered to be of hindrance to any covered agreement may be called up for dispute settlement.
 - ❖ Panel rulings are automatically binding.
 - ❖ Trade bias of panelists.
 - ❖ Many national policies that have already come under attack are policies relating to non-economic goals, such as environment or public health protection.
 - ❖ Although reform of the process has been identified as being "necessary" since 1997, review and changes to the system have not taken place.
 - ❖ "Experts" from outside.
 - ❖ Many developing countries/LDC lack resources or expertise to defend their domestic laws in Geneva. Many simply amend their laws as soon as a WTO threat is issued. (***Ex-Gerber vs. Guatemala Infant Health Law***).
 - ❖ Discrepancy of human resources available.
 - ❖ Internal and external lack of transparency.
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Note: Ms Asha S Kumar, BB `LAW` CLASS Student, as part of CIER Paper Presentation Competition, presented this write-up. THIS ARTICLE WON THE FIRST PRIZE.