A Critique on Dispute Settlement under WTO Regime

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Abstract

The Dispute Settlement Understanding, which the WTO uses to settle trade disputes, is essential for upholding the rules and ensuring that commerce proceeds without disruption. If nations believe their rights under the Agreements are being violated, they file challenges with the WTO. Interpretations of the agreements and the commitments of the various countries are related to decisions made by specially chosen impartial experts. The system encourages nations to resolve their disagreements through negotiation. In the event that it doesn't work, they can follow a methodical, stage-by-stage process that may involve a panel of experts making a decision and the opportunity to challenge that decision in court. This paper critically reviews the Dispute Settlement under the world trade organization (WTO), its principles and the method of the settlement of disputes.

Key Words*:* Dispute Settlement, WTO

World Trade Body (WTO)

One of the international organizations, the World Trade Body (WTO), was established in 1995 and is the organization that replaced GATT, which was founded after the Second World War. The World Trade Organization (WTO) offers a venue for negotiating agreements aimed at removing barriers to international trade and ensuring equal playing conditions for all, helping to promote economic growth. Additionally, the WTO provides a legal and institutional framework for these agreements' implementation, oversight, and resolution of disagreements arising from their interpretation. 16 distinct multilateral agreements (to which all WTO members are party) and 2 separate plurilateral agreements make up the current body of trade agreements that includes the WTO (to which only some WTO members are parties). It should be highlighted that over time, the 1995-founded WTO and its predecessor, the GATT, have contributed to the development of a robust international trade system and, as a result, to previously unheard-of rates of global economic growth.

The WTO, founded in 1995, and the GATT, which it replaced, has played a significant role in fostering a robust and successful international trade system during the past 60 years, resulting in unparalleled global economic growth. New discussions under the "Doha Development Agenda," which was introduced in 2001, are currently taking place at the

World Trade Organization. The WTO is responsible for setting international trade regulations. The organization's primary goal is to ensure that trade proceeds as easily, reliably, and freely as possible. The only international body dealing with international trade regulations is the World Trade Organization (WTO). The majorities of trade nations in the world negotiate, sign, and have their parliaments ratify the WTO agreements. The goal is to help exporters, importers, and manufacturers of goods and services run their businesses. Currently, there are 164 members of the WTO, 117 of which are developing nations or independent customs territories. A Secretariat with 700 employees, overseen by the WTO Director-General, promotes WTO activities.

In the WTO, decisions are typically made unanimously by all members. The Ministerial Conference, which convenes usually every two years, is the highest institutional entity. Between Ministerial Conferences, the organization's affairs are managed by a General Council, which is made up of all members. The different WTO agreements are administered and monitored by specialised subsidiary bodies, such as Councils, Committees, and Sub-committees, which also include all members.

As stated in Article 3(2) of the Dispute Settlement Understanding (DSU), the World Trade Organization's dispute settlement process aims to "bring stability and predictability to the multilateral trading system." The method for resolving disputes aims to "preserve the rights and duties of Members under the covered agreements and to explain the existing provisions of those agreements." Another goal of the conflict settlement system is mentioned in paragraph 3 as being speedy dispute resolution. The remainder of the DSU focuses mostly on the process, how the dispute settlement system will go about carrying out its mandate.[1]

The WTO's main activities are:

- Agreeing on laws controlling the conduct of international trade and negotiating the reduction or elimination of trade barriers (import tariffs, etc).
- Managing and overseeing compliance with the WTO's established standards for trade in products, exports of goods and services, and trade-related intellectual property rights
- Ensuring transparency of bilateral free trade agreements as well as monitoring and analyzing the trade policies of our members
- Resolving disagreements among our members about how to interpret and implement the agreements.
- Developing country government officials' expertise in international trade issues
- Facilitating the entry of about 30 nations that are not yet members of the organization
- Gathering and distributing trade statistics and conducting economic research to assist the WTO's other primary tasks
- To inform and educate the general public about the WTO, its goals, and its operations.

[1]Kachwaha.S, Enforcement of Arbitration Awards in India, Asian International Arbitration Journal (2008) 4 AIAJ, (London, United Kingdom) (24-06-2010).

The WTO's guiding principles continue to be the promotion of open borders, the assurance of the most-favorable-nation clause, the prohibition of discrimination against members and third parties, and a dedication to openness in the way it conducts its business. With acceptable exceptions or sufficient flexibility, opening up national markets to international trade will promote sustainable development, improve people's welfare, lessen poverty, and promote peace and stability. The opening of the market must be complemented by sensible domestic and international policies that support economic growth and development in line with the requirements and ambitions of each member.

The principles of GATT under Article XXIII serve as the foundation for the dispute resolution procedures in the GATT and the WTO Agreement,[2] including the GATS, TRIPS, and the side agreements to the General Agreement. The primary process for resolving disputes under the General Agreement is Article XXIII. According to Article XXIII a party may use the dispute resolution procedure if it believes that another party has negated or diminished a benefit that would otherwise have accrued to it under the General Agreement or that doing so would make it more difficult to achieve any of the General Agreement's objectives.

The application of any measure by another contractual party, whether or not it interferes with the terms of [the General] Agreement, (a) the refusal of another contracting party to uphold its duties under the General Agreement; (b) the existence of any other circumstance. The vast majority of complaints filed under Article XXIII until date have claimed that the Member Countries have violated the General Agreement (paragraph (a)), however there have been a few cases based on paragraph (b), which are referred to as non-violation cases. No cases have been successful based on this paragraph (c). It should be noted that GATT Article XXII is a general consultation provision, and in practice, consultations under Article XXII are generally regarded as equivalent to consultations under Article XXIII, meaning that the subsequent phases of dispute settlement may be used if the consultations fail to resolve a dispute.

Dispute Settlement under WTO

For the rules to be upheld and, consequently, for trade to proceed without disruption, the World Trade Organization's process for solving disputes or disagreements under the Settlement Of Investment disputes is essential. As stated in Article 3(2) of the Dispute Settlement Understanding (DSU), the World Trade Organization's dispute settlement process aims to "bring stability and predictability to the multilateral trading system." The dispute resolution procedure "serves to maintain the rights and obligations of Members under the covered agreements and to make the terms of those agreements more clear."[3]

[2] As the basis for dispute settlement, although some of them contain provisions that modify or limit the understanding's general dispute settlement rules

[3] Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Legal Instruments – Results of the Uruguay Round, 33 I. L.M. 1125 (1994) .

A further goal of the conflict settlement system is acknowledged in paragraph 3 as being quick dispute resolution. The remainder of the DSU focuses mostly on the procedure, or how the dispute resolution system is to carry out its duties. One of the WTO's primary functions is the resolution of trade disputes. When one member country thinks another member government has broken a WTO agreement or obligation, a dispute arises. For the rules to be enforced and, consequently, for trade to proceed without disruption, the World Trade Organization's (WTO) process for resolving trade disputes under the Dispute Settlement Understanding is essential. Building confidence is one function of dispute resolution. This system promotes consultation as a means of resolving international disputes. In the absence of that, they can follow a clearly laid out stage-by-stage system that offers the possibility of a decision by a panel of experts and the opportunity to challenge the decision in court. The amount of cases submitted to the WTO is evidence of public confidence in the system. In regards to any topic for which consultation under paragraph 1 has not been successful in producing a satisfactory resolution, the parties to a contract may, at the request of a contracting party, consult with any other contracting party or parties.

The General Council appoints the Dispute Settlement Body (DSB) to resolve conflicts among WTO participants. Any agreement included in the Uruguay Round Final Act that is susceptible to the Rules of Court Governing the Settlement of Disputes may be the subject of such disputes (DSU). The DSB has the authority to create dispute resolution panels, refer disputes to arbitration, adopt panel, Appellate Body, and arbitration reports, keep an eye on how the recommendations and rulings contained in such reports are being carried out, and permit suspension of concessions in the event that those recommendations and rulings are not followed.

In the WTO, dispute settlement falls under the following heading:

- Conflicts by nation or area
- Agreement-based disputes
- Conflicts with the Dispute Settlement Body
- Conflicts by Subject

When one member country believes another member government is breaking a WTO pledge or agreement, a dispute results. These agreements are the result of negotiations among members and were created by the member states themselves. Through the World Trade Organization's Dispute Settlement Body, member nations are also ultimately responsible for resolving disputes. Over 542 disputes have been submitted to the WTO since 1995, and over 350 decisions have been made.

WTO's Unique Contribution

The WTO's singular contribution to the health of the global economy is dispute settlement, which serves as the middle pillar of the multilateral trading system. The rules-based approach would have minimal impact without addressing the conflicts because the rules could not be implemented. The WTO's process promotes the rule of law and improves the predictability and stability of the trading system. The method is based on clearly stated

guidelines with deadlines for completing cases. A panel makes the first decisions, which are then overturned by the WTO's entire membership. On legal issues, appeals may be made. The point, however, is unable to render a verdict. It is preferred to resolve conflicts amicably, ideally through talks.

Principles of WTO

The core of WTO disputes is violated promises. Members of the WTO have acknowledged that they'll use the multilateral system of dispute resolution rather than acting unilaterally if they think other members are violating trade laws. That entails following the accepted processes and respecting decisions. The WTO's dispute resolution process adheres to the swift and equitable premise. The method in this case would be handled based on appeal and non-appeal. When one nation adopts a trade policy measure or takes another action that one or more other WTO members deem to be inconsistent with the WTO agreements or a breach of responsibilities, a dispute results. The third group of nations has the option to declare an interest in the matter and claim certain privileges. A more organized process with more precisely defined steps was created by the Uruguay Round agreement. It imposed strict regulations on how long cases should take to be resolved and adjustable deadlines at different phases of the process. The agreement provides necessary fast settlement for the WTO to operate successfully. It lays out in great detail the steps and timeline that must be taken to resolve conflicts. If a case proceeds all the way to a first verdict, an appeal usually won't take more than one year and 15 months. The mutually agreed upon deadlines are negotiable, and if the case is deemed urgent (for example, if perishable items are involved), it is expedited as far as is practical.

The Uruguay Round accord also rendered it unreasonable for the nation to dismiss a lawsuit attempting to prevent the ruling's implementation. Previously, GATT judgments were adopted by agreement, but currently, unless there is a consensus to reject a ruling, rulings are automatically adopted. If a country wants to prevent a ruling, it must persuade all other WTO members, including its adversary in the case, to agree with its position. The preferable approach is for the parties to discuss their issues and resolve the dispute on their own, even though a large portion of the procedure does duplicate a court or tribunal. Negotiations between the interested governments are the first step, thus even after the case has moved on to subsequent stages, consultation and mediation are always options. Decisions on trade disputes between governments that are resolved by the Organization are made by the Dispute Settlement Body (DSB) of the World Trade Organization (WTO). Its judgments typically concur with those of the dispute body.

Method of the Settlement of Disputes at WTO

The WTO's Dispute Settlement Body, which is composed of all members, is responsible for resolving disputes. The Dispute Settlement Body is the only one with the power to convene "panels" of experts to review the case and decide whether to accept or reject their conclusions or the outcomes of an appeal. It monitors the implementation of

the decisions and suggestions and has the authority to sanction punishment when a nation disobeys a decision. Before taking any further action, the disputing nations must first consult with one another for up to 60 days to determine if they can resolve their disagreements amicably. If it doesn't work, they can ask the WTO director general to mediate or attempt to offer assistance in any other way.

In the second stage, the panel has up to 45 days to appoint a panel and up to 6 months to complete the panel. The opposing nation may ask for the appointment of a panel if consultations are unsuccessful. The nation "in the dock" may develop the appointment of a panel once, but after the second meeting of the Dispute Settlement Body, the appointment may no longer be developed (unless there is a consensus against appointing the panel). The panel's official purpose is to provide opinions or recommendations to the Dispute Settlement Body. But because the panel's report can only be disregarded with the consent of the Dispute Settlement Body, it is challenging to change its conclusions. The conclusions of the panel must be based on the aforementioned agreements.

The parties to the dispute should typically receive the panel's final report from the panel within six months. The timeframe is shortened to three months in emergency situations, particularly those involving perishable items. The agreement stipulates how the panels are to operate. Here are the key phases:

1. Both parties in the dispute provide their written arguments to the panel prior to the first hearing.

2. At the panel's first hearing, the opposing nation (or countries), the responding nation, and any other parties who have declared an interest in the dispute lay out their respective defences.

3. Rebuttals: At the second sitting of the panel, the concerned nations offer oral arguments in addition to submitting written responses.

4. Experts: The panel may engage experts or create an expert review group to draught an advice report if one party raises additional scientific or technical issues.

5. First draught: The panel gives both sides two weeks to comment on the descriptive (factual and argument) sections of its report. Findings and recommendations are not included in this study.

6. Interim report: The panel then delivers its findings and recommendations in an interim report to the parties, giving them a week to request a review.

7. Review: The review process cannot go longer than two weeks. The panel may schedule additional meetings with the parties during that time.

8. Final report: A final report is presented to the parties and distributed to all WTO members three weeks later. If the panel determines that the contested trade measure does violate a WTO commitment or agreement, it suggests that the measure be changed to comply with WTO regulations. The panel might offer suggestions on how to proceed.

9. The report becomes a ruling: Unless an agreement rejects it, the report becomes the Dispute Settlement Body's ruling or recommendation after 60 days (and in some cases both sides do).

Appeals

Either party may challenge a panel's decision. In some cases, both parties can. Appeals cannot review prior evidence or evaluate brand-new issues; they must rule on legal questions like legal interpretation. Three members of the permanent seven-member Appellate Body, which was established by the Dispute Settlement Body and largely represents the range of WTO membership, hear each appeal. Members of the Appellate Body serve four-year terms. They must be independent persons without ties to any governments and with experience in the legal and international commercial fields. The panel's legal findings and conclusions may be upheld, modified, or overturned by the appeal. Normally, appeals shouldn't last longer than 60 days, and they shouldn't last longer than 90 days at all. The appeals report must be accepted or rejected by the dispute settlement body within 30 days, and rejection is only permitted with agreements.

The Dispute Settlement Body (DSB)

The World Trade Organization (WTO) dispute settlement procedures are managed by the WTO Dispute Settlement Body (DSB), which was established in Article 2 of the Dispute Settlement Understanding (DSU). All WTO members are represented on the DSB by ambassadors or other appropriate officials. It resolves trade disputes that have been decided by the Organization between nations. The DSB is the only body with the power to appoint "Panels" of experts to review the case and decide whether to accept or reject their findings or the outcomes of an appeal,[4] consensus against, a specific decision-making procedure used by the DSB, virtually guarantees that the Panel's decisions in a dispute will be followed. The Panel's recommendations must be approved per the process, "unless" all of the members agree that they should not be. This has never occurred, and it is impossible to imagine how it ever could because the nation "winning" under the Panel's decision would have to sign this reverse agreement.

Institutional Structure

The Disputes Settlement Body may order the "losing" member state to take action to bring its laws, regulations, or policies into compliance with the WTO Agreements after the case has been admitted and decided by the DSB as to whether it is capable of settlement on merits, and after it has finally agreed on the case, i.e., whether the grievance had been shown to be right or wrong. Only this course of action results from a WTO dispute. No notion of "punishment" or even restitution exists. The unsuccessful party will be given a "reasonable period of time" by the DSB to replace the consistency of its statutes, etc. Nearly all WTO participants "voluntarily" implement DSB judgments on schedule. Of course, a failing nation may decide how to bring its laws, etc. into compliance; it need not always choose the modifications that the victorious party would propose.

[4] Article 3.1 of the DSU

The GATT Articles XXII and XXIII, which were left unaltered by the Uruguay Round90, are effectively being interpreted and elaborated by the DSU objectivity. According to Article XXII, any WTO Member may ask another Member to confer with them on any issue that would influence how the agreement is implemented. In general, where one Member believes that another Member is not performing its commitments under the agreement, Article XXIII allows for consultations and dispute resolution mechanisms.[5] Since all of the agreements attached to the Marrakesh Agreement Establishing the WTO rely on GATT Articles XXII and XXIII or very comparable provisions as a foundation for dispute settlement, they are also the basis for disputes in the WTO system92, as was previously said.

It is only one way to look at the system, though, to see the WTO dispute settlement process as giving Members a voice when they believe their rights have been violated. Another approach to look at the WTO system is as one that focuses on Members' claimed actions that are in odds with their responsibilities under the relevant agreement. This is obviously an issue of emphasis. Any system that grants complainants rights automatically affects the parties they are making a complaint about. However, a system whose primary objective is to impose penalties on those who break its rules differs in focus from one that is concerned with providing redress for individuals who assert that their rights have been violated.

However, many academics who study the WTO's dispute settlement provisions, in especially economists, see it as a disciplinary system that fosters punishment of the global trade system. Additionally, Steve Charnovitz has noted that whereas the GATT used the term "rebalancing concessions," the WTO now refers to them as "trade sanctions."

The depoliticization of international conflicts is one of the WTO's greatest accomplishments. It minimizes the conflict's diplomatic significance and offers a workable solution. The informality of the WTO procedure helps with this. The use of email for pleading exchange, conference rooms used as courtrooms, and the relative informality of panel hearings and even Appellate Body hearings all help to make the dispute settlement procedure a conventional or routine associated with conducting relations between states. With the appointment of Agents with ambassadorial status to the Agreement on Government Procurement, art. XXII, the International Court of Justice's procedure, which is far more codified, can be contrasted with this. The Agreement on Trade in Civil Aircraft, however, is exempt from its application. A list of special or additional dispute resolution provisions found in WTO agreements that supersede DSU provisions can be found in Appendix 2 of the DSU. For an explanation of how these special and additional regulations relate to the DSU rules, see DSU, art. 1.2. Adopted on November 25, 1998, the Appellate Body Report on Guatemala's Anti-Dumping Investigation into Imports of Portland Cement from Mexico.

[5]John H. Barton et al., the evolution of the trade regime: politics, law and economics of the GATT and the WTO 208-09 (2006).

Legal traditions can be divided into local, regional, and worldwide traditions from the standpoint of international commercial arbitration. The laws and customs of a state or local legal system, such as those found in a state's commercial code, are included in local legal traditions. The laws and customs of regional organizations like the EU and NAFTA are examples of regional legal traditions (NAFTA). The different institutions embraced by numerous states, such as the World Trade Organization, are examples of international legal traditions (WTO).[6]

Although there is clear evidence that arbitration, or tahkim, is accepted in the Islamic legal tradition, if not in the same way that it is in the West today, arbitration has a questionable history in the Islamic world during the past century. There is no question that tahkim is a legitimate method of resolving disputes, but there are fundamental philosophical and historical contrasts between it and the western concept of arbitration. Five major categories can be used to discuss the differences: 1) The nature of arbitration; 2) its purview; 3) the lack of clarity surrounding the Shari'a's and other Middle Eastern jurisdictions' arbitration rules and regulations; 4) the choice of law; and 5) the purview of judicial review and enforcement.

Conclusion

Commercial arbitration has become more global and transnational thanks to the UNCITRAL Model Law on International Commercial Arbitration, UNIDROIT principles, and the WTO. The national legislation that were in place before the Model Law's adoption were not only insufficient or unsuited for international commercial arbitration, but also inconsistent.[7] These rules represent what is often referred to as "soft law," as opposed to the stricter standards levied by arbitration statutory provisions and treaties, as well as the procedural framework chosen by the parties through the selection of pre-established arbitration rules. Despite the fact that these rules are non-binding on their face, they will have significant consequences. The soft law may have the ability to improve arbitration's fairness and integrity, assisting in finding the ideal balance between efficiency and fairness. There are no set rules governing how arbitrators should conduct procedures in modern arbitration, therefore it depends on perspective. The specifics of how an arbitral tribunal should gather evidence and hear arguments in its effort to ascertain the facts, interpret the contract, and determine the law governing the parties' disagreement are not covered by much "hard law." By creating the idea that the procedure is "regular" and in accordance with the "rule of law" concepts under the International Commercial Arbitration Legal Regime, procedural soft law has the potential to encourage a sense of equal treatment.

[6]Steve Charnovitz, Rethinking WTO Trade Sanctions, 95 American Journal of International Law (2001).
[7]Donald McRae, Measuring the Effectiveness of the WTO Dispute Settlement System, AJWH Vol.3:1, (2008)