

# The WTO Dispute Settlement Process.

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Director-General Pascal Lamy, in his report on G-20 trade measures issued on 31 October 2012, said that “there has been a slowdown in the imposition of new trade restrictive measures by G-20 economies over the past five months”. **However, “at a time of continuous economic difficulties, trade frictions seem to be increasing”**. He urged G-20 governments “to redouble their efforts to keep their markets open, and to advance trade opening as a way to counter slowing global economic growth.

- WTO information brochure<sup>1</sup>

Hence we can assess the importance of the WTO Dispute settlement in present global scenario. The article explores the significance of dispute settlement and describes a very brief details about the legal provisions related to the process of Dispute Settlement.

*“Without a means of settling disputes, the rules-based system would be worthless because the rules could not be enforced. The WTO’s procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case.”*

- WTO information brochure<sup>2</sup>

The World Trade Organization (WTO) Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) provides a means for WTO Members to resolve disputes arising under WTO agreements. WTO members must attempt to settle their dispute through consultations, but if fail the Member initiating the dispute may request that a panel examine and report on its complaint. The DSU provides for Appellate Body (AB) review of Panel reports, panels to determine if a defending Member has complied with an adverse WTO decision by the established deadline in a case, and possible retaliation if the defending Member has failed to do so. Automatic establishment of panels, adoption of panel and appellate reports, and authorization of a member’s request to retaliate, along with deadlines and improved multilateral oversight of compliance, are aimed at producing a more expeditious and effective system than had existed under the General Agreement on Tariffs and Trade (GATT). To date<sup>3</sup>, 451<sup>4</sup> complaints have been filed under the DSU, in which around 50% cases are United States is either complainant or defendant.<sup>5</sup>

Use of the DSU has revealed procedural gaps, particularly in the compliance phase of the dispute. These include a failure to coordinate DSU procedure for requesting retaliation with procedure aimed at the removal of trade sanctions in the event the defending member believes it has fulfilled its WTO obligations in a case. To overcome these gaps, disputing Members have entered into bilateral agreements permitting retaliation and compliance panel procedures to advance in sequence and have initiated new dispute proceedings seeking the

<sup>1</sup> [http://www.wto.org/english/news\\_e/news12\\_e/jgo\\_31oct12\\_e.htm](http://www.wto.org/english/news_e/news12_e/jgo_31oct12_e.htm) as visited on 31st October 2012 at 9:30PM

<sup>2</sup> “Trading Into the Future,” <http://www.wto.org>” as visited on 1<sup>st</sup> July 2011 at 6PM.

<sup>3</sup> 31s October 2012

<sup>4</sup> Chronological list of disputes cases by visiting [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) as on 31st October 2012.

<sup>5</sup> Jeanne J. Grimmett ‘s CRS Report for Congress on Dispute Settlement in the World Trade Organization (WTO): An Overview as published on August 28, 2012

removal of retaliatory measures believed to have outlived their legal foundation. WTO Members have been negotiating DSU revisions in the currently stalled Doha Development Round.<sup>6</sup>

## The WTO Dispute Settlement Proceedings – the Process

As per WTO agreement, on the violation of trade rules by fellow-members, the multilateral system of settling disputes is used instead of taking action unilaterally. That means they should abide by the agreed procedures, and respect judgments. The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) is the formal dispute settlement agreement of WTO. The DSU provides the primary legal means of settling trade related conflicts in the WTO. The Dispute Settlement Body is responsible for settlement of Dispute. Dispute Settlement Body is composed of all Members of the WTO. The Dispute Settlement Body (DSB as created in Article 2 of DSU) has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

Dispute arises on violation of a WTO agreement

1. when a country adopts a trade policy measure or takes some action that another member considers to be a violation of a WTO agreement it has right to move for justice under WTO Dispute settlement,
2. If any country’s benefits provided under WTO is infringed by action caused by another country, that another country can raise the issue.
3. A third group of countries can also declare that they have an interest in the case and, when that is the case, they enjoy some rights as Third Parties.

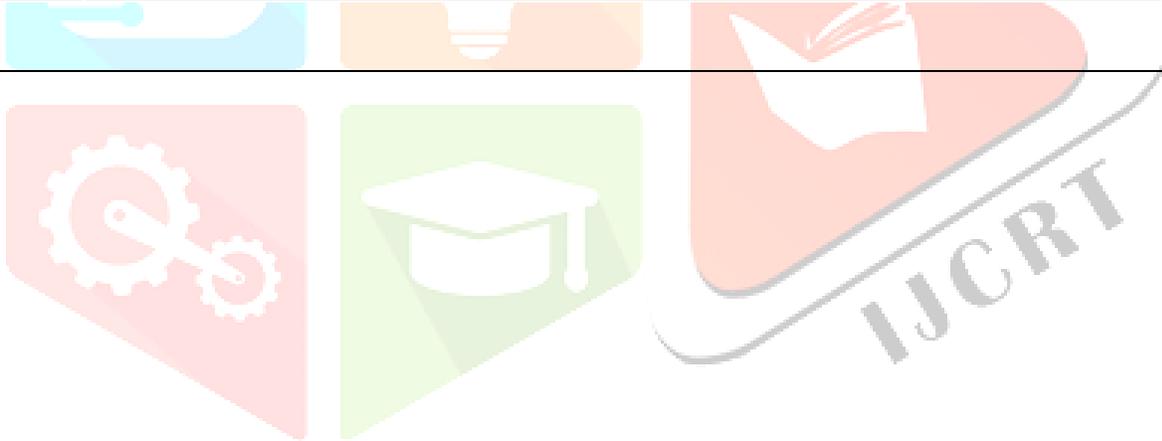
A procedure for settling disputes existed under the General Agreement on Tariffs and Trade (GATT), which preceded the WTO, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The DSU introduced a more structured process with more clearly defined stages in the procedure and times limits for these stages. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. A case that runs its full course should normally take no more than about one year to a first ruling and 15 months if there is an appeal. If the case is considered urgent (e.g. if perishable goods are involved), then the allowed time is shorter.

<sup>6</sup> Ibid

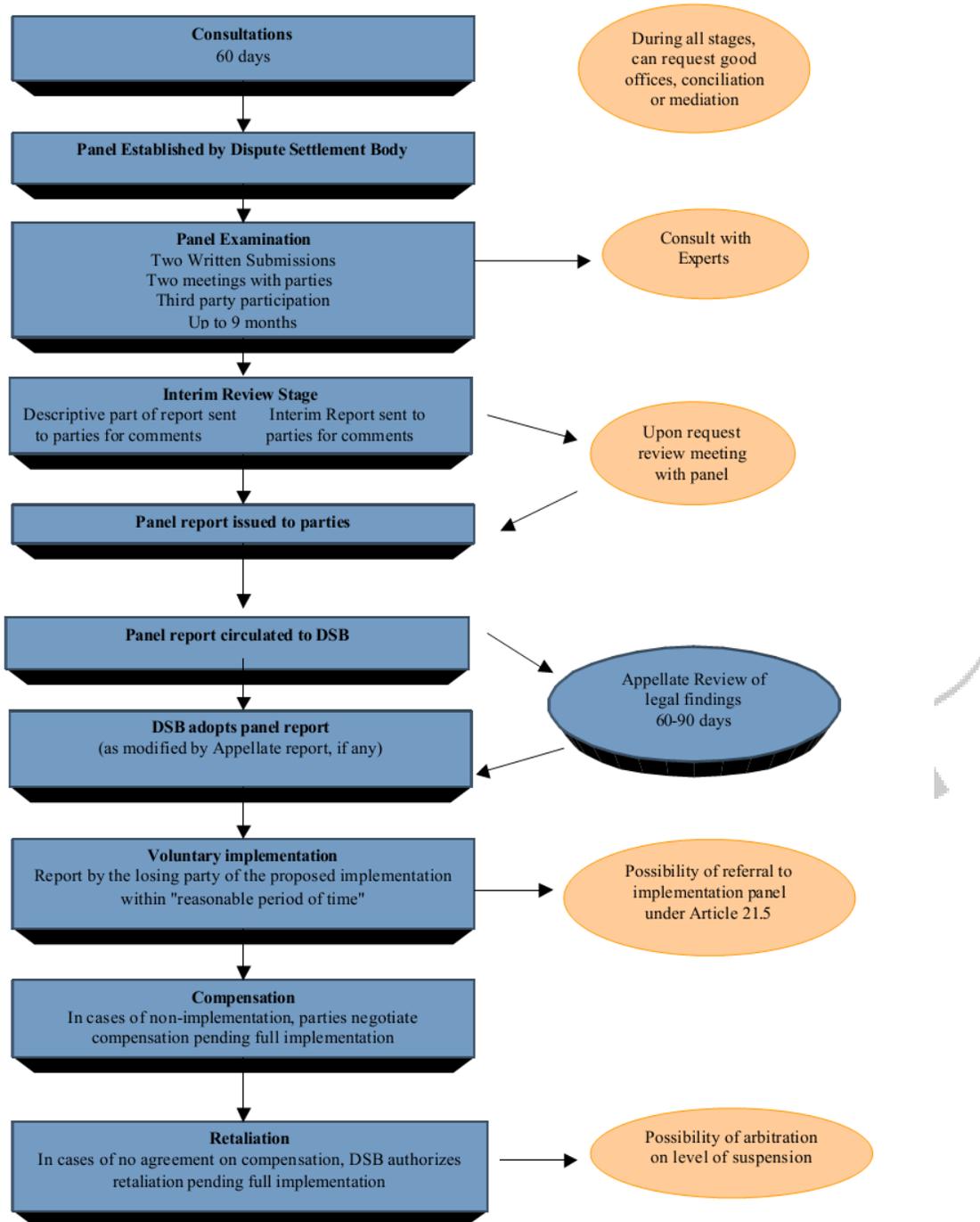
**Dispute Settlement Time Line**

The approximate periods for each stage of a dispute settlement procedure are target figures and can be extended somewhat. In addition, the countries can settle their dispute themselves at any stage. Totals for each stage are approximate.

60 days	Consultations, mediation, etc
45 days	Panel established by DSU and appointment of panelists
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
<b>Total = 1 year</b>	(without appeal)
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
<b>Total = 1 year</b>	(with appeal)
<b>3 months</b>	



### The WTO Dispute Settlement Process



## Steps in a WTO Dispute:

1. **Consultations (Article 4):** Under DSU, a WTO Member may request consultations with another Member regarding “measures affecting the operation of any covered agreement taken within the territory” of the latter. If a WTO Member requests consultations with another Member under a WTO agreement, the latter Member must enter into consultations with the former within 30 days.<sup>7</sup> If the dispute is not resolved within 60 days, the complaining Member may request a panel. A panel may be requested before this period ends if the defending Member has failed to enter into consultation or if the disputing parties agree that consultations have been unsuccessful.
2. **Panel Established by Dispute Settlement Body (Article 6&8):** A written request identifying the specific issue and provide a brief summary of the legal basis for the complaint with clearly stated problem. Measure of a country may be challenged “as such”, “as applied”, “or both”.<sup>8</sup> The DSB ordinarily meets once a month. On request, the DSB must establish it at the second time within 15 days after such request by the complaining member for the sole purpose of considering the panel request.

The panel is ordinarily composed of three persons. The WTO Secretariat proposes the names of panelists to the disputing parties, who may not oppose them except for “compelling reasons” (Art. 8.6). If the disputing parties fail to agree on panelists within 20 days from the date that the panel is established, either disputing party may request the WTO Director-General to appoint the panel members. Because the Director-General may only act upon request in this situation, it is possible that disputing Members may not make such a request immediately or may not do so at all, thus permitting them to resolve their dispute before the adjudicatory process begins.

3. **Panel Proceedings (Articles 12, 15, Appendix 3):** A panel hears written and oral arguments from the disputing parties and on this basis it issues the descriptive part of its report containing facts and argument to the disputing parties. The panel submits the portion of the report with added comments from the parties, along with its findings and conclusions, to the disputants as an interim report. Following a review period, a final report is issued to the disputing parties and later circulated to all WTO members.

A panel must generally provide its final report to disputants within six months after the panel is composed, but may take longer if needed; extensions are usual in complex cases. The period from panel establishment to circulation of a panel report to WTO Members should not exceed nine months. In practice, panels have been found to take more than 13 months on average to publicly circulate reports.<sup>9</sup>

<sup>7</sup> Once the WTO is notified that a request for consultations has been made, the dispute will be assigned a number. Disputes are numbered in chronological order. The prefix WT/DS, followed by the assigned number, is then used to designate WTO documents issued in connection with the dispute. For Example, the dispute between the United States and China, China-Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio Entertainment Product is DS#^#, with the U>S> request for consideration on China August 10, 2009, numbered WT/DS363/AB/R.

<sup>8</sup> Appellate Body Report, United States-Anti Dumping Act of 1916, paras. 60-61, WT/DS136/AB/R, WT/DS162/AB/R (August 28, 2000).

<sup>9</sup> See, e.g., Henrik Horn & Petros C. Mavridis, *The WTO Dispute Settlement System 1995-2006: Some descriptive statistics*, at 28-29 (March 14, 2008), at [http://sitesources.worldbank.org/INTRES/Rsources/4692321107449512766/DescriptiveStatistics\\_031408.pdf](http://sitesources.worldbank.org/INTRES/Rsources/4692321107449512766/DescriptiveStatistics_031408.pdf). An example is the panel in China-Measures Related to the Exploration of Various raw Materials, a dispute proceeding initiated separately by the United States, the European Union, and Mexico. In this case, the panel, which was established on December 21, 2009, and composed on March 30, 2010, reports on DSB that it would not meet the six-month deadline and instead expected to conclude its work by April 2011. Communication from the Chairman of the Panel, China-Measures Related to the Exportation of Various Raw Materials, WT/DS394/10, WT/DS395/10, WT/DS398/9 (October 21, 2010). The Final panel reports were submitted to

- 4. Adoption of Panel Reports/Appellate Review (Article 16, 17, 20):** Unless disputing party appeals it or the DSB decides by consensus not to adopt, a panel report is to be adopted at a DSB meeting within 60 days after it is circulated to the WTO members. The DSU, at Article 17.6, limits appeals to “issues of law covered in the panel report and legal interpretations developed by the panel.”

Within 60 days of being notified of an appeal (extendable to 90 days), the WTO Appellate Body (AB) must issue a report that upholds, reserves or modifies the panel report. The AB reports is to be adopted by the DSB, and unconditionally accepted by the disputing parties, unless the DSB decides by consensus not to adopt it within 30 days after circulation to Members.

The period of time from the date the panel is established to the date the DSB considers the panel report for adoption is not to exceed 9 months ( 12 months where the report is appealed) unless otherwise agreed by the disputing parties.

- 5. Implementation of Panel and Appellate Body Reports (Article 21):** Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

At a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so The member is expected to implement the WTO decision fully by the end of this period and to act consistently with the decision after the period expires.<sup>10</sup>

The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings. In such arbitration, a guideline for the arbitrator should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances. Arbitrated compliance period have ranged from six months to 15 months and one week. The DSU envision that a maximum 18 months will elapse from the date a panel is established until the reasonable period of time is determined.

- 6. Compliance Panel (Article 21.5):** Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral

the parties on April 1, 2011, and publicly circulated to WTO Members on July 5, 2011. Panel Reports, China-Measures Related to the Exportation of various Raw Materials, para 1.9, , WT/DS394/10,WT/DS395/10, WT/DS398/9 (July 5, 2011); id., Corrigendum, WT/DS394/R/Corr. 1, WT/DS395/R/Corr. 1, WT/DS398/R/Corr. 1(August 17, 2011).

<sup>10</sup> E.g., Appellate Body Report, United States-Measures Relating to Zeroing and Sunset Reviews, Recourse to Article 21.5 of the DSU by Japan, paras 153-158, WT/DS322/AB/RW (18<sup>TH</sup> August, 2009)

of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

7. **Compensation and Suspension of Concessions (Article 22):** Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

In considering what concessions or other obligations to suspend, the complaining party shall apply the principles and procedures mentioned in Article 22.3.

The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

The arbitrator acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

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