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# Dispute Settlement Mechanism of WTO

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## ABSTRACT

*This article reflected upon dispute settlement mechanism of World Trade Organisation and its significance in international trading. It starts with a brief introduction that states structure of WTO and the objective of WTO. It also describes what is the legal body prior to the WTO for resolving trade disputes and the. The article then provides a historical background of Dispute settlement mechanism of WTO and how Dispute Settlement Understanding will come into force. It also provides information regarding article XVIII of GATT 1947 and Uruguay round negotiation and summarizes the dispute settlement body and powers of DSB. The article also describes various methods of disputes settlement that are adopted by the WTO like consultation, mediation, panel proceedings and appellate body procedures. It also states how India become the part of WTO dispute settlement and what challenges faced by the WTO in resolving trade disputes. Conclusion and suggestions include there should be some openness in negotiations proceedings and there should be some judicial body for timely resolving trade disputes and there must be some provisions regarding assistance of legal competence for preserving the rights of the developing countries.*

**Keywords:** World Trade Organisation (WTO), General Agreement on Tariffs and Trade (GATT), Dispute Settlement Understanding (DSU), Dispute Settlement Body (DSB).

## I. INTRODUCTION

The World Trade Organisation (WTO) is a global trade organisation that concern with rules and regulations of international trade. The main motive of WTO is to reducing the trade restrictions between the nations, and promote free and fair globalization of trade. It determines the trade related disputes mechanisms and provide a forum for negotiating trade agreements and resolve the trade conflicts between its member nations. The dispute resolution system of the WTO has been deemed to be most stable mechanism in international trading between international forum and bodies.<sup>3</sup> After U.S Congress refused to accept the establishment of ITO the General Agreement on Tariffs and Trade (GATT) was signed as temporary regime, which later replaced

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<sup>3</sup> Manish Kumar and Alpha Shiralli, "World Trade Organisation's Dispute Settlement-An Indian Perspective" 3 *Jus Corpus Law Journal* 639 (2023).

by WTO at Uruguay Round of GATT. In 1995 during that Uruguay Round negotiation the idea of dispute settlement mechanism of WTO was introduced as legal regime for resolving trade disputes globally.<sup>4</sup>

Concerned with many members states in an organization that relies on collective agreements it is important to protect the rights and duties of members because there was contingency of conflicts. Therefore, a constructive dispute settlement mechanism was required. Dispute resolution regime of WTO is accordance with Articles XXII and XXIII of GATT. Nowadays dispute settlement body of WTO is more operative legal regime for resolving international trade disputes.<sup>5</sup>

WTO dispute settlement mechanism has the power to resolve trade disputes, trade imbalances and preserve the rights of the member countries. The Dispute Settlement Understanding (DSU) dealing with various conflicts regarding trade under which are reflected under the trade agreement and certain rules also prescribed by DSU for resolution of trade conflicts. For regulating disputes settlement processes the DSU established the Dispute Settlement Body (DSB) and providing reliability to international trading and finding reciprocally acceptable resolution for dispute is the main motive behind these rules.<sup>6</sup>

## **II. HISTORY OF THE DISPUTE SETTLEMENT MECHANISM**

Article XXIII the first adaptation of GATT which was signed by the US and eventually adopted by 128 member nations provided basic methods and consultations for resolving disputes. The signatory parties of GATT could utilize the Article XXIII if they were inspected that the action of any party would be violative to any of the provisions of the GATT. But there were some difficulties arose because the procedure of GATT could resolve some limited kinds of disputes and have definite inadequacy which prevented the formation of a dispute panel.<sup>7</sup>

In GATT procedure instead of accurate decision or adjudication the working groups emphasized negotiation and compromise. The result of these negotiation process occurred on an irregular basis standard of objectivity and impartiality were met. The panel structure was introduced due to the requirement to established a quasi-judicial system. In 1952, a complaints body was formulated to hear all complaints brought to it by the contracting parties. To determined and

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<sup>4</sup> Amrita Bahri, "Making WTO dispute settlement mechanisms work for developing countries: Designing the strategy of public-private partnership" 4 *Indian Journal of International Economic Law* 106 (2011).

<sup>5</sup> Noopur Biswas, "Decision making in WTO: Different methods of dispute settlement, comparative analysis" 2 *Indian Journal of Law and Legal Research* (2021).

<sup>6</sup> Ishita Chatterjee, *International Trade Law* 33 (Central Law Publications, Allahabad 1<sup>st</sup> edn., 2013).

<sup>7</sup> Daniel T. Shedd and Brandon J. Murrill and Jane M. Smith, "Dispute Settlement in the World Trade Organization (WTO): An Overview" *Congressional Research Service* (2012).

resolve particular problems the contracting parties establishing special committees till abolishing the standing panel in 1955.

Until 1979 the usual common practices for the resolution of dispute were developed except specific procedure for dispute settlement among developed and developing countries in 1966. To submit its report the panel was given 60 days and to report compliance alleged party was given 30 days.<sup>8</sup>

In 1979, for defining the process of dispute settlement by a larger comprehensive the decision of 1966 of dispute resolution was followed. The 1982 Ministerial Declaration indicate the ambassadorial method to resolve disputes between contracting parties and allows disputed parties to plead for the appointment of Director-General for resolving conflicts among them. GATT dispute resolution mechanism including the procedural regime and the 1982 decision was not able to resolve some specific matter. The main issue that was found in the panel process are related to the delay in resolving disputes and many pending cases was also found. Therefore, the contracting parties proposed a series of proceedings for timely resolving disputes.<sup>9</sup>

After considering the all drawbacks of the GATT dispute settlement procedure an improved measure was taken by congress in 1986 in the Uruguay Round of GATT. In 1994 Marrakesh Agreement was signed that formulated World Trade Organisation that is the successor of GATT and modified all understandings procedures of dispute settlement.<sup>10</sup>

#### **(A) Dispute Settlement Body**

According to the pursuant of Article 2 of DSU the dispute settlement body was formulated. For resolving disputes between members countries the general council operate. DSB has the power to establish dispute settlement committee, panels, appellate body and can give directions to the parties to resolve disputes through consultation, arbitration and mediation and inspect reports. The Dispute shall be in accordance with the agreement concluded in the Uruguay Round and based on the rules of the Dispute Settlement Understanding (DSU). DSB can also adjourned and modified the compromises if parties don't compliance the rules and provisions.<sup>11</sup>

### **III. PROCEDURE OF WTO DISPUTE SETTLEMENT**

There are some basic mechanisms to resolve disputes such as consultation, mediations, panels

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<sup>8</sup> *Supra* note 3 at 642.

<sup>9</sup> Daniel H. Erskine, "Resolving Trade Disputes, the Mechanisms of GATT/WTO Dispute Resolution" 2 *Santa Clara Journal of International Law* 49 (2004).

<sup>10</sup> Dispute Settlement Mechanism under the WTO, *available at*: <https://www.lawctopus.com/academike/dispute-settlement-mechanism-wto/amp> (last visited on November 17, 2023).

<sup>11</sup> Dispute Settlement understanding, *available at*: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_body\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_body_e.htm) (last visited on November 15, 2023).

and appellate body that are covered under the provisions of DSB.

#### **(A) Consultation**

Article XVIII describe that any member country may request for consultation if that member countries observe that another member country don't fulfil its obligation and failure in its duties that are mentioned in the contractual agreement. All rules and process related to consultation are described under Article 4 of DSU regime which provide an appropriate consultation mechanism for resolving disputes on the written request of the parties and that request also informed to the DSB committee. In this mechanism both the parties must negotiate with each other to find out mutually beneficial decision. The burden of proof is on the complainant to prove complaint is legal in nature. The panel only take action for those complaints which are come under the purview of the agreement. It is also the responsibility of the complainant to provide legitimate reasons for the complaint.

#### **(B) Panel Proceedings**

Complainant can request for panel after 60 days if the consultation failed between the parties. It is the duty of the DSB to form a panel after consent of both the parties. As per Article 8 panel must be comprises of well qualified practitioner members their work must be quasi-judicial in nature. For every dispute a renew panel is setup and the dispute shall be settled by the panel and it is the responsibility of the panel to submit its closing report to the DSB for suggestions. It is the also duty of the panel to focusing upon all legal, logical and relevant facts rather than fictitious or deceptive facts. If any party not satisfied with the decision of the panel, then the members can approach to the appellate body.<sup>12</sup>

#### **(C) Appellate Body**

For adjudicating appellate matters against panel, the DSB set up an Appellate Body. The Appellate Body must be comprising of seven members out of them three must be adjudicate the case and those members must having specialization in law, international trade and experience in that specified issue. Those legal issues raised in the panel the Appellate Body will reflect on only those legal issues. The Appellate Body proceedings shall not be disclosed.

Resolution of Appellate Body can be amended or overturn the decision of the panel and the parties shall receive final disclosure report from Appellate Body.<sup>13</sup>

#### **(D) Good Offices, Conciliation and Mediation**

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<sup>12</sup> *Supra* note 5.

<sup>13</sup> Niharika Vij, *International Trade Law* 125 (Lexis Nexis, 1<sup>st</sup> edn., 2016).

If both the parties to the dispute voluntarily agree this process for resolving dispute are initiating. All proceedings will be carried out to take into consideration the welfare of both the parties of the dispute and the whole proceeding shall not be disclosed. There are many cases that are solved through this mechanism of WTO by the mutual compromise of the parties. Unlike consultation if the parties are not satisfied with conciliation solution, then they can approach to the panel.<sup>14</sup>

#### **IV. INDIA AND DISPUTE SETTLEMENT OF WTO**

India is a part of the WTO and those agreements which ensure free trade and prevent restrictions and unfair trading between the signatory countries. To protect its rights India fearlessly follow all rules and directions of DSU. In Dispute Settlement Mechanism all cases are numerically identical whether they are submitted by India or Submitted against India. As yet 19 cases have submitted by India as complaining party and in 63 cases it involved as mediator. For promoting international trade, better unbiased solution for trade disputes, protecting their rights and proclaiming remedies India utilizing the Dispute Settlement Mechanism.<sup>15</sup>

#### **V. PROBLEMS FACED BY WTO IN RESOLVING DISPUTES**

Due to many pending cases and delay in resolution WTO dispute panel body not able to entertain new cases. If signatory members of WTO think there isn't any method to challenging the settlement of the dispute given by the panel, those aggrieved nations can also refuse to accept the decision of panel for protecting their interest. India can also face problem due to many pending cases regarding agricultural products and uncertain functioning of Dispute settlement mechanism.<sup>16</sup> Sometimes remedies given by the WTO is not appropriate solution for developing nation. In some matters only compliances and rules of the DSU are followed rather than the principle of equity, justice and good conscience.<sup>17</sup>

#### **VI. SUGGESTIONS**

There are several problems faced by the WTO dispute settlement mechanism regarding resolving disputes. There should be involvement of parties in open communication for timely resolving dispute and protecting the interest of the parties. The parties of the disputes must

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<sup>14</sup> Rhea Srivastava and Vikram Shah, "Resolving Disputes under WTO: A Dispute Settlement Mechanism" 1 *International Journal of Law and Legal Jurisprudence Studies*.

<sup>15</sup> Kangan Pasricha and Shweta Raju, "India's International Trade Law Issues and the Role of World Trade Organisation" 7 *Supremo Amicus* 95 (2018).

<sup>16</sup> Dispute Settlement under WTO available at: <https://prepp.in/news/e-492-dispute-settlement-under-wto-indian-economy-notes> (last visited on November 17, 2023).

<sup>17</sup> William J. Davey, "Compliance Problems in WTO Dispute Settlement" 42 *Cornell International Law Journal* 125 (2009).

negotiation on actual legal problem of the dispute rather than claiming retribution this will be helpful in decreasing the decreasing number of trade disputes. There should be an everlasting Judicial system in order to protect the domestic law of the countries in case of binding decisions.

## **VII. CONCLUSION**

From this study it is concluded that the dispute settlement mechanism is the essential pillar of the WTO. For maintaining harmony and balance between the nations and promoting international trade it is relevant to resolve conflicts regarding trade. The countries economy will also increase by promoting international trade and this will possible only when the conflicts regarding trade can be timely resolved. But there are some obstacles also exist regarding trade dispute. There are many cases pending in DSU. Dispute settlement mechanism of WTO works upon the principle of compliance there is no provisions regarding good conscience. There should be some legal provisions for good conscience in the WTO. Despite many rules and effective procedure of dispute settlement of WTO certain developing countries still treated unfairly due to their less economy power. However, DSU provisions are not biased in nature but developing countries still not fully utilizing these provisions due to their deficiency in legal procedure competence. Along with the provisions of financial assistance there should also be some provisions regarding legal competence in WTO.

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