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RIGHTS OF STATES IN THE DISPUTE RESOLUTION PROCESS OF THE WORLD TRADE ORGANIZATION

Monograph

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This monograph is dedicated to the rights of states in the dispute resolution process within the framework of the World Trade Organization (WTO). It examines the history, jurisdiction, and development of the WTO dispute settlement mechanism. The analysis includes the participation of developing countries in the dispute resolution system, the rights of states during different stages of dispute resolution, and the concept of a "reasonable period of time" as provided in Article 21.3 of the Dispute Settlement Understanding (DSU). The monograph also explores current trends in the WTO dispute settlement mechanism, factors contributing to the system's ongoing crisis, and the role of third parties in supporting state rights. Additionally, it investigates the intersection of health law and WTO rules, highlighting the conflicts and synergies between health and trade, along with the impact of health crises on WTO rulemaking, supported by case studies.

This work is intended for researchers, graduate students, and practitioners in the field of law, as well as a broader audience interested in the WTO dispute resolution system.

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INTRODUCTION

The World Trade Organization[1] (hereinafter WTO) is the only global organization generating and implementing trade rules in international scope. The WTO plays a crucial role in the global economic integration of nations and facilitates stable, predictable, free, and easy trade among member states. The main advantages that states receive from joining the WTO include stability, safety, and procurement. For Uzbekistan, these advantages include access to global economic integration and the expansion of trade opportunities to include new markets. Under the leadership of Shavkat Mirziyoyev[2], Uzbekistan has been implementing institutional and legal reforms to create a favorable environment for investors and traders, while the protection of the legal interests and rights of owners of private property is mandated by current political trends.

The most recent Uzbekistan policy on the WTO accession, which is set as the priority in the nation's macroeconomic stability, reveals the work's current relevance. Economic benefits from the WTO have been stated as the main focus of integrating trade relations under many trade regulations[3].

Regarding the essence WTO, it can be established that WTO is a multi-facet organization which is primarily aimed at liberalization of trade, acts as a forum for governments to negotiate trade agreements, settles trade disputes of members, reviews the trade facilitation and challenges, it operates as a system of trade rules and other functions.

Regarding the normative provisions of the WTO, it established for all members equal trade conditions, with some deviations made for the developing and least developed countries. The core principles of the WTO such as national and most favorite treatment are underlying rules, which consist the cornerstone of the WTO system. The Multilateral Agreements

[1] https://www.wto.org/

[2] Brief profile of Mirziyoyev Archived 16 November 2007 at the Wayback Machine, Radio Free Europe/Radio Liberty.

[3] https://www.cairn.info/revue-l-europe-en-formation-2018-1-page-104.htm

favor all members and are applied equally at national levels without discrimination[4].

Artistically, dispute settlement is described as the "jewel in the crown" because of its valuable contribution to the maintenance of the proper balance and the protection of rights of the WTO member states regardless of the share in international trade. Article 3.2 of the Dispute Settlement Understanding clearly states the fundamental role as "The dispute settlement mechanism of the WTO is a pivotal element in maintaining security and uniformity to the multilateral trading system. The members recognize that it serves to preserve the rights and obligations of members under the covered agreements, and to clarify the existing provisions of those agreements according to customary rules of public international law[5].

Dispute resolution processes have gained significance as a crucial component of both international economic relations and the policy governing those relations for a number of reasons. The dispute resolution procedures received significantly more attention during the final GATT decade (1985–1994)[6], and that attention only grew after the Uruguay Round treaty made significant changes to those procedures. The WTO's conflict resolution processes have received praise from both the WTO and significant national leaders, making them practically the center of the new organization.

As **an objective,** this research pursues to analyze in depth by detailed consideration of the whole procedure and formulation of rights of states in the dispute resolution process of the world trade organization, identification of its major problems and their possible elimination.

The main goals and tasks of this monograph are:

- to analyze of the development of the mechanism for resolving disputes within the WTO;

- to review the powers and competencies of the Dispute Settlement Body (hereinafter - DSB) WTO;

[4] https://www.wto.org/

[5] Article 3:2 of the Dispute Settlement Understanding of the WTO. Online available at: https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm

[6] https://unacademy.com/

- to describe the features of the stages of resolution of the dispute within the WTO;

- to conduct an analysis and assessment of the mechanism for monitoring the rights of the states;

- to examine the issue of enforcement of decisions made by the DSB;

- to analyze some specific decisions taken by the DSB;

- to identify practical and regulatory problems in the functioning of the WTO dispute resolution mechanism and the mechanism for monitoring DSB decisions;

- to make proposals on reforming the dispute settlement system of WTO in order to reduce the existing problematic issues.

The relevance of this research stems from the increasing number of disputes considered by the WTO, which is gradually complicating the WTO legal system. The WTO dispute settlement mechanism and the mechanism for monitoring the execution of DSB decisions are critical elements ensuring the stability and effective functioning of the WTO legal framework. Studying these issues is essential for a comprehensive evaluation of the WTO's activities, as the organization currently serves as a stabilizer of international economic relations in trade. The dispute resolution and decision enforcement mechanisms are guarantors of the stability of the entire international trading system.

The novelty of research is the identification and formulation of some of the problems characteristic of the dispute settlement mechanism of the WTO and the rights of the states, as well as making proposals for resolving these problems.

Issues related to the WTO dispute settlement mechanism and the execution of decisions are increasingly becoming the subject of consideration by many scientists. However, in research, the mechanism for resolving disputes and enforcing decisions is considered from not only the theoretical side, but also the practical functioning of this mechanism.

The research employs historical and descriptive methods, synthesis, analysis, assessment, comparative legal analysis, induction, deduction, and concretization.

Both primary and secondary sources form the foundation of the analysis. Primary sources include WTO legal documents, DSB Panel reports, Appellate Body reports, arbitration decisions regarding remedies, and the Dispute Settlement Understanding. Secondary sources include books, publication reviews, and expert commentaries.

As a theoretical basis, the present research considers the teachings of the world-renowned scholars who have dedicated their several works to the issues of dispute settlement in the WTO.

In order to become familiar with the current state of WTO law in respect of covered agreements and the rapidly increasing body of panel and Appellate Body reports, the research used the most famous book on law of the WTO by Peter Van den Bossche and Werner Zdouc, "The Law and Policy of the World Trade Organization"[7].

"The World Trade Organization: Law, Practice, and Policy" by Mitsuo Marsushita, Thoma J. Schoenbaum & Petros C. Mavroidis[8] is a must-have book that one definitely finds handy and most needed, since throughout whatever you plan to write, this book will support you with finding relevant and important materials that are sorted in accordance with their topical sequence.

In relevant paragraphs of the research, there were studied and analyzed corresponding chapters of "The History and Future of the World Trade Organization" by Craig Van Grasstek and Cases & Materials on International Law by Martin Dixon, Robert McCorquodale, and Sarah Williams[9].

As primary sources for analyzing Uzbekistan's accession to the World Trade Organization (WTO), the present work examines the following scholarly articles: "The Last Bastion of Protectionism in Central Asia: Uzbekistan's Auto Industry in Post-WTO Accession" by Professors Alisher Umirdinov and Valijon Turakulov; "Liberalism and Binding of Protectionism in the Way of Accession of Uzbekistan

[7] Available at:https://www.amazon.com/Law-Policy-World-Trade-Organization/dp/1108478204, 1220 pages

[8] Available at: https://www.amazon.com/World-Trade-Organization-Practice-International/dp/0199571856, 1104 pages

[9] Available at: https://www.amazon.com/Cases-Materials-International-Martin-Dixon/dp/019872764X, 832 pages.

to the World Trade Organization" by Professor N. Zufarova; and "Uzbekistan and the World Trade Organization" by Professor Richard Pomfret. These works have been analyzed to inform the corresponding sections of this study.

Further, in the research, mostly the works of foreign scholars were used due to a lack of national authorities. There scientific works of scholars where the dispute mechanism of WTO were revealed: Andreas F. Lowenfeld, M.Peters, M.Kumar, Robers Read, P.Valiyev, Lani, A.Pamela, M.Marsushita, J.Thoma, C.Mavroidis, G.Shaffer, Sh.Almosova[10] and others.

As a legal basis of the monograph, WTO agreements, the Vienna Convention on the Law of Treaties, the Understanding on Rules and Procedures Governing the Settlement of Disputes, the decision and findings of the Panel and the Appellate Body, and other legal acts have been regarded.

The monograph consists of an introduction, four chapters, conclusion and a list of references.

[10] "Jahon savdo tashkiloti huquqi", Tashkent 2023. Available at : https://library-tsul.uz/jahon-savdo-tashkiloti-huquqi-almosova-sh-2023/

CHAPTER I. WTO DISPUTE SETTLEMENT MECHANISM

The establishment of the World Trade Organization (WTO) accelerated the development of standardized international commerce among nations, promoting equal trade rules for both developed and developing countries. The fundamental principles of non-discrimination[11] between nations and the expansion of free trade across all sectors are enshrined in modern trade rules under the auspices of the WTO. The WTO dispute settlement mechanism provides a process for resolving disputes between member countries over alleged violations of WTO agreements. This mechanism is designed to ensure that WTO members comply with their obligations under these agreements and that disputes are resolved in a timely and effective manner.

The WTO dispute settlement mechanism is widely regarded as one of the most effective and efficient dispute resolution systems globally. Since its establishment in 1995[12], it has facilitated the resolution of hundreds of disputes among WTO members. By ensuring compliance with WTO agreements and promoting timely and effective dispute resolution, the mechanism enhances the stability and predictability of the global trading system.

The WTO's dispute resolution process prioritizes peaceful resolution over adversarial victories. Notably, more than half of all complaints filed with the WTO have been resolved amicably without the need for a dispute panel[13].

The WTO Dispute Settlement Body (DSB) is a cornerstone of the modern trading system, distinguished in the practice of international law. This chapter provides an overview of the history of the WTO dispute resolution mechanism, its jurisdiction, and its operational framework.

[11] https://www.cambridge.org/core/books/abs/law-and-policy-of-the-world-trade-organization

[12] Oatley, Thomas (2019). International Political Economy: Sixth Edition. Routledge. pp. 51–52.

[13] https://www.wto.org/

1. History of the Creation of the WTO Dispute Settlement Mechanism

The dispute settlement system of the WTO is often mentioned as the most important achievement of the GATT period, as this explains that former GATT members concluded on comprehensive system, which will review and discuss the issue deriving from the WTO matter. The evolution of the system backs to the GATT 1947 practice the then trading system based on the dispute settlement system under GATT 1947 that evolved quite considerably just under 50 years based on Articles XXII and XXIII of GATT 1947[14]. Therefore, the present WTO system builds upon the principles of management of disputes applied under in GATT Articles XXII and XXIII and current Article 3.1 of the Dispute Settlement Understanding.

The GATT dispute settlement procedure and its evolution

The scope of globalization and the expansion of economic sectors and transactions necessitated several negotiation rounds among General Agreement on Tariffs and Trade (GATT) member countries. The most transformative was the Uruguay Round, the final negotiation round under the GATT system. This round involved broader negotiations compared to previous GATT norms and encompassed various aspects of international trade, including trade in goods (such as agricultural products and textiles and clothing) and, for the first time in history, trade in services.

The Punta del Este Declaration, named after the location of the conference, explicitly highlighted the need for institutional reforms within the GATT system, though ambitions in this regard were limited. The Declaration stated in relevant part:

Negotiations shall aim to develop understandings and arrangements:

i. To enhance surveillance in the General Agreement on Tariffs and Trade (GATT) to enable regular review of trade policies and practices of contracting parties and their impact on the functioning of the multilateral trading system;

[14] World Trade Organization. 2004. A Handbook on the WTO Dispute Settlement System, A WTO SecretariatPublication.

ii. To improve the overall effectiveness and decision-making of the GATT as an institution, including, inter alia, through the involvement of ministers;

iii. To deepen the contribution of the GATT to achieving greater coherence in global economic policymaking by strengthening its relationships with other international organizations responsible for monetary and financial matters[15]. The Uruguay Round, spanning eight years, introduced significant changes to both the institutional framework and the scope of trade rules negotiated among contracting parties. In brief, the round established the following key aspects of trade rules:

- A new dispute settlement mechanism with robust quasi-judicial elements;
- Several new trade agreements extending the scope of world trade law to encompass not only goods but also services;
- A new institutional framework centered on the World Trade Organization (WTO), with clearly defined functions and objectives.

In terms of provisions, the revised GATT (1994) incorporated updated versions of the pre-existing GATT provisions, new understandings on various GATT articles, and the Marrakesh Protocol, which established the WTO and introduced distinctive features of the GATT 1994. The core principles of the GATT 1947 are reflected in the GATT 1994, and its conceptual structure is evident in the organization of the legal texts.

The Marrakesh Agreement, which establishes the WTO, forms the legal and institutional foundation of the WTO system. It is structured into four annexes, whereby:

Annex 1 contains the detailed rules and is divided into three sections:

1A: Includes the updated GATT, other agreements governing trade in goods, and a protocol linking individual countries' specific commitments to trade in goods;

1B: The General Agreement on Trade in Services (GATS), introduced for the first time in trade history, encompassing texts on specific service sectors, individual countries' commitments, and exemptions;

[15] Ministerial Declaration on the Uruguay Round, Part I, Section E: 'Functioning of the GATT System'. GATT Ministerial Declaration, 20 September 1986. Online available at https://www.jus.uio.no/lm/wto.gatt.ministerial.declaration.uruguay.round.1986/landscape.a4.pdf

1C: The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a key agreement concluded during the round to protect authorship in all forms.

Collectively, the agreements included in Annex 1 are referred to as the Multilateral Trade Agreements because they included the substantive trade policy obligations, which were mandatory to follow by all member states to WTO.

Annex 2 establishes rules and procedures for dispute settlement instrument.

Annex 3 catalysts regular monitoring of developments and rises in national and international trade policy.

Annex 4 includes four plurilateral agreements, which two of them were terminated in 1997. Other two agreements are within the WTO framework but with limited membership.[16]

The table below shows the concise conceptual framework of the WTO Agreements:

The conceptual framework

Broadly speaking, the WTO agreements for the two largest areas of trade — goods and services — share a common three-part outline, even though the detail is sometimes quite different.

In a nutshell

The basic structure of the WTO agreements

	Goods	Services	Intellectual property	Disputes	Trade policy reviews
Basic principles	GATT	GATS	TRIPS	Dispute settlement	TPRM
Additional details	Other goods agreements and annexes	Services annexes			
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)			

In terms of institutional framework, the Uruguay round introduced a centralized body dealing with trade matters. Being one of the primary functions of the WTO, in December 1988 it was decided to

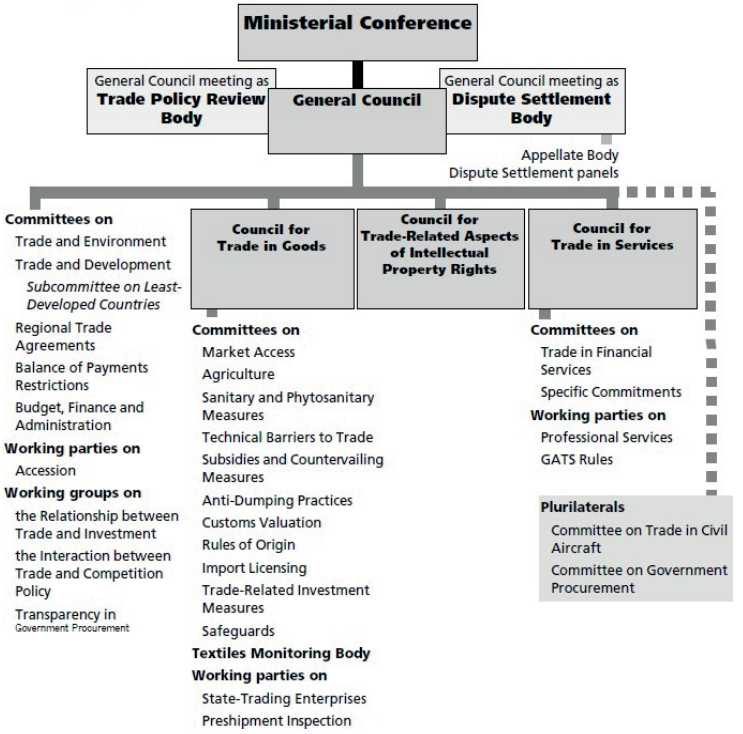
[16] Article II, 1994, Marrakesh Agreement Establishing the World Trade Organization. Online available at: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

establish, on a provisional basis, a Trade Policy Review Mechanism to improve adherence to GATT rules and reviewing challenges and developments member state achieved.[17] In order to achieve a greater coherence in international economic policymaking, this Mid-Term Review was a first step to explore ways and resulted in an agreement attempting to create greater cooperation between the GATT, the IMF and the World Bank. [18] Further, to adopt major decisions and to improve the functioning of the GATT, it was agreed by the contracting parties to meet at least once every two years at ministerial level.

Here below it is depicted the structure of the WTO in details:

Figure I.1
The WTO's structure

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees.



[17] The history of the Trade Review Policy Mechanism, in April 1989, the Contracting Parties formally established the Trade Policy Review Mechanism. Online available at: https://www.wto.org/english/tratop_e/tpr_e/tprm30_e.htm

[18] T. Stewart, the GATT Uruguay Round. Klumer Law and Taxation, 1993, Vol. III.

As discussed in the previous section, the dispute settlement mechanism of the General Agreement on Tariffs and Trade (GATT) was one of the organization's most distinctive and contentious features. While the system was unique, it also had flaws, partly due to the GATT's complex origins. Some might argue that these procedures outperformed those of the International Court of Justice and other international dispute resolution mechanisms, exceeding expectations despite their imperfections.

When the GATT 1947 was adopted in 1948, it included comprehensive provisions for resolving disputes between contracting parties. Several GATT articles addressing specific obligations also outline procedures for settling disagreements. Some issues required only bilateral consultations, while others permitted consultations with the Contracting Parties (the full membership) as an alternative. Certain articles governing specific obligations mandated multilateral consultations after unsuccessful bilateral attempts, whereas others relied solely on multilateral consultations. Some provisions allowed for compensatory withdrawal or suspension of concessions or obligations, while others limited dispute resolution to bilateral or multilateral consultations.

Although various dispute settlement procedures are scattered throughout the GATT, Articles XXII and XXIII establish the primary and formal mechanisms. Article XXII grants contracting parties the right to consult with one another on any matter related to the GATT. This right imposes minimal obligations but remains valuable. Such provisions counter the frequent objection that a request for consultation regarding potential legislative or executive actions is "premature."[19]

The central component of the General Agreement on Tariffs and Trade (GATT) for resolving disputes was Article XXIII, which stipulated that consultations were required before invoking multilateral GATT procedures. Three key characteristics of this system should be emphasized:

[19] Dispute Settlement in the WTO: Policy and Jurisprudential Consideration, John H. Jackson, University of Michigan, February 9, 1998, Recent RSIE Discussion Papers are available on the World Wide Web at: http://www.spp.umich.edu/rsie/workingpapers/wp.html

Disputes could typically be initiated on grounds of "nullification or impairment" of benefits expected under the Agreement, without depending on an actual breach of legal obligations;

The Contracting Parties were empowered not only to investigate and recommend actions but also to "give a ruling on the matter";

In appropriately serious cases, the Contracting Parties could authorize "a contracting party or parties" to suspend GATT obligations toward other contracting parties.

Although Article XXIII provides limited detail on these features, each has significant interpretations and implications. Over four decades, the practical application of these principles evolved into a relatively complex process.

The GATT system relied on consultations and constructive resolution between contracting parties, rather than a permanent body of prominent members, to settle disputes. Recognizing the potential for disputes arising directly or indirectly from the GATT 1947, its drafters included two general provisions governing the nature and process of dispute resolution. Article XXII, in particular, promotes a "sympathetic approach" to consultations between contracting parties involved in disputes concerning GATT matters, emphasizing cooperative dialogue among disputing states[20].

Additionally, Article XXIII pinned the message to the phrase "Nullification or impairment" which, more often than not, tended to refer to the injury and compensation system rather than the rules and procedures for dispute resolution[21]. To understand, there were not mentioned any written provisions in Article XXIII about the solution of the controversies between and among the Contracting Parties, apart from the provision regarding that—contracting parties shall promptly investigate and address appropriate recommendations or give a ruling on the issue as appropriate[22].

During the General Agreement on Tariffs and Trade (GATT) period, the dispute settlement system faced significant challenges, particularly due to the positive consensus rule, unlike the more

[20] Article XXII: 1 of the General Agreement on Tariff and Trade. Geneva 1947.

[21] Id, Article XXIII.

[22] Andreas F. Lowenfeld. 2003. International Economic Law Series: International Economic Law. Oxford UniversityPress.

streamlined dispute resolution system of the World Trade Organization (WTO). This rule required unanimous agreement among all contracting parties involved in the decision-making process, including those in disagreement, with no objections permitted. A dispute could only be submitted to a panel once this "complete consensus" was achieved.

The primary flaw of this system was that the respondent party could veto any decision, including the establishment of a panel. Similarly, adopting the panel's report and authorizing countermeasures—when the respondent failed to implement the panel's recommendations—required unanimous consent. Despite the theoretical rarity of achieving such consensus, contracting parties, including respondents, often refrained from actively opposing consensus decisions, allowing disputes to proceed to panel review in practice[23]. Contracting parties often refrained from exercising their veto power under the General Agreement on Tariffs and Trade (GATT) dispute settlement system, despite the potential to block panel establishment or report adoption. This restraint, though limiting the expansion of their immediate commercial interests, was intended to prevent reciprocal vetoes from other members. It is noted that contracting parties pursued this approach to foster long-term growth within the GATT system, anticipating that frequent use of vetoes would provoke similar responses from other members.

Uruguay Round Developments and the Creation of the Dispute Settlement Understanding

During the Uruguay Round (hereinafter UR) negotiations, the primary objective of negotiators was to address deficiencies in the GATT 1947 dispute settlement processes, particularly issues related to implementation. A significant challenge was the tendency of certain influential contracting parties to delay panel establishment or block the adoption of panel reports. There was broad consensus that the dispute settlement procedure needed to transition from a politically driven process to a more judicial one. To this end, negotiators agreed to implement improvements—

[23] Dispute Settlement System Training Module: Chapter 2, WTO. Online Available at: https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c2s1p1_e.htm

on which consensus had already been reached—without waiting for the conclusion of the Uruguay Round's Mid-Term Review Meeting[24].

The existing system faced increasing difficulties until it reached a standstill in the 1980s, at which point the parties were forced to modify the positive consensus system. The dispute resolution system prioritized the political interests of the members, and it was a balanced approach to challenge other parties regarding the adoption of favorable judgments, which ultimately led to the collapse of the consensus system. Through the continuing talks of the Uruguay Round, the members developed an updated dispute resolution agreement covering several topics, including the adoption of panel reports, technical assistance, monitoring the implementation of recommendations and decisions, and other developments[25].

As a result, the judgment was implemented on a trial basis, covering key provisions of the Uruguay Round and, subsequently, the WTO dispute settlement agreement. The new conflict resolution system stood in stark contrast to the GATT system.

The understanding introduced several amendments to the rules and procedures of the dispute settlement process, including specific timeframes for disputes, the stages of the process, and, most notably, the elimination of the right of parties whose disputes are being challenged to impose a veto, along with other changes.

The positive consensus strategy was abandoned in favor of a negative consensus approach, which stipulated that the Dispute Settlement Body (DSB) would automatically establish panels and adopt panel and Appellate Body reports unless there was widespread agreement to the contrary. Formal monitoring of the implementation of DSB reports was also established with the creation of the Appellate Body to review panel reports[26].

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[24] Dispute settlement understanding of the WTO: need for improvement and clarification, S. Narayanan, December 2003

[25] Decision of 12 April 1989 on improvements to the GATT dispute settlement rules and procedures. DisputeSettlement System Training Module: Annex III.

[26] *Supra 1*, page 15.

2. Jurisdiction of WTO Dispute Settlement System

Other international dispute resolution methods are distinct from the WTO's dispute resolution system. According to Article 36 of its Statute, the International Court of Justice (hereafter ICJ) has jurisdiction over all matters submitted to it. In cases where the parties mutually agree on the terms of referral to the ICJ, they may also submit a dispute to the ICJ through a special agreement, or compromise.

In contrast to other dispute resolution mechanisms, the WTO's conflict resolution system is notable for its unique nature and expansive jurisdiction. The WTO's method for resolving disputes is characterized by being:

(1) Compulsory in nature;

(2) Exclusive;

(3) Non-advisory.

Before delving into the specifics of WTO jurisdiction, it is important to note that only WTO members have the authority to appeal to the Dispute Settlement Body (DSB), following which panel and, subsequently, Appellate Body proceedings are initiated. Non-WTO member states cannot present their disputes to the DSB for resolution. The WTO's judicial bodies resolve disputes significantly more quickly than other international tribunals.

2.1. Compulsory in Nature

Regarding the first trait, the compulsory nature of jurisdiction, there is no choice but to accept the WTO's authority over disputes. Pursuant to Article 6 of the Dispute Settlement Understanding (DSU)[27], when a complainant requests the establishment of a panel, the request is discussed at a meeting of the Dispute Settlement Body (DSB). A panel is then formed unless the DSB, by consensus, decides otherwise.

As previously stated, the jurisdiction of international dispute resolution systems is typically determined by a declaration or agreement between the parties. In contrast, within the WTO, a

[27] Available at: https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf

complainant can request the creation of a panel without the consent of the respondent state.

When a state decides to join the WTO, it must sign and ratify all WTO Agreements, thereby accepting all responsibilities arising from these agreements. Consequently, when complainants seek to establish a panel, they are not required to obtain the respondent state's consent.

Any dispute between WTO members arising under any of the covered agreements is subject to the jurisdiction of the WTO dispute settlement system (Article 1.1 of the DSU). The content of the agreements (i.e., the types of complaints permitted under the agreements in question, in conjunction with the relevant substantive clauses) determines how the subject of a dispute is viewed in legal terms[28]. For example, in the India — Patents (US) case[29], the panel noted:

The substantive provisions of the DSU cannot be altered, although panels have some latitude in defining their own working procedures. Specifically, Article 12.1[30] of the DSU states that panels must follow the working procedures in Appendix 3 unless they decide otherwise after consulting with the parties to the dispute. Nothing in the DSU grants a panel the authority to ignore or modify other explicit DSU provisions. A panel's terms of reference, governed by Article 7 of the DSU, define the panel's jurisdiction. Only claims falling within the scope of a panel's authority may be considered.

In addition, there is a widely recognized principle in international law known as *pacta sunt servanda*: [31] a nation must uphold any agreement it enters into in good faith. Consequently, WTO members are obligated to comply with its regulations. The WTO members' agreement to the jurisdiction of the dispute settlement body is already evidenced by their membership in the WTO. The WTO exercises compulsory jurisdiction over its member

[28] https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c5s1p1_e.htm

[29] Available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?, paras. 92–93

[30] Available at: https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf

[31] Article 26 of Vienna Convention on Law of Treaties

countries in the context of dispute settlement, meaning that member countries are required to participate in the dispute settlement process and comply with the rulings of the WTO's dispute settlement bodies.

Under the WTO's Dispute Settlement Understanding (DSU), member countries must follow a specific process for resolving disputes over alleged violations of WTO agreements. This process includes consultations, the establishment of a panel, and the possibility of an appeal to the Appellate Body. Once a panel or the Appellate Body issues a ruling, the member countries involved in the dispute are required to comply with it.

If a member country fails to comply with a ruling, the complaining country may be authorized by the WTO to impose trade sanctions on the non-complying country. The WTO's Dispute Settlement Body (DSB) must approve any trade sanctions before they can be imposed.

According to Article 23.1 of the DSU, members must adhere to the guidelines and rules of the DSU when seeking redress for a breach of obligations, other nullification or impairment of benefits under the covered agreements, or an obstruction to the achievement of any objective of the covered agreements[32]. Unlike previous international dispute settlement systems, parties to a dispute arising under the covered agreements are not required to consent to the WTO dispute settlement system's jurisdiction over that case through a separate declaration or agreement. Consent to and acceptance of the WTO's mandatory jurisdiction are requirements for membership in the organization.

In summary, the compulsory jurisdiction of the WTO ensures that member countries participate in the dispute settlement process and comply with the rulings of the WTO's dispute settlement bodies. This helps to ensure that disputes are resolved fairly and impartially and that member countries fulfill their obligations under WTO agreements.

[32] The World Trade Organization: Law, Practice, and Policy" of Mitsuo Marsushita, Thoma J. Schoenbaum & Petros C. Mavroidis, page 189.

2.2. Exclusive Jurisdiction

Another characteristic of the WTO dispute settlement system is its exclusivity, as clearly stated in Article 23 of the Dispute Settlement Understanding (DSU). According to this article, WTO members are required to use and abide by the DSU's rules and procedures whenever they seek redress for a breach, nullification or impairment of benefits under covered agreements, or an obstruction to achieving any objective of those agreements. Consequently, a complainant must resolve any dispute arising from covered agreements through the WTO's dispute settlement system. The Panel in the United States — Section 301 Trade Act case (2000) similarly found in favor of this principle. The Panel stated that when members seek the withdrawal of a WTO-inconsistent measure, they are obligated under Article 23 of the DSU to use the DSU's dispute settlement procedures[33]. The Panel also noted that a crucial new component of members' rights and obligations is the "exclusive dispute settlement clause."

Article 23 of the DSU prohibits members from acting unilaterally and grants the WTO exclusive jurisdiction over other international tribunals for the resolution of disputes. Under the second paragraph of this article, members are not permitted to unilaterally evaluate the impact of violations or benefits that have been nullified without first resorting to the WTO dispute settlement mechanism. Members must use the dispute settlement process to resolve their differences; however, this does not mean that disputes must be settled solely through panel or Appellate Body proceedings. It should be noted that these methods are the most frequently employed. In addition to the aforementioned procedures, the WTO dispute settlement system also offers arbitration, good offices, conciliation, and mediation as alternative means of settling disputes.

2.3. Contentious Jurisdiction

The WTO dispute settlement system differs from the jurisdiction of other tribunals in that it solely addresses disputed issues

[33] Panel Report, US – Section 301 Trade Act (2000), par.7.43.

and lacks an advisory function[34]. It is also tasked with clarifying WTO legislation in the context of a specific dispute. In the EC — Commercial Vessels case, the Panel declined to address certain issues because it deemed them unnecessary for resolving the dispute, particularly due to their reliance on imprecise judgments. Consequently, the matter was not brought before the Panel. This case underscores that the Dispute Settlement Understanding (DSU) does not encourage either the Panel or the Appellate Body to elaborate on the provisions of existing WTO Agreements outside the context of a genuine dispute[35].

2.4. Scope of the Jurisdiction

When analyzing the scope of jurisdiction, it is essential to determine which measures are potentially subject to arbitration under the WTO and whether a dispute falls within its purview.

Regarding the first question of whether a dispute is subject to WTO dispute settlement, it is important to note that the WTO dispute settlement system has jurisdiction over disputes between WTO members concerning WTO agreements. The rules and procedures of the Dispute Settlement Understanding (DSU) apply to disputes arising from covered agreements[36]. These covered agreements include, among others, the WTO Agreement, the General Agreement on Trade in Services (GATS), the Trade Facilitation Agreement (TFA), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the General Agreement on Tariffs and Trade 1994 (GATT 1994), and other agreements listed in Appendix 1 to the DSU.

The second question concerns whether a measure is subject to WTO dispute settlement, as the DSU does not provide a clear definition of a "measure." However, in the United States — Corrosion-Resistant Steel Sunset Review case (2004), the Appellate Body clarified that any act or omission by a WTO member can be

[34] Peter Van den Bossche and Werner Zdouc — The Law and Policy of the World Trade Organization‖, third edition, p. 339.

[35] See US – Wool Shirts and Blouses case, par. 340.

[36] Supra 11, Article 1.1

challenged in dispute settlement proceedings[37]. Peter Van den Bossche identifies seven types of measures that may be subject to a WTO dispute: (1) acts or conduct of private parties attributable to a member; (2) measures no longer in effect; (3) optional measures; (4) contested measures; (5) unwritten rules; (6) ongoing conduct; and (7) measures of local authorities[38].

The first of these measures is the most challenging to establish. Examining Articles 5–8 of the Responsibility of States for Internationally Wrongful Acts will be crucial in determining whether the actions of private parties or local authorities can be attributed to the state. Additionally, several precedents address the relevance of government involvement in private actions. In the Japan — Film case, it was determined that if there is sufficient evidence of government involvement in a private party's actions, the government can be held accountable. However, each case must be evaluated individually. If a private party's action can be legitimately attributed to the government, it may be subject to WTO dispute settlement proceedings.

It is argued that measures no longer in force cannot be challenged in WTO dispute settlement. However, if such measures continue to have effects that impair the proper operation of WTO agreements or the benefits of members, they can be challenged in the WTO dispute settlement system.

Legislation itself constitutes another type of measure that can be contested in WTO dispute settlement. Regardless of its application in specific situations, it is common practice in the WTO to bring such legislation into the dispute settlement process. The WTO and its dispute settlement system aim to protect existing commerce while ensuring the security and predictability required for future trade. If legislation conflicts with WTO agreements, it will be deemed a violation. Consequently, if such a legislative act occurs, the WTO grants its members the authority to bring it before a panel.

Unwritten standards, laws, or customs of member states may also be contested in WTO dispute settlement proceedings. The Appellate

[37] Appellate Body Report, US – Corrosion-Resistant Steel Sunset Review (2004), par. 81.
[38] Supra 13, p.340.

Body has ruled that any action or inaction by a WTO member can be considered a measure for the purposes of dispute resolution[39]. As a result, unwritten rules and norms may be subject to dispute settlement proceedings.

WTO members are accountable for actions taken by their local or regional governments. The Appellate Body in the United States — Shrimp case emphasized that a WTO member is responsible for the activities of all its governmental agencies. Actions by local authorities may be subject to the dispute settlement mechanism if they impact compliance, as stipulated in Article 22.9 of the Dispute Settlement Understanding (DSU). Furthermore, under the General Agreement on Trade in Services (GATS), actions taken by regional or local authorities are attributable to the member in question

There are number of bodies that have jurisdiction under the WTO Agreements. They are followings:

1) Dispute Settlement Body

2) Panel

3) Appellate Body

4) Arbitration that is established under particular issue specified in the DSU.

The function and procedural stage of these bodies are analyzed in detail in latter paragraph.

i. The Role of Good Faith in Dispute Resolution

Principle of Good Faith in International Law

The principle of good faith is a cornerstone of international law, governing the conduct of states in their relations with one another. It reflects a foundational obligation that requires states to act honestly, fairly, and consistently with their commitments under international law. As both a moral and legal standard, it ensures the integrity of agreements and fosters mutual trust among states.

The principle of good faith is enshrined in various international legal instruments. For instance, the Charter of the United Nations (UN Charter) obliges states to fulfill their obligations in good faith to maintain international peace and security[40]. Similarly, Article 26

[39] Appellate Body Report, US – Corrosion-Resistant Steel Sunset Review (2004), par.81.

[40] Charter of the United Nations, opened for signature 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945) art 2(2).

of the Vienna Convention on the Law of Treaties (VCLT) provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." [41] This principle underpins numerous areas of international law, including treaty interpretation, dispute resolution, and the exercise of state rights and obligations.

Definition and Significance of Good Faith in International Relations

Good faith in international relations entails a duty to act honestly, fairly, and in accordance with accepted legal and ethical standards. While its definition varies by context, good faith generally requires states to:

- Refrain from engaging in deceitful or manipulative conduct;
- Honor their legal obligations and commitments; and
- Exercise their rights in a manner that respects the rights of others[42].

The significance of good faith lies in its role as a stabilizing force in international law. By requiring states to act in good faith, the principle promotes legal certainty and trust, which are essential for peaceful coexistence and cooperation. For example, in the context of treaties, good faith ensures that states negotiate, interpret, and implement agreements in a manner that respects their mutual interests and objectives. Moreover, the principle extends beyond treaties to other domains, such as international trade and dispute resolution. For instance, under the WTO Dispute Settlement Understanding (DSU), member states are expected to participate in consultations and dispute resolution processes in good faith, demonstrating genuine efforts to resolve conflicts amicably. In practice, violations of good faith often lead to legal disputes and undermine international cooperation. Nevertheless, the principle remains a key mechanism for holding states accountable and fostering a stable international legal order.

The principle of good faith is a fundamental norm of treaty law, codified in several key international instruments. The Vienna Convention on the Law of Treaties (VCLT) serves as the primary legal framework governing the formation, interpretation, and termination

[41] Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 26.

[42] Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7, 78 [142].

of treaties. The VCLT explicitly incorporates good faith as a guiding principle, ensuring that treaties are respected and upheld in accordance with international law.

Article 26 of the Vienna Convention on the Law of Treaties (VCLT), often referred to as the *pacta sunt servanda* principle, provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." [43] This provision underscores the obligation of states to honor their treaty commitments, fostering trust and predictability in international relations. The emphasis on good faith ensures that treaties are not merely formal documents but are implemented effectively in accordance with their intended purpose[44].

In addition to performance, the principle of good faith is integral to treaty interpretation under Article 31(1) of the VCLT. This article mandates that treaties be interpreted "in good faith" and in accordance with the ordinary meaning of their terms, in light of their object and purpose. This approach balances textual clarity with the need to consider broader contextual factors, thereby preventing states from exploiting ambiguities for self-serving purposes.

Good faith also plays a vital role in treaty negotiation and termination. For example, under Article 18 of the VCLT, states are prohibited from engaging in acts that would defeat the object and purpose of a treaty they have signed but not yet ratified. Similarly, the principle is invoked in cases of treaty invalidity or termination under Articles 46–64, ensuring that such actions are not taken arbitrarily or in bad faith.[45]

Beyond the VCLT, the principle of good faith is codified in other international instruments and practices. For instance, the Charter of the United Nations requires member states to fulfill their obligations under the Charter in good faith[46]. Furthermore, international courts

[43] Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 26.

[44] Sir Ian Sinclair, The Vienna Convention on the Law of Treaties (Manchester University Press, 2nd ed, 1984) 119.

[45] Malgosia Fitzmaurice, 'The Practical Working of the Law of Treaties' in Malcolm Evans (ed), International Law (Oxford University Press, 5th ed, 2018) 166.

[46] Charter of the United Nations, opened for signature 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945) art 2(2).

and tribunals frequently reference the principle of good faith in their decisions, reinforcing its status as a customary norm of international law[47].

By codifying good faith, the VCLT and other instruments provide a legal foundation for states to act with integrity and mutual respect. This principle not only safeguards the sanctity of treaties but also promotes cooperation and stability in the international community.

Obligations of States to Engage in Dispute Resolution Sincerely and Constructively

The World Trade Organization's (WTO) Dispute Settlement Understanding (DSU) emphasizes that members must participate in dispute resolution with sincerity, fairness, and a constructive attitude. This obligation reflects the overarching principle of good faith in international law, which seeks to ensure that states approach dispute resolution not as an adversarial process but as a means to preserve and enhance the rules-based international trading system[48].

Consultations under Article 4 of the DSU represent the first step in the dispute resolution process, designed to facilitate direct dialogue between the parties and enable the amicable resolution of disputes without recourse to litigation[49]. The obligation to participate in consultations in good faith requires states to:

- Respond promptly to requests for consultations, respecting the timelines set out in Article 4.3 of the DSU[50].
- Engage in open and constructive dialogue aimed at resolving the dispute rather than using consultations as a delaying tactic[51].
- Avoid actions that escalate tensions or undermine the spirit of cooperation during this stage.

For example, in the *EC – Bananas* case, the European Communities were criticized for their lack of transparency during consultations, which impeded efforts to resolve the dispute

[47] Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7, 78 [142].

[48] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995) annex 2 art 3.10.

[49] Ibid annex 2 art 4.

[50] Ibid annex 2 art 4.3.

[51] Peter Van den Bossche and Werner Zdouc, The Law and Policy of the World Trade Organization (Cambridge University Press, 5th ed, 2021) 218.

constructively[52]. Such actions underscore the importance of genuine participation in consultations as a demonstration of good faith.

Good faith also obliges states to refrain from abusing procedural mechanisms within the DSU to delay proceedings or secure tactical advantages. This includes:

- Avoiding frivolous claims or defenses that lack substantive legal merit[53];
- Limiting procedural objections to those genuinely necessary for ensuring fairness and legality in the dispute process.

The Appellate Body in *US – Shrimp* emphasized that procedural maneuvers must not compromise the DSU's objective of providing a "prompt and positive solution" to disputes[54]. Failure to adhere to these principles undermines the system's credibility and the legitimate rights of other states.

Once a panel or the Appellate Body issues a ruling, Article 21.1 of the DSU mandates that the losing party comply promptly and in good faith. This includes:

- Taking all necessary measures to bring domestic policies or practices into conformity with WTO obligations[55];
- Avoiding partial or symbolic compliance, which could further strain relations between the parties[56].

For instance, in the *US – Cotton* case, the United States faced criticism for delays in implementing the panel's recommendations, prompting Brazil to request retaliatory measures under Article 22[57]. Such instances highlight the importance of good faith in ensuring timely compliance and maintaining the integrity of the dispute resolution system.

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[52] European Communities – Regime for the Importation, Sale and Distribution of Bananas (Complaint by Ecuador) (1997) WTO Doc WT/DS27/R (Report of the Panel).

[53] Gabrielle Marceau, A History of Law and Lawyers in the GATT/WTO (Cambridge University Press, 2015) 312.

[54] United States – Import Prohibition of Certain Shrimp and Shrimp Products (1998) WTO Doc WT/DS58/AB/R (Report of the Appellate Body).

[55] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995) annex 2 art 21.1.

[56] Malgosia Fitzmaurice, 'The Practical Working of the Law of Treaties' in Malcolm Evans (ed), International Law (Oxford University Press, 5th ed, 2018) 166.

[57] United States – Subsidies on Upland Cotton (2004) WTO Doc WT/DS267/R (Report of the Panel).

Good faith also governs the use of countermeasures, such as suspension of concessions or retaliation, under Article 22 of the DSU. Retaliation is permitted only after all reasonable efforts to achieve compliance have failed and must be proportionate to the harm caused by the offending measure[58]. The principle of good faith prevents states from employing retaliation as a punitive tool or leveraging it excessively to gain unrelated advantages.

For example, in *EC – Hormones*, Canada and the United States imposed retaliatory tariffs after the European Union failed to comply with WTO rulings. While retaliation was legally permissible, concerns were raised about the proportionality and economic impacts of the measures[59].

Good faith extends to a state's engagement with dispute resolution bodies, including panels, the Appellate Body, and arbitration mechanisms. States must provide timely and accurate information, cooperate with requests for evidence, and refrain from undermining the proceedings. Constructive participation fosters trust and facilitates effective decision-making.

In the *Australia – Apples* case, Australia's constructive cooperation during the panel proceedings exemplified how states can engage in good faith while vigorously defending their interests[60].

The broader obligation of good faith in the DSU seeks to preserve the multilateral trading system as a forum for trust, cooperation, and mutual benefit. By engaging in dispute resolution sincerely and constructively, states affirm their commitment to upholding international law and fostering stability in global trade relations.

2.5. Examples of Procedural and Substantive Applications of Good Faith in the WTO DSS

The principle of good faith is pivotal to the WTO Dispute Settlement System (DSS), governing both procedural and substantive

[58] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995) annex 2 art 22.2.

[59] European Communities – Measures Concerning Meat and Meat Products (Hormones) (1998) WTO Doc WT/DS26/AB/R (Report of the Appellate Body).

[60] Australia – Measures Affecting the Importation of Apples from New Zealand (2010) WTO Doc WT/DS367/R (Report of the Panel).

obligations of member states. It ensures that disputes are resolved equitably and that parties act in a manner consistent with the spirit and purpose of the WTO agreements. This principle has been invoked in several high-profile cases, illustrating its relevance across various stages of dispute resolution.

Good faith plays an integral role in guiding the procedural conduct of states in the WTO DSS. It governs the way states interact with each other and with dispute settlement bodies during consultations, panel proceedings, and compliance phases.

Article 4.3 of the DSU requires member states to consult in good faith to settle disputes before escalating them to litigation[61]. This obligation was emphasized in *US – Offset Act (Byrd Amendment)*, where the panel highlighted the importance of meaningful consultations as a mechanism to prevent unnecessary disputes[62]. Failure to engage sincerely in consultations, such as refusing to provide relevant information or failing to attend meetings, may be deemed a violation of good faith.

In the WTO DSS, procedural timelines are designed to ensure disputes are resolved promptly. States are prohibited from using procedural tools, such as repeated appeals or unwarranted procedural objections, to delay the resolution of disputes. For instance, in *EC – Bananas III*, the European Communities' delays in implementing panel recommendations were criticized as inconsistent with the principle of good faith, leading to further litigation and retaliatory measures[63].

Good faith requires states to fully cooperate with panels and the Appellate Body by providing accurate and timely information. In *Argentina – Textiles and Apparel*, Argentina's lack of transparency during the panel proceedings was deemed a failure to act in good faith, undermining the effective functioning of the DSS[64].

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[61] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995) annex 2 art 4.3.

[62] United States – Continued Dumping and Subsidy Offset Act of 2000 (2001) WTO Doc WT/DS217/AB/R (Report of the Appellate Body).

[63] European Communities – Regime for the Importation, Sale and Distribution of Bananas (Complaint by Ecuador) (1997) WTO Doc WT/DS27/AB/R (Report of the Appellate Body).

[64] Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items (1998) WTO Doc WT/DS56/R (Report of the Panel).

Substantive Applications of Good Faith

In addition to procedural obligations, the principle of good faith influences the substantive interpretation and implementation of WTO agreements. Panels and the Appellate Body have invoked good faith to ensure that members do not exploit legal ambiguities or engage in practices that contravene the object and purpose of the WTO agreements.

Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT), applicable to the WTO, requires treaties to be interpreted "in good faith" in accordance with their ordinary meaning, context, and purpose[65]. This principle was applied in *US – Shrimp*, where the Appellate Body interpreted the environmental exceptions under Article XX of the General Agreement on Tariffs and Trade (GATT) in light of good faith, ensuring they were not used as disguised restrictions on trade[66].

Good faith obliges states to implement panel and Appellate Body rulings in a timely and comprehensive manner. In *US – Gambling*, the United States was found to have partially complied with the recommendations, leading to further disputes. The failure to take meaningful steps toward compliance was criticized as inconsistent with the principle of good faith[67].

When states resort to retaliation under Article 22 of the DSU, good faith requires such measures to be proportional and targeted. In *EC – Hormones*, the Appellate Body emphasized that retaliatory measures must align with the harm caused by the breach, ensuring they are not excessive or punitive[68].

Good faith prohibits states from implementing disguised protectionist measures that undermine the principles of free trade. In *Japan – Alcoholic Beverages II*, the panel found that Japan's taxation system, which favored domestic over imported alcoholic beverages,

[65] Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 31(1).

[66] United States – Import Prohibition of Certain Shrimp and Shrimp Products (1998) WTO Doc WT/DS58/AB/R (Report of the Appellate Body).

[67] United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (2005) WTO Doc WT/DS285/AB/R (Report of the Appellate Body).

[68] European Communities – Measures Concerning Meat and Meat Products (Hormones) (1998) WTO Doc WT/DS26/AB/R (Report of the Appellate Body).

violated the national treatment principle of GATT Article III. The decision underscored the importance of good faith in upholding non-discriminatory trade practices[69].

2.6. Balancing Good Faith and Sovereign Rights

While good faith obliges states to act responsibly within the WTO framework, it also respects their sovereign rights to regulate in areas such as public health, environment, and national security. For example, in *Brazil – Retreaded Tyres*, the Appellate Body balanced Brazil's good faith obligation to adhere to trade rules with its legitimate right to protect public health and the environment under GATT Article XX(b)[70]. This demonstrates how good faith operates as a flexible principle that accommodates diverse state interests while maintaining the integrity of the DSS.

Assessing good faith in the context of the World Trade Organization's Dispute Settlement System (WTO DSS) presents significant challenges. The principle, while foundational, is inherently abstract, and its application depends on the specific circumstances of each case. These challenges are magnified by the varying interpretations of good faith among states and the subjective nature of evaluating intent and sincerity in international relations.

The subjective nature of good faith evaluations arises from their reliance on intangible factors such as intent, sincerity, and cooperative behavior. Unlike clear-cut legal standards, the assessment of good faith often involves interpreting actions and motivations, which can vary widely among stakeholders.

Good faith is inherently a normative principle rather than a quantifiable standard. Panels and the Appellate Body must assess whether a state's actions align with the objectives of the DSU without clear guidelines on what constitutes bad faith. For example, a delay in consultations might result from genuine administrative constraints

[69] Japan – Taxes on Alcoholic Beverages (1996) WTO Doc WT/DS8/AB/R (Report of the Appellate Body).

[70] Brazil – Measures Affecting Imports of Retreaded Tyres (2007) WTO Doc WT/DS332/AB/R (Report of the Appellate Body).

or deliberate obstruction, making it difficult to discern the true intent[71].

Cultural, legal, and political contexts influence how states approach dispute resolution. What one state views as a cooperative action may be perceived as insufficient or obstructive by another. This subjectivity complicates the application of good faith as a universal standard[72].

Good faith evaluations must balance between respect for state sovereignty with the need to ensure compliance with WTO rules. States may argue that certain actions, such as withholding sensitive information, are legitimate exercises of sovereignty, while others may perceive these actions as bad faith efforts to hinder the dispute process[73].

The absence of concrete benchmarks for determining good or bad faith leaves considerable discretion to panels and the Appellate Body, potentially leading to inconsistencies in rulings.

Disputes in the WTO DSS have often involved allegations of bad-faith actions, ranging from procedural delays to non-cooperation in implementing rulings. These cases illustrate the complexities of assessing good faith and the contentious nature of such evaluations.

In *EC – Bananas III*, the European Communities faced criticism for repeatedly delaying the implementation of panel recommendations. The United States and Ecuador accused the European Communities of using procedural maneuvers to prolong the dispute and avoid compliance[74]. While the delays were partially attributed to legislative hurdles, the prolonged non-compliance was widely perceived as a breach of the good faith obligation under Article 21.1 of the DSU[75].

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[71] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995) annex 2 art 4.3.

[72] Gabrielle Marceau, A History of Law and Lawyers in the GATT/WTO (Cambridge University Press, 2015) 312.

[73] Malgosia Fitzmaurice, 'The Practical Working of the Law of Treaties' in Malcolm Evans (ed), International Law (Oxford University Press, 5th ed, 2018) 166.

[74] European Communities – Regime for the Importation, Sale and Distribution of Bananas (Complaint by Ecuador) (1997) WTO Doc WT/DS27/AB/R (Report of the Appellate Body).

[75] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995) annex 2 art 21.1.

In *US – Offset Act (Byrd Amendment)*, the United States was accused of failing to engage meaningfully during consultations and refusing to provide relevant information. This lack of cooperation hindered efforts to resolve the dispute amicably and escalated the case to formal adjudication[76]. The panel emphasized that consultations require transparency and a genuine effort to address concerns, both of which were deemed lacking in this case.

The *US – Gambling* case highlighted the issue of partial compliance. Despite rulings against its measures, the United States implemented changes that did not fully address the violations identified by the Appellate Body. Antigua and Barbuda argued that this partial compliance constituted bad faith, as the United States appeared to avoid full implementation while claiming adherence to WTO rules[77].

In *EC – Hormones*, the European Union's refusal to comply with rulings on the prohibition of hormone-treated beef led to retaliatory measures by the United States and Canada. The EU argued that its measures were based on scientific concerns under GATT Article XX(b), but the Appellate Body found that the EU's justification lacked sufficient evidence. The prolonged dispute raised questions about whether the EU's actions were a legitimate regulatory measure or a bad-faith attempt to circumvent WTO obligations[78].

In *Australia – Apples*, New Zealand alleged that Australia's repeated use of procedural objections and requests for additional time were deliberate efforts to delay the resolution of the dispute. The panel acknowledged that while some delays were justifiable, others appeared to lack substantive merit, raising concerns about procedural abuse in bad faith[79].

The challenges in assessing good faith within the WTO DSS underscore the complexity of balancing subjective evaluations

[76] United States – Continued Dumping and Subsidy Offset Act of 2000 (2001) WTO Doc WT/DS217/AB/R (Report of the Appellate Body).

[77] United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (2005) WTO Doc WT/DS285/AB/R (Report of the Appellate Body).

[78] European Communities – Measures Concerning Meat and Meat Products (Hormones) (1998) WTO Doc WT/DS26/AB/R (Report of the Appellate Body).

[79] Australia – Measures Affecting the Importation of Apples from New Zealand (2010) WTO Doc WT/DS367/R (Report of the Panel).

with the need for objective and consistent application of rules. Case studies reveal the multifaceted nature of bad-faith actions, ranging from procedural tactics to substantive non-compliance. Addressing these challenges requires clearer guidelines and stronger mechanisms to ensure states uphold their good faith obligations, fostering trust and fairness in the multilateral trading system.

Impact of Good Faith on State Rights

The principle of good faith in international law profoundly influences state rights, serving as both a protective and regulatory mechanism. By embedding good faith within the WTO framework, states are empowered to exercise their rights while maintaining a balance between sovereignty and their obligations under international agreements. The application of good faith strengthens the dispute resolution process, ensuring fairness, trust, and predictability.

Good faith acts as a safeguard for state sovereignty, ensuring that states can exercise their rights under WTO agreements without undue interference or exploitation by other members.

The principle of good faith allows states to pursue legitimate public policy goals, such as environmental protection, public health, and national security, while adhering to their trade obligations. For instance, in *Brazil – Retreaded Tyres*, the Appellate Body acknowledged Brazil's right to regulate imports for environmental reasons, balancing this with its obligations under WTO rules[80]. This demonstrates how good faith supports states in achieving policy objectives while ensuring that such measures are not used as disguised trade restrictions.

Good faith requires states to implement trade-related measures in a non-discriminatory manner, respecting the sovereignty of other members. In *US – Shrimp*, the Appellate Body underscored the importance of applying trade restrictions in a way that is fair and consistent with multilateral rules[81]. The principle ensured that the United States' environmental measures were balanced against the rights of other states to access its markets.

[80] Brazil – Measures Affecting Imports of Retreaded Tyres (2007) WTO Doc WT/DS332/AB/R (Report of the Appellate Body).

[81] United States – Import Prohibition of Certain Shrimp and Shrimp Products (1998) WTO Doc WT/DS58/AB/R (Report of the Appellate Body).

Good faith acts as a check against the abuse of rights, preventing states from exploiting procedural or substantive provisions to undermine the rights of other members. In *Japan – Alcoholic Beverages II*, the panel found that Japan's tax measures were inconsistent with the national treatment principle, highlighting that good faith prohibits actions that distort competition under the guise of sovereign rights[82].

Through these mechanisms, good faith fosters an environment where states can exercise their rights responsibly, preserving their sovereignty while contributing to a rules-based trading system.

Good faith is integral to building trust and ensuring predictability in the WTO Dispute Settlement System (DSS). By promoting sincere engagement and compliance, it reinforces the legitimacy of the system and encourages states to resolve disputes constructively.

Trust is essential in any dispute resolution process, and good faith fosters this by requiring states to act transparently and cooperatively. In *US – Offset Act (Byrd Amendment)*, the panel emphasized that meaningful consultations and open communication are central to resolving disputes in a manner that respects the rights of all parties[83]. Trust is further reinforced when states demonstrate good faith in implementing panel recommendations and Appellate Body rulings.

The consistent application of good faith ensures predictability in the DSS, enabling states to anticipate how their actions will be assessed. This predictability reduces the risk of prolonged disputes and enhances confidence in the multilateral trading system. For instance, in *EC – Hormones*, the Appellate Body's emphasis on scientific evidence provided clarity on the scope of regulatory measures permissible under GATT Article XX(b)[84].

Good faith encourages states to resolve disputes amicably during the consultation phase, reducing the need for litigation. By requiring states to engage sincerely and provide relevant information,

[82] Japan – Taxes on Alcoholic Beverages (1996) WTO Doc WT/DS8/AB/R (Report of the Appellate Body).

[83] United States – Continued Dumping and Subsidy Offset Act of 2000 (2001) WTO Doc WT/DS217/AB/R (Report of the Appellate Body).

[84] European Communities – Measures Concerning Meat and Meat Products (Hormones) (1998) WTO Doc WT/DS26/AB/R (Report of the Appellate Body).

the principle minimizes the likelihood of disputes escalating to retaliatory measures or prolonged non-compliance[85]. Adherence to good faith enhances the legitimacy of the WTO DSS by ensuring that states perceive the system as fair and balanced. When states act in good faith, they demonstrate their commitment to the principles of the WTO, reinforcing the credibility and authority of its dispute resolution mechanisms. The principle of good faith has a profound impact on state rights within the WTO framework. It safeguards sovereignty by allowing states to pursue legitimate objectives while adhering to their obligations and it enhances trust and predictability in the dispute resolution process. By fostering cooperation, transparency, and fairness, good faith strengthens the multilateral trading system and ensures that disputes are resolved in a manner that respects both state sovereignty and international obligations.

3. Developing Country Members and WTO Dispute Settlement

It is noteworthy that developing countries participate actively in resolving disputes within the World Trade Organization (WTO) at a significantly higher rate than in the dispute settlement system of the General Agreement on Tariffs and Trade (GATT[86]). In several cases, developing countries have successfully brought forward complaints against more economically advanced nations, including the US in the "Underwear" case, Turkey in the "Textiles" case, and again the US in the "Gambling" case.

The DSU acknowledges the challenges that developing country members may encounter while engaging in dispute resolution within WTO judicial bodies. Consequently, the DSU incorporates specific rules to address these difficulties, found in Articles 3, 4, 8, 12, 21, 24, and 27.

The fundamental principles concerning Special and Differential Treatment for developing countries were established during the Uruguay Rounds. These principles include the following:

[85] Gabrielle Marceau, A History of Law and Lawyers in the GATT/WTO (Cambridge University Press, 2015) 321.

[86] Report by the Consultative Board to the Director-General Supachai Panitchpakdi, The Future of the WTO: Addressing Institutional Challenges in the New Millennium (WTO, 2004), par. 222.

1. Developing countries have a significantly higher level of involvement in the dispute settlement process of the World Trade Organization (WTO) compared to the dispute settlement system of the General Agreement on Tariffs and Trade (GATT). Developing countries have successfully brought cases against more developed countries, such as the US in the "Underwear" case, Turkey in the "Textiles" case, and the US in the "Gambling" case.

2. The Dispute Settlement Understanding (DSU) acknowledges the challenges that developing country members may face when participating in resolving disputes within WTO judicial bodies. As a result, the DSU incorporates specific rules, found in Articles 3, 4, 8, 12, 21, 24, and 27, to address these difficulties.

3. The Uruguay Rounds outlined several key principles regarding Special and Differential Treatment for developing countries, which include:

a) Developing countries face disadvantages in their participation in international trade.

b) Any Multilateral Agreement should consider these disadvantages when determining the rights and obligations of developing countries.

c) Trade policies that promote sustainable development in one country may not necessarily have the same effect in another country.

d) Developed countries have an interest in supporting the integration of developing countries into the multilateral trade system.

4. The DSU grants various privileges to developing and least-developed countries in the proceedings of dispute settlement[87].

Regarding the consultation process, Article 4.10 of the DSU emphasizes that members should consider the problems and interests of developing countries. Additionally, if a developing country is involved in a dispute, the parties can agree to extend the consultation period. If parties fail to reach a conclusion, the DSB (Dispute Settlement Body) chairperson can extend the consultation period under Article 12.10 of the DSU.

At the panel stage, Article 12.11 of the DSU requires panels to take into account the Special and Differential Treatment provisions when a developing country is a party to the dispute.

[87] Peters, M. & Kumar, M. (2014). — Introspect — special and differential treatment‖ given to developing countries under the WTO dispute settlement system. p. 9.

Special and Differential Treatment also applies during the implementation stage. According to Article 21.2 of the DSU, particular attention should be given to matters affecting the interests of developing countries with respect to measures subject to dispute settlement. Furthermore, supervision of implementation may be organized. Under Article 21.7 of the DSU, if a developing country raises an issue, the DSB may consider additional actions alongside surveillance and status reports. In such cases, Article 21.8 mandates that the DSB consider both the challenged measures and their economic impact on the developing country.

It is important to note that most developing country members lack specialized national expertise in WTO law to effectively participate in dispute settlement on behalf of their countries. Consequently, they often seek assistance from international experts to represent them in proceedings. Developing country members are legally permitted to be assisted and represented by private legal counsel during dispute settlement, which facilitates their effective participation. However, the cost of private legal representation can be burdensome, as developing countries are sensitive to high litigation costs due to the lack of national experts.

Under Article 27.2 of the DSU, additional assistance, such as legal advice and support, may be provided to developing countries. To fulfill these needs, the DSU mandates that the WTO Secretariat make qualified legal experts available to support developing country members. As a result, developing country members can request technical assistance from the WTO Secretariat.

To enhance the provision of effective legal assistance, the Advisory Centre on WTO Law (ACWL) was established on December 1, 1999, during the WTO Ministerial Conference in Seattle. The ACWL, an independent intergovernmental organization working in collaboration with the WTO Secretariat, provides legal advice, aid, and training to developing countries, as well as assistance in preparing and presenting their cases in WTO disputes. Its independence from the WTO Secretariat allows the ACWL to serve as a “public defender” for developing countries.

CHAPTER II. RIGHTS OF STATES IN THE DISPUTE RESOLUTION PROCESS

The World Trade Organization's (WTO) dispute settlement process comprises several stages, which are crucial for upholding the rights and obligations of member states. A key component of the WTO framework is the system for monitoring and enforcing the recommendations and rulings of the Dispute Settlement Body (DSB). This system ensures the proper execution of directives outlined in panel and Appellate Body reports. The priority is the prompt implementation of DSB recommendations and rulings to guarantee the efficiency of the DSB and the effective resolution of disputes within the WTO.

The final step in the WTO dispute settlement process is the implementation and enforcement of DSB recommendation and decision, provided that the respondent state's behavior is shown to be in conflict with the obligations that have been established under the relevant agreements. Within 30 days of the DSB adopting a panel or Appellate Body report, the concerned member shall notify the DSB of its intention to implement the recommendations and decisions[88]. However, in practice, immediate implementation of DSB recommendations is often challenging, primarily due to the need to align the respondent state's domestic legal framework with its WTO obligations.

The WTO dispute settlement procedure consists of three main steps:

(i) Consultations between the parties; (ii) Adjudication by panels and, if necessary, by the Appellate Body; and (iii) Implementation of the decision, which may include countermeasures in the event that the losing party fails to carry out the decision[89].

In following subparagraphs, we will discuss stages of considering and resolving disputes and procedural issues, which arise with respect to the implementation and enforcement of recommendations and rulings: (1) definition of "a reasonable period of time," (2) the

[88] Supra 11, Article 21.3

[89] https://www.wto.org/

surveillance of implementation by the DSB, (3) disagreement over implementation.

1. Stages of Consideration of Dispute Settlement System

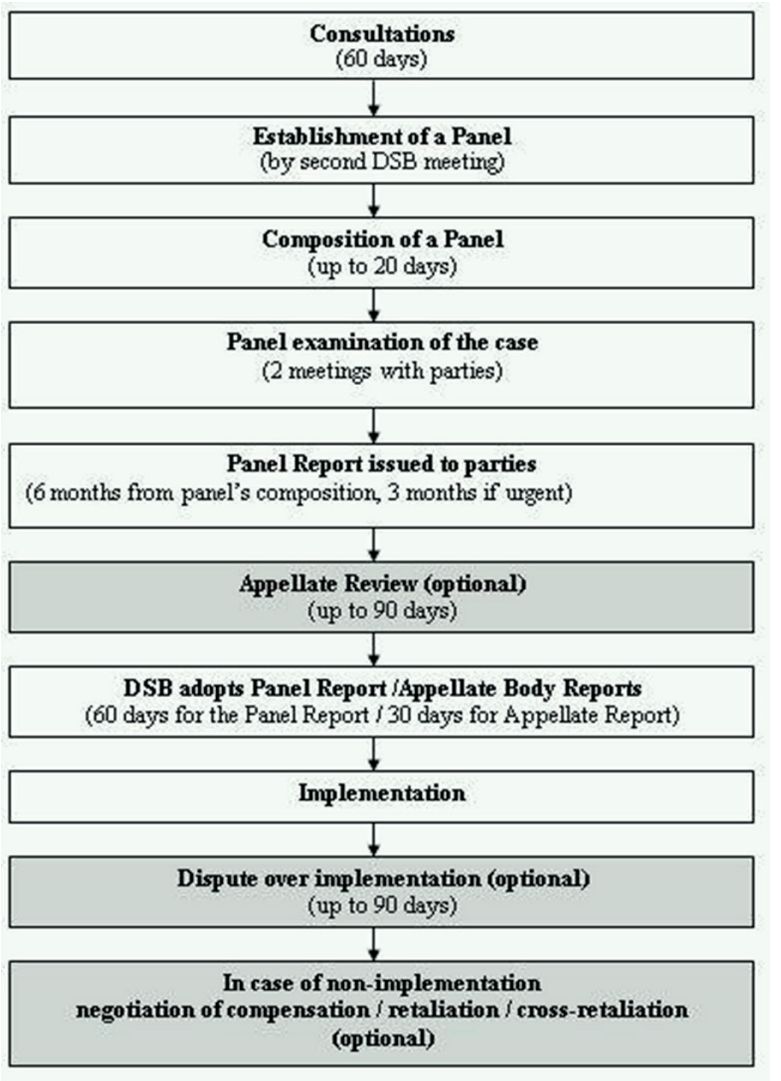
Disputes arise between WTO members when one or more adopt trade measures considered to breach covered agreements, potentially causing imbalances and violating the rights and interests of other member states. The prompt settlement of disputes aimed at providing security and predictability to the multilateral trading system are the main object and purpose of the WTO dispute settlement system. It is stated that the necessity of the prompt settlement of disputes is to maintain a proper balance between rights and obligations of member states[90]. The dispute settlement system is thus considered as a central element in ensuring security and predictability[91] which was stressed in US – Section 301 Trade Act (2000)[92]. Supachi Panitchpakdi[93] gave a characterization to the WTO dispute settlement system as "the most active international judicial mechanism."

The WTO's dispute settlement process is distinct from the former dispute settlement mechanisms under the General Agreement on Tariffs and Trade (GATT). In the pre-WTO era, each GATT agreement had its own dispute settlement mechanism, which members found to be inconsistent and unreliable. Unlike the GATT, the WTO provides a unified framework for resolving disputes among members.

The WTO dispute settlement system offers multiple methods for resolving conflicts, including consultations, panels, the Appellate Body, arbitration, conciliation, and mediation. Each method is governed by relevant provisions of the Dispute Settlement Understanding (DSU). All decisions and solutions reached in settling disputes between members must comply with WTO agreements. In addition to the complainant and respondent, third parties are entitled to participate in the dispute settlement process, subject

[90] Ibid, article 3.3
[91] Ibid, article 3.2
[92] See Panel Report, US – Section 301 Trade Act, par. 7.75.
[93] A former Director – General of the WTO

to specific rules and procedures outlined in the DSU. The stages of dispute settlement at the WTO are outlined in the table below. As follows[94]:



[94] https://www.wto.org/

The above-described procedures' outcomes are established by special rules in the DSU. I will go into depth about each milestone in the following pages. The first stage of conflict resolution begins with an amicable resolution, specifically by consulting each disputed party with themselves.

1.1. Consultations

The Dispute Settlement Understanding (DSU) emphasizes resolving disputes through dialogue rather than judicial adjudication. Parties to a dispute are not initially required to appear before a panel but are encouraged to settle their differences amicably through consultations. According to Article 4 of the DSU, consultations constitute the first stage of the WTO dispute settlement process.

Parties must make a genuine effort to resolve their conflict through consultations before escalating to formal adjudication. Consultations are more cost-effective than panel proceedings, but any resulting agreement must comply with WTO law and be communicated to the Dispute Settlement Body (DSB).

A dispute arises when one WTO member believes another member's government is violating a WTO agreement. The complaining member must submit a "request for consultations," specifying the agreements allegedly breached. Disputes often involve multiple agreements[95].

The DSU requires full transparency from all parties regarding the claims and relevant facts from the outset of the dispute. Claims must be detailed, and facts must be communicated openly during consultations and formal panel hearings. Transparency is particularly critical during consultations due to the DSU's implied due process requirements, as the claims and facts established in this stage significantly shape subsequent panel proceedings[96].

If the parties do not agree on a timeframe, the requested member must respond to a consultation request within 10 days and participate in consultations within 30 days of the request[97]. Both

[95] https://www.wto.org/
[96] India — Patents (US), para. 94
[97] Supra 11, Article 4.3 and Article 4.8

parties should engage in good faith to reach a mutually acceptable solution. If no agreement is reached within 60 days, the complaining member may request the establishment of a panel. The complaining member may also proceed to the next stage if consultations commence but fail to yield an agreement after 60 days. Consultation outcomes remain confidential, but parties may use information obtained during consultations in panel proceedings if essential.

Article XXII of the General Agreement on Tariffs and Trade (GATT) 1994 provides for consultations as a stage in WTO dispute settlement. The GATT further specifies the circumstances under which WTO members may initiate the dispute settlement process[98]:

1) In the event that the actions of another WTO member state violate the provisions of the "covered agreements," thereby making it difficult for the first state to achieve any goal of this agreement, or canceling or reducing one or another advantage provided by this agreement;

2) When a member applies a measure not related to the violation of the provisions of the "covered agreements" but still entailing the consequences provided for in paragraph 1;

3) Any other situation resulting in nullification and entailment.

Thus, if a WTO member believes that there is nullification and entailment, they may start the consultation stage.

In accordance with Article XXII of the GATT's DSU, additional members may engage in the consultation process in place of disputed members if they believe that their interests are also affected or if they have a significant trade interest. Within ten days, they must notify the DSB as well as the disputing members of their decision[99].

According to Article 3.8 of the DSU, when a covered agreement's obligation is broken, the procedure is regarded as prima facie nullification or entailment. As a result, the nullification or entailment is always assumed when the "covered agreements" responsibilities are broken.

In this situation, the nullification or implication should be regarded as elements like the expectation of competitive market

[98] Articles XXII, XXIII of the GATT 1994

[99] Supra 11, Article 4.11

conditions, assurances of efficient market access, and new business opportunities. Thus, the GATT allows for two different kinds of complaints: those relating to the violation of "covered agreement" provisions and those that are unrelated to the violation but result in nullification or entailment.

It should be noted that developing nation members have a particular procedures in place for all phases of dispute resolution, including the consultation process.

The DSU's Article 12.8 states that the parties may agree to prolong the consultation time, which is typically sixty days. If after sixty days the parties are unable to come to a mutually agreeable agreement, the Chair of the DSB have to decide whether to extend the given period and, if so, for how long.

Article 4.3 of the DSU links the complaining party's right to request the creation of a panel to the replying party's behavior during consultations. The complaining party may forego consultations and instead ask for the creation of a panel in the event that the replying party ignores or declines to participate in consultations. In this situation, the responding party forfeits any possible advantages that might have resulted from such discussions through its own actions[100].

Article 4.7 also links the complaining party's right to ask for the creation of a panel to the responding party's behavior with regard to consultations. According to this clause, the responding party and the party making the complaint may decide to forego any potential advantages that prolonged consultation might have. So long as the parties agree, a panel may be legitimately created notwithstanding the abbreviated term for discussions, according to Article 4.7. However, Article 4.7 does not impose any particular requirements on the format of the parties' agreement[101].

Consultations can be conducted between the parties during the panel proceedings. Pursuant to Article 11 of the DSU, panels should conduct consultations with the parties and provide them a chance to achieve an agreed solution to their dispute[102]. A number of cases

[100] Mexico — Corn Syrup (Article 21.5 — US), paras. 58–59
[101] Mexico — Corn Syrup (Article 21.5 — US), para. 61
[102] Ibid, Article 11

such EC – Scallops (1996,) EC – Butter (1996) and other has come to solution through consultation during the panel proceedings. If such happened during panel proceedings, the panel shall maintain a brief description of the case and report that a resolution has been reached.

Peter Van den Bossche asserts that the fundamental goal of consultations is to assist the disputing parties in comprehending the actual circumstances and the legal requirements related to the dispute's subject matter. Additionally, consultations enable the successful resolution of a dispute through diplomatic channels, avoiding the need to use additional WTO processes in the process[103].

In summary, consultations are the first stage in resolving a disagreement and are also a requirement for the next process to proceed. The DSU's Article 4 specifies the deadline for completion, which must be followed. The outcome of the consultations is communicated to the DSB and must not violate WTO regulations. If developing member states are unable to come up with a solution within sixty days, they are granted a number of advantages in discussions. The complaining party has the right to demand the creation of a panel to address the dispute if, during talks, the states were unable to come to an agreement on a single course of action.

1.2. Panel

The World Trade Organization's (WTO) panel mechanism is a crucial part of the organization's dispute resolution process. When a member believes another member has violated WTO agreements, it may request consultations to seek a resolution. If consultations fail, the aggrieved member may request the establishment of a panel to adjudicate the dispute.

After unsuccessful consultations, the complaining party may decide to move the dispute resolution process to the panel proceedings, which is the next stage of WTO dispute resolution. The Chair of the DSB receives a written request from the complaint state asking for the creation of a panel. This official request serves as the complainant's legal foundation. Following adoption of the requested

[103] Supra 13

document, notice is given to all WTO members, which includes the respondent and any other interested parties. Sometimes there may be more than one complainant in a dispute. In this case, a single panel is created in accordance with Article 9.1 of the DSU.

A Panel has both the inherent powers and direct application of the international rule of *la competence de la competence*, which was acknowledged by the Appellate Body in the Mexico-Soft Drinks case[104]. In its decision, the Appellate Body stated that panels have rights to establish their jurisdiction or to consider the issue of jurisdiction on its own initiative, moreover, to determine the scope of their jurisdiction[105].

Article 12 of the DSU lays out the regulations governing panel procedures. The Working Procedure set forth in Appendix 3 to the DSU is intended[106] to serve as the Panel's guide, but it also grants the Panel the right to act differently after consulting with the parties to the dispute. Although the panels are free to set their own working procedures, it has been acknowledged on several occasions that this discretion should not change the DSU's core provisions. There is no authority for a panel to disregard or alter the DSU's regulations in any of the DSU's rules[107]. On the other hand, panels' use of the DSU's principles encourages fairness and the preservation of due process[108].

The panel process begins with the complaining member submitting a written request to the DSB, detailing the alleged violation of WTO rules and the legal basis for the complaint. The DSB considers the request and decides whether to establish a panel.

The functions and procedures of a panel are collectively covered in Articles 7, 8, and 11 through 15. The fundamental duty is to interpret the WTO agreements legally and determine whether the circumstances of the disputing parties' cases are pertinent to the WTO agreements. The purpose of a panel's terms of reference is to look into the details of a trade dispute with regard to an appeal

[104] Andrew D. Mitchell, David Heaton — The Inherent Jurisdiction of WTO Tribunals: The Select Application of Public International Law Required by the Judicial Function‖, 2010 Michigan Journal of International Law

[105] Appellate Body Report, Mexico-Soft Drinks

[106] Supra 11, article 12.1

[107] Appellate Body Report, India – Patents (US) (1998), par. 92.

[108] Appellate Body Report, Thailand – Cigarettes (Philippines) (2011), par. 148.

requested by the complainant. As a result, they must look into and consider each fact in light of the WTO agreements. In order to identify the applicable law and relevant facts jointly, a panel would consider whether the facts it is deciding upon are relevant under the applicable legislation[109].

Panels consist of three trade law experts independent of the disputing parties. The panelists are selected from a list of people who have been proposed by WTO member nations and authorized by the WTO's Dispute Settlement Body. The panelists are chosen based on their knowledge of trade law as well as their objectivity and independence. Highly competent government or non-government individuals who have served as top trade policy officials in one of the WTO member states or who have published in this field or have taught international trade law or trade policy make up the panels. These nomination requirements are set out in Article 8 of the DSU.

The WTO Secretariat maintains a list of individuals who meet the standards for candidates for the panel, and for each applicant, it also identifies specific areas of expertise on problems relating to the "covered agreements." As a result, the panel is comprised of nominations made by the WTO Secretariat.

In order to choose the panel of judges, the Secretariat makes recommendations to the parties involved in the dispute. Article 8 of the DSU prohibits members of the panel from being either citizens of the state parties to the dispute or citizens participating in the dispute as third parties.

A particular document of competence called the Terms of Reference defines the terms of reference for a panel.

Unless the parties have agreed otherwise, Article 7.1 of the DSU lists only the general standard powers granted to the panel: to examine, in light of the relevant provisions of the covered agreement(s) cited by the parties to the dispute, the matter referred to the DSB by [name of party] in the relevant document, and to make such findings as will assist the DSB in making the recommendations or giving the rulings provided for in that agreement(s)[110].

[109] Martin Dixon, Robert McCorquodale, Sarah Williams, —Cases & Materials on International Law‖, Sixth Edition, p.571

[110] Supra 11, Article 7.1

In contrast to the Appellate Body, the Panel is an ad hoc body formed to consider each individual case. As a result, proposals to establish a permanent panel have recently increased in frequency[111].

A timeframe for panel proceedings is included in Appendix 3 of the DSU, along with the procedural rules for panels. It is important to note that this schedule is adjustable depending on the complexity of the case. Most disputes are resolved within nine to twelve months following the establishment of the panel[112]. The panel has the right to seek information throughout the proceedings and if it needs to consult exports for technical guidance. The panel's entire process is confidential. According to Article 12.10 of the DSU, developing nation members will have additional time to prepare and deliver their reasons. The panel granted India an additional ten days for preparation in the matter of India – Quantitative Restrictions (1999)[113], even though the USA objected to India's request for more time to prepare its initial written contribution.

The complainant and respondent each submit a written response, which is then exchanged between the parties as part of the panel proceedings. In addition to the parties, any other WTO member parties with a substantial interest in the dispute —and who have informed the DSB of their interest—may have a chance to present evidence and be heard by the Panel[114]. During the first meeting, which is held in a special session, third parties may also present their views.

Each party submits two written arguments to the panel: an initial written submission and a rebuttal submission. In the initial submission, both parties present all the evidence and justifications they believe support their claims regarding the alleged violation of a WTO commitment. In the rebuttal stage, each party responds to the arguments presented by the other. If a party has properly identified specific claims in the panel request, those claims will remain within the panel's terms of reference, even if the party fails to address them

[111] Ланьи, Памела Апаца. Система разрешения споров в ВТО : обзор новых трендов/ Памела Апаца Ланьи, Томмазо Соаве// Журнал «Мосты».- 2015 г.- Выпуск № 6.- 6 с.

[112] Robert Read, —Dispute Settlement, Compensation and Retaliation Under the WTO||, p.8

[113] See Panel Report, India – Quantitative Restrictions (1999), para. 5.10.

[114] Supra 11, Article 10.2

in its first submission. Generally, the parties have the right to make submissions to the panel, and the panel is obligated to accept and give those submissions due consideration[115].

The first substantive meeting is held following the stage of written submissions, during which the parties present their arguments. A second meeting is convened for the submission of rebuttals and responses. If expert testimony or scientific evidence is required, Appendix 3 of the DSU permits the holding of additional meetings. Ex parte communications with the Panel are not permitted. Additionally, the process may be conducted either in private or with public access, depending on the parties' preferences.

At any point during these meetings, the panel may request clarifications or pose questions to the parties regarding their submissions. It may also seek additional information from WTO members. Similarly, the parties are obligated to provide all information and documentation requested by the panel[116].

The panel's deliberations are kept confidential in accordance with Article 14 of the DSU. After considering the evidence and arguments presented during the hearings, the panel issues a draft report to the parties for their review. The parties are then given the opportunity to comment on and request that the panel reconsider specific aspects of the interim report.

After taking into account the parties' comments, the panel finalizes its findings and prepares the final report. This report is published in the three official working languages of the WTO and distributed to all WTO members.

According to Article 16.4 of the DSU, the DSB may adopt the panel's report after a 60-day period from the date of its distribution unless one of the following conditions is met: (1) a party to the dispute appeals the panel's report to the Appellate Body, or (2) the DSB, by consensus, decides not to adopt the report. If adopted, the panel's recommendations become legally binding on the parties.

In conclusion, once a panel is established, it has six months to issue a report containing its findings and recommendations.

[115] See Appellate Body Report, US – Shrimp (1998), par. 101.

[116] Supra 11, Article13.1

During this time, the panel reviews the evidence and arguments submitted by both parties, holds hearings, and may pose questions to the parties. The panel's report includes a summary of the parties' arguments, an analysis of the relevant WTO provisions, and findings on whether the responding party has violated WTO rules.

The panel's report is subject to review by the WTO Appellate Body, which may uphold, modify, or reverse the panel's findings. The Appellate Body consists of seven members appointed by the Dispute Settlement Body (DSB). Its review is limited to issues of law and legal interpretation; it does not re-examine the factual record of the case.

If the Appellate Body upholds the panel's findings, the member found to be in violation of WTO rules is expected to bring its measures into compliance with those rules. If the member fails to comply within a reasonable period, the complaining member may request authorization from the WTO to impose retaliatory trade measures against the non-complying member. Any such trade sanctions must be approved by the Dispute Settlement Body (DSB) before they can be implemented.

1.3. The Appellate Body

The Appellate Body is a key component of the World Trade Organization's (WTO) dispute settlement system. It is responsible for reviewing the legal aspects of panel reports issued in WTO disputes. The Appellate Body is composed of seven members appointed by the WTO's Dispute Settlement Body (DSB) for a term of four years. Members may be reappointed for a second term.

Parties to a dispute may appeal a panel report if they believe the panel erred in its interpretation or application of WTO agreements. The Appellate Body's review is strictly limited to issues of law and legal interpretation; it does not re-examine the factual findings of the panel. It has the authority to uphold, modify, or reverse the legal conclusions of a panel report. The Appellate Body's decisions are final and binding on the parties to the dispute. Furthermore, its reports play a significant role in the development of WTO

jurisprudence by providing authoritative interpretations of WTO agreements.

A disputing party has 60 days from the circulation of the panel's final report to file an appeal. The panel report is not submitted to the DSB for adoption until the appeals process has been completed. It is also increasingly common for parties to request clarification or reinterpretation of specific legal issues due to their broader implications for future disputes. In many cases, both the complainant and the respondent appeal aspects of the panel's findings and recommendations. Under the applicable procedures, the Appellate Body has the authority to revise or overturn the panel's conclusions.

The DSU regulates the operations of the Appellate Body and the procedures for the appeal procedure. The document titled "Working Procedures for Appellate Review" was adopted in compliance with it. In accordance with Article 17.9 of the DSU, the Appellate Body is authorized to create these Working Procedures after consulting with the WTO Director-General and the DSB Chair[117]. To ensure fairness and the orderly conduct of the appeal, the Appellate Body adopts an appropriate procedure when an issue regarding a procedure that is not covered by Working Procedures arises. Such procedures must remain consistent with WTO regulations[118].

According to Working Procedures Rule 20.1, an appellate proceeding begins when the parties notify the DSB in writing and submit a notice of appeal to the Appellate Body. The following information should be included in the notice of appeal whenever parties file an appeal:

1. A description of the errors made by the panel;

2. A list of the legal clauses of the covered agreements on which the panel failed to provide accurate interpretation; and

3. Identification of the sections of the Panel Report allegedly involved in the errors.

The Appellate Body division in charge of making decisions on appeals develops pertinent working procedures following the filing of an appeal based on the deadlines outlined in the Working

[117] Ibid, Article 17.9

[118] Rule 16(1) of the Working Procedures

Procedures[119]. The parties will be aware of this working schedule within one or two days and it includes the precise dates for submitting documents as well as a timetable of the division's activity. The working schedule for the appeal may be changed if the parties believe that the time frame set by the Appellate Body is unfair[120]. It should be mentioned that this phenomena only happens under unusual circumstances.

During appeal procedures, a cross-appeal may also occur. Under Rule 23 of the Working Procedures, a party intending to cross-appeal must file a notice of other appeal within five days of the original notice of appeal.

Pursuant to Rule 30.1 of the Working Procedures, disputing parties have the right not only to initiate but also to terminate an appeal at any point during the appellate procedure. For example, in India – Autos (2002), due to India's cancellation of its appeal, the Appellate without having completed reviewing a report issued a summary to the procedural history and reason for not completion of the procedure[121].

Only the parties in dispute have the right to appeal. All third parties are only entitled to submit written explanations of the case and, if necessary, be heard before the Appellate Body[122].

The panel's judgment or its legal analysis of a provision of a covered agreement may be challenged by the parties. The appellant must submit a written argument the same day that the notice of appeal is filed by one of the parties[123]. This written submission must include a clear justification for the appeal, identification of the panel's legal errors, and arguments supporting the claims.

The Appellate Body, however, does not take into account or evaluate the dispute's factual circumstances. In other words, the Appellate Body is not permitted to review the dispute's factual circumstances beyond the panel's report or to send the case back to the panel for further examination.

[119] Ibid, Rule 26(1)
[120] Ibid, Rule 2 l(16)
[121] See Appellate Body Report, India – Autos (2002), par18.
[122] Supra 11, Article 17.4
[123] Supra 47, Rule 21(1)

The Appellate Body may confirm, amend, or reverse the conclusions of the dispute settlement panel in accordance with Article 17.13 of the DSU. The Appellate Body is made up of individuals of recognized authority who have demonstrated expertise in the fields of law, international trade, and general issues falling under the purview of the "covered agreements" in accordance with Article 17.1 of the DSU.

According to Article 17.1 of the DSU, the Appellate Body consists of seven members, although only three members of the Appellate Body hear each case.

The Appellate Body selects its members for four-year terms, renewable for an additional four years. Additionally, the Appellate Body must consider the appeal within 60 days in accordance with Article 17.5 of the DSU. However, this time frame may be extended, but it cannot exceed 90 days.

Any party is not permitted to speak to the Appellate Body ex parte during the proceedings. The Appellate Body's members are not permitted to interact with or meet with participants[124].

The three division members would sign it after it had been written. The Appellate Body Report is then translated into the three WTO languages that are offered, distributed to all WTO members, and made available online. In accordance with Article 17.14 of the DSU, parties are required to accept the DSB's recommendations without condition. It is also submitted to the DSB for adoption.

The WTO dispute settlement process reaches its final stage, especially the stage of the implementation and enforcement of the decisions of the Panel or Appellate Body, if the Appellate Body determines that the respondent has breached its obligation under one or more covered agreements.

The concerned member is required to notify the DSB of its intention to adopt the Panel or Appellate Body report within 30 days.

It should be noted that the Appellate Body's proceedings, together with the panel's decision on the dispute and the consultation phase, are all private. The DSU's provisions allow for the

[124] Supra 11, Article 18 of the DSU and Supra 47, Rule 19

conclusion that the concept of confidentiality applies to every stage of the evaluation of a WTO dispute.

The Panel's interim reports and the Appellate Body's final reports are private until they are shared with the parties to the dispute. When the reports are given to WTO members, they are made public knowledge.

In conclusion, the Appellate Body is known for its expertise in trade law and its ability to provide impartial and independent legal analysis. Its members are selected based on their expertise in trade law, their experience in international trade, and their ability to be impartial and independent. The Appellate Body's decisions are highly respected and are considered to be authoritative interpretations of WTO agreements. In recent years, the Appellate Body has faced challenges due to the United States' blocking of new appointments to the body. This has led to a backlog of appeals and has raised concerns about the effectiveness of the WTO's dispute settlement system. Despite these challenges, the Appellate Body remains an important component of the WTO's dispute settlement system and plays a critical role in ensuring the consistent and predictable interpretation of WTO agreements.

2. Definition of a "Reasonable Period of Time" Provided for in Article 21.3 of the DSU

The "reasonable period of time" is a term used in the World Trade Organization (WTO) dispute settlement process to refer to the amount of time that a country has to bring its measures into compliance with WTO rules after it has been found to be in violation of those rules.

When a WTO panel or the Appellate Body finds that a country has violated WTO rules, it can recommend that the country bring its measures into compliance with those rules. The country is then given a reasonable period of time to do so. The length of the reasonable period of time is determined by the panel or the Appellate Body, taking into account the specific circumstances of the case.

The reasonable period of time is intended to give the violating country a sufficient amount of time to bring its measures into compliance with WTO rules while also ensuring that the complaining country is not subjected to continued harm as a result of the violation. The length of the reasonable period of time can vary depending on factors such as the complexity of the measures that need to be changed, the time required to implement those changes, and the potential impact on the complaining country.

During the reasonable period of time, the violating country is expected to take steps to bring its measures into compliance with WTO rules. It may need to amend or repeal the measures that were found to be in violation, or it may need to take other actions to ensure that its measures are consistent with WTO rules.

If the violating country fails to bring its measures into compliance within the reasonable period of time, the complaining country may be authorized by the WTO to impose trade sanctions on the violating country. The WTO's Dispute Settlement Body must approve any trade sanctions before they can be imposed.

Prompt or immediate compliance with the recommendations and rulings of the panel and/or the Appellate Body, as adopted by the DSB, is essential for the effective functioning of the WTO and the primary obligation of the member concerned. Prompt or immediate compliance with the recommendations and rulings means prompt or immediate withdrawal or modification of the WTO inconsistent measure[125].

However, as it is often impracticable to comply with the recommendation immediately, Article 21.3 of the DSU provides the members concerned a reasonable period of time for the implementation of the recommendations and rulings of the DSB.

In accordance with the aforementioned article[126], a reasonable period of time is defined as:

(a) The period proposed by the member in question, provided that the DSB approves of such period; or

[125] Supra 13, p. 443.

[126] Supra 11, Article 21.3(a), (b) and (c)

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

(c) A time frame decided by binding arbitration within 90 days of the day the recommendations and rulings were adopted[127]. The arbitrator[128] in such a case should follow the rule that the acceptable time frame for putting panel or Appellate Body recommendations into practice should not exceed 15 months from the date on which a panel or Appellate Body report was adopted. However, depending on the specific circumstances, that period might be shorter or longer.

It is clear from the provisions of this article that the parties have a say in deciding what constitutes a "reasonable period of time."

When deciding between the first and second methods of calculating the "reasonable period of time," the parties' power to control how this period is calculated takes precedence.

The respondent state defines the "reasonable period of time" in the first method. A second definition of a "reasonable time period" should be used if the complaint disagrees with the proposed time, as the selected time must be agreed by the DSB by consensus[129]. If the complainant state votes "against" the proposed time, consensus cannot be reached.

The reciprocal expression of the will of both parties in a "reasonable period of time" is a distinguishing quality of the second definition. However, if a compromise cannot be reached within 45 days, there is no other option but to abide by the final method of establishing arbitration under Article 21.3(c) of the DSU in order to determine what constitutes "a reasonable period of time." If the parties are unable to agree on an arbitrator within ten days, either party may request that the Director-General of the WTO appoint an arbitrator on their behalf. Regarding the qualifications needed to serve as an arbitrator, there are no guidelines or rules in the DSU.

[127] If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

[128] The expression — arbitrator‖ shall be interpreted as referring either to an individual or a group.

[129] Supra 11, Article 2.4.

But it has become customary for current or former members of the Appellate Body to act as arbitrators. They do so in their individual capacity rather than as an appellate body member[130].

It should be noted that the DSU's Article 21.3 does not specifically state that the techniques for determining the "reasonable period of time" must be chosen and implemented in the precise sequence outlined in this paragraph. For instance, if the parties so want, they can forgo the primary and second approaches and immediately use the third method to determine the "reasonable period of time" by the arbitrator.

When parties opt for the third method of determining a "reasonable time period," Article 3 of the DSU states that a reasonable amount of time for putting the panel's or the appellate body's recommendations and decisions into effect should not exceed 15 months from the date the panels or appellate body's report was adopted. However, depending on the precise circumstances, that point might also be shorter or longer. By applying this text's interpretation, it is made apparent that a fair amount of time cannot go beyond 15 months from the day the panel or the Appellate Body accepts the report. It is important to note that the maximum amount of time for the DSB's recommendations and selections to be implemented is 15 months.

There will be two parts to the arbitration process: submitting a written argument and having an oral hearing. The case must be concluded within ninety days beginning on the day the panel or appellate body reports were adopted by the DSB. The parties are given the arbitration award outlining the "reasonable period of time in order for implementation" and all WTO members are informed of it. Finally, a WT/DS document containing an arbitration award can be obtained from the WTO website. Having said that, it should be emphasized that in most situations, it is necessary to grant the respondent state a "reasonable period of time" for the execution of decisions and the recommendation of the DSB because doing so immediately is virtually impossible.

In summary, the reasonable period of time is a critical component of the WTO dispute settlement process, as it provides a framework for ensuring that countries comply with WTO rules and that disputes are resolved in a timely and effective manner.

[130] Supra 13, p. 444.

CHAPTER III. CURRENT TRENDS IN THE WTO DISPUTE SETTLEMENT MECHANISM

A binding decision made in line with a trade or investment agreement can resolve disputes that arise in international trade. Members of the World Trade Organization (WTO) can file such issues using the WTO's two-stage dispute settlement process. Similar dispute resolution clauses are also included in the trade agreements of the European Union (EU)[131].

A crisis in the multilateral trading system based on rules has resulted from the United States' obstruction of appointments to the WTO Appellate Body, the highest instance for dispute resolution in the WTO. Complaints from the United States[132] address issues with priority, transitional rules, delay, and court abuse of power. No conflicts may now be settled in the highest instance because the Appellate Body cannot entertain fresh appeals, which is reason for widespread alarm given the rise in trade protectionism on a worldwide scale.

The EU and a number of trading partners have established a multilateral temporary appellate arbitration (MPIA)[133] to find a temporary solution to end the deadlock. The parties agree to employ MPIA as a second instance while the matter is still ongoing in an effort to address the Appellate Body crisis. The MPIA is available for adoption by additional WTO members. Additionally, when the dispute resolution system is obstructed, commitments under trade agreements may be swiftly suspended under the recently modified EU Compliance Regulation. Although the US has condemned MPIA, President Joe Biden may shift the country's attitude toward international collaboration. The EU's dedication to WTO reform is reaffirmed by the European Commission's Trade Policy Review from February 2021[134].

[131] European Parliamentary Research Service, Jana Titievskaia; Graphic: Samy Chahri
[132] https://www.un.org/
[133] https://wtoplurilaterals.info/plural_initiative/the-mpia/
[134] Ibid

1. The Context for Crisis in WTO Dispute Settlement

The WTO dispute settlement process has encountered numerous discrepancies almost from the start[135]. This is not surprising given the unusual and unprecedented ramifications that the conclusions may have for sovereign states. The system's continued sustainability has not been seriously threatened by these discrepancies for most of this time, though. At least interconnected variables can be used to explain why the issues have recently taken on an almost existential character.

The multilateral trading system[136] is supported by a variety of trade agreements that the WTO members have reached with one another. When one member government suspects another member government of breaching its commitments under one or more WTO accords, disputes may occur. WTO members have agreed on a Dispute Settlement Agreement (DSU) that specifies a series of steps for resolving a global dispute and adhering to rules in order to resolve such issues. On behalf of the member states, the European Commission makes decisions regarding the opening and handling of disputes in the EU. According to the case's overall context, the legality, economic significance, and systemic influence of the dispute settlement cases determine their priority. In order to fulfill the goals of EU policy[137] in the areas of implementation and enforcement, the newly appointed Chief Commissioner for Compliance with EU Trade Rules ensures that dispute resolution activities contribute in a coordinated and orderly manner.

From January 1995, the year the WTO Appellate Body was founded, and it acted until December 2019. The Appellate Body served as the highest instance of the WTO for dispute settlement, supporting, amending, or rescinding group and quasi-judicial bodies' legal conclusions and decisions regarding participant disputes in the first instance. The Appellate Body was made up of seven members for more than 20 years, each with a four-year tenure in office. One

[135] Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994 (entered into force 1 January 1995), 1867 UNTS 154, 33 ILM 1144

[136] https://www.forumsec.org/multilateral-trade/

[137] https://commission.europa.eu/strategy-and-policy/policies_en

of the most active and successful dispute resolution processes in the world is the WTO. WTO members started consultations and started disputes 598 times between 1995 and 2020. Of these, 365 disputes resulted in the formation of a panel to settle a dispute between members, and panel reports were compiled in 265 cases, and on 174 disputes, the outcomes of which were appealed[138].

The fact that two-thirds of the commissions' reports were appealed highlights both the value of the highest instance in the dispute resolution process and respect for the members of the Appellate Body. Additionally, most issues were resolved amicably by the parties involved; just 19% of disputes involving the commission's report resulted in the establishment of compliance proceedings (which are initiated when the parties cannot agree on whether compliance was achieved by the end of the implementation period). With more than 100 disputes it have started since 1995, the EU has regularly turned to WTO dispute resolution. The EU was a party to 45 current disputes in the WTO as of February 2021, the majority of which involved the United States. In the case of Jennifer Hillman in 2011, the United States, for the first time under the Obama administration, declined to re-appoint a member of the Appellate Body for a second term. Commentators speculated that the decision was made because of U.S. discontent with the Appellate Body's decisions addressing trade remedies rules at the time because the U.S. Trade Representative did not cite specific justifications for the denial[139].

The primary reason for the crisis in WTO dispute settlement is the deadlock in the functioning of the Appellate Body (AB), which is the highest authority for resolving trade disputes. The AB is responsible for hearing appeals against panel reports and ensuring the uniform interpretation of WTO agreements. However, since December 2019, the AB has been unable to function effectively due to the blocking of appointments to its seven-member body by the United States. This has resulted in a significant backlog of cases and a lack of resolution for ongoing disputes.

[138] https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm
[139] Ibid

The lack of functioning of the AB has led to a growing backlog of trade disputes. As of the knowledge cutoff in September 2021, there were more than 40 unresolved cases waiting for appellate review. This backlog has undermined the credibility and effectiveness of the dispute settlement system, as parties to a dispute have had to wait for an extended period for a final resolution. The delay in the resolution of disputes reduces the incentive for countries to comply with WTO rules, as they can exploit the system's inefficiencies.

Another significant concern is the issue of non-compliance with WTO rulings. The WTO's dispute settlement process relies on the principle that members will abide by the decisions made by panels and the AB. However, there have been instances where countries have failed to implement rulings, resulting in a lack of effective enforcement. This undermines the credibility of the system and raises questions about the overall effectiveness of WTO dispute settlement in promoting compliance with trade rules.

The WTO's dispute settlement system was designed to address traditional trade disputes, primarily involving tariff and non-tariff barriers. However, with the changing nature of global trade, new and more complex issues have emerged, such as intellectual property rights, subsidies, and regulatory measures. Resolving these disputes requires expertise and specialized knowledge, which the current system struggles to handle adequately. The system's inability to effectively address these new and emerging issues further contributes to the crisis in WTO dispute settlement.

Efforts to reform the WTO's dispute settlement mechanism have been ongoing for several years. However, there is a lack of consensus among member countries on how to address the challenges and shortcomings of the current system. Different countries have varying perspectives and priorities, making it difficult to reach an agreement on necessary reforms. Disagreements over the appointment process, the scope of the AB's powers, and the composition of the body have hindered progress in resolving the crisis.

The crisis in WTO dispute settlement has created uncertainty and undermined the rules-based multilateral trading system. It hampers the ability of countries to resolve their trade disputes in a fair and

timely manner, potentially leading to unilateral actions, trade wars, and a decline in global economic cooperation. Addressing these challenges and revitalizing the dispute settlement mechanism is crucial to restoring confidence in the WTO and maintaining a stable and predictable international trading environment.

The current administration is more openly hostile against the multilateral economic system and the rules-based international order than any other national administration in recent memory. The dispute resolution process and the WTO, according to former president Donald Trump, both unfairly treat the United States[140].

United States Trade Representative (USTR) Robert Lighthizer openly recalled the veto power that the contracting parties used to settle disputes under the General Agreement on Tariffs and Trade (GATT), the forerunner of the WTO[141]. John Bolton, the national security adviser, also made no effort to hide his disdain for the WTO[142].

The use of national security justifications[143] to support a variety of tariffs points to a shift in U.S. trade policy away from the idea that the country is constrained by commitments to engage in international trade. It is possible to infer from these facts alone that the United States is seeking to entirely demolish the dispute settlement process and possibly even the rules-based trading system itself.

The appointment of Son Wa Chang to the Appellate Body in 2016—the year of the US election—was also apparently denied due

[140] White House, "Remarks by President Trump at 2018 White House Business Session with Governors" (26 February 2018) [White House, "2018 White House Business Session"], online: <www.whitehouse.gov/briefngs statements/remarks-president-trump-2018-white-housebusiness-session-governors/>; "Trump Threatens to Pull U.S. Out of WTO If It Doesn't 'Shape Up'" (29 August 2018), online: Bloomberg <www.bloomberg.com/news/articles/2018-08-30/trump-says-he-will-pull-u-s-outof-wto-if-they-don-t-shape-up>.

[141] See e.g. Interview of USTR Robert Lighthizer by John Hamre, "U.S. Trade Policy Priorities" (18 September 2017 at the Center for Strategic and International Studies) [Lighthizer interview], online: <www.csis.org/analysis/us-trade- policy-priorities-robert-lighthizer-unitedstates-trade-representative>.

[142] John Bolton, "Trump, Trade and American Sovereignty", The Wall Street Journal (7 March 2017).

[143] "Economic security is national security", in White House, "National Security Strategy of the United States of America" (December 2017) ["National Security Strategy"], online: <www.whitehouse.gov/ wpcontent/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

to US worries about the overly broad judicial system. The Trump administration kept on with the nominations blockage. As the terms of office of the current members ended, the Appellate Body progressively ceased to exist. Although the United States was among the nations that favored mandatory and binding dispute resolution in the WTO the most in the early 1990s, the nation has since expressed disapproval of several procedures.

In 2018, the US Trade Representative (USTR), which functions as the US equivalent of the EU Commissioner for Trade, provided a report on US concerns regarding the WTO's ability to settle trade disputes. This was followed by a thorough report on the WTO Appellate Body in February 2020.

2. Current Status of Disputes

The WTO provides a forum for its member countries to negotiate and resolve trade-related disputes. Disputes in the WTO typically arise when a member country believes that another member country is violating WTO rules and obligations, such as those outlined in various agreements like the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The WTO's dispute settlement system is designed to address these conflicts in a fair and transparent manner.

To understand the current status of disputes in the WTO, it is helpful to consider two aspects: ongoing disputes and recent developments in the dispute settlement system.

There were numerous ongoing disputes in the WTO. These disputes cover a wide range of issues, including trade remedies (such as anti-dumping and countervailing duties), intellectual property rights, agricultural subsidies, and market access barriers, among others.

Some prominent ongoing disputes include the long-standing Airbus-Boeing dispute between the United States and the European Union over subsidies provided to their respective aircraft manufacturers and disputes involving China and the United States on

issues such as intellectual property protection, trade remedies, and technology transfer policies.

Other disputes involve countries from various regions, such as India, Canada, Australia, the European Union, Brazil, and many others, covering a diverse range of trade-related matters.

The WTO's dispute settlement system faced significant challenges in recent years. One key issue was the effective paralysis of the Appellate Body, the highest level of the dispute settlement system, due to the United States blocking the appointment of new members.

The Appellate Body is responsible for reviewing and issuing rulings on appeals filed against panel reports. Its inability to function has resulted in a backlog of cases awaiting appeal, which has impeded the timely resolution of disputes.

In response to this situation, some WTO members initiated discussions on potential reforms to the dispute settlement system. These discussions aim to address concerns raised by various countries regarding the functioning and operation of the Appellate Body.

It is important to note that the ongoing disputes continue to be addressed through the regular dispute settlement process, including panel proceedings. However, the lack of an active Appellate Body limits the availability of the final stage of the appeals process.

The EU does not concur with the US decision to unilaterally block the Appellate Body, but it does share the US's systemic concerns about the need to level the rules of the game surrounding the use of state aid, subsidies, and the status of developing nations in the WTO. In its 2018 concept paper on WTO reform, the EU detailed many of its goals and recommendations. An attempt was made to revive the system through discussions aimed at protecting and strengthening the dispute settlement mechanism. Later that year, in a joint communiqué by the Ottawa Group of like-minded countries on the revitalization of the Appellate Body, proposals were made to revive the Appellate Body. It was believed that a healthy dispute settlement mechanism was a prerequisite for a rules-based multilateral trading system.

In the 2018 report on the Appellate Body crisis[144], a coalition of members at the level of the WTO General Council first put-up specific options to end the deadlock. They also contain a specific set of adjustments that are proposed, largely in line with EU ideas. These include improved communication channels for debating precedent-related issues, new transitional norms for departing members of the Appellate Body, an extension of the 90-day deadline by agreement, special attention to matters that are "necessary to resolve the dispute," and an extension of the 90-day deadline.

Following this, WTO members engaged in rigorous negotiations for nine months to find a solution to the deadlock, led by New Zealand Ambassador David Walker. On October 15, 2019, the General Council was presented with the outcomes of the informal process. Primary offers[145]:

- An obligation to release the report by the set timeframe of 90 days;

- Judicial abuses: a clarification that the duties under the WTO agreements cannot be increased by the decisions and recommendations of the Appellate Body;

- A clarification that the resolution of disputes in the WTO does not establish a legally binding precedent. However, WTO members place a high importance on uniformity and predictability in the application of treaties. As a result, when appropriate, the Commission's or the Appellate Body's prior reports should be considered.

- Exiting members of the Appellate Body were given temporary rules that allowed them to finish the appeals procedure, which included an oral hearing, before their term of office normally ended.

- Ample time should be allocated for filling vacancies; in some circumstances, the meaning of municipal law may be interpreted as a reality when a case is being taken into consideration. The Appellate Body is unable to reexamine the dispute's relevant facts, nevertheless.

[144] https://www.wto.org/english/tratop_e/dispu_e/ab_report_launch_e.htm

[145] https://www.wita.org/blogs/wtos-appellate-body-reform/

The "coalition of the willing" turned to a multilateral intermediate appellate arbitration agreement (MPIA)[146] after the United States rejected these suggestions. Concerns regarding over-coverage and the alleged implications of using trade remedies continue to rank among the hardest problems to solve. However, the election of Joe Biden as president has increased optimism for the revival of the Appellate Body, so parties will not have to turn to MPIA.

Any prospective modifications to the Appellate Body's policies, however, are likely to take time, and the US continued to obstruct nominees at a meeting of the WTO Dispute Settlement Body held in February 2021[147]. Along with the reaction of trade policy to the Covid-19 pandemic, including trade in vaccinations, the new WTO Director General, Ngozi Okonjo-Iweala, considers reform of the global dispute settlement mechanism to be a major priority. A number of US worries were acknowledged by the European Commission in the annex to the EU Trade Policy Review. In particular, the Commission concurs that the Appellate. The EU is open to more robust legal formulations and advancements in addition to the solutions created through the MPIA process. The EU also released a new multilateralism strategy in February 2021, emphasizing its leadership role in the WTO reform process to ensure stability, clarity, and fairness in the international trade system.

Overall, the current status of disputes in the WTO involves numerous ongoing cases covering a broad range of trade-related issues. Efforts are being made to address the challenges faced by the dispute settlement system, particularly with regard to the functioning of the Appellate Body. The resolution of these disputes plays a crucial role in maintaining a rules-based international trading system and promoting fair and predictable global trade.

[146] https://drs.cpradr.org/rules/arbitration/appellate-arbitration-procedure
[147] https://www.wita.org/blogs/wto-dispute-settlement-panels-authorized/

3. The Role of Third Parties in Supporting State Rights

The involvement of third parties in international dispute resolution processes has become increasingly significant, reflecting the complex and interconnected nature of contemporary international legal disputes. Third parties, whether they are non-disputing states, international organizations, or other entities, play an essential role in shaping the adjudication and outcomes of disputes. Their contributions through amicus curiae briefs, advisory opinions, and direct interventions serve to safeguard the rights of disputing states, enrich the adjudicative process, and ensure broader adherence to international norms. This section examines these contributions and evaluates the challenges and benefits associated with third-party participation in dispute resolution mechanisms.

Amicus curiae submissions, commonly referred to as "friend of the court" briefs, provide a platform for third parties—often non-governmental organizations (NGOs), international institutions, or other states—to share perspectives and expertise on issues central to a dispute. The role of amicus curiae is particularly pronounced in disputes involving international trade, investment arbitration, and human rights.

In the landmark case of United States – Import Prohibition of Certain Shrimp and Shrimp Products, the WTO Appellate Body controversially accepted amicus curiae submissions from environmental NGOs. These submissions highlighted the broader implications of the dispute on marine conservation and international environmental obligations[148]. By considering these submissions, the Appellate Body acknowledged the interconnectedness of trade and environmental governance, setting a precedent for future amicus participation in WTO disputes.

However, the acceptance of amicus briefs in dispute resolution processes is not without contention. Some states argue that the inclusion of non-state actors disrupts the intergovernmental nature of dispute settlement systems. Critics contend that allowing external

[148] Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WTO Doc WT/DS58/AB/R (12 October 1998) [153].

submissions risks privileging well-funded NGOs or interest groups over smaller states or underrepresented perspectives[149]. Balancing the need for broader input with the rights of disputing parties remains a contentious issue in the procedural design of international tribunals.

International organizations often serve an advisory function in disputes, offering interpretations of treaties, clarifications on legal norms, and guidance on procedural rules. Such advisory input ensures that adjudicative bodies remain aligned with the overarching principles of international law. For example, under Article 65 of the Statute of the International Court of Justice (ICJ), the Court may provide advisory opinions on legal questions referred by the United Nations or its specialized agencies[150].

Advisory opinions often have far-reaching implications for state rights and obligations. The ICJ's advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* underscored the rights of affected states and peoples, while reinforcing international legal norms on self-determination and territorial sovereignty[151]. Although non-binding, such opinions influence the behavior of states and international bodies, promoting compliance with established legal frameworks.

Similarly, organizations like the WTO Secretariat or the International Law Commission (ILC) contribute indirectly to dispute resolution through technical assistance and legal guidance. Their involvement ensures that weaker or less-resourced states have equitable access to legal expertise, thus addressing power imbalances in dispute settlement processes.

Third-Party Interventions: Balancing Sovereign and Collective Interests

Direct intervention by third-party states is another mechanism through which non-disputing entities assert their interests in disputes. In multilateral trade or environmental disputes, for

[149] Chi Carmody, 'Beyond the Proposals: Public Participation in International Economic Law' (2002) 15(2) American University International Law Review 1321, 1327.

[150] Statute of the International Court of Justice, art 65.

[151] Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

instance, third parties often intervene to protect their rights or ensure consistent application of international norms.

The dispute settlement mechanisms of the United Nations Convention on the Law of the Sea (UNCLOS) provide a clear example of third-party intervention. In cases involving maritime boundaries or shared resources, third-party states frequently participate to safeguard their interests or advocate for principles of equity and sustainability. The case of *Bangladesh v Myanmar* before the International Tribunal for the Law of the Sea (ITLOS) illustrated how third-party interventions can clarify legal ambiguities and contribute to the equitable resolution of disputes involving overlapping claims[152].

While third-party interventions can enhance the legitimacy and inclusivity of dispute resolution, they also raise concerns about the dilution of disputing states' sovereign rights. The procedural frameworks governing third-party participation must therefore strike a delicate balance, ensuring that interventions do not undermine the autonomy of the primary parties to the dispute.

The involvement of third parties in dispute resolution presents both opportunities and challenges. On the one hand, their participation enriches the legal and factual record, ensuring that tribunals consider a diversity of perspectives. This is particularly critical in disputes with global implications, such as those concerning climate change, public health, or human rights. Third-party contributions also enhance the perceived legitimacy of international tribunals, fostering greater acceptance of their decisions by the international community.

On the other hand, the inclusion of third parties may complicate proceedings, prolonging the resolution process and increasing costs. States with limited resources may find it challenging to respond effectively to third-party submissions or interventions, exacerbating power imbalances. Furthermore, the involvement of non-state actors, such as NGOs, may be perceived as politicizing legal processes, undermining the impartiality of tribunals.

[152] International Tribunal for the Law of the Sea, Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Judgment) (2012) ITLOS Rep 4.

To address these concerns, dispute resolution mechanisms must establish clear procedural rules governing third-party participation. For example, the ICSID Arbitration Rules and UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration provide detailed guidelines for the submission of amicus curiae briefs, ensuring that such submissions are relevant, concise, and non-disruptive[153].

Third-party states and organizations play a multifaceted role in international dispute resolution, contributing expertise, advocacy, and broader perspectives that enhance the quality and legitimacy of adjudicative outcomes. However, their involvement must be carefully managed to safeguard the rights of disputing states and maintain the procedural integrity of dispute settlement mechanisms. By balancing the benefits and challenges of third-party participation, international tribunals can continue to evolve as effective forums for resolving complex legal disputes in an interconnected world.

The involvement of third parties in international dispute resolution has the potential to significantly affect the rights of disputing states. While third-party participation can enhance the legitimacy and inclusivity of the dispute settlement process, it also raises critical concerns about sovereignty, procedural fairness, and the balance of power between the parties. This section examines the ways in which third parties—whether states, organizations, or non-governmental entities—can influence the procedural and substantive rights of the disputing states, with a focus on both the positive contributions and potential risks associated with their participation.

Positive Contributions of Third-Party Participation

Third parties, particularly through mechanisms such as amicus curiae briefs, can help ensure that the dispute resolution process adheres to principles of transparency and accountability. By introducing diverse perspectives and highlighting broader implications, third parties can serve as a check on adjudicatory bodies, ensuring that decisions are not rendered in isolation or with undue influence from one disputing party.

[153] ICSID Arbitration Rules, Rule 37(2); UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, art 4.

For example, in WTO disputes, third-party submissions have often enriched the legal debate by introducing environmental, human rights, or economic considerations that might otherwise be overlooked. In the United States – Shrimp, environmental organizations contributed perspectives that broadened the legal reasoning of the Appellate Body, ensuring that trade considerations were balanced with environmental protection[154]. This not only enhanced the decision's legitimacy but also safeguarded the interests of states whose positions aligned with global environmental norms.

Third-party interventions can contribute to the development of consistent legal interpretations, which benefit both disputing and non-disputing states by reducing uncertainty in international law. Advisory opinions from international organizations like the International Court of Justice (ICJ) often provide clarity on complex legal questions, indirectly supporting the rights of disputing states by ensuring that their obligations are clearly defined[155].

In disputes involving multilateral treaties, third-party states frequently advocate for interpretations that uphold treaty objectives, which can protect smaller or less-resourced states from being disadvantaged by more powerful parties. For instance, in maritime disputes under UNCLOS, third-party interventions have often emphasized equitable principles, preventing dominant states from imposing unilateral interpretations of the law[156].

Resource-constrained states often face challenges in effectively defending their rights in complex legal disputes. Third-party involvement, particularly from international organizations or coalitions, can provide critical support by offering legal expertise, technical assistance, or advocacy. This support can help weaker states counterbalance the advantages enjoyed by more powerful opponents, ensuring that their procedural and substantive rights are upheld.

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[154] Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WTO Doc WT/DS58/AB/R (12 October 1998) [153].

[155] Statute of the International Court of Justice, art 65.

[156] International Tribunal for the Law of the Sea, Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Judgment) (2012) ITLOS Rep 4.

Potential Risks to the Rights of Disputing States

One of the most significant concerns associated with third-party participation is the perceived erosion of state sovereignty. Disputing states may view third-party interventions as an external intrusion into what should be a bilateral or strictly multilateral process. Such interventions can shift the focus of the dispute away from the specific issues between the parties, introducing considerations that the disputing states may not have intended to address. For instance, in investment arbitration cases, the inclusion of third-party submissions from NGOs or civil society organizations has sometimes been criticized for introducing arguments that undermine the sovereign regulatory rights of host states. In cases like Methanex Corporation v United States, amicus submissions highlighted environmental concerns that, while valuable, added layers of complexity to the proceedings and potentially constrained the regulatory autonomy of the disputing state[157]. The participation of third parties can also affect the procedural balance between disputing states. Wealthy or influential third parties, such as well-funded NGOs or powerful non-disputing states, may disproportionately shape the tribunal's understanding of the issues, placing less-resourced disputing states at a disadvantage. This concern is particularly relevant in cases where third parties align closely with one disputing party, creating an implicit bias in the proceedings.

Moreover, the inclusion of extensive third-party submissions may prolong the resolution process, increasing costs and procedural burdens on the disputing states. For states with limited legal or financial resources, this can significantly impact their ability to effectively present their case.

Third-party interventions sometimes risk fragmenting the legal focus of a dispute. By introducing arguments or issues that extend beyond the core dispute, third parties may dilute the tribunal's ability to deliver a coherent and focused ruling. This can create uncertainty for the disputing states, whose rights and obligations may become entangled in broader normative debates that were not central to their dispute.

[157] Methanex Corporation v United States of America, UNCITRAL (NAFTA), Final Award (3 August 2005).

For example, in cases involving overlapping legal regimes, such as trade and environmental law, third-party submissions can lead to conflicting interpretations of states' obligations. While this may advance normative development, it can also leave disputing states without clear guidance on how to comply with their obligations, thereby complicating enforcement and implementation.

Striking a Balance: Managing Third-Party Participation

To mitigate these risks while preserving the benefits of third-party involvement, dispute resolution mechanisms must establish clear procedural frameworks. Such frameworks should:

- Tribunals should specify the criteria for accepting third-party submissions, ensuring that they are relevant, concise, and directly related to the dispute at hand. For example, the ICSID Arbitration Rules explicitly limit the scope of amicus curiae briefs to avoid undue interference[158].
- Mechanisms should ensure that both disputing states have equal opportunity to respond to third-party submissions, preventing any undue advantage.
- While third-party participation can enhance the legitimacy of dispute resolution, it must not undermine the disputing states' sovereign rights or autonomy in resolving their differences.

The participation of third parties in international dispute resolution is a double-edged sword. On the one hand, it can enhance transparency, enrich legal reasoning, and promote fairness, particularly for less-resourced states. On the other hand, it poses risks to state sovereignty, procedural balance, and legal clarity. The challenge lies in designing dispute resolution frameworks that balance these competing interests, ensuring that third-party participation strengthens rather than undermines the rights of disputing states. As international legal disputes continue to evolve in complexity, the role of third parties will remain a critical area of focus for ensuring the equitable resolution of disputes.

[158] ICSID Arbitration Rules, Rule 37(2).

CHAPTER IV. INTERSECTION OF HEALTH LAW AND WTO RULES

1. Health and Trade: The Conflict and Synergy

The relationship between international trade law and public health protection is one of the most contentious and complex areas within the WTO framework. While the World Trade Organization (WTO) aims to promote global trade by reducing barriers to commerce, the protection of public health remains a fundamental concern for WTO member states. Trade liberalization can sometimes conflict with efforts to protect public health, leading to tensions that require careful legal balancing. At the same time, certain provisions of WTO agreements recognize the need for health protections, offering countries flexibility to implement health-related measures without violating trade obligations. This section examines the tensions and synergies between trade and health law, with a particular focus on key WTO agreements such as the TRIPS Agreement**,** Sanitary and Phytosanitary (SPS) Measures, and Technical Barriers to Trade (TBT), as well as the health exceptions and flexibilities under international law.

The Balancing Act between Trade Liberalization and Public Health Protection

International trade rules prioritize the free flow of goods and services, which theoretically can enhance public access to goods like medicines, food, and medical technologies. However, this can create potential risks for public health if the imported goods do not meet appropriate safety standards or if trade rules unduly limit governments' ability to protect their populations. A case in point is the TRIPS Agreement under the WTO, which mandates robust intellectual property (IP) protection for pharmaceuticals and other health-related innovations. While stronger IP protections incentivize research and development, they can also lead to high prices for essential medicines, making them unaffordable in lower-income countries[159].

[159] Fink, C. (2005). Intellectual Property and Access to Medicines: A Case Study of TRIPS Implementation in Brazil. The World Bank.

At the same time, countries may wish to enact public health measures, such as food safety regulations, health warnings on packaging, or mandatory vaccinations, to protect citizens. These regulations can sometimes be seen as non-tariff barriers to trade, potentially leading to disputes between trading partners. For example, measures such as the Tobacco Plain Packaging law in Australia have raised questions about the balance between protecting public health and respecting intellectual property rights (WHO, 2018). Similarly, trade measures such as bans on harmful substances (e.g., pesticides or chemicals) can lead to conflicts under WTO rules if these measures are perceived as unjustified barriers to trade[160].

Key Provisions of the WTO Agreements That Influence Health Law

The WTO's agreements contain several provisions designed to address these competing interests, particularly in the TRIPS, SPS, and TBT Agreements. Each of these agreements has key implications for health law and public health protection. The TRIPS Agreement was designed to ensure the protection of intellectual property across member states, including patents on pharmaceuticals. One of the most controversial aspects of TRIPS is its provision for patenting medicines, which can raise the cost of essential medications, limiting access in poorer countries. However, the TRIPS Agreement contains important public health exceptions that allow countries to take action to protect public health, even if this means overriding IP protections. Article 31(f) of TRIPS permits the issuance of compulsory licenses, allowing governments to authorize the production of generic drugs without the consent of the patent holder during emergencies or for public health reasons.

The most notable use of this exception occurred in the early 2000s when several developing countries, including Brazil and India, issued compulsory licenses for antiretroviral medications to address the HIV/AIDS epidemic. These actions were later supported by the Doha Declaration (2001), which reaffirmed the right of WTO members to use compulsory licensing to promote access to

[160] Correa, C. M. (2007). Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options.

medicines[161]. More recently, the WTO has debated the TRIPS waiver for COVID-19 vaccines, which would allow countries to bypass IP protections for pandemic-related medicines and vaccines, thereby improving access to these life-saving products in low-income countries[162] (Baker, 2022).

1. SPS Measures and Public Health Protections

The Sanitary and Phytosanitary (SPS) Measures Agreement permits countries to adopt regulations aimed at protecting human, animal, and plant life or health, including food safety and disease control measures. Under the SPS Agreement, health-related trade barriers, such as restrictions on the import of certain foodstuffs or pharmaceuticals, are permissible if they are scientifically justified. For example, countries can restrict the importation of foods that may contain harmful pathogens or chemicals, such as pesticides, provided that the restrictions are based on international scientific standards or risk assessments.

However, the SPS Agreement also emphasizes that these measures should not be more trade-restrictive than necessary. The WTO's dispute settlement mechanism (DSM) has addressed several disputes involving SPS measures, such as the EC – Hormones case (European Communities – Measures Concerning Meat and Meat Products), in which the European Union's ban on hormone-treated beef was challenged by the United States and Canada. The WTO ruled that the EU's ban was not based on sufficient scientific evidence and therefore violated international trade rules, highlighting the tension between health protections and trade obligations[163].

2. TBT and Health-Related Standards

The Technical Barriers to Trade (TBT) Agreement allows countries to implement health-related measures concerning the labeling, packaging, and testing of products. These measures are crucial for informing consumers about health risks and ensuring

[161] Correa, C. M. (2007). Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options.

[162] Pauwelyn, J. (2015). The WTO and the Environment: Development and Trade Policy and the WTO. Cambridge University Press.

[163] WTO. (1998). European Communities – Measures Concerning Meat and Meat Products (Hormones). Report of the Panel, WT/DS26/R/USA.

the safety of products such as food and medicines. For example, countries may require nutritional labeling on food products or mandate that pharmaceutical companies provide information on side effects and contraindications.

The TBT Agreement also permits members to adopt measures that aim to protect public health, provided that they do not create unnecessary obstacles to trade. However, like the SPS Agreement, the TBT requires that such measures not be more trade-restrictive than necessary. The Australia – Tobacco Plain Packaging case, mentioned earlier, is a prime example of how the TBT Agreement can intersect with health law. Australia's tobacco packaging laws, which require standardized packaging and large graphic health warnings, were challenged by several WTO members. The panel found that while the measure served a legitimate public health objective, it did not disproportionately restrict trade[164].

The WTO framework includes a number of health exceptions that allow member states to adopt trade-restrictive measures when they are necessary to protect public health. These exceptions, found in various WTO agreements, provide important flexibility for countries to regulate in the public interest without violating their international trade commitments.

As noted above, the TRIPS Agreement includes mechanisms such as compulsory licensing and parallel importing, which allow countries to bypass patent protections in exceptional cases, particularly when public health is at risk. The Doha Declaration (2001) specifically affirmed these flexibilities, particularly in relation to access to medicines during public health emergencies. These provisions have been crucial in ensuring that life-saving drugs are accessible to populations in need, particularly in developing countries. The General Agreement on Tariffs and Trade (GATT) provides an exception under Article XX, which permits countries to adopt measures that are necessary to protect public health, provided these measures are not arbitrary or discriminatory. For instance, countries can implement measures to prevent the spread of infectious diseases, restrict the import of harmful substances, or

[164] WTO. (2017). *Australia – Tobacco Plain Packaging* (WT/DS435/AB/R).

limit the availability of unsafe products. The case law surrounding Article XX demonstrates that the WTO recognizes the importance of public health measures, as long as they meet specific criteria[165].

Case Study: The WTO and Health-Related Measures

The Australia – Tobacco Plain Packaging case (2017) is one of the most significant WTO disputes involving health-related measures. In this case, Australia enacted legislation requiring plain packaging for tobacco products as part of its strategy to reduce smoking rates and protect public health. Several countries, including Ukraine, Honduras, and Indonesia, challenged the law under the TBT Agreement, arguing that it was a barrier to trade and violated intellectual property rights.

The WTO Panel ultimately upheld Australia's measure, ruling that it was a legitimate public health intervention. The case highlighted the growing recognition within the WTO that countries must be allowed to take measures to protect public health, even when such measures may interfere with trade[166]. This ruling underscores the potential for synergy between trade and health law, showing that trade rules can be flexible enough to accommodate health protections, provided they meet specific criteria.

2. Case Studies on Health Law and the WTO

The World Trade Organization (WTO) has long been a forum for resolving disputes that involve both trade and health-related measures. These cases demonstrate the tension and interplay between the global trade agenda and the right of nations to regulate in the interests of public health. Below are detailed case studies that examine some of the most high-profile health-related disputes within the WTO framework. These cases reveal how international trade law navigates health law challenges, providing both precedents and insights into the balancing of health protections and trade liberalization.

[165] Pauwelyn, J. (2015). The WTO and the Environment: Development and Trade Policy and the WTO. Cambridge University Press.

[166] WTO. (2017). *Australia – Tobacco Plain Packaging* (WT/DS435/AB/R).

1. The Tobacco Plain Packaging Case (Australia v. Indonesia/ Ukraine/Honduras)

The Tobacco Plain Packaging Case is one of the most significant WTO disputes involving public health regulations. In 2011, Australia passed a law requiring plain packaging for all tobacco products, including standardized packaging and large graphic health warnings. The aim of the legislation was to reduce smoking rates by making tobacco products less attractive and to combat the tobacco industry's advertising tactics.

Several countries, including **Indonesia**, **Ukraine**, and **Honduras**, brought complaints before the WTO, arguing that Australia's plain packaging law violated the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Technical Barriers to Trade (TBT) Agreement. These countries contended that the law constituted an expropriation of intellectual property rights (specifically, the trademarks of tobacco companies) and imposed an unjustifiable barrier to trade.

Australia defended the law as a public health measure necessary to protect the health of its population, arguing that the law was consistent with WTO rules because it was not intended to discriminate against foreign products, but instead aimed at reducing tobacco consumption, particularly among young people.

In 2017, the WTO Appellate Body ruled in favor of Australia, upholding the plain packaging law. The panel found that Australia's measure was consistent with the TBT Agreement, ruling that the law was designed to protect public health, a legitimate public policy goal. The Appellate Body also emphasized that Australia's law did not disproportionately restrict trade or discriminate against foreign tobacco producers. This decision marked a significant victory for public health regulation within the context of the WTO's trade rules and clarified the extent to which countries may regulate for health purposes under international trade law[167].

The **Tobacco Plain Packaging** case is a pivotal example of the WTO's recognition of public health as a legitimate exception to trade rules, even when the measures involved may conflict with

[167] WTO. (2017). *Australia – Tobacco Plain Packaging* (WT/DS435/AB/R).

intellectual property protections. It sets a precedent for future cases involving health regulations that affect trade, particularly in industries such as tobacco, alcohol, and food.

The interplay between international trade law and public health protection remains a dynamic and critical area of focus within the WTO framework. While trade liberalization has undeniably contributed to global economic growth and improved access to goods and services, it can also create challenges for public health by potentially prioritizing commercial interests over health objectives. The need to strike a balance between these competing priorities is evident in the application of agreements such as TRIPS, SPS, and TBT, which provide both opportunities and constraints for member states seeking to protect public health.

The TRIPS Agreement, with its emphasis on intellectual property protections, illustrates the dual-edged nature of trade rules. On one hand, it incentivizes innovation and development; on the other, it raises questions of accessibility, especially for essential medicines in lower-income countries. Public health flexibilities such as compulsory licensing and the Doha Declaration have proven crucial in mitigating these issues, demonstrating that the WTO can adapt to prioritize health needs during crises. Similarly, the SPS and TBT Agreements show how health-related trade measures can coexist with international trade rules when scientifically justified and proportionate.

High-profile disputes, such as the Tobacco Plain Packaging case, highlight the WTO's evolving approach to health-related measures, signaling a broader acceptance of public health as a legitimate policy objective. These cases serve as important precedents, affirming that trade rules can accommodate health protections when designed transparently, equitably, and in line with scientific evidence.

As global health challenges become increasingly complex, such as the ongoing need for equitable vaccine distribution and the regulation of emerging technologies, the tension and synergy between trade and health will continue to evolve. The WTO's ability to foster a framework that supports both objectives will be essential in navigating these challenges. By maintaining a careful balance

between trade liberalization and health protection, the international community can ensure that trade serves as a tool for advancing global health equity and resilience, ultimately benefiting nations and populations worldwide.

2. The Access to Medicines Case (India/Thailand v. US/EU)

The issue of access to medicines has been a long-standing concern in the context of the TRIPS Agreement. TRIPS requires WTO members to enforce patents on pharmaceuticals, which can result in higher drug prices, limiting access to life-saving medicines in developing countries. The Access to Medicines dispute highlights the tension between protecting intellectual property and ensuring access to affordable medicines, particularly in the developing world.

In the early 2000s, **India** and **Thailand** were central to a growing movement for access to generic medications, especially in relation to the treatment of HIV/AIDS. Both countries were producing and exporting generic versions of essential drugs, which were often far more affordable than their patented counterparts. This was in direct conflict with the **European Union** and the **United States**, which sought to enforce strict IP protections under TRIPS.

In 2001, the Doha Declaration on the TRIPS Agreement and Public Health was adopted by WTO members, acknowledging that TRIPS flexibilities, such as compulsory licensing, could be used to address public health crises and improve access to medicines in developing countries. The Declaration affirmed the right of countries to circumvent patents in the public interest, particularly in the case of epidemics like HIV/AIDS.

Despite this declaration, the United States and the European Union continued to push for stronger enforcement of IP rights, while India and Thailand used compulsory licenses to produce generic versions of patented drugs, including antiretroviral therapies for HIV/AIDS. In response, the World Health Organization (WHO) and other international health bodies supported the actions of India and Thailand, emphasizing the importance of access to affordable medicines in developing countries.

While this issue has not been settled through formal WTO litigation, it remains a key example of the conflict between IP

protections and public health goals. The TRIPS flexibilities, such as compulsory licensing, have become a crucial tool in addressing the global access to medicines crisis, and the Doha Declaration remains an important legal instrument for countries seeking to balance trade obligations with public health concerns[168] .

3. The GMO Dispute (Argentina v. EU)

The dispute over genetically modified organisms (GMOs) between Argentina and the European Union (EU) is another significant case that highlights the tension between trade and health regulations. Argentina, one of the world's leading producers of genetically modified crops, challenged the EU's de facto ban on the importation of genetically modified foods under the Sanitary and Phytosanitary (SPS) Agreement. The EU imposed stringent regulations on the approval of GMOs, citing health and environmental risks. However, Argentina argued that these measures were not based on sound scientific evidence and were therefore inconsistent with the SPS Agreement, which allows countries to implement health and safety measures but requires that these measures be scientifically justified. The WTO Appellate Body found that the EU's measures were inconsistent with its obligations under the SPS Agreement, specifically because the EU had failed to conduct sufficient scientific risk assessments before imposing the ban. The ruling emphasized that while the EU had a legitimate right to protect health and the environment, the measures it adopted were not based on objective scientific evidence, thus violating international trade rules[169]. The GMO Dispute is significant because it highlights the difficulties in applying trade rules to complex health and environmental issues, especially when scientific uncertainty exists. The case reinforced the principle that while countries may adopt health and safety measures, these measures must be based on sound scientific evidence to avoid unjustified trade barriers. This has broad implications not only for GMO regulation but also for future trade disputes related to public health and environmental protection.

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[168] UNDP. (2003). *Intellectual Property, Innovation, and Public Health*. United Nations Development Programme.

[169] WTO. (2006). European Communities – Measures Affecting the Approval and Marketing of Biotech Products. WT/DS291/R.

The cases of Access to Medicines and the GMO Dispute illustrate the delicate balance that must be maintained between international trade obligations and the protection of public health. These disputes highlight the inherent tensions between enforcing intellectual property rights, facilitating trade, and ensuring the health and well-being of populations.

The Access to Medicines case underscores the importance of leveraging the flexibilities within the TRIPS Agreement, such as compulsory licensing, to address public health crises. The efforts of countries like India and Thailand in producing affordable generic medications, coupled with the adoption of the Doha Declaration, demonstrate how international law can evolve to prioritize health equity over commercial interests. This case remains a vital precedent for how trade rules can be applied to ensure that the benefits of medical innovation are accessible to those in need, particularly in low-income countries facing health emergencies.

Similarly, the GMO Dispute between Argentina and the EU reveals the complexities of aligning trade regulations with health and environmental concerns in the face of scientific uncertainty. While the WTO affirmed the EU's right to implement health and safety measures, it also reinforced the requirement for scientific justification to avoid unjustified trade restrictions. This case emphasizes the need for a balanced approach that respects both sovereign health and environmental policies and the principles of fair trade.

Together, these cases highlight the potential for synergy between trade and health when guided by evidence-based policymaking, transparent dispute resolution, and a commitment to public welfare. Moving forward, the WTO and its member states must continue to refine this balance, ensuring that trade serves not only as a driver of economic growth but also as a tool for improving global health and addressing pressing challenges such as epidemics, environmental sustainability, and equitable access to life-saving technologies.

4. COVID-19 and Trade in Vaccines (TRIPS Waiver Debate)

The COVID-19 pandemic, which began in late 2019, quickly evolved into an unprecedented global health crisis, affecting

every aspect of human life—from public health systems to global economies. As the virus spread rapidly across borders, claiming millions of lives, the urgent need for medical solutions led to a global race to develop effective vaccines. These vaccines became the primary tool in managing the crisis, significantly reducing the severity of infections, hospitalizations, and death rates. Mass vaccination campaigns helped many countries regain a sense of normalcy, but they also exposed glaring inequalities in global health access, with lower-income nations struggling to obtain sufficient doses.

Amid this backdrop, attention turned to the role of international legal frameworks in facilitating or hindering access to vaccines, particularly the TRIPS Agreement—the Trade-Related Aspects of Intellectual Property Rights. Adopted under the World Trade Organization (WTO) in 1995, the TRIPS Agreement sets out minimum standards for protecting intellectual property, including patents on pharmaceutical products. While intended to promote innovation, TRIPS has been criticized for creating barriers to affordable medicines, especially during health emergencies.

In response to the urgent need for broader vaccine access, India and South Africa proposed a landmark waiver in October 2020, calling for the temporary suspension of certain TRIPS provisions related to COVID-19 health technologies. This waiver aimed to allow countries to manufacture or import generic versions of vaccines and other medical tools without facing legal challenges over intellectual property rights. The proposal was significant because it brought global attention to the ethical tension between patent protection and the human right to health, igniting a debate over whether the existing international IP regime adequately serves the needs of humanity during a pandemic.

The COVID-19 pandemic brought to the forefront the urgent issue of global access to vaccines and the limitations of the TRIPS Agreement in addressing public health emergencies. As vaccines for COVID-19 were developed and rolled out globally, it became clear that access to these vaccines would be uneven, with wealthier countries securing the majority of the vaccine supply, leaving

developing countries struggling to vaccinate their populations. In response to this crisis, India and South Africa led a proposal at the WTO in 2020 to temporarily waive certain provisions of the TRIPS Agreement, specifically related to patents on COVID-19 vaccines and treatments. The waiver would allow countries to produce generic versions of vaccines and treatments, thereby increasing global access to life-saving medicines. The proposed TRIPS waiver was backed by many developing countries and public health organizations, who argued that the waiver was essential to ensuring equitable vaccine distribution and addressing the global public health emergency.

However, the proposal faced strong opposition from several high-income countries, particularly the United States and the European Union, as well as pharmaceutical companies that argued that waiving IP protections would undermine innovation and investment in vaccine development. After months of negotiation, a compromise was reached in 2022 in which certain provisions of the TRIPS Agreement related to COVID-19 vaccines and treatments were temporarily waived, but the waiver was more limited than originally proposed.

The TRIPS waiver debate highlighted the critical intersection between trade law and public health, particularly in the context of a global health crisis. It underscored the need for the WTO to adapt its rules to address public health emergencies more effectively, and it illustrated the potential role of international trade law in responding to global health challenges. The decision to temporarily waive TRIPS provisions for COVID-19 vaccines is an important precedent that may influence future negotiations on trade and public health, especially in the context of pandemics and other health crises[170].

The COVID-19 pandemic and the subsequent TRIPS waiver debate showcased the pressing need to align international trade law with the realities of global public health emergencies. The stark inequities in vaccine access highlighted the limitations of the TRIPS Agreement in addressing urgent health crises, particularly for low- and middle-income countries. The proposal to temporarily

[170] Gopinath, G. (2022). The COVID-19 TRIPS Waiver Debate: A New Era of Global Health Policy? Harvard University Press.

waive intellectual property protections for COVID-19 vaccines and treatments underscored the tension between protecting innovation and ensuring equitable access to life-saving technologies.

The compromise reached in 2022, which allowed for a limited waiver of TRIPS provisions, marked an important step toward recognizing the role of international trade law in responding to global health challenges. While the final waiver fell short of the broader demands from developing countries, it set a critical precedent for how the WTO can adapt its rules to meet public health needs during emergencies. The debate also emphasized the importance of fostering international cooperation to ensure that trade policies contribute to global health equity, rather than exacerbating disparities.

The TRIPS waiver debate serves as a reminder that public health must remain a central consideration in trade negotiations, particularly in the face of future pandemics and health crises. By building on this experience, the international community can work toward a more responsive and inclusive trade framework that balances the protection of intellectual property with the urgent need for accessible and affordable health solutions.

3. Impact of Health Crises on WTO Rulemaking

Global health crises, such as the COVID-19 pandemic, profoundly impact the World Trade Organization (WTO) and its rulemaking processes, exposing both the strengths and limitations of the international trade framework in addressing urgent public health needs. Traditionally, WTO rules have been designed to facilitate trade liberalization and protect intellectual property rights, with relatively limited consideration of public health priorities. However, the COVID-19 pandemic challenged this orientation by highlighting the need for greater flexibility in times of crisis.

One of the most notable impacts has been the renewed scrutiny of the TRIPS Agreement, which governs intellectual property protections, including patents for life-saving medical technologies. The pandemic sparked calls for reform, with many developing

countries arguing that strict IP rules hinder timely and equitable access to vaccines and treatments. This led to unprecedented negotiations at the WTO, including the TRIPS waiver debate, which questioned whether existing rules adequately balance innovation incentives with global health needs.

The health crisis also emphasized the importance of transparency, supply chain resilience, and equitable distribution of essential goods, prompting discussions about updating WTO disciplines on export restrictions, subsidies, and trade facilitation measures. Moreover, it underscored the need for greater inclusivity in WTO decision-making, as the interests of developing and least-developed countries became more visible and urgent during the pandemic.

In essence, the pandemic has served as a catalyst for rethinking WTO rulemaking, encouraging a shift toward more health-sensitive and equity-focused trade policies. While concrete reforms remain limited and slow-moving, the experience of COVID-19 has left a lasting mark on the global trade agenda, signaling the necessity for a more responsive and adaptive multilateral system in the face of future health emergencies.

Global health emergencies, such as pandemics, have a profound effect on the World Trade Organization (WTO) and its rulemaking processes. These crises highlight the intersection of public health needs and international trade law, often testing the flexibility and responsiveness of the WTO system in addressing urgent health concerns. This section explores how health crises, including pandemics like COVID-19, influence WTO rules, the dispute resolution process, and the potential for future changes to accommodate health-related measures more effectively.

1. How Global Health Emergencies Influence WTO Rulemaking and Dispute Resolution

The WTO is primarily designed to foster global trade liberalization, but it also provides legal mechanisms for member states to adopt health-related measures that may impact trade. The COVID-19 pandemic demonstrated the need for greater flexibility within the WTO framework, as health emergencies require countries

to implement swift and often drastic measures to protect public health—measures that can be at odds with WTO commitments.

A key example of how health emergencies influence WTO rulemaking is the Doha Declaration (2001), which clarified the relationship between the TRIPS Agreement and public health. The Declaration emphasized that compulsory licensing (allowing governments to authorize the production of generic medicines without the patent holder's consent) is permissible in the event of public health crises, such as HIV/AIDS, and for improving access to medicines. This exception was further tested during the COVID-19 pandemic, where calls for a TRIPS waiver for vaccines and treatments highlighted the tension between intellectual property protections and global health needs.

In 2020, India and South Africa led a proposal for a TRIPS waiver to allow WTO members to temporarily bypass IP rules for COVID-19 vaccines, treatments, and diagnostics, aiming to increase production and distribution in low- and middle-income countries. The pandemic raised questions about the need for WTO rulemaking to provide greater flexibility in times of health crises, such as facilitating easier access to life-saving treatments. The TRIPS waiver debate ultimately led to an agreement in 2022 that temporarily waived certain provisions related to COVID-19 vaccines and treatments, a decision that could set a precedent for future health crises[171]. Health emergencies often prompt countries to impose trade restrictions to protect public health, such as export bans on medical supplies, restrictions on the movement of people, or quarantines. During the COVID-19 pandemic, countries like the EU, India, and China imposed export bans on essential medical supplies, such as personal protective equipment (PPE) and medicines. While these measures were intended to ensure domestic availability, they triggered disputes under the SPS (Sanitary and Phytosanitary) Agreement and the GATT (General Agreement on Tariffs and Trade). The WTO's dispute resolution system has been called upon to balance the protection of public health with trade obligations. In the case of

[171] Gopinath, G. (2022). The COVID-19 TRIPS Waiver Debate: A New Era of Global Health Policy? Harvard University Press.

the EU – Export Restrictions on Medical Supplies, the WTO dispute settlement system would need to consider whether these trade restrictions were justified under Article XX of the GATT, which allows for trade measures necessary to protect public health. The WTO's role in future crises will likely involve a delicate balancing act between ensuring that health measures are not excessively trade-restrictive and allowing for necessary public health interventions during emergencies.

Global health crises, such as pandemics, have underscored the urgent need for the World Trade Organization (WTO) to adapt its rulemaking processes to better address public health imperatives. These emergencies highlight the tension between maintaining open global trade and enabling countries to implement measures to protect public health. The COVID-19 pandemic, in particular, exposed the necessity for greater flexibility within the WTO framework, as member states balanced the competing demands of safeguarding public health and upholding trade commitments.

The TRIPS waiver debate during the pandemic illustrated the WTO's potential to respond to global health challenges by modifying intellectual property rules in times of crisis. While the resulting waiver agreement for COVID-19 vaccines marked a significant step, it also revealed the complexities and limitations of achieving consensus on health-related measures within a trade-centric organization. Similarly, trade restrictions on medical supplies and equipment during the pandemic exposed the challenges of balancing domestic health priorities with international trade obligations, prompting scrutiny of WTO provisions under agreements like GATT and SPS.

As health crises become more frequent and interconnected, the WTO's role in facilitating equitable access to medical resources, resolving disputes, and crafting rules that protect both public health and trade interests will be increasingly important. To meet these demands, the WTO must prioritize reforms that enhance its flexibility and responsiveness, ensuring that its rulemaking processes align with the realities of global health emergencies. By striking this balance, the WTO can strengthen its capacity to support both

economic recovery and public health resilience in an increasingly interconnected world.

2. The Role of the WTO in Future Global Health Crises

The World Trade Organization (WTO) will play a crucial role in addressing future global health crises by shaping how international trade rules respond to urgent public health needs. The COVID-19 pandemic exposed the limitations of current WTO mechanisms in ensuring equitable access to life-saving medical products and highlighted the need for a more health-responsive trade framework. As the main body governing global trade, the WTO has both the responsibility and opportunity to adapt its rules and processes to better align with public health priorities.

In future health emergencies, the WTO can contribute by promoting greater flexibility in the application of intellectual property rights, particularly under the TRIPS Agreement. This could involve streamlining the process for issuing compulsory licenses, expanding the scope of waivers during global health crises, and encouraging voluntary licensing and technology transfer. Such measures would enable broader production and distribution of critical medical supplies in low- and middle-income countries.

Additionally, the WTO can play a key role in enhancing transparency and cooperation among member states. By facilitating the sharing of data on export restrictions, supply chains, and vaccine distribution, the organization can help prevent protectionism and ensure that essential goods reach the populations that need them most. Reforming trade rules to minimize disruptions in the global supply of medical goods—such as through clearer regulations on export bans or tariffs during emergencies—could further strengthen preparedness.

Moreover, the WTO must work more closely with health-focused international bodies like the World Health Organization (WHO) to ensure trade policies support, rather than hinder, global health objectives. Integrating health considerations into trade negotiations, ensuring fair representation of developing countries, and fostering inclusive dialogue will be essential to building a more equitable and effective global response system.

The WTO's role in future global health crises will depend on its willingness to evolve. By embedding flexibility, cooperation, and equity into its rulemaking and dispute resolution processes, the organization can become a central actor in ensuring that trade serves humanity—especially during times of crisis.

As the world continues to face emerging health challenges—whether in the form of pandemics, antibiotic resistance, or environmental health threats—the role of the WTO in future global health crises will need to evolve. Several key areas suggest that the WTO's framework could become more responsive to public health needs, while still safeguarding international trade. The COVID-19 pandemic exposed the limitations of the existing WTO framework in addressing health emergencies. In the future, the WTO may need to adopt more explicit flexibilities to ensure that countries can implement necessary health measures without fear of trade disputes or retaliation. While the WTO's agreements, such as TRIPS and SPS, allow for some exceptions in health emergencies, the complexity of global trade and the slow response to urgent health needs demonstrated the need for clearer, faster mechanisms.

Future **WTO rulemaking** could involve:

Permanent flexibilities in the TRIPS Agreement for global health crises, ensuring easier access to treatments and vaccines.

Expedited procedures for dispute resolution related to public health measures, allowing countries to implement emergency measures quickly without long legal battles.

More coordinated international responses to ensure global supply chains for critical medical goods and technologies during health emergencies. A key lesson from the COVID-19 pandemic is that trade law and public health law are interconnected. The WTO could benefit from closer cooperation with the World Health Organization (WHO) and other international health bodies in responding to future health crises. This could involve:

Joint declarations or memorandums of understanding between the WHO and WTO, enabling coordinated responses to public health emergencies.

Greater emphasis on public health and trade synergies, ensuring that trade rules do not hinder countries' ability to respond effectively to health emergencies.

Supporting the global distribution of vaccines and medical supplies by easing trade restrictions on critical products, particularly for lower-income countries.

Strengthening the WTO's Role in Global Health Security

The WTO could play a more active role in shaping global health security by fostering greater collaboration between trade and health policy. This could include:

- Promoting research and development (R&D) of vaccines, treatments, and diagnostic tools for emerging diseases through trade-related incentives**.**
- Encouraging fair pricing for life-saving medicines and vaccines to make them affordable worldwide, particularly in developing countries.
- Supporting global manufacturing capabilities for critical medical supplies to ensure that countries are not dependent on a few suppliers during health emergencies.

In the context of the TRIPS waiver debate and the broader discussion of how international trade law should address health crises, the WTO will need to consider both immediate needs and long-term strategies. The organization's role will likely shift from a purely trade-focused institution to one that also promotes global health resilience, ensuring that health emergencies do not become a barrier to trade, and that trade agreements are not a hindrance to public health objectives.

The impact of health crises on World Trade Organization (WTO) rulemaking is profound and multifaceted. Although the WTO has mechanisms, such as the flexibilities under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), to accommodate health-related exceptions, the COVID-19 pandemic exposed gaps in the current framework and underscored the need for greater flexibility in addressing global health emergencies. Moving forward, the WTO will likely need to

adopt more comprehensive and efficient mechanisms to ensure that trade obligations do not hinder countries' ability to protect public health during crises. Furthermore, enhanced cooperation between the WTO and health organizations, such as the World Health Organization (WHO), could strengthen global responses to health threats, ensuring that international trade supports, rather than impedes, global health security.

The evolving role of the WTO in addressing global health crises highlights the need for a more responsive and health-conscious trade framework. As the world continues to face challenges such as pandemics, antibiotic resistance, and environmental health threats, the WTO must strike a balance between facilitating international trade and enabling countries to take necessary public health measures. The COVID-19 pandemic underscored the limitations of current WTO mechanisms and the urgency for reforms to better integrate public health priorities.

Future global health crises demand permanent flexibilities in agreements like TRIPS to ensure equitable access to life-saving treatments and vaccines. Expedited dispute resolution processes and coordinated international responses are essential to allow countries to implement emergency measures swiftly and effectively. By fostering collaboration with organizations such as the WHO, the WTO can align trade rules with health objectives, supporting fair pricing, equitable distribution, and robust manufacturing capacities for critical medical supplies.

The WTO has the potential to become a pivotal force in global health security, promoting synergies between trade and public health while addressing gaps exposed by recent crises. By embracing reforms and strengthening partnerships, the organization can ensure that its trade rules not only support economic recovery but also contribute to a more resilient and equitable global health system.

CONCLUSION

The rights of states in the dispute resolution process of the World Trade Organization (WTO) play a crucial role in ensuring a fair and effective international trading system. The dispute resolution process serves as a cornerstone of the WTO's efforts to maintain the rule-based trading regime and provide a platform for resolving trade disputes among member states.

The rights of states in the dispute resolution process are enshrined in the WTO's agreements and rules. These rights encompass both procedural and substantive aspects, ensuring that all member states have an equal opportunity to present their cases and defend their interests. The rights include the right to initiate dispute settlement proceedings, the right to participate in the proceedings, the right to present evidence and arguments, and the right to receive a fair and timely decision.

The dispute resolution process of the WTO follows a clearly defined and transparent procedure, which provides states with the opportunity to present their positions and engage in meaningful negotiations. This process promotes transparency, predictability, and the rule of law in international trade relations. It allows states to address trade disputes in a cooperative manner and find mutually acceptable solutions, which ultimately contribute to the stability and predictability of the global trading system.

Moreover, the rights of states in the dispute resolution process are protected by the principle of sovereign equality. Regardless of their size, economic power, or political influence, all member states of the WTO have an equal right to participate in the dispute settlement mechanism. This principle ensures that the interests of all states, particularly developing and least-developed countries, are taken into account and that they are not unduly marginalized or disadvantaged in the resolution of trade disputes.

Furthermore, the dispute resolution process of the WTO encourages the participation of third parties, which enhances the legitimacy and effectiveness of the system. Third parties have the right to submit written and oral statements, make legal arguments,

and present evidence, thereby broadening the perspectives and expertise brought to bear on a dispute. This promotes a more comprehensive understanding of the issues at hand and contributes to the overall fairness and credibility of the dispute settlement process.

The WTO dispute resolution system offers an efficient means of resolving conflicts between its members; to some part, this system is based on the terms of the 1947 GATT Agreement. However, the GATT 1947 dispute settlement mechanism required modification; the issue of insufficient regulation of the process was a serious one.

An agreement on the rules and procedures for resolving disputes has been agreed by the WTO. By systematizing dispute resolution practice, establishing deadlines for procedures, and merging the dispute resolution rules in the DSU, many of the issues that occurred as a result of the practical execution of the 1947 GATT were resolved. Additionally, by providing new guidelines for making procedural decisions utilizing the so-called "negative consensus," one of the fundamental issues with the 1947 GATT's application of the idea of "absolute consensus" was also resolved, making the entire decision-making process automatic DSB.

In contrast to other courts, the WTO dispute settlement system's jurisdiction is by definition obligatory, exclusive, and debatable. The WTO dispute resolution mechanism is used to settle any issues and disagreements resulting from agreements with the WTO, including TRIPS, FTAs, GATS, and GATT.

Only WTO member countries are permitted access to WTO dispute resolution. Anytime a participant learns that their benefits are being decreased or canceled, they can contact the system. As a result, the plaintiffs assert that the defendant is in breach of its WTO legal responsibilities.

The primary goals of the dispute resolution system are the quick resolution of conflicts, the maintenance of security and predictability, and the defense of the current trade system. The DSU establishes a stringent process for resolving disputes, governs the key phases, such as consultations and panel consideration of a dispute, and also

allows for the possibility of appellate body review of disputes, which is a departure from the GATT 1947 provisions.

In the event of conflicts between WTO members, the Dispute Settlement Body established the Commission as a special judicial body. The DSU contains every procedural requirement that guides how the commission works. Since the panelists are impartial, they should avoid getting in touch with the parties directly. After the LFS is adopted, the Board's decisions are binding on the parties.

The Appellate Body is a permanent judicial body made up of seven judges, unlike the Collegium. The Rules of Conduct is a document upon which the judges of the Appellate Body base their work. This group's primary job is to analyze, examine, and modify the Commission's decision and legal reasoning. The Appellate Body may only hear appeals from parties.

The DSU's regulations provide the potential of voluntary and mutually agreed-upon mediation and conciliation procedures in addition to the primary phases of dispute resolution. The WTO member states hardly ever use reconciliation and mediation procedures because of the reciprocity of these processes. This is because it is simpler for the Plaintiff State to proceed directly to the major stages of the dispute resolution process when a dispute is being considered within the parameters of the main procedures because the respondent State's approval is not necessary.

The stages of dispute resolution in the WTO dispute settlement system are unambiguously established and regulated. To address potential issues in the future, I think a lot of alterations and changes are necessary. I am making some ideas as a result.

The review period should be lengthened first. In reality, it frequently takes far longer than ninety days for a collegium or appellate body to reach a decision. For instance, the EU and several member states' large civil aircraft (2012) lasted 301 days, whereas the USA's large civil aircraft (2012) lasted 346 days. Therefore, extending the review period is a good idea.

The second is to provide third parties more rights. The dispute settlement process places restrictions on some privileges. Only the

plaintiff and defendant have the rights to apply to the appellate body to prove their points.

Thirdly, emerging and least developed nations should be granted more additional preferences. They can frequently be presented to a commission or an appeal body because of the expense, taking into consideration their financial prospects. Even while they receive assistance from expert organizations, this does not sufficiently demonstrate their involvement in the process.

The examination of the intersection between health law and WTO rules underscores the evolving nature of international trade in the face of pressing global health challenges. While trade and public health objectives may at times appear to be in tension—particularly when intellectual property rights restrict access to essential medicines and medical technologies—this chapter has demonstrated that these domains are not inherently incompatible. Instead, there are significant areas of synergy that can be strategically leveraged through thoughtful legal and policy design.

The case studies examined offer a clear perspective on how World Trade Organization (WTO) mechanisms are interpreted and applied in practice, highlighting both the adaptability and limitations of existing rules. These examples illustrate the complex legal and ethical landscape that states navigate: they are bound by trade obligations under the WTO framework while compelled by domestic and international law to protect the right to health for their populations. Significantly, the studies demonstrate that WTO rules are not absolute. Member states retain the sovereign right to adopt measures necessary to protect human life and health, as explicitly recognized in key WTO instruments, such as Article XX(b) of the General Agreement on Tariffs and Trade (GATT) and reaffirmed in the 2001 Doha Declaration on the TRIPS Agreement and Public Health. These provisions permit states, for example, to issue compulsory licenses or pursue parallel imports to ensure access to life-saving treatments during health emergencies.

However, exercising these rights entails responsibilities. States must ensure that their measures align with the foundational principles of the multilateral trading system, including non-

discrimination, transparency, and good faith. The procedural and diplomatic complexities of invoking flexibilities under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) or negotiating waiver proposals, as observed during the COVID-19 pandemic, reveal that while legal tools exist, their practical application often involves significant institutional and political challenges.

The COVID-19 pandemic sharply exposed the limitations and inequities within global trade and health governance systems, particularly the stark disparities in access to vaccines and medical technologies. It underscored the urgent need for reform in WTO rulemaking to prioritize equitable access, foster global solidarity, and strengthen collaboration with public health institutions. The future of global health governance cannot rely solely on medical innovation or national health policies; it must be anchored in inclusive, adaptive, and ethically sound international legal frameworks.

Strengthening the balance between trade and health requires coordinated reforms, enhanced legal clarity, and increased support for capacity-building, particularly in developing countries. Ensuring that trade supports, rather than undermines, public health objectives is not only a matter of legal compliance but also a moral and humanitarian imperative. Through these efforts, the WTO and its member states can play a transformative role in building a more resilient, equitable, and health-conscious global order.

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