

DISPUTE SETTLEMENT IN THE WTO

WTO OMC

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The World Trade Organization (WTO) was established in 1995 to create a stable and predictable global trade environment.



One of the essential functions of the WTO is the dispute settlement mechanism, which is designed to ensure that trade rules are enforced fairly and effectively. This mechanism not only protects the interests of member states but also contributes to maintaining order and peace in international trade relations.

THE BODIES OF THE WTO INVOLVED IN THE DISPUTE SETTLEMENT PROCESS

The dispute settlement procedure in the WTO is carried out by various bodies, each with distinct functions, ensuring the independence of the investigation and decision-making processes in this mechanism.



Dispute Settlement Body (DSB):

This body is effectively the General Council of the WTO, comprising representatives from all member countries. The DSB has the authority to establish Panels, approve reports from Panels and the Appellate Body, oversee the implementation of decisions, and allow the suspension of obligations and concessions (retaliation). However, the DSB is merely a decision-making body and does not directly review or resolve disputes.

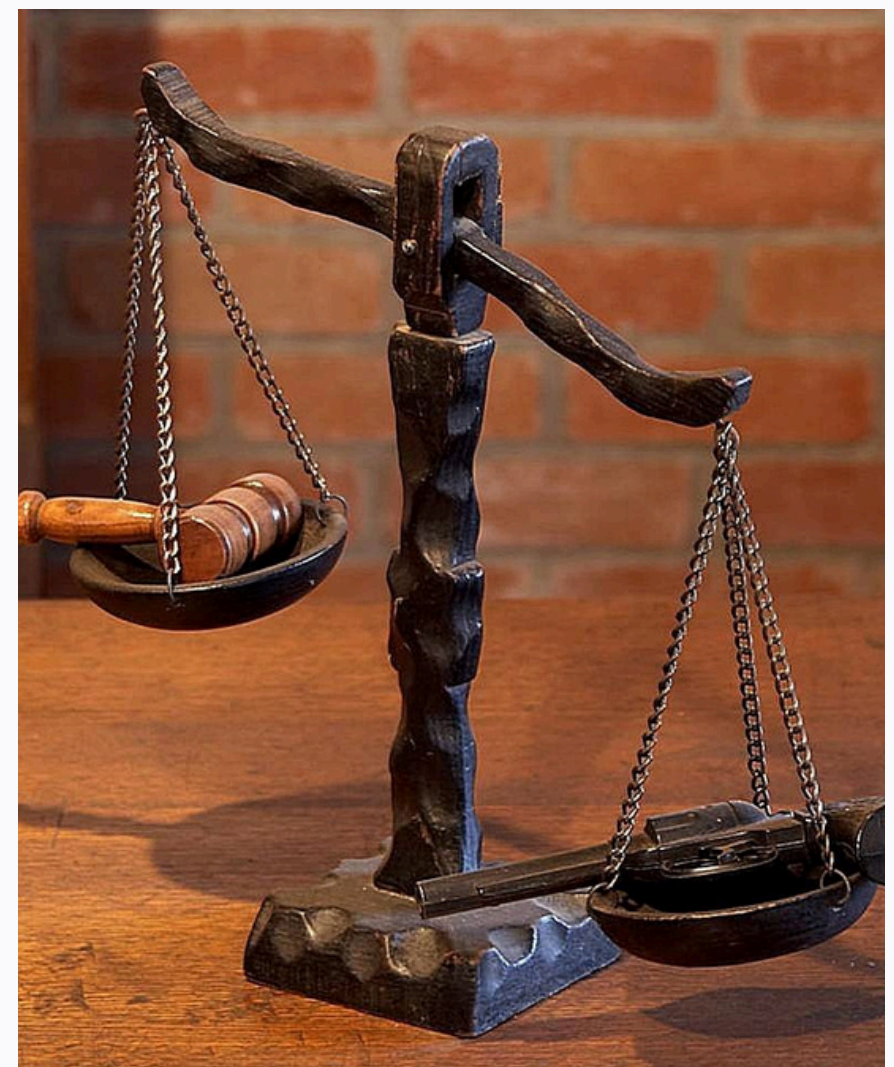


Decisions made by the DSB are *adopted by consensus*, meaning a decision can only fail to pass if all DSB members vote against it. Consequently, DSB decisions are almost always adopted automatically, making it challenging to envision a scenario where all members would vote against a decision. This principle addresses a fundamental drawback of the dispute settlement mechanism under the GATT 1947, where traditional consensus required that every decision be approved by all members, allowing any member the right to veto.

Panel:

The Panel consists of 3 to 5 members who are tasked with examining a specific disputed issue based on the WTO regulations cited by the complaining country. The outcome of the Panel's work is a report presented to the DSB for approval, assisting the DSB in providing recommendations to the disputing parties. In practice, this body directly resolves disputes, even though it does not have decision-making authority (since, under the consensus principle, all issues brought before the DSB are "automatically" approved).

Panel members are chosen from government officials or recognized non-governmental experts who do not have citizenship in a disputing party or a country that is a member of a customs union or common market with one of the disputing countries (e.g., the European Union). The Panel operates independently, free from oversight by any nation.



Appellate Body:

The Appellate Body is a new institution within the WTO's dispute settlement mechanism, allowing reports from the Panel to be reviewed upon request, ensuring the accuracy of dispute resolution reports. The establishment of this body highlights the adjudicative nature of the new dispute settlement procedure. The Appellate Body comprises 7 members appointed by the DSB for a term of 4 years (renewable once). Members of the Appellate Body are selected from among recognized experts in international law, trade, and matters covered by relevant agreements.

However, the appellate review of each case is conducted independently by only 3 Appellate Body members. In resolving disputes, the Appellate Body examines only the legal aspects and interpretations of law in the Panel's report, without re-investigating the factual elements of the dispute. The Appellate Body's working result is a report that may uphold, modify, or overturn the conclusions in the Panel's report. The report of the Appellate Body is adopted by the DSB and cannot be challenged or appealed further.



THE DISPUTE SETTLEMENT PROCESS

Consultation Stage:

Consultation:

The bilateral consultation stage is the first step in the dispute resolution process. The complaining party must send a request for consultation to the other party and notify the Dispute Settlement Body (DSB) along with relevant councils. The consulted party must respond within 10 days, and consultations must occur within 30 days, which can be shortened to 20 days in urgent cases. If after 60 days the consultations yield no results, the complaining party may request the establishment of a Panel. However, countries often prefer to resolve disputes at this stage to protect their interests and confidentiality, resulting in many disputes being resolved during the consultation phase.



Mediation, Conciliation, and Arbitration:

In addition to the consultation procedure, the Dispute Settlement Understanding (DSU) also provides for political dispute resolution methods such as mediation, conciliation, and arbitration. These methods are conducted on a voluntary and confidential basis and can be pursued anytime after the dispute arises, even after the establishment of a Panel. All parties involved in the dispute have the right to terminate these procedures, with the WTO Secretary-General taking on the role of mediator and conciliator as per Article 5 of the DSU. There are currently no provisions for individuals or organizations outside the WTO to undertake this role. The DSU encourages the use of these methods due to benefits such as saving time and money and maintaining good relations between the parties, emphasizing that seeking a reasonable solution for all parties is more important than strict adherence to trade rules in the agreement.

Panel and Appellate Stages

Establishment of a Panel:

If consultations fail to resolve the dispute, the parties proceed to the Panel stage. A request to establish a Panel must be submitted in writing to the Dispute Settlement Body (DSB), including information on the consultation process, disputed measures, and legal basis. The Panel will consist of three members, unless the parties agree to select five members within ten days. If no consensus is reached, the WTO Director-General will appoint the members within twenty days from the decision to establish the Panel, ensuring the members' expertise and independence.

Operation of the Panel:

The Panel's role is to examine the dispute based on the provisions of WTO Agreements cited by the complainant as the legal basis for the complaint, to help the DSB make appropriate recommendations or decisions for the disputing parties. This process begins when the parties submit written statements on preliminary issues raised by the respondent. If there are no preliminary issues, the Panel schedules the first hearing, during which the parties present their written submissions and arguments. This is followed by a second hearing, where the parties' representatives offer their views and answer questions from the Panel. After the second hearing, the Panel prepares a summary of the dispute content for the parties' feedback, leading to a draft report with case descriptions and conclusions. The Panel may hold additional sessions if necessary. Finally, the Panel completes its Final Report for all WTO members and the DSB.

Adoption of the Panel Report:

The Panel's report is transmitted to all WTO members and is approved by the DSB within 60 days from the date the report is sent to members unless a disputing party decides to appeal or the DSB consensus vetoes the report.

Appellate Procedure:

Disputing parties may appeal legal issues in the Panel Report (request for appellate review) through a formal written request. Upon such a request, the appellate procedure is initiated. However, the appellate review process generally must be completed within 60 days and, in all cases, must not exceed 90 days from the date a party submits the notice of appeal.





IMPLEMENTATION STAGE

Implementation:

The losing party must inform the DSB of its intentions regarding the implementation of the recommendations at a DSB meeting convened within 30 days from the adoption of the Report. If immediate implementation is not possible, the losing party may be granted additional time for compliance, defined as a “reasonable period” (this timeframe is determined by the DSB based on a proposal from the parties; or agreed upon by the disputing parties within 45 days from the adoption of the recommendations; or through an arbitration decision rendered within 90 days from the adoption of the recommendations).

Compensation and Retaliation:

If the losing party cannot implement the DSB's recommendations within a reasonable period, the winning party has the right to request negotiations with the losing party to agree on compensation. Compensation must be voluntary and consistent with the relevant agreements. If the parties cannot agree on satisfactory compensation within 20 days after the expiration of the implementation period, the winning party may request DSB authorization to impose trade sanctions against the losing party.



CONCLUSION

The dispute resolution mechanism within the WTO is a crucial component of the global trade system, not only safeguarding the rights of member countries but also contributing to the maintenance of order and peace in international trade. Although it faces certain challenges, this mechanism continues to demonstrate its value and importance in resolving trade disputes.

To ensure that this mechanism remains effective in the context of an evolving global trade landscape, countries must cooperate more closely to improve the dispute resolution process while respecting and implementing agreed-upon regulations. The sustainable development of the international trade system depends on the ability to maintain and reform the WTO's dispute resolution mechanism, protecting the rights of all member countries and fostering a fair and stable trade environment.