

MECHANISM AND PROCEDURE OF WTO DISPUTE SETTLEMENT SYSTEM

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ABSTRACT

WTO Dispute Settlement System is a judicial body constituted during the Uruguay Round of multilateral trade negotiations. The speedy and timely resolution of international trade conflicts is necessary to prevent the detrimental consequences arise due to these conflicts. This paper tries to look at mechanism and procedural aspects of WTO Dispute Settlement System to check its effectiveness to avoid retaliation among the disputant WTO member nations.

Keywords: WTO, Dispute Settlement System.

INTRODUCTION

The World Trade Organization (WTO) is an international trade organization known for its enforceable dispute resolution procedure. One of the principle functions of WTO is resolution of international trade disputes. The disputes may arise between the member nations of WTO whenever there is violation of agreement or commitment in the WTO. However, the WTO has an international mechanism to deal with these cases with the help of Dispute Settlement System(DSS).The process of DSS issues rulings on disputes over the WTO members according to their right and obligations which may subject to be reviewed by a standing Appellate Body (AB) of DSS. The decisions delivered by the AB are final and binding, respected by the parties to the disputes. Since its incorporation in 1995, the WTO DSS has resolved number of cases relating to trade disputes because of which it recognized as a ‘crown jewel’ of the world trade system.[1]

However, this dispute settlement mechanism of WTO is going through crisis because the WTOmembers are failing to update the rulebook containing the rules of dispute settlement. Also, the US officials have restricted the appointments of AB members to obligate the WTO members to negotiate the new rules. Given this background, it is pertinent to check whether, the process of WTO dispute resolution is being affected by inspite of the objective of promptness of WTO’s DSS in resolving international trade conflicts.[2]

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The WTO is an international organization regulating international trade relations between the nations. It performs two significant functions - Legislative and Judicial. The legislative function is referred to the role of the WTO as a forum to deal with trade agreements. The judicial function is performed by the dispute settlement system (DSS) and it is considered as one of the features of the current multilateral trade system. The effective functioning of the DSS of the WTO is necessary for rules-based multilateral trade as it provides certainty and predictability and prevents power based behavior. Thus, the mechanism and procedure of the DSS needs to be understood before analyzing its effectiveness.[3]

The Dispute Settlement Understanding (DSU) was established under the WTO agreement negotiated and agreed in the Uruguay Round. The DSU formulates the rules and procedure for settlement of the disputes on the application of the WTO obligations. If the consultations held among disputant parties fail to resolve a problem, the case is referred to an ad hoc dispute panel whose decision is binding upon the parties. The appeals are presented to the AB of the WTO, a standing body established by all the members of WTO act through the Dispute Settlement Body (DSB). The DSB is empowered to appoint the seven members of the WTO's AB. This multistage process of resolution of international trade disputes starts with a request for informal consultation between the aggrieved members of WTO i.e. parties to the disputes. If the consultation does not reach to resolution of dispute, then the complaining party may request the appointment of the three-member investigative panel. After getting the oral and written submissions from the parties, the panel moves on to issue its report and recommendations. The party may, further, seek AB review on panel report, but only in respect to issues of law and legal interpretations given by the panel. Appeals are heard by three of the seven members of the AB. The AB may uphold, modify or reverse the report issued by the panel. The panel or AB report must be adopted by the DSB without amendment otherwise the DSB can decide by a consensus of all the members to reject the report. The respondent may request for granting a reasonable time to comply with the recommendations of the report. The complainant may seek compensation or request authorization from the DSB to engage in retaliation upon the failure by the respondent to comply with the report.[4]

Thus, the process of WTO dispute settlement is mainly divided into three stages: (i) Consultation between the disputant parties; (ii) adjudication by panels and, if necessary, by the Appellate Body;

and (iii) the implementation of the ruling.

The DSU also provides for a parallel process of binding arbitration if both parties desire and agree to arbitrate their dispute instead of submitting it to a DSB panel. Along with this, the party may seek arbitration as a matter of right subject to an adverse decision by the DSB.

CONCLUSION

Based on the analysis, it can be concluded that the WTO DSS is effective than the previous dispute settlement mechanism provided by GATT. Despite of procedural delay occurring in some cases, DSS, the quasi-judicial system of dispute resolution has a potential to deal with difficult cases and provide assurance to the members to defend their rights effectively.

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