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THE WTO DISPUTE RESOLUTION PROCESS

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Introduction

The World Trade Organization ("WTO") deals with the global rules of trade between nations. The WTO is run by its member governments, of which there are currently 158. The WTO oversees a multilateral trading system, which operates through various agreements that have been negotiated and signed by its member governments, and ratified in their parliaments. These agreements set the legal ground-rules for international commerce. Essentially, they are contracts guaranteeing member countries important trade rights. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. Importantly, they set procedures for settling disputes.

The dispute settlement procedure

Overview

The WTO's procedure for resolving trade quarrels under the dispute settlement procedure is vital for enforcing the WTO agreements and ensuring that trade flows smoothly. WTO members have agreed that if they believe fellow-members are violating trade rules, they will not take unilateral action against the alleged violator, but will use the agreed multilateral trading system. The procedure is based on clearly defined rules, which aim to guarantee security and predictability, with time-tables for completing each dispute.

Countries bring disputes to the WTO if they think their rights under the agreements are being infringed. For example, a dispute could arise where one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations.

Judgements by specially appointed 'panels' of experts are based on interpretations of the agreements and individual countries' commitments. The panels themselves are like tribunals and are chosen in consultation with the countries in dispute (if the two sides cannot agree then the panels are appointed by the WTO director-general). Panels consist of three or possibly five experts from different countries who examine the evidence and decide who is right and who is wrong. The panel's report is then passed to the Dispute Settlement Body ("DSB"). The DSB is, in effect, a session of the General Council of the WTO: that is, all of the representatives of the WTO member governments, usually at ambassadorial level, meeting together.

The priority for the WTO is to settle disputes, rather than to pass judgment on them. Accordingly only about 35% of disputes reach the full panel process.

The procedure in action

(a) The first stage: consultation

The first stage of the dispute settlement procedure is for consultations to take place between the countries concerned. The process begins when the complaining country requests consultations with another WTO member over a particular issue. This request often follows unsuccessful efforts to resolve the dispute through bilateral diplomatic efforts.

The consultation request must identify the measures of the other member that are being challenged and provide at least some indication of the WTO provisions that the member has allegedly violated. Although most requests are made by a single member, WTO regulations do allow for complaints by multiple members. Moreover, third parties with a substantial trade interest in the dispute can request to participate in the consultations and all subsequent actions. The respondent country must respond to the request within 10 days, and must begin the consultations within 30 days. The first stage can take up to 60 days, but even when the case has progressed to other stages, consultation and mediation are always possible.

(b) The second stage: the panel

If consultations fail, the complaining country can file a request for the establishment of a dispute settlement panel. Establishing panels is one of the functions of the DSB. The country "in the dock" can block the creation of a panel once, but when the DSB meets for a second time, the appointment can no longer be blocked.

The panel's findings are turned into a report which should normally be given to the parties to the dispute within six months, and must be issued within nine months. In urgent cases, this deadline is shortened to three months.

The main stages of the panel procedure are as follows:

- **Before the first hearing:** each side in the dispute presents its case in writing to the panel.
- **First hearing:** the case for the complaining country and defence: the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.
- **Rebuttals:** the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.

- **First draft report:** the panel submits the descriptive (factual and argument) sections of its report to the parties, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report and review:** The panel then submits an interim report, including its findings and conclusions, to the parties giving them one week to ask for a review. This period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final report:** A final report is submitted to the parties and three weeks later, it is circulated to all WTO members. If the panel decides that a disputed trade measure does break a WTO agreement or an obligation, it might recommend that the measure be made to conform with WTO rules and suggest how this could be done.
- **The report becomes a ruling:** The report becomes the DSB's ruling or recommendation within 60 days unless a consensus rejects it. If a case runs its full course to a first ruling, it should not normally take more than about one year, or 15 months if the case is appealed. However, the agreed time limits are flexible, and if the case is considered urgent (for example, if perishable goods are involved), it is accelerated as much as possible.
- **Appeal:** Either side can appeal a panel's ruling. Sometimes both sides do so. Each appeal is heard by three members of a permanent seven-member appellate body which broadly represents the range of WTO membership. The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The DSB has to accept or reject the appeals report within 30 days and rejection is only possible by consensus.

(c) Implementation

The 'losing' member must inform the DSB of its intentions to implement the panel or appellate body recommendations and rulings at a DSB meeting within 30 days of the adoption of the panel or appellate body report.

Members are given a reasonable amount of time to implement the recommendations, typically either a period proposed by the member and approved by the DSB, a period mutually agreed upon by the parties, or a period determined through binding arbitration. This reasonable amount of time should not normally exceed 15 months.

Should the member fail to implement the recommendations within the agreed upon amount of time, the other member has the right to compensation. If the parties to the dispute cannot agree upon compensation, then the other member can request permission from the DSB to suspend concessions equivalent to the level of nullification or impairment, as determined by an arbitrator.

Summary: WTO Dispute Resolution Process

