



# WTO: As an Instrument of Dispute Settlement in the International Trade

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## Abstract

The World Trade Organization is a platform which is primarily responsible for the rules and regulation related to the world trade for the member nations. This research paper is an effort to measure the effectiveness of the WTO as a Dispute Settlement Body (DSB). In relation to that the first objective of the research paper is to understand the nature of the International Trade Dispute among the member nations. The second objective of the research paper is to analyze certain International Trade Disputes which were reported to the WTO. The third objective of the research paper is to find out some common features among the analyzed cases.

**Keywords:** DSB- Dispute Settlement Body, WTO, International trade .

## 1. Introduction

The disputes in the international trades are not new; it was usual even prior to the establishment of the World Trade Organization. The WTO provides a platform to the member nations to settle their dispute in the effective manner. The diversities on various aspects i.e. caste, creed, culture, norms, legal system of countries makes it impossible for countries to agree on just about something. In the mindset of such complexity, the members have agreed to settle disputes through the multilateral system of dispute settlement, rather than opting to unilaterally action. To handle the dispute a Dispute Settlement Body was established under the WTO comprising of all the members of the WTO.

The DSB establishes the panels for the effective settlement of the Dispute .These panels have experts who takes the cases for consideration, and come to the conclusion after discussing with each and every member of the panel about the acceptance or rejection of the case for further handling .The panel also monitors how well the recommendations and rulings have been implemented.

A dispute occurs, quite simply, when one country takes up a trade policy measure, or some action which is according to another member country seems to violate an existing WTO agreement. A Dispute may also occur, in the case of one member country feeling that as a consequence of an action or trade policy measure that was adopted by another country, they were being denied certain benefits from the WTO towards which they were entitled. In certain cases, a third group of member countries might choose to announce their interest in case in consideration due to which they may enjoy certain rights being Third Parties.

The Dispute Settlement structure of the WTO that existing today has not come out in one day it has evolved gradually. Prior to this DSB a system was existing with the General Agreement on Trade and Tariffs , However the dispute settlement system Under GATT could be described to be premature at best, as there were no fixed timetables, a ruling could be block quite easily, and it just takes a

long time for handling the pending cases. The biggest and perhaps most important update with the WTO's Dispute Settlement Mechanism is the persistence of being punctual. The Present DSB has a detailed processes and methods to function and to make dispute settlement more effective. The maximum period of time prescribed in DSB is 15 months. But this time may be reasonably less in case of it has the involvement of perishable items.

Previously, under the GATT system of settling such cases, the ruling that was decided need to be passed by everyone. Which means was that even if the country against whom the complaint was launched would deny the ruling, it would be over-ruled. Now, things are the opposite. Any ruling is by default passed, and for it to be over-ruled, requires voting by all other parties. It is seen that most countries tend to prefer settling disputes by them. And in fact, there is a 60 day period wherein both countries must discuss the issue between themselves first, before raising formal consultations.

**Table 1.** Dispute Settlement Timeline (Source: [http://www.commercialdiplomacy.org/manuals/wto\\_dispute.htm](http://www.commercialdiplomacy.org/manuals/wto_dispute.htm))

### Dispute Settlement Time Line

The approximate periods for each stage of a dispute settlement procedure are target figures and can be extended somewhat. In addition, the countries can settle their dispute themselves at any stage. Totals for each stage are approximate.

60 days	Consultations, mediation, etc
45 days	Panel established by DSU and appointment of panelists
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
<b>Total = 1 year</b>	<b>(without appeal)</b>
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
<b>Total = 1 year</b>	<b>(with appeal)</b>
3 months	

The WTO has several classifications of the status and the country-wise status of cases that have been filed as part of the Dispute Settlement process.

**Table 2. Indian Cases**

INDIA	As a Complainant	As a Respondent	As a Third Party
<b>Number of Cases:</b>	21	23	113

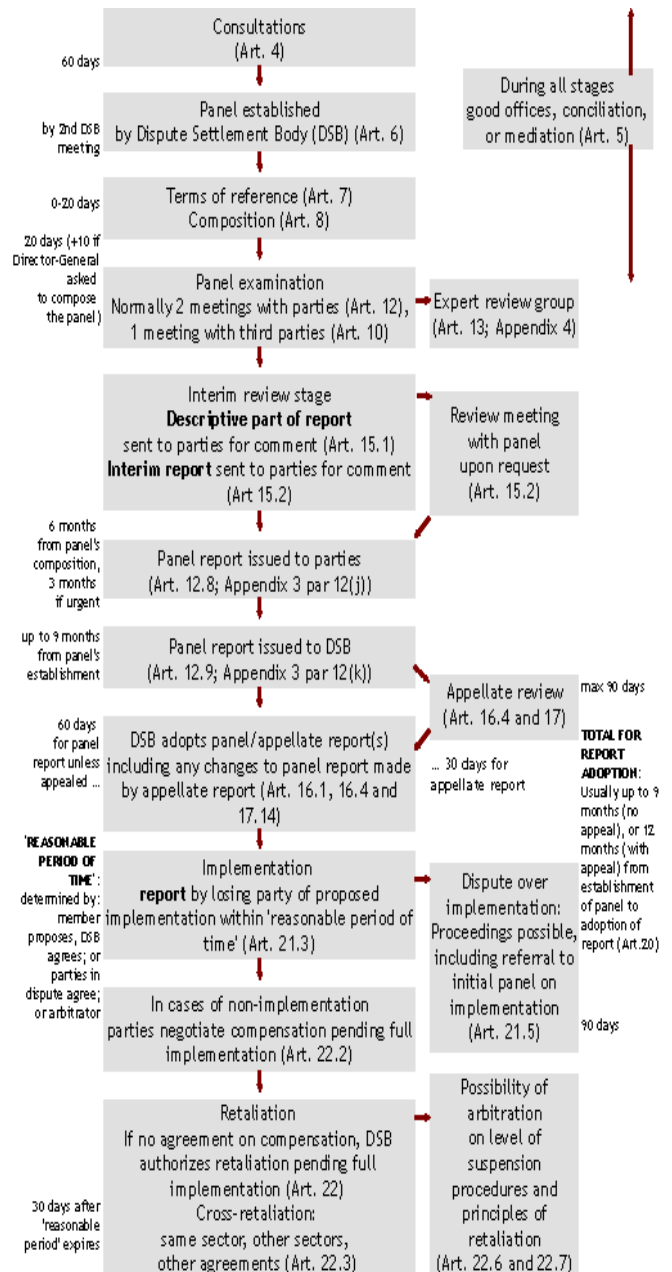
And for India, the number of cases sits at a healthy status, with overall good relationships that have been maintained.

**Table 3. All WTO Dispute Settlement cases with their current status** (Source: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_current\\_status\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_current_status_e.htm))

Current Status	Number of cases	Percentage
In consultations	146	0.29
Panel established, but not yet composed	28	0.06
Panel composed	20	0.04
Panel report circulated	1	0.0
Panel report under appeal	0	0.0
Appellate Body report circulate	2	0.0
Report(s) adopted, no further action required	28	0.06
Report(s) adopted, with recommendation to bring measure(s) into conformity	34	0.07
Implementation notified by respondent	91	0.18
Mutually acceptable solution on implementation notified	23	0.05
Compliance proceedings ongoing	4	0.01
Compliance proceedings completed without finding of non-compliance	2	0.0
Compliance proceedings completed with finding(s) of non-compliance	6	0.01
Authorization to retaliate requested (including 22.6 arbitration)	4	0.01
Authorization to retaliate granted	4	0.01
Authority for panel lapsed	11	0.02
Settled or terminated (withdrawn or mutually agreed solution)	94	0.19
<b>TOTAL</b>	<b>498</b>	<b>100%</b>

Although the Dispute Settlement process was started as a way to solve international trade conflicts, issues, and matters on a swift level with greater unity, such processes have not been settled as fast as was promised.

Martin Khor, has argued that there is a great disparity of the fairness shown towards richer countries and multinational corporations, through which decisions can be swayed. He has further argued that the developing countries are not standing to benefit as greatly as the developed countries have been able to, from the WTO. Such issues take time through dispute settlement. Further, decision making is halted on a regular basis due to the variety of differing opinions that participants hold. Most of the criticism, including the issues arising from labor and environment related matters, happens to arise due to flaws present in the WTO system in itself, which extends to the Dispute Settlement process.



**Fig. 1. Process or Stages in a typical WTO Dispute Settlement Case** (Source: [https://www.wto.org/english/tratop\\_e/dispu\\_e/disp\\_settlement\\_cbt\\_e/c6s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s1p1_e.htm))

## 2. Various Dispute Cases

### 2.1 Case I:

Canada vs. South Korea – Dispute over ban on Canadian beef by South Korea.

On the 9<sup>th</sup> of April, 2009, Consultations with Korea were requested by Canada regarding actions taken which affected the import of meat products and bovine meat from Canada. Canada disputed that such restrictions were put in place since the month of May, 2003. Korea argued that this prohibition was intended to protect against BSE (bovine spongiform encephalopathy) risks.

The Dispute Settlement Board established a panel on 31<sup>st</sup> of August, 2009: the European Union, Japan, Brazil, Chinese Taipei, the United States, China, and Argentina. The panel was expected to issue the final report of their findings before the 31<sup>st</sup> of August, 2011. By 28<sup>th</sup> June, 2011, however, Canada had put forth its request to suspend the proceedings, until otherwise requested, as by the 1<sup>st</sup> of July, 2011, Korea had agreed towards Canada's request.

The Dispute Settlement Body was notified by 19<sup>th</sup> June, 2012, that a solution had been reached through mutual consensus. Korea and Canada was also being urged to continue talks for a 'Free Trade Agreement' between the nations. The ban has lifted reasonably well in the light of U.S. beef receiving a slight subsidy, which can be countered once the Free Trade Agreement between Canada and Korea is established.

**Table 4.** Canada vs. South Korea: Facts (Source: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds391\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds391_e.htm))

Short title:	Korea – Bovine Meat (Canada)
Complainant:	Canada
Respondent:	Korea, Republic of
Third Parties:	Argentina; Brazil; India; China; European Communities; Japan; Chinese Taipei; United States
Agreements cited: (as cited in request for consultations)	GATT 1994: Art. I:1, III:4, XI:1 Sanitary and Phytosanitary Measures (SPS): Art. 2.2, 2.3, 3.1, 3.3, 5.1, 5.5, 5.6, 5.7, 6.1, 8, Annex C
Request for Consultations received:	9 April 2009
Mutually Agreed Solution notified:	19 June 2012
Panel Report circulated:	3 July 2012

## 2.2 Case II:

India Vs. United States –Dispute over Agricultural Restrictions placed by India on the United States.

**Table 5.** India vs. United States (Source:[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds430\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm))

Short title:	India – Agricultural Products
Complainant:	United States
Respondent:	India
Third Parties:	China; Colombia; Ecuador; European Union; Guatemala; Japan; Viet Nam; Argentina; Australia; Brazil
Agreements cited: (as cited in request for consultations)	Sanitary and Phytosanitary Measures (SPS): Art. 2, 2.2, 2.3, 3.1, 5, 5.1, 5.2, 5.5, 5.6, 5.7, 6, 6.1, 6.2, 7, Annex B GATT 1994: Art. I, XI
Request for Consultations received:	6 March 2012
Panel Report circulated:	14 October 2014
Appellate Body Report circulated:	4 June 2015

On the 6<sup>th</sup> of March, 2012, the United States requested consultations with India when the latter issued a ban on the import of poultry products from the United States over fear of the spread of Avian Influenza, and such action was taken under the Indian Live-stock Importation Act, 1898. By 15<sup>th</sup> March, Colombia had put forth a request to join in on the consultation. Subsequently, the European Union, Australia, China, Japan, Ecuador, Guatemala, Vietnam, Argentina, and Brazil subsequently had joined the dispute, as third parties.

It was found by the panel, in its findings, that the measures taken up by India were not decided by an international standard that was relevant, or even via assessment by scientific risk. The panel further found that the measures were thus not consistent with several provisions from the Sanitary and Phytosanitary (SPS) Agreement. The panel had consulted with experts and international organizations. The interpretation of the OIE Terrestrial Code and AI surveillance regimes (concerning the domestic measures and situation of disease for India) was assessed hence. The panel found it redundant to consider alternative claims by the US, as India's measures had been found to be inconsistent the first time around. And as of 13<sup>th</sup> July, 2015, India had requested for a shortwhile to implement the rulings and to remove the restrictions that it had placed (these imports would grant a 300 Million USD boost to American poultry exports).

## 2.3 Case III:

Canada vs. European Union  
Certain Measures Prohibiting the Importation and Marketing of Seal Products

**Table 6.** Canada vs. European Union (Source: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds369\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds369_e.htm))

Short title:	EC – Seal Products II
Complainant:	Canada
Respondent:	European Communities
Third Parties:	Argentina; China; Colombia; Ecuador; Japan; Mexico; Norway; United States
Agreements cited: (as cited in request for consultations)	GATT 1994: Art. I:1, III:4, V:2, V:3(a), V:4, XI:1, XXIII:1(b), V:3 Technical Barriers to Trade (TBT): Art. 2.1, 2.2
Request for Consultations received:	25 September 2007

This incident started from 25<sup>th</sup> September, 2007 when Canada had requested for consultations with the European Communities' delegation over some actions that were adopted by the Netherlands and Belgium that had affected the sale, marketing, manufacturing, transportation, and importation of seal products. The two delegations did talk it out on the 14<sup>th</sup> November, 2007 but were unable to settle the dispute amongst them. A panel was requested by Canada to the Dispute Settlement Body, so as to take into view these matters, while mentioning these topics directly:

- A. The Belgian Trade Ban
- B. Import Licensing Requirement of Belgium
- C. The Dutch Flora and Fauna Act [Articles: 5 and 13](Dutch Trade Ban)

The trade ban by Belgium prohibited the transfer and distribution, importation, possession for the purpose of sale, transport for sale or delivery, preparation for sale, delivery to customers seal products, and additionally the issuance of an import license fee towards importing these seal products' the Dutch side of things, disregarding age of the animals, a prohibition was imposed on the harp seal and hooked seal importation, or trade for that matter.

Canada listed out the provisions that it felt were being violated under the GATT 1994 as well as the TBT Agreement, and pushed for these matters to be taken up by the meeting of the DSB that was to be held on 24<sup>th</sup> February, 2011. The meeting was held on 25<sup>th</sup> March, 2011 and United States, Japan, China, Colombia, Mexico, Norway, Argentina, and Ecuador became the third parties

associated. The 1<sup>st</sup> December, 2014 marked the day when Canada terminated the panel, and withdrew formally the complaint it imposed, as the measures had been repealed.

### 3. Conclusion

In Canada Vs. South Korea – Dispute over ban on Canadian beef by South Korea. The Dispute Settlement Body was notified by 19<sup>th</sup> June, 2012, that a solution had been reached through mutual consensus. Korea and Canada was also being urged to continue talks for a ‘Free Trade Agreement’ between the nations. The ban has lifted reasonably well in the light of U.S. beef receiving a slight subsidy, which can be countered once the Free Trade Agreement between Canada and Korea is established.

In the other case India vs. United States – Dispute over Agricultural Restrictions placed by India on the United States The panel found it redundant to consider alternative claims by the US, as India’s measures had been found to be inconsistent the first time around. And as of 13<sup>th</sup> July, 2015, India had requested for a short while to implement the rulings and to remove the restrictions that it had placed (these imports would grant a 300 Million USD boost to American poultry exports).while in the last case Canada vs. European Union The 1<sup>st</sup> December, 2014 marked the day when Canada terminated the panel, and withdrew formally the complaint it imposed, as the measures had been repealed.

So in the dispute settlement which is of international nature under WTO has used different approach with different cases. So in international Law no one approach may work out while solving the disputes but the importance of general principles ,dispute settlement clause, interpretation of the body are some common features which may not be ignored in this perspective.

### References

- [1] Bown, C. P., & Hoekman, B. M. (2005), WTO dispute settlement and the missing developing country cases: engaging the private sector. *Journal of International Economic Law* 8, 861-890..
- [2] Bronckers, M., & Van den Broek, N. (2005), Financial compensation in the WTO: improving the remedies of WTO dispute settlement. *Journal of International Economic Law* 8, 101-126.
- [3] Davey, W. J. (2005), The WTO dispute settlement system: the first ten years. *Journal of International Economic Law* 8, 17-50.
- [4] Hoekman, B. M., & Mavroidis, P. C. (2000). WTO dispute settlement, transparency and surveillance. *The World Economy* 23, 527-542.
- [5] Jackson, J. H., Hudec, R. E., & Davis, D. (2000, January). The Role and Effectiveness of the WTO Dispute Settlement Mechanism [with Comments and Discussion]. In Brookings Trade Forum (pp. 179-236). Brookings Institution Press.
- [6] Jackson, J. H. (1997). The WTO Dispute Settlement Understanding—Misunderstandings on the Nature of Legal Obligation. *American Journal of International Law* 91, 60-64.
- [7] Canada formally drops WTO beef dispute with Korea, Available at: <http://www.agcanada.com/daily/canada-formally-drops-wto-beef-dispute-with-korea>
- [8] Basu, N. (2015), India loses poultry import case to US in WTO. Available at: [http://www.business-standard.com/article/economy-policy/india-loses-poultry-import-case-to-us-in-wto-115060500044\\_1.html](http://www.business-standard.com/article/economy-policy/india-loses-poultry-import-case-to-us-in-wto-115060500044_1.html)