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WTO Dispute Settlement Body: A Critically Analysis from Indian Perspective

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ABSTRACT

A country's economy is largely dependent on trade and business activities both inside and outside of its borders. Jurisprudence on trade during the classical era had held that there should be no limitations and no state should regulate issues associated with trade. However, during the industrial revolution, most countries realized that trade between two people had an impact on the country's overall income and should therefore be governed by both domestic legislation and trans-nationalorganizations.The understanding on Rules and Procedures Overseeing the Settlement of Disputescame into effect on January 1, 1995. The multilateral trading system has been dealing with hitherto unseen difficulties on several fronts. A wide range of reasons is contributing to the trade and tariff war's escalation, which is departing from the accepted rules of trade. These include the USA and China's growing economic competition, the rise in protectionist policies, and the impasse between rich and developing nations over the direction of trade talks. The paper first gives a brief description of the DSS process. It also provides a broad, statistical overview of India's disputes and analyses the trade.As has been noted above, India is among the most active developing country users of the WTO dispute settlement system.

***Keywords**: DSU, WTO, International Trade.*

I. INTRODUCTION

The economy of a nation depends heavily on the trade and commercial activities within and outside its jurisdiction. Jurisprudence of trade in the classical era was that there should be no restriction and there was no state to control the affairs over trade. But with the industrial revolution, it was felt by majority nations that the trade between two individuals has consequence in the income of the nation as whole and needs to be regulated with their own laws and external agencies. Trade between two individuals belonging to the same nation can be regulated by the law of that nation. But with regard the commercial transactions between nations, there was no uniform mechanism or body to systemize international trade, particularly

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when it comes to a dispute between the parties or states. Immediately after the World War II, negotiations between large counts of nation were initiated in the year 1944 at Bretton Woods to form a body and treaty to coordinate international trade and successfully concluded with the preparation of multilateral treaty with the General Agreement on Tariffs and Trade in the Geneva meetings, 1947 and the GATT provisionally came into effect from January 1, 1948.At the same time the attempt to establish an international body called International Trade Organization was completed with the charter but failed to exist as it was not adopted by the United States of America's congress which was an important arm intended in creating such an international body. From then, GATT was the only international instrument administering international trade until 1995 when World Trade Organization was established

On 1 January 1995, the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) entered into force.Since 1998, negotiations to review and reform the DSU have taken place ('DSU review'), without however yielding any result so far. This study is proposed to present the negotiations and the individual reform proposals in their broader context. Moreover, it is aimed at offering a critical analysis of the DSU.

II. DISPUTE SETTLEMENT BODY AND ITS STRUCTURE

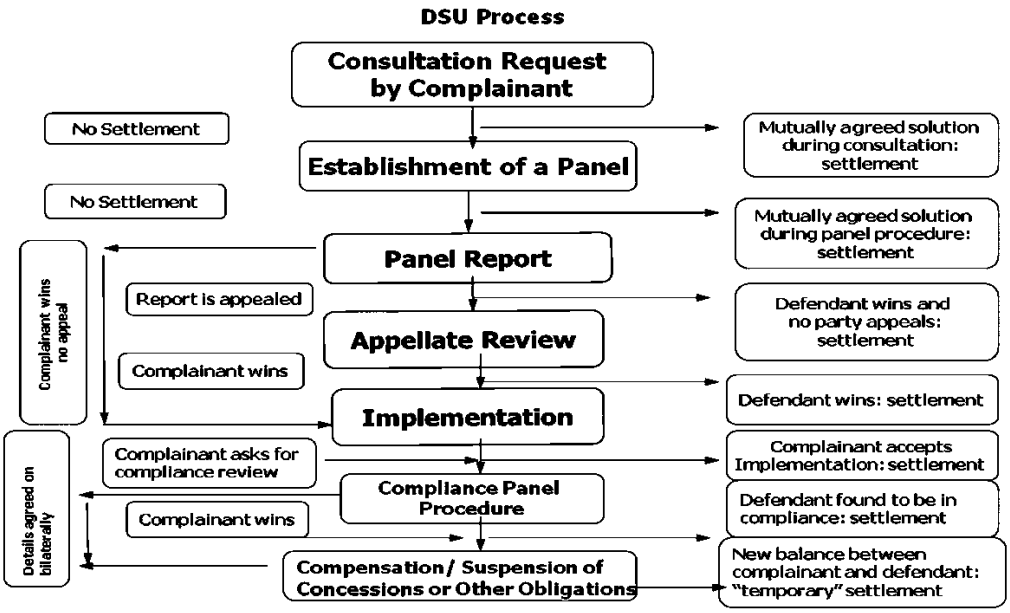
In 1994, the WTO members agreed on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) annexed to the "Final Act" signed in Marrakesh in 1994[3]. Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system, and as a "unique contribution to the stability of the global economy"[4]WTO members have agreed that, if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of acting unilaterally.The operation of the WTO dispute settlement process involves the DSB panels, the Appellate Body, the WTO Secretariat, arbitrators, independent experts, and several specialized institutions. Bodies involved in the dispute settlement process, World Trade Organization.If a member state considers that a measure adopted by another member state has deprived it of a benefit accruing to it fewer than one of the covered agreements, it may call for consultations with the other member state[5]. If consultations fail to resolve the dispute within 60 days after receipt of the request for consultations, the complainant state may request the establishment of a Panel. It is

[3]Stewart,The Broken Multilateral Trade Dispute System available at https://www.law.berkeley.edu/wp-content/uploads/2018/01/Terence-P.-Stewart-Asia-Society-Paper-re-dispute-settlement-WEB-VERSION-1.pdf (Last Visited on May 13,2024)

[4] Speech WTO at 10 available at https://www.wto.org/english/news_e/spsp_e/spsp_e.htm (Last visited on May 13,2024)

[5]Andreas F. Lowenfeld, *International Economic Law (*Oxford University Press,GreatClardon Street)

not possible for the respondent state to prevent or delay the establishment of a Panel, unless the DSB by consensus decides otherwise[6]. The panel, normally consisting of three members appointed ad hoc by the Secretariat, sits to receive written and oral submissions of the parties, on the basis of which it is expected to make findings and conclusions for presentation to the DSB. The proceedings are confidential, and even when private parties are directly concerned, they are not permitted to attend or make submissions separate from those of the state in question.The final version of the panel's report is distributed first to the parties; two weeks later it is circulated to all the members of the WTO. In sharp contrast with other systems, the report is required to be adopted at a meeting of the DSB within 60 days of its circulation, unless the DSB by consensus decides not to adopt the report or a party to the dispute gives notice of its intention to appeal.A party may appeal a panel report to the standing Appellate Body, but only on issues of law and legal interpretations developed by the panel. Each appeal is heard by three members of the permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They must be individuals with recognized standing in the field of law and international trade, not affiliated with any government. The Appellate Body may 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[7]. The possibility for appeal makes the WTO dispute resolution system unique among the judicial processes of dispute settlement in general Public International law.



[6] Article 6.1,WTO Dispute Settlement Understanding *available* at https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (Last visited on May,14,2024)

[7] Article 17,WTO Dispute Settlement Understanding *available* at https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (Last visited on May,14,2024)

Only WTO Member governments have direct access to the dispute settlement system either as parties or as third parties. In addition, the entire procedure is confidential, which covers the consultations[8]the panel procedure until the circulation of the report, and the proceedings of the Appellate Body[9]. It is true that Members may make use of their right to disclose their own submissions to the public[10].

III. DEVELOPING COUNTRIES AND WTO DISPUTE SETTLEMENT

It is generally agreed that the very existence of a compulsory multilateral dispute settlement system is itself a particular benefit for developing countries and small Members. Such a system, to which all Members have equal access and in which decisions are made on the basis of rules rather than on the basis of economic power, empowers developing countries and smaller economies by placing "the weak" on a more equal footing with "the strong". In this sense, any judicial law enforcement system benefits the weak more than the strong because the strong would always have other means to defend and impose their interests in the absence of a law enforcement system. Such a view has been challenged by some as being overly formal and theoretical.On the other hand, it is true that in most WTO disputes so far, the complainant has been a developed country Member, and the same is true as far as respondents are concerned. The majority of WTO Members are developing countries; one could conclude that the developed countries make a disproportionate use of the dispute settlement system.

Special and differential treatment[11] takes a different form in the DSU than in the other covered agreements, which contain the substantive rules governing international trade. The DSU recognizes the special situation of developing and least-developed country Members by making available to them, for example, additional or privileged procedures and legal assistance. Developing countries may choose a faster procedure, request longer time-limits, or request legal assistance. WTO Members are encouraged to give special consideration to the situation of developing country Members. These rules will be specifically addressed below. Some are applied very frequently, but others have not yet had any practical relevance.At the stage of implementation, the DSU mandates that particular attention be paid to matters affecting the interests of developing country Members. This provision has already been applied repeatedly

[8]Article 4.6,WTO Dispute Settlement Understanding *available* athttps://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (Last visited on May,14,2024),

[9]Article 17.10, WTO Dispute Settlement Understanding *available* ahttps://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (Last visited on May,14,2024),

[10] Article 18.2, WTO Dispute Settlement Understanding *available* ahttps://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (Last visited on May,14,2024),

[11]"Special and differential treatment" is a technical term used throughout the WTO Agreement to designatethose provisions that is applicable only to developing country Members.

by arbitrators acting under the DSU[12] in their determination of the reasonable period for implementation. One arbitrator has, relying on of the DSU, explicitly granted an additional period of six months for implementation in the circumstances of the case[13].All the above rules of special and differential treatment apply to least-developed country Members, which are included in the group of developing country Members. In addition, the DSU sets out a few particular rules applicable only to least developed country Members.

The WTO Secretariat assists all Members in respect of dispute settlement at their request, but it provides additional legal advice and assistance to developing country Members. To this end, the Secretariat is required to make available a qualified legal expert from theWTO technical cooperation services to any developing country member which so requests.

IV. WTO: DISPUTE SETTLEMENT MECHANISM WITH SPECIAL REFERENCE TO INDIA

India has been a founding member of both General Agreement on Tariffs and Trade (GATT) and WTO and is strictly adhering to WTO rules while conducting international trade. When most of the developing countries were diffident to approach *Dispute Settlement Body* (DSB) to ascertain their rights due to the huge expenses involved and lack of technical and related competence, India from the beginning was an active user of the DSU at both the GATT and the WTO. As a founding member of the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT), India closely complies with WTO regulations when conducting business internationally. India was an early adopter of the DSU at the GATT and WTO, but other poor nations were hesitant to approach the Dispute Settlement Body (DSB) to determine their rights because of the significant costs involved and a lack of technical and associated skills.India frequently used the GATT dispute resolution process. It got started in 1948 (India - Tax rebates on exports[14]) and brought its first protest against Pakistan in 1952 regarding export fees on jute[15]. But in the subsequent instance, the contracting parties' chairman was able to persuade the parties to agree on a framework for negotiations, which resulted in the 1953 signature of a long-term agreement on jute shipments to India.India has been an active participant in the WTO DSM as complainant in 21 cases and as respondent in 22 cases.A few disputes have also led to landmark decisions. For instance, the ***US-Shrimp***[16], which was

[12]Article 21.3(c)WTO Dispute Settlement Understanding *available* ahttps://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (Last visited on May,14,2024),
[13]Award of the Arbitrator, *Indonesia – Autos (Article 21.3)*, Para. 24
[14]GATT/CP.2/SR.11
[15](GATT/L/41)
[16] DS58

brought by India, Malaysia, Pakistan, and Thailand in 1996 ultimately turned out to become one of the most important cases in WTO jurisprudence. India and other complainants had challenged the US law that prohibited the import of shrimp unless the shrimp exporting country obtained a US certification that the shrimp was harvested with sea turtle-friendly devices. The appellate body (AB) held that the US law fell within the purview of the environmental exception of GATT Article XX(g), but that the manner in which the law was applied constituted a means of arbitrary and unjustifiable discrimination within the meaning of the chapeau of Article XX. This decision recognized for the first time in GATT or WTO history that environmental protection is one of the objectives of the world trading system and marked a viable path for balancing trade interests with environmental concerns within the WTO legal framework.Another landmark case brought by India is ***EC-Tariff Preferences***[17]. This dispute between India and the EC stemmed from an EC Regulation which awarded tariff preferences to a closed group of 12 beneficiary countries (11 Latin American countries and Pakistan) on the condition that they combat illicit drug production. India brought the claim alleging that the Drug Arrangements were inconsistent with GATT Article I:13 and unjustified by the enabling clause.The AB found that the drug arrangements regime followed by the EC was inconsistent with the enabling clause because it does not clearly set out the objective criterion that, if met, would allow a developing country to be included by the drug panel in the list of beneficiaries that are affected by the problem. This lack of objective criterion, clearly identified by the drug arrangements Programme pursued by the EC made the AB finally conclude that the drug arrangements program of the EC was inconsistent with the enabling clause. Recently India solved 7 cases bilaterally with United state of America.The settlement of all the disagreements demonstrates India's new strategy for handling trade disputes as well as the expansion of commercial relations between the two countries. Furthermore, India's biggest trading partner is the United States. From $119.5 billion in the previous fiscal year to $128.8 billion in 2022–2023—goods commerce between the two nations grew.

V. CONCLUSION

Over the years, India’s involvement in the DSS as a direct party has been increased, 2019 being the highest in the recent years. However, despite facing issues, India, as a responsible member state, is all set to initiate the process of DSS reforms through negotiations, diplomacy and engagement with all stakeholders. At the same time, it is expected that, it shall ensure that the interests of developing countries and LDCs are not compromised and the DSS as an institution

[17] DS246

retains its original purpose, which is to provide stability and security to the multilateral trading system.

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