Dispute Settlement in the WTO

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Abstract

The WTO dispute settlement represents a significant improvement compared to the dispute settlement system under GATT 1947, but is still considered as his successor. The mechanism under GATT 1947 had many weaknesses which resulted to the need of reform. The procedure under GATT 1947 was not contradictory and all members of the Dispute Settlement Body (DSB) were entitled to use the veto right when adopting the reports. The contracting parties were conscious of such weaknesses and they have agreed on a new dispute settlement system during the Uruguay round. The Dispute Settlement Understanding (DSU) is part of the Agreement Establishing the World Trade Organization. The new system remains inter-state mechanism and as a consequence, available only to the Member States, excluding individuals and business operators. The dispute settlement under WTO has become compulsory while leaving each member the choice between this standard procedure and other dispute modes, such as Good Offices, Conciliation, Mediation and Arbitration. The dispute settlement system has been unified and has become more judicial. It excludes national jurisdictions and means strengthening the multilateralism.

The dispute settlement is administrated by the Dispute Settlement Body, composed of all WTO members. The DSB itself doesn´t solve the disputes but is responsible for adoption of the panel or appellate body reports. Compared to the GATT system, the report adoption is made by a negative consensus which leads to almost automatic adoptions. Another innovation is the creation of a permanent Appellate body, whose aim is to review the legal aspects of the reports issued by panels.

The first stages of the dispute settlement are bilateral consultations. They are initiated by a complaining member, considering that a benefit accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another member. During this stage, parties are trying to find a mutually agreed solution and/or to define the scope of the dispute to arise. If the mutually agreed solution hasn´t been found, an ad hoc panel is established. Its aim is to review the legal and factual aspects of the dispute and issue a report containing findings, conclusions and recommendations. Such report is submitted to the DSB in order to be adopted.

Another stage of the dispute settlement process might be an appellate review, dealing only with the legal aspects. In that case, the DSB adopts the report issued and submitted by an appellate body.

The decisions and recommendations adopted by DSB are now compulsory for the member states concerned and they must be implemented by the losing party within a reasonable period of time. Otherwise, the complaining member may be entitled to negotiate compensation or seek a permission to impose a countermeasure.

The DSU provides special and differential treatment in favor of developing and least-developed countries. Nowadays, such countries don´t hesitate to use the WTO dispute settlement process even against economically strong members. Nevertheless, the process remains very expensive and complicated and therefore inaccessible to these relatively poor countries.

The WTO dispute settlement has been successful and satisfactory. However, a lot of weaknesses remain. Panels are not necessarily composed of lawyers; the procedure is lengthy, expensive and not available to non state operators.

In addition, WTO faces a multilateralism crisis that benefits to bilateral negotiations. The WTO dispute settlement reform has been proposed since the adoption of the DSU. However, the system has not so far been changed. It seems that the members are more or less satisfied with the current system or they may simply be trying to avoid any radical changes.