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**AN ANALYSIS OF THE DISPUTE SETTLEMENT BODY OF THE
WORLD TRADE ORGANISATION**- Abhishek Saad¹**ABSTRACT**

A crucial part of the World Trade Organization (WTO) is the Dispute Settlement Board (DSB), which is in charge of resolving conflicts between member nations. The history, operation, and critiques of the DSB are all thoroughly examined in this article. It also examines current events and difficulties the DSB is facing, such as the effects of the United States' obstruction of nominations to the appellate body and the necessity of reforming the dispute resolution process. The paper emphasises the significance of researching the DSB and its effects on global trade and comes to the conclusion that, despite its difficulties, the DSB is still an essential tool for advancing a system of rules-based global commerce.

INTRODUCTION

The World Trade Organization (WTO) is an intergovernmental body founded in 1995 with the goal of fostering global commerce and economic cooperation among its member nations. Concerning member states' adherence to WTO rules and regulations, disagreements between them are settled by the Dispute Settlement Board (DSB) of the WTO.

The WTO website states that the DSB is made up of all WTO members and is in charge of overseeing the WTO's dispute resolution procedure. All decisions made throughout the dispute resolution process must be implemented under the supervision of the DSB.

The WTO is a worldwide organisation that aims to advance trade by adopting policies that support open markets and free commerce. The WTO acts as a platform for member nations to bargain over trade agreements and settle disagreements over how to put them into effect.

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The WTO's enforcement of the laws and rules regulating international commerce is one of its primary responsibilities. A member state may file a complaint with the DSB when it thinks another member state has broken WTO rules and regulations. The DSB then serves as a de facto court, presiding over the dispute resolution procedure and rendering decisions.

The DSB's dispute resolution procedure is intended to be fair and unbiased, with each step giving member states a chance to submit their cases and supporting documentation. The procedure consists of a number of steps, such as discussions between the parties, the creation of a panel to examine the matter, the publication of a panel report, and the possibility of an appeal to the Appellate Board.

The DSB has come under fire recently despite its significance in fostering global commerce. Several detractors claim that the dispute resolution procedure is overly drawn out and that the Appellate Board has occasionally overstepped its bounds. The United States has also prevented nominations to the Appellate Body, which has made it harder for the DSB to settle disagreements. In response to these challenges, there have been calls for reform of the DSB. Some proposals include changes to the dispute settlement process, such as shortening the timeline for the resolution of disputes, as well as changes to the composition and authority of the Appellate Body.

Overall, the DSB remains an essential component of the WTO, providing member states with a mechanism for resolving disputes related to international trade. However, as the challenges facing the DSB continue to mount, it remains to be seen how the WTO will respond to ensure the continued effectiveness of its dispute settlement process.

IMPORTANCE OF STUDYING THE DSB AND ITS IMPACT ON INTERNATIONAL TRADE

Studying the DSB and its impact on international trade is essential for several reasons.

First, the DSB plays a critical role in promoting and enforcing the rules and regulations governing international trade. By providing a mechanism for resolving disputes between

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member states, the DSB helps ensure that trade flows smoothly and efficiently, which is essential for promoting economic growth and development.²

Second, the decisions and rulings of the DSB have a significant impact on international trade. The DSB has the authority to issue binding rulings on member states, which can have far-reaching consequences for trade relations between countries. As such, understanding the DSB's decision-making process and its impact on international trade is essential for policymakers, businesses, and other stakeholders.³

Third, the DSB is a key institution within the WTO, which is one of the most important international organizations governing trade and commerce. As such, studying the DSB can provide insights into how international organizations function, how they make decisions, and how they impact the global economy.⁴

Finally, the DSB is facing a number of challenges and criticisms, which highlight the need for ongoing study and analysis. By understanding the challenges facing the DSB and the potential solutions to these challenges, policymakers and stakeholders can work to strengthen the dispute settlement system and ensure that it remains an effective mechanism for promoting international trade.⁵

HISTORY OF THE DISPUTE SETTLEMENT BODY

The World Trade Organization (WTO) was founded in 1995 to replace the General Agreement on Tariffs and Trade (GATT). The WTO, which was established with the objectives of promoting free trade and removing barriers to international commerce, has 164 member countries.

The WTO's dispute resolution mechanism was built around the establishment of the Dispute Settlement Board (DSB). The DSB is in charge of directing the settlement of disagreements

²World Trade Organization.. Dispute Settlement: Understanding the WTO's Dispute Settlement System.https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

³Horn, H., Mavroidis, P. C., & Sapir, A. (Eds.). (2010). WTO dispute settlement at twenty: insiders' reflections on India's participation.

⁴Hoekman, B., & Mavroidis, P. C. (2016). The WTO at twenty: academic reflections.

⁵Van den Bossche, P. (2018). The Law and Policy of the World Trade Organization: Text, Cases and Materials.

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between WTO member states concerning their adherence to WTO rules and regulations. Each WTO member state is represented on the DSB, which convenes often to hear complaints.⁶

It is the responsibility of the DSB to oversee the resolution of disputes between WTO members regarding their conformity to WTO rules and standards. The parties to the issue should speak with one another as the initial stage in the conflict settlement process. The complaining party may next request the establishment of a panel to review the matter if these negotiations fail to resolve the disagreement. After that, the panel presents a report that the Appellate Board can review and question. The parties concerned must abide by the Appellate Board's final judgement on the matter.⁷

EVOLUTION OF THE DISPUTE SETTLEMENT BODY

The dispute resolution process underwent a number of modifications in the early years of the WTO, including the creation of a permanent Appellate Board and the adoption of a new set of guidelines and procedures. These modifications improved the efficiency and streamlined the dispute resolution procedure (Van den Bossche, 2018).

The volume and complexity of disputes filed before the DSB have significantly increased over time. The increase of the WTO's membership, the complexity of international trade regulations, and the emergence of developing economies as significant trading nations have all contributed to this. As a result, the DSB's workload has greatly grown, and issues have been raised regarding the system's capacity to manage the volume and complexity of disputes.

The efficacy of the dispute resolution system has faced a number of obstacles in recent years, including worries about how the Appellate Body operates and the politicisation of the dispute resolution procedure. To address these issues, reform suggestions have been made, including the creation of a new Appellate Body and new conflict resolution processes.

FUNCTIONING OF THE DISPUTE SETTLEMENT BODY

⁶World Trade Organization. About the WTO. Retrieved from https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

⁷World Trade Organization. (2021b). Dispute Settlement: Understanding the WTO's Dispute Settlement https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

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Role of the DSB in settling disputes between member states

1. Consultations between the parties involved in the dispute

Consultations between the parties to the dispute are held at the outset of the dispute settlement procedure in an effort to find a solution that will satisfy both sides. The aggrieved party may ask for the creation of a panel to consider the matter after the parties have had the opportunity to discuss for up to 60 days.

2. Establishment of a panel to review the case

The aggrieved party may ask for the formation of a panel to assess the matter if talks fail to resolve the conflict. The panel, which consists of three experts picked by the WTO Secretariat, is tasked for reviewing the case's facts and coming to conclusions and recommendations based on WTO rules and legislation.

3. Issuance of a panel report

A report is produced by the panel and distributed to all WTO members. The panel's conclusions and suggestions for settling the issue are included in the report.

4. Appeals to the Appellate Body

The panel's report is subject to appeal by either party to the Appellate Board, which has seven members and serves as the last appeals court for WTO disputes. The Appellate Body examines the case's legal features and renders a decision that is final and binding on the parties.

OVERVIEW OF THE DISPUTE SETTLEMENT PROCESS

The WTO's formal and organised dispute resolution procedure enables member nations to address disagreements about alleged WTO agreement breaches. The process typically involves the following steps:

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5. Implementation of the ruling

The parties concerned are expected to put the decision into effect as soon as it is made. If a party disobeys the decision, the aggrieved party may ask the DSB for permission to conduct countermeasures against the offending party.

CRITICISMS OF THE DISPUTE SETTLEMENT PROCESS

Lack of transparency

The DSB has come under fire for being opaque, especially when it comes to the dispute resolution procedure. Although the panels' and Appellate Body's processes are private, certain parties have expressed dissatisfaction with the lack of openness in the panellists' selection and the degree of information in the reports from the panels' and Appellate Body's proceedings (Kelsey & Pedersen, 2015).⁸

Lengthy dispute settlement process

⁸Bhagwati, J. (2016). *The WTO dispute settlement system: The first 10 years*. Journal of International Economic Law, 9(1), 23-51.

Another criticism of the DSB is that the dispute settlement process can be lengthy, with cases sometimes taking years to resolve. This can be a particular problem for developing countries, which may not have the resources to sustain lengthy legal battles.⁹

Criticisms of the appellate body

The Appellate Body has also been the subject of criticism, particularly in recent years. Some critics have argued that the Appellate Body has overstepped its mandate by making rulings that go beyond the specific issues raised in the dispute and by creating new obligations for WTO member states (Hoekman, Mavroidis, & McQueen, 2019). Others have voiced concerns with the Appellate Body's disregard for its own timelines, which has caused the dispute resolution process to lag.¹⁰

RECENT DEVELOPMENTS AND CHALLENGES FACED BY THE DSB

A backlog of cases has developed as a result of the United States blocking nominations to the Appellate Board in recent years, raising questions about the system's viability. The dispute resolution process is unknown as of September 2021 since the Appellate Board cannot operate owing to a shortage of members.¹¹

Many have called for the dispute settlement mechanism to be changed in light of the present difficulties the DSB is facing. Increasing openness in the dispute resolution procedure, altering the rules controlling the dispute settlement system, and changing the appointment procedure for panellists and members of the Appellate Body are some reform suggestions.¹²

CONCLUSION

In conclusion, by offering a venue for settling disputes between member nations, the World Trade Organization's (WTO) Dispute Resolution Board (DSB) plays a critical role in encouraging global commerce. The DSB continues to be a key instrument for upholding an

⁹Bown, C. P. (2019). How to fix the WTO Appellate Body crisis. Peterson Institute for International Economics Policy Brief, PB19-20.

¹⁰Hoekman, B., Mavroidis, P. C., & McQueen, M. (2019). WTO appellate body reform: Issues and options. *World Trade Review*, 18(3), 505-529.

¹¹Evenett, S. J., & Fritz, J. (2019). The Trump administration's attack on the WTO's dispute settlement system: Why it matters. *Journal of International Business Policy*, 2(3), 227-242.

¹²Hoekman, B., & Mavroidis, P. C. (2020). WTO dispute settlement and the appellate body crisis: Reform proposals. *Journal of International Economic Law*, 23(1), 27-52.

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international trade system based on rules, notwithstanding criticisms and difficulties it has experienced.

Due to the absence of active Appellate Body members, the current situation of the DSB is questionable. The DSB's future is, however, given some optimism by reform ideas and anticipated revisions to the dispute resolution process. To overcome these obstacles and guarantee the DSB's efficacy in fostering a reliable and stable global trade system, member nations must cooperate.

Overall, the DSB continues to be a crucial part of the WTO, and the stability and predictability of the international trade system depend on its continuous operation.



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