

World Trade Organization

Dispute Settlement in the WTO

Members have to abide by the
rules and procedures of the
Dispute Settlement Understanding.
(Article 23.1 of the DSU)



**ITU Regional Regulatory Seminar
Dalian, China
5 - 8 August 2002**

*Lothar Ehring
WTO Appellate Body Secretariat*

Dispute settlement in the WTO:

Overview

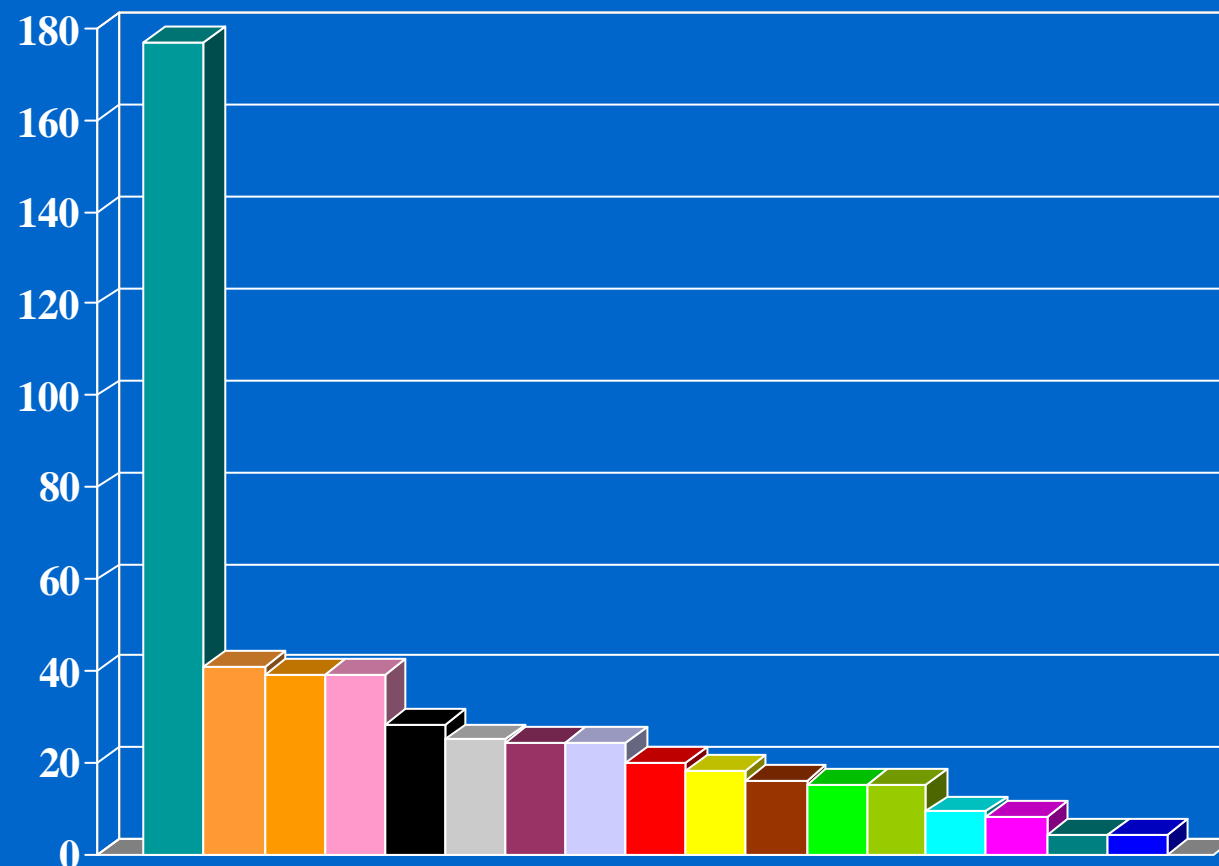
- Who can have recourse to it? (Members)
- When? (Member considers benefits resulting from agreements are being impaired)
- Which agreements?
- Compulsory jurisdiction
- Supranationality
- Detailed procedures
- Possible appeal
- Implementation aimed at securing conformity of measures

Dispute settlement in the WTO

Overview

- **An integrated system:**
 - Applies to all the multilateral agreements
 - A single set of rules for all disputes
 - Only a few specific rules in some agreements

Disputes by Agreement



Dispute settlement in the WTO

Overview

- **Nullification or impairment of any benefit by measures taken by another Member**
- Measure infringes WTO obligation? \Rightarrow **Presumed**
- Measure does not infringe WTO obligation? \Rightarrow **to be proved** by the claimant

Dispute Settlement in the WTO:

The DSB



Dispute settlement in the WTO

The panel Process

Main stages

- Consultation phase
 - Panel and Appellate Body review
 - Adoption of report by the DSB
 - Implementation

Dispute Settlement in the WTO

Consultations

- **The request for consultations:**
 - Indicates the reasons for the request: identification of the measures, legal basis for complaint
 - Notified to DSB and circulated to all Members in “WT/DS” document series



Dispute settlement in the WTO:

Consultations

- Confidential consultations, between the Members concerned
- Undertaking to “accord sympathetic consideration to and accord adequate opportunity for consultation...” (Art. 4:1 DSU)

Dispute settlement in the WTO:

Consultations

- **In some instances, other Members can request to be joined in the consultations**
- Consultations requested under Article XXII of GATT or corresponding provision
- Substantial trade interest
- Request to be made within 10 days of initial request for consultations

Dispute settlement in the WTO:

Consultations

Deadlines

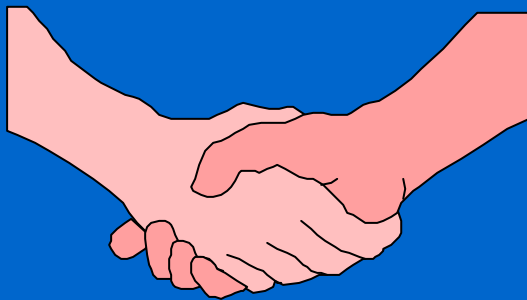
- Answer to request for consultations: 10 days
- beginning of consultations: 30 days (from receipt of request)

- If consultations fail to resolve the matter within 60 days from receipt of request.....
- Or if no response or no entering into consultations
- A request for establishment of a panel can be made

Dispute settlement in the WTO:

Consultations

- **In many instances, disputes have been resolved at the consultation stage, without further proceedings:**



- 262 Disputes (Consultation Requests)
- 97 Panels established
- 71 Panel Reports adopted
- 48 Appellate Body Reports adopted
- 11 Disputes on compliance (Implementation)
- 5 Arbitrations on “Retaliation” (Suspension of Concessions)
- 5 Authorizations of “Retaliation” (Suspension of Concessions)

Dispute Settlement in the WTO:

Establishment of panels

- The request for establishment of a panel:
 - “identify the specific measures at issue and provide a brief summary of the legal basis of the problem sufficient to present the problem clearly” (Art 6.2)
- Establishment at the latest at “DSB meeting following that at which the request first appears on the DSB’s agenda”, by reverse consensus (Art. 6.1 DSU)



Dispute Settlement in the WTO:

Terms of reference and composition of panels

- Terms of reference:
 - Standard terms of reference
 - Special terms of reference
- Panel Composition:
 - “well-qualified government and /or non-governmental individuals”
 - Secretariat proposals
 - Indicative list of panellists
 - Nomination by DG



Dispute Settlement in the WTO:

Multiple complainants (Art. 9 DSU)

- When feasible, **single panel** to examine more than one request relating to the same matter
- If separate panels to examine same matter, **same persons as panellists and harmonization of time-tables**, to greatest extent possible
- **Examples:** US - Shrimp, EC - Hormones

Dispute Settlement in the WTO:

Panel procedures (1)

- Working Procedures (DSU Appendix 3)
- Submissions and meetings
- Issuance of descriptive part to parties
- Interim review
- Final report issued to parties
- Final report circulated to all Members

Dispute Settlement in the WTO: Panel Procedures (2)

- Function of panels (Art. 11 DSU):
 - Objective assessment of the matter before it, including facts and the applicability of and conformity with the relevant agreements
- What should the report contain? (Art. 12.7)
 - Findings of fact, applicability of relevant provisions and basic rationale supporting any finding and recommendation.

Dispute Settlement in the WTO:

Panel Procedures: deadlines

- As a general rule, **6 months** from composition/terms of reference to issuance of final report of the panel to the parties
- (Art. 12.8 DSU)
- As a general practice, **9 months** from establishment of panel to consideration of report for adoption (if no appeal)
- **12 months** where report is appealed
- (Art. 20 DSU)

Dispute Settlement in the WTO: Panel Procedures (3)

- Third parties: “substantial interest” (Art. 10)
 - Difference with consultation phase
- Right to seek information (Art. 13)
- Expert review groups (Appendix 4)
- Confidentiality (Art. 14)

Dispute Settlement in the WTO: Adoption of Panel Reports

- Panel reports not considered for adoption until 20 days after circulation



- Adoption **within 60 days of circulation**, by reverse consensus....

- ... **Except if appealed**

Dispute Settlement in the WTO: Appellate Review

- Standing Appellate Body
- Appeals limited to “issues of law and legal interpretations developed by the panel” (Art. 17.6 DSU)
- Appeal only open to parties to the dispute



Standing Appellate Body (AB)

- Composition: 7 Members
- Appointed by the DSB
- Term of Office: 4 years (renewable once)
- Requirements:
 - demonstrated expertise in law, international trade
 - unaffiliated with Member government

The 7 Current Members of the AB



- Prof. Yasuhei Taniguchi, [Japan](#);
- Prof. Giorgio Sacerdoti, [Italy](#) (European Communities);
- Mr. A.V. Ganesan, [India](#);
- Mr. James Bacchus, [United States](#) (current Chairman);
- Prof. Georges Abi-Saab, [Egypt](#);
- Mr. Luiz Olavo Baptista, [Brazil](#);
- Mr. John Lockhart, [Australia](#).

Dispute Settlement in the WTO:

Appellate Review (2)

- **Report of the Appellate Body:**
 - “The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel” (Art. 17.12 DSU)
- **Adoption of Appellate Body report:** by reverse consensus within 30 days of circulation to Members

Timetable for Appeals

	Day
Notice of Appeal	0
Appellant's Submission	10
Other Appellant(s) Submission(s)	15
Appellee(s) Submission(s)	25
Third Participant(s) Submission(s)	25
Oral Hearing	ca. 30
Circulation of Appellate Body Report	60 - 90
DSB Meeting for Adoption	90 - 120


*Article 4.9 of the *SCM Agreement*: "Where a panel report is appealed, the Appellate Body shall issue its decision within 30 days from the date when the party to the dispute formally notifies its intention to appeal. [...] In no case shall the proceedings exceed 60 days."

Dispute Settlement in the WTO:

Implementation (1)

- **Recommendations:**
- If violation: recommendation that the Member **bring the measures into conformity**
- If No violation (but impairment): mutually satisfactory adjustment
- Within 30 days of adoption of report, Member concerned informs the DSB of its **intentions in respect of implementation** of the recommendations and rulings (Art. 21.3)

Dispute Settlement in the WTO: Immediate compliance not possible?

- Determination of “**reasonable period of time**” for implementation: 
 - proposed by Member and approved by DSB, or
 - mutually agreed by the parties, or
 - determined through **arbitration**: “guideline for the arbitrator”: 15 months from the date of adoption

Dispute Settlement in the WTO:

Complied or not?

- **Surveillance by the DSB:** Status reports on implementation



- If Member fails to bring measure into conformity within reasonable period of time, possibility of **temporary** measures: **compensation** or “**suspension of concessions**” (retaliation)

Dispute Settlement in the WTO: Complied or not?

- **Disagreement? (Art. 21.5)**
 - “recourse to these dispute settlement procedures”
 - Back to original Panel
 - 90 days to circulate report
 - Possibility to appeal

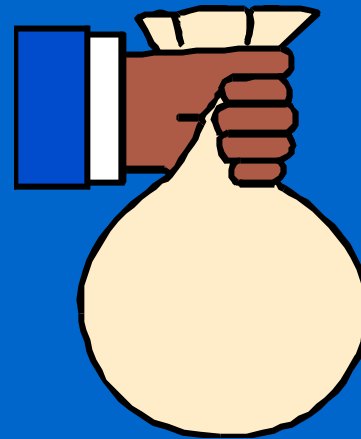


Dispute Settlement in the WTO:

No compliance?

- **Compensation:**

- voluntary
- negotiated
- compatible with WTO obligations
- If no compensation agreed within 20 days after expiry of reasonable period of time....



Dispute settlement in the WTO:

No compensation?

- **Suspension of concessions:**



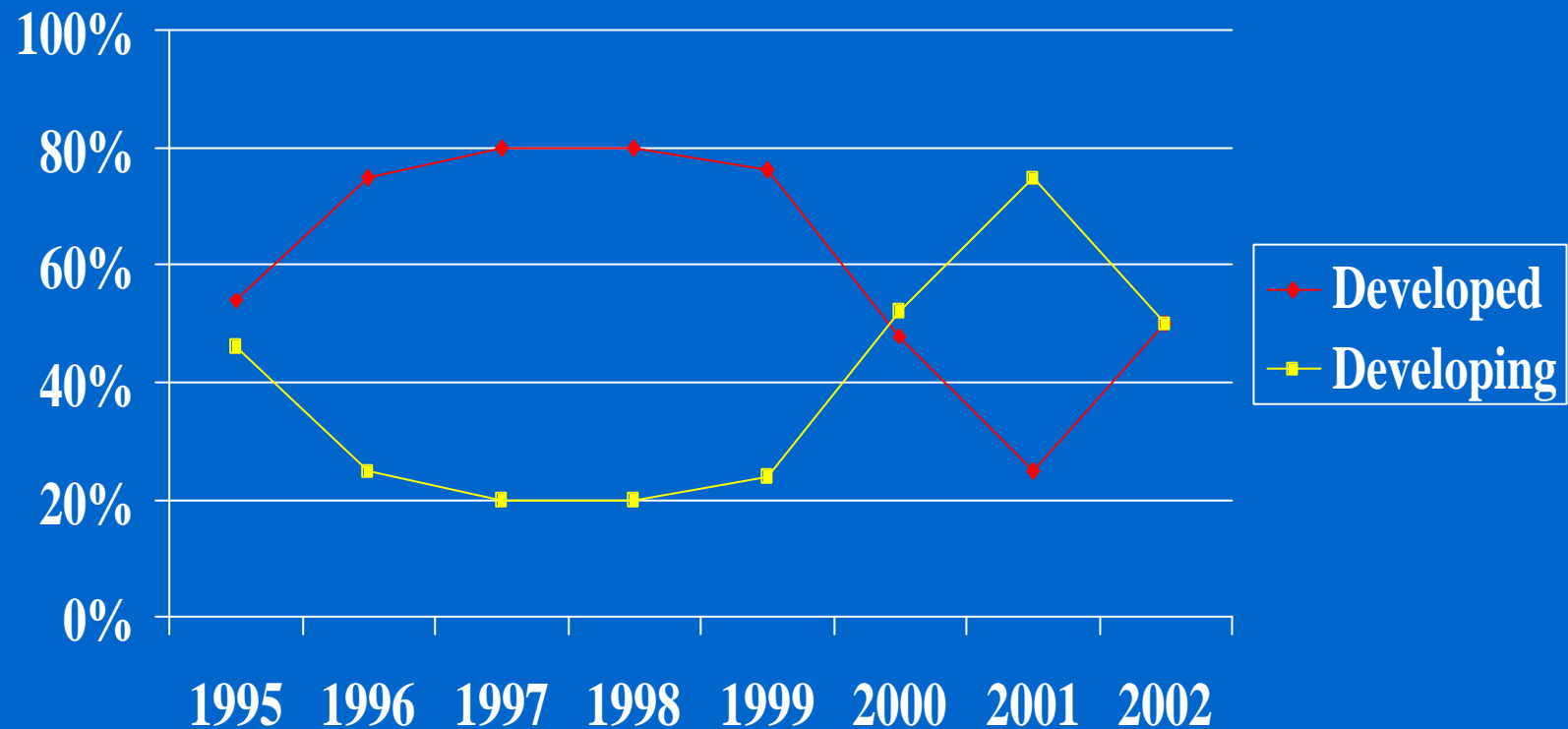
- same sector/other sector/other agreement
- level of suspension: “equivalent to the level of nullification or impairment” (Art. 22.4 DSU)
- authorization to suspend: within 30 days of expiry of reasonable period of time
- arbitration on level of suspension or principles of Art. 22.3

Dispute Settlement in the WTO:

Developing countries

- Reference to 1966 decision
- Specific provisions: e.g. composition of panels (Art. 8.10 DSU), consultations (Art. 4. 10 DSU), panels procedures (Art. 12. 10 and 12.11 DSU)
- Least -developed countries (Art. 24 DSU): particular consideration to special situation, restraint in asking for compensation and seeking to suspend concessions
- Legal assistance (Art. 27.2 DSU)

Trends in the Use of the Dispute Settlement Mechanism



Conclusion

- **Settlement of Disputes**
- **A generally efficient system**
 - Success (number of complaints) - problems
 - Comparison to GATT 1947, international law
- **Contribution to WTO Law**
 - “Judicialization” - pro & contra
- **Prospects of the Reform**
- **Discussion**

Information/Resources

- **Legal Texts (agreements etc.):**
http://www.wto.org/english/docs_e/legal_e/legal_e.htm
- **Panel and Appellate Body Reports:**
http://www.wto.org/english/tratop_e/dispu_e/distabase_e.htm
http://www.wto.org/english/tratop_e/dispu_e/gt47ds_e.htm
- **Official WTO Documents:**
http://docsonline.wto.org/gen_home.asp
- **Advisory Centre on WTO Law:**
<http://www.acwl.ch>
- **Register for news and information**
<http://www.wto.org> (at very top of the page, click “register”)

Reform of the Dispute Settlement Understanding

- **Doha Declaration, November 2001**
- **Ministers agreed on negotiations to improve and clarify the DSU**
- **Based on “work done thus far as well as additional proposals”**
- **Negotiations to be concluded by May 2003**

DSU Reform: “Sequencing” and “Streamlining”

- **Suspension of concessions only after a multilateral determination of non-compliance**
- **Right of appeal in Article 21.5 proceedings - should consultations be required at this stage?**
- **Proposals for saving time in the dispute settlement proceedings:**
 - one DSB meeting to establish panel
 - reduce time required for consultations
 - pros and cons of “streamlining”

DSU Reform: Transparency versus Confidentiality

- **Enhancing third party rights**

 - “active” versus “passive” participation

 - receive all submissions and be present at all meetings

- **External transparency**

 - opening panel proceedings to the public

 - amicus curiae* briefs

 - public dissemination of parties’ submissions

DSU Reform: Panels

- Permanent versus *ad hoc* panelists
 - cost concerns
 - impartiality
 - case-specific expertise

DSU Reform: Appellate Body

- **Increasing the number of Appellate Body Members**
- **Remand authority**
- **Part-time/full-time**

DSU Reform: Implementation

- **Monetary compensation as an alternative to retaliation?**
- **Ensuring the actual level of retaliation is consistent with the level of retaliation approved by the DSB**
- **Carousel retaliation**