



Settlement of International Commercial Disputes Under WTO: An Analysis on Legal Perspective

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ABSTRACT: *The purpose of this study is to explore the method of adjudication of international commercial disputes among the Member States of the WTO. Under this research paper, author mainly focuses on the WTO's Rules and Procedures Governing the Disputes Settlement Understanding (DSU) containing in Annexure 2 of the WTO Agreement. Specifically, this article explains the scope, composition, process and procedures of the dispute settlement system. The dispute settlement system consists of the Dispute Settlement Body (DSB) i.e. Panel, Appellate Body, Arbitrators etc. and the WTO Secretariat. On the other hand, the process and procedures of the dispute settlement system contained different stages such as consultations, Panel, Appellate Review and implementation and enforcement of rulings. Additionally, whether the Least Developed Country (LDC) or Developing Country (DC) states are getting fair treatment as a Member State of the WTO in the dispute settlement system. Finally, this paper concludes with some important recommendations for reforming the WTO's dispute settlement system.*

KEYWORDS: *WTO's Rules and Procedures Governing the Settlement of Disputes (DSU), DSB, Process and Procedures of the Dispute Settlement System, LDC and DC Member States.*

INTRODUCTION

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. A dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO.¹ The current dispute settlement system was created as part of the WTO Agreement during the Uruguay Round. It is embodied in the Understanding on Rules and Procedures Governing the Settlement of Disputes, commonly referred to as the Dispute Settlement Understanding and abbreviated "DSU". The DSU, which constitutes Annexure 2 of the WTO Agreement, sets out the procedures and rules that define today's dispute settlement system. It should however be noted that, to a large degree, the current dispute settlement system is the result of the evolution of rules, procedures and practices developed over almost half a century under GATT 1947.²

¹ <https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm> Accessed 13 September 2024

² <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c1s2p1_e.htm> Accessed 22 September 2024.

SCOPE OF THE DISPUTE SETTLEMENT SYSTEM

The (WTO) dispute settlement system applies to all disputes brought under the WTO Agreements listed in Appendix 1 of the DSU.³ In the DSU, these agreements are referred to as the “covered agreements”. The DSU itself and the WTO Agreement (in the sense of Articles I to XVI) are also listed as covered agreements. In many cases brought to the dispute settlement system, the complainant invokes provisions belonging to more than one covered agreement.

The covered agreements also include the so-called Plurilateral Trade Agreements contained in Annexure 4 to the WTO Agreement (Appendix 1 of the DSU), which are called “plurilateral” as opposed to “multilateral” because not all WTO Members have signed them. However, the applicability of the DSU to those Plurilateral Trade Agreements is subject to the adoption of a decision by the parties to each of these agreements setting out the terms for the application of the DSU to the individual agreement, including any special and additional rules or procedures (Appendix 1 of the DSU). The Committee on Government Procurement has taken such a decision, but not the Committee on Trade in Civil Aircraft for the Agreement on Trade in Civil Aircraft. Two other plurilateral agreements, the International Dairy Agreement and the International Bovine Meat Agreement, are no longer in force.⁴ Appendix 1: Agreements Covered by the Dispute Settlement Understanding are as follows:

Appendix 1: Agreements Covered by the Understanding

- i. Agreement Establishing the World Trade Organization
- ii. Multilateral Trade Agreements

Annexure 1A: Multilateral Agreements on Trade in Goods

Annexure 1B: General Agreement on Trade in Services

Annexure 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annexure 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

- iii. Plurilateral Trade Agreements

Annexure 4: Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.⁵

WTO BODIES INVOLVED IN THE DISPUTE SETTLEMENT PROCESS

The operation of the (WTO) dispute settlement process involves the parties and third parties to a case, DSB and the DSB panels, the Appellate Body, the WTO Secretariat, arbitrators,

³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 1 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art1 >

⁴ <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c1s5p1_e.htm> Accessed 14 October 2024

⁵ <https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm> Accessed 27 October 2024

independent experts and several specialized institutions. This part gives an introduction to the WTO bodies involved in the dispute settlement system. The precise tasks and roles of each of the actors involved in the dispute settlement process will become clear in the later part on the stages of the dispute settlement process.⁶

A. *The Dispute Settlement Body (DSB)*

According to Article IV of the WTO Agreement, the General Council discharges the responsibilities of the Dispute Settlement Body under the DSU. Like the General Council, the DSB consists of a chairman and representatives of all WTO Members.⁷ The chairperson is appointed with the consent of the WTO Members.⁸

According to Article 2 of the DSU, The DSB is responsible for administering the rules and procedures of DSU.⁹ Also, Article 2 of the DSU empowers the DSB to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations and authorize the suspension of obligations under the covered agreements.¹⁰ The parties must comply with the rulings and recommendations of the DSB in order to ensure effective resolution of disputes.¹¹ If the parties do not comply with these recommendations and rulings within the prescribed time limit, then compensation and suspension of concessions measures will be taken by the Dispute Settlement Body in accordance with Article 22 of the DSU.¹²

In dispute settlement cases involving a least-developed country Member, According to Article 24 of the DSU, the least-developed country can request the DSB chairperson to offer his/her good offices, conciliation and mediation before the case goes to a panel.¹³ Article 20 provides the time frame for the Dispute Settlement Body decisions. It mentions that DSB must deliver its decision within nine months where no appeal is preferred by the parties and 12 months where appeal is preferred. This time limit will be started from the date of establishment of panel till the adoption of the panel or appellate body reports by the DSB. If there is any delay providing the reports, then such an additional period granted will be added to the above periods.¹⁴

⁶ <https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c3s1p1_e.htm> Accessed 15 November 2024

⁷ Marrakesh Agreement Establishing the World Trade Organization (15 April 1994) art IV (4)

< https://www.wto.org/english/docs_e/legal_e/marag_e.htm#art4>

⁸ <https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c3s1p1_e.htm> Accessed 26 January 2025

⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 2

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art2>

¹⁰ *ibid*

¹¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 21 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art21>

¹² Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 22 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art22>

¹³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 24 (2)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art24>

¹⁴ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 20

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art20>

i. Panels

Panels are the quasi-judicial bodies, in a way like tribunals, in charge of adjudicating disputes between Members in the first instance. According to Article 6 of the DSU, if no satisfactory result is reached through consultations between the member countries, then the complaining party may request DSB to establish a panel.¹⁵ Panels are normally composed of three, and exceptionally five, experts selected on an ad hoc basis.¹⁶ Anyone who is well-qualified and independent can serve as panelist.¹⁷ Article 8.1 of the DSU mentions as examples persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or who have worked in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.¹⁸ The WTO Secretariat maintains an indicative list of names of governmental and non-governmental persons, from which panelists may be drawn.¹⁹ The function of the Panel is to assist the Dispute Settlement Body in discharging its responsibilities under the DSU.²⁰ The panel must assess the entire matter before it, including the facts of the case, applicability and conformity with the relevant covered agreements between the member countries²¹ and submitting a report to the DSB.²² If the panel finds that a measure is inconsistent with the covered agreement, then it shall recommend the member concerned to bring it in conformity with the covered agreement.²³ It may also suggest ways to implement such recommendations.²⁴ The recommendations and rulings of a panel are not legally binding by themselves until they are adopted by the DSB. If they are adopted by the DSB, then they become the recommendations and rulings of the DSB.²⁵ However, the panel suggestions are not legally binding on the member concerned even after adoption by the DSB.²⁶

ii. Appellate Body

The Appellate Body is the second and final stage in the adjudicatory part of the dispute settlement system²⁷ which was established by the DSB in 1995.²⁸ Generally, The Appellate

¹⁵ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 6 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art6>

¹⁶ *ibid*

¹⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 8 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art8>

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 11

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art11>

²¹ *ibid*

²² Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 189

²³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 19

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art19>

²⁴ *ibid*

²⁵ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 229

²⁶ *ibid*

²⁷ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 189.

²⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 17 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

Body shall hear appeals from panel cases²⁹ and can uphold, modify or reverse the legal findings and conclusions of a Panel.³⁰ The Appellate Body is a permanent international tribunal.³¹ It consists of seven members entrusted with the task of reviewing the legal aspects of the reports issued by panels.³² According to Article 2.4 of the DSU, the DSB appoints the members by consensus, for a four-year term and can reappoint a person once.³³

Appellate Body members are representatives from the member countries of the WTO, but they must represent the WTO in practice.³⁴ Appellate Body members must be persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally.³⁵

Most Appellate Body members have so far been university professors, practicing lawyers, past government officials or senior judges. Being an Appellate Body member is theoretically only a part-time occupation. However, the workload and the ability to pursue substantial other professional activities depend on the number of appeals being filed, provided that Appellate Body members must be available at all times and on short notice.³⁶ In doing so, the Appellate Body also provides consistency of decisions, which is in line with the central goal of the dispute settlement system to provide security and predictability to the multilateral trading system.³⁷

iii. Arbitrators

In addition to panels and the Appellate Body, arbitrators can be called to adjudicate certain questions at several stages of the dispute settlement process. Arbitration is available as an alternative of panels and the Appellate Body for resolving disputes,³⁸ but it must be subject to mutual agreement of the parties.³⁹ The parties must agree to abide by the arbitration award.⁴⁰ The arbitration decision or award is final⁴¹ and can be enforced through the DSU.⁴² The

²⁹ *ibid.*

³⁰ https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement_en Accessed 05 February 2025.

³¹ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 231.

³² Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 17

<https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

³³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 17 (2)

<https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

³⁴ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 17 (3) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 3 (2) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art3>

³⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 25 <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art25>

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 22 (7) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art22>

⁴² <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c3s5p1_e.htm> Accessed 04 February 2025.

provisions of Articles 21 and 22 of the DSU on remedies and on the surveillance of implementation of a decision apply to the arbitration award.⁴³

THE PROCESS OF WTO DISPUTE SETTLEMENT

The WTO dispute settlement process consists of four stages. Such as –

- i. Consultations;
- ii. Panel Procedures;
- iii. Appellate Body Procedures; and
- iv. Implementation of Rulings.

Full details of the above-mentioned four steps are described below.

i. Consultations

The preferred objective of the DSU is to settle the dispute between the concerned members themselves in accordance with the WTO Agreement.⁴⁴ Accordingly, consultation is the first stage of the formal dispute settlement process.⁴⁵ It provides the parties an opportunity to discuss the matter and to find a satisfactory solution without resorting to litigation.⁴⁶ A request for consultations must be submitted in writing to the DSB and must give the reasons for the request.⁴⁷ This includes identifying the measures at issue and indicating the legal basis for the complaint.⁴⁸ In practice, such requests for consultations are very brief; often they are no more than one or two pages long, yet they must be sufficiently precise. Because requests for consultations are always the first official WTO document emerging in a specific dispute and each dispute has its own WT/DS number.⁴⁹ Consultations typically take place in Geneva and are confidential,⁵⁰ which also means that the (WTO) Secretariat is not involved. The fact that they take place behind closed doors also means that their content remains undisclosed to any panel subsequently assigned the matter.

If a request for consultation is made, the respondent must reply to the request within 10 days and must enter into consultations within a period of 30 days after the date of receipt of the request for consultations.⁵¹ If the respondent fails to meet any of these deadlines, the complainant may immediately request the DSB to establish a panel.⁵²

⁴³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 25 (4) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art25>

⁴⁴ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 3 (7) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art3>

⁴⁵ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 192.

⁴⁶ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁴⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (4) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁴⁸ *ibid.*

⁴⁹ <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s2p1_e.htm> Accessed 07 February 2025.

⁵⁰ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (6) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁵¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (3) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁵² Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 193

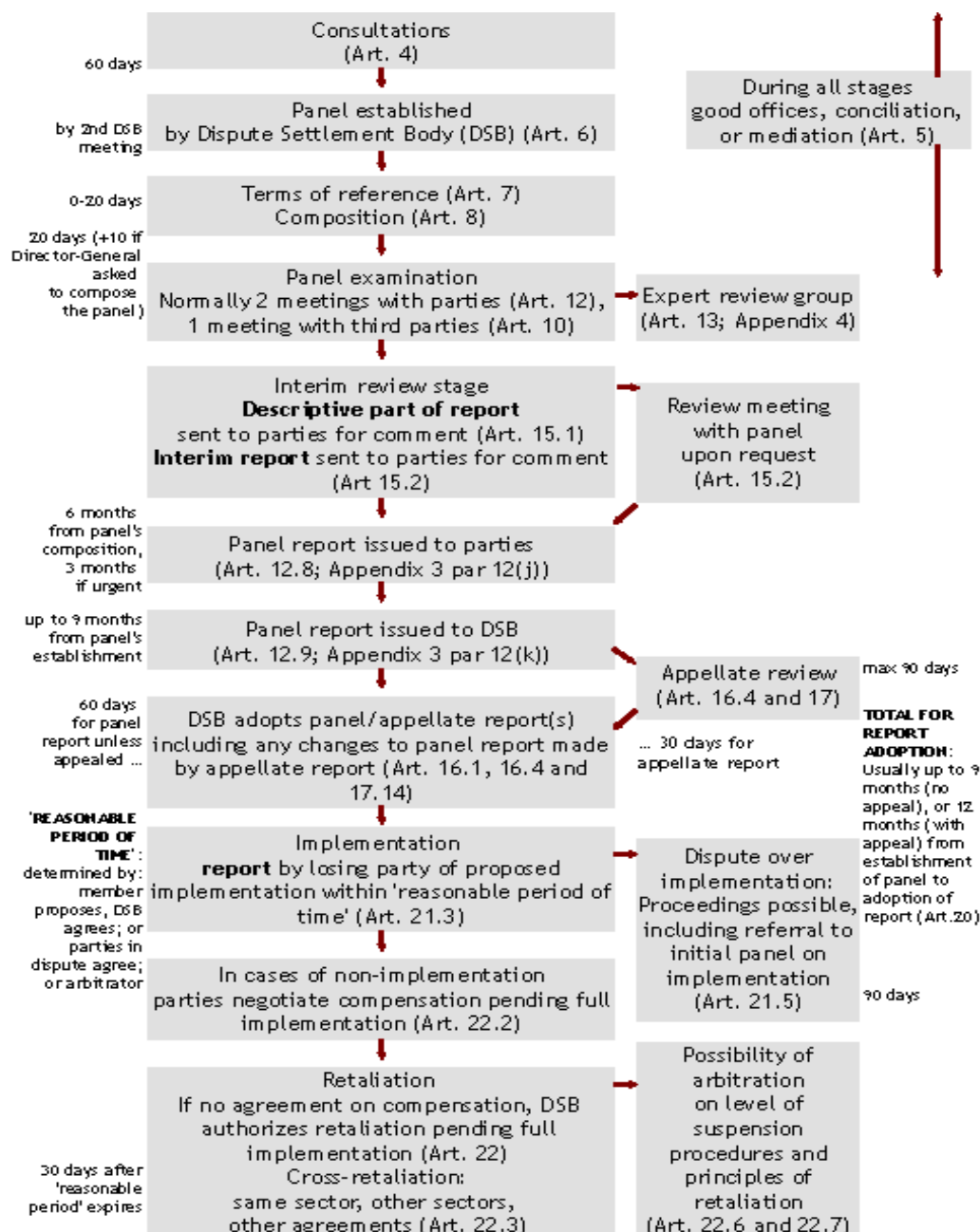


Figure 1: Flow chart of the Dispute Settlement Process⁵³

If the respondent engages in consultations and fails to settle dispute within 60 days after the date of receipt of the request for consultations, then the complainant can request for establishment of a panel.⁵⁴ However, the consultation stage can also be concluded earlier if the parties jointly consider that consultations have failed to settle the dispute.⁵⁵ Even when consultations have failed to resolve the dispute, it always remains possible for the parties to find a mutually agreed solution at any later stage of the proceedings. In cases of urgency, including those that concern perishable goods, Members can enter into consultations within a

⁵³ <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s1p1_e.htm> Accessed 22 March 2024

⁵⁴ *ibid*

⁵⁵ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (7) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

short period of time⁵⁶ and Parties, Panels and Appellate Body must make every effort to accelerate the proceedings.⁵⁷

ii. Panel Procedures

If the consultations are unsuccessful, the complaining party may proceed to the next stage of the dispute settlement which is panel proceedings.⁵⁸ As mentioned earlier, the complainant may request the establishment of a panel to adjudicate the dispute after the stipulated time of consultations or earlier if the parties agreed.⁵⁹ The request for establishment of a panel initiates the phase of adjudication. A request for the establishment of a panel must be made in writing and is addressed to the Chairman of the DSB. It must indicate whether consultations were held, identify the specific measures at issue, and provide a brief, but sufficiently clear, summary of the legal basis of the complaint.⁶⁰ The content of the request for establishment of the panel is crucial. Under Article 7.1 of the DSU, such request determines the standard terms of reference for the panel's examination of the matter. The complaining and the responding Members are the parties to the disputes. Other Members have an opportunity to be heard by panels and to make written submissions as third parties. In order to participate in the panel procedure, third party Members must have a substantial interest in the matter before the panel and they must notify their interest to the DSB.⁶¹ Once established and composed, the panel now exists as a collegial body and can start its work. One of the first tasks for the panel is to fix the timetable for the panel process.⁶² Article 12.1 of the DSU directs a panel to follow the working procedures contained in Appendix 3 of DSU, whereas the panel can follow different procedures after consulting the parties.⁶³ However, in *India – Patents (US) (1998)*, the Appellate Body cautioned panels as follows: *Although panels enjoy some discretion in establishing their own working procedures, this discretion does not extend to modifying the substantive provisions of the DSU ...*⁶⁴. According to Article 12.6 of the DSU, the complainant normally is the first to file its submission, to which the respondent replies in its first submission. The third parties usually file their submissions after the parties have filed theirs. These written submissions contain the facts of the case and their arguments (paragraph 4 of the Working Procedures in Appendix 3).⁶⁵

⁵⁶ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (8) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁵⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (9) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁵⁸ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 274

⁵⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 4 (7) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art4>

⁶⁰ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 6 (2) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art6>

⁶¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 10 (2) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art10>

⁶² Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 12(3) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art12>

⁶³ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 274

⁶⁴ *ibid* 275

⁶⁵ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 12 (6) Para 4, Appendix 3 <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#appendix3>

After the exchange of the first written submissions, the panel holds its first substantive meeting with the parties.⁶⁶ Like all meetings, this meeting takes place at the WTO headquarters in Geneva. At this meeting, the panel first asks the complainant to present its case and then gives the respondent an opportunity to present the case brought against it.⁶⁷ After hearing the complainant and the respondent, the panel accords the third parties an opportunity to present their views orally during a special session dedicated to the third parties' presentations.⁶⁸ After the oral statements, the parties (and third parties) are invited to respond to questions from the panel and from the other parties in order to clarify all the legal and factual issues.⁶⁹

Approximately four weeks after the first panel meeting, the parties simultaneously submitted written rebuttals, also called the second written submissions. Thereafter, the panel holds a second substantive meeting with the parties.⁷⁰ The parties once again orally present factual and legal arguments at this second oral hearing and respond to further questions from the panel and the other party, first orally, then in writing.

After the oral hearings are concluded, the panel goes into internal deliberations to review the matter and to reach conclusions as to the outcome of the dispute and the reasoning in support of such outcome. The panel should submit its final report to the parties to the dispute within two weeks following the conclusion of the interim review. The panel's deliberations are confidential and its report is drafted in the absence of the parties.⁷¹ Article 18.1 of the DSU also prohibits any ex parte communications with the panel on the matter under consideration.⁷²

iii. Appellate Review Procedures

Appeals are limited to legal questions. They may only address issues of law covered in the panel report and legal interpretations developed by the panel.⁷³ The appeal process begins when "a party to the dispute formally notifies the DSB of its decision to appeal".⁷⁴ An appeal must be made to the Appellate Body within 60 days after the date of circulation of a panel report to the Members⁷⁵ and before it is adopted by the DSB.⁷⁶ However, only parties to the dispute can

⁶⁶ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 277

⁶⁷ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 277-278

⁶⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 10 (2) Para 9, Appendix 3
<https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#appendix3>

⁶⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 10 (2) Para 8, Appendix 3
<https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#appendix3>

⁷⁰ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 278

⁷¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (1994) art 14 (1) (2) Para 3, Appendix 3
<https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#appendix3>

⁷² Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 278

⁷³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (6) <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁷⁴ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 195

⁷⁵ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 16 (4)
<https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art16>

⁷⁶ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 195

appeal a panel report to the DSB,⁷⁷ and the dispute will be referred to the Appellate Body.⁷⁸ It is important to note that third parties cannot appeal a panel report⁷⁹ but they can submit written submissions to the Appellate Body and their submissions must be heard by the Appellate Body.⁸⁰

The Appellate Body has complete standard working procedures set out in the *Working Procedures for Appellate Review* which is adopted in 1996 and revised in 2010.⁸¹ Pursuant to Article 17.9 of the DSU, Appellate Body has the mandate to determine the working procedures in consultation with the Chairman of the DSB and the Director General of the WTO.⁸² Additionally, Appellate Body may adopt appropriate working procedures to conduct the appeal in the absence of, or in contradiction with, the working procedures for the ends of justice.⁸³ It is mentionable that the appellant must file its written submission within 10 days after the date when the notice of appeal was filed, setting out in detail its legal arguments as to why the panel committed a legal error.⁸⁴ Generally, appellate proceedings must not exceed 60 days but if Appellate Body cannot provide its report within this timeline, then it shall inform the DSB in writing reasons for the delay.⁸⁵ In that case, it shall not take more than 90 days to complete the proceedings from the date when the notice of appeal was filed.⁸⁶

Following the opinions of Appellate Body members, the Appellate Body concludes its deliberations and drafts the Appellate Body report. After the report is finalized and signed by the Appellate Body members, the report is translated⁸⁷ and made available into all three languages of the WTO.⁸⁸ Finally, the Appellate Body report is circulated to all WTO Members⁸⁹ and becomes a public document.⁹⁰ Appellate Body report must be adopted by the DSB and unconditionally accepted by the parties within 30 days of circulation to the

⁷⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (4)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁷⁸ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 195

⁷⁹ *ibid*

⁸⁰ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (4)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁸¹ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 283

⁸² Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (9)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁸³ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 283-284

⁸⁴ <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s5p3_e.htm> Accessed 16 February 2025

⁸⁵ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (5)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁸⁶ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 195

⁸⁷ <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s5p3_e.htm> Accessed 17 February 2024

⁸⁸ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 290

⁸⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (14)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁹⁰ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 290

members.⁹¹ The Appellate Body has the power to uphold, modify or reverse the decision of the panel.⁹² All deliberations of the Appellate Body are confidential, and the drafting of the report takes place without the presence of the participants and third participants.⁹³

iv. Implementation of Rulings

When a Panel or Appellate Body provides a report that a party to the dispute has acted against one or more of the covered agreements, then the next stage of the dispute settlement is implementation and enforcement of the report.⁹⁴ Prompt or immediate compliance with recommendations or rulings of the DSB is essential in order to effective functioning of the rule of law.⁹⁵ However, if it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time.⁹⁶ Within 30 days of the adoption of the report, the member concerned must inform DSB of its intentions in respect of the implementation of the recommendations and rulings of the DSB.⁹⁷

If the implementing Member fails to comply within a reasonable period of time, it must enter into negotiations with the complaining party with a view to agreeing a mutually acceptable compensation.⁹⁸ This compensation does not mean monetary payment; rather, the respondent is supposed to offer a benefit, for example a tariff reduction. The parties to the dispute must agree upon the compensation, which must also be consistent with the covered agreements.⁹⁹

If, within 20 days after the expiry of the reasonable period of time, no satisfactory compensation has been agreed, the complainant may ask the DSB for permission to impose trade sanctions against the respondent that has failed to implement. Technically, this is called “temporary suspensions of concessions or other obligations under the covered agreements”¹⁰⁰ – informally also called “retaliation” or “sanctions”.¹⁰¹ Such suspension of obligations takes

⁹¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (14)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁹² Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (13)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁹³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 17 (10)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art17>

⁹⁴ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 291

⁹⁵ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 21 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art21>

⁹⁶ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 21 (3)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art21>

⁹⁷ *ibid*

⁹⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 22 (2)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art22>

⁹⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 22 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art22>

¹⁰⁰ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 22 (2)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art22>

¹⁰¹ Surya P Subedi (ed), *International trade and business law* (The People’s Public Security Publishing House 2014) 196

place on a discriminatory basis only against the Member that failed to implement.¹⁰² Retaliation is the final and most serious consequence a non-implementing Member faces in the WTO dispute settlement system.¹⁰³ The DSB's surveillance must continue as long as the recommendation of rulings to bring a measure in conformity with the covered agreements have not been implemented.¹⁰⁴

DISPUTE SETTLEMENT EXCEPT PANELS AND THE APPELLATE BODY

There are provisions like ADR in the WTO for settling disputes without going through to Panels and Appellate Body. In this regard, parties can settle a dispute by finding a mutually agreed solution in bilateral negotiations or with the help of dispute resolution mechanisms such as good offices, conciliation or mediation. In addition, they can also agree to refer their dispute to an arbitrator. However, these forms of dispute settlement are provided in the DSU and are therefore formal part of the WTO dispute settlement system.¹⁰⁵

DURATION FOR DISPUTE SETTLEMENT

These approximate periods for each stage of a dispute settlement procedure are target figures – the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc.
45 days	Panel set up and panelists appointed
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)
Total = 1 year	(without appeal)
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)¹⁰⁶

DEVELOPING COUNTRY MEMBERS AND DISPUTE SETTLEMENT SYSTEM

Developing-country members are major participants of the dispute settlement system.¹⁰⁷ Since 2000, developing-country members have brought more disputes to the WTO than developed-

¹⁰² Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 197

¹⁰³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 3 (7)
< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art3>

¹⁰⁴ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 22 (8)
< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art22>

¹⁰⁵ <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c8s1p1_e.htm> Accessed 27 April 2024

¹⁰⁶ < https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm> Accessed 14 May 2024

¹⁰⁷ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 299

country members.¹⁰⁸ Among them, most of the cases are filed against the economic superpower nations and have done so successfully.¹⁰⁹ *US-Underwear*, a complaint by Costa Rica, and *US Gambling*, a complaint by Antigua, are well-known examples of successful uses of the system. Additionally, *US-Shrimp (Thailand)* and *US-Shrimp (Viet Nam)* are remarkable cases for the success of Thailand and Vietnam against the US.¹¹⁰ However, Bangladesh is the first Least Developed-Country (LDC) member that had brought a dispute to the WTO's dispute settlement system.¹¹¹ On 28 January 2004, Bangladesh requested consultations with India for imposing a certain anti-dumping measure on imports of lead acid batteries from Bangladesh.¹¹² Members of WTO must exercise due restraint consideration while raising complaints against LDC members in the dispute settlement system, i.e., asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to DSU.¹¹³

In addition, DSU contains a number of provisions providing special treatment or consideration for developing-country Members involved in the WTO dispute settlement.¹¹⁴ Meanwhile, it also enumerates the legal assistance available to developing-country Members involved in WTO dispute settlement.¹¹⁵ Such special DSU rules are contained in Article 3.12 (regarding the application of the 1966 Decision), Article 4.10 (regarding consultations), Article 8.10 (regarding the composition of panels), Article 12.10 (regarding consultations and the time to prepare and present arguments), Article 12.11 (regarding the content of panel reports), Article 21.2 (regarding implementation of adopted recommendations and rulings), Article 21.7 (regarding the DSB surveillance of the implementation of adopted recommendations or rulings) and Article 27 (on the assistance of the WTO Secretariat).¹¹⁶

ANALYSIS AND FINDINGS

The DSU has given a platform to the weaker nations to bring action against strong nations who violate the rules of trade. It is easier for strong nations to impose arbitrary tariffs on goods and services on the weaker nations while importing. But the WTO's principle is to provide tariff reduction to the weaker nations which lay better foundation for the weaker nations. Hence, the weaker nations can recourse to DSU under its own rule of law for the violation of agreements and principles of the WTO. However, there are many restrictions for weaker nations to recourse to the dispute settlement system such as lack of expertise and resources, other retaliation from the strong nations if recourse to dispute settlement system.

On the other hand, the compensation system of the DSU is not worthy of attracting member states to file a request for dispute settlement. It gives compensation for the reduction of tariffs, which is not viable for a member state because a member state must file a request and wait for a long time to get the possible outcome. Furthermore, it is expectable that a member state

¹⁰⁸ *ibid*

¹⁰⁹ *ibid*

¹¹⁰ Surya P Subedi (ed), *International trade and business law* (The People's Public Security Publishing House 2014) 197

¹¹¹ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 299

¹¹² <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds306_e.htm> Accessed 21 February 2025

¹¹³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annexure 2, (15 April 1994) art 24 (1)

< https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#art24>

¹¹⁴ Peter V Bossche and W Zdouc, *The Law and Policy of the World Trade Organization* (3rd edn, Cambridge University Press 2013) 300

¹¹⁵ *ibid*

¹¹⁶ *ibid*

should get compensation instantly in money which will be fruitful for the victim. Immediate payment of compensation in money will be the proper punishment for breaching the WTO trade rules. Also, it may carry on checks and balance on that member state. Thereby, it can bring down the barrier and encourage the member state to recourse to the DSU.

Bangladesh was the first LDC to formally approach the WTO to settle dispute it had with its powerful neighbor like India regarding the imposition of an anti-dumping duty on the export of lead acid battery from Bangladesh. For long two years Bangladesh tried to settle the dispute amicably through bilateral efforts, but without any success. The decision to move the dispute to the WTO was not taken easily or without internal resistance. The difficulties and the psychological barriers that Bangladesh had to overcome in order to seek redress of the unfair trade imposition on its exports by a powerful trading partner provide a good indication of the predicaments that other LDCs will face in moving their trade disputes to the WTO. The experience of Bangladesh could provide important lessons for other LDCs that they should contemplate utilizing the dispute settlement mechanism of the WTO.

Finally, there are various conventions and treaties of the United Nations which are governing international trade distinctly. Hence, I am doubtful how far the WTO as a separate international organization will be able to conduct international trade fairly. As the WTO is an independent entity and is regulated by the Ministerial Conference held once every two years; hence, it must wait for an urgent amendment. On the other hand, it cannot grow strongly for the protection of welfare of world trade without proper punishment system.

CONCLUSION

The establishment of the WTO with the Dispute Settlement Body is a remarkable creation in world trade. It is playing an important role in settling disputes among its member nations. However, the statistics of dispute settlement illustrate that only developed countries are in good positions to avail of the opportunity. Especially, the LDCs have various limitations to avail the benefit of the Dispute Settlement Body.

Therefore, there are some important recommendations to improve the WTO's dispute settlement system. They are as follows:

- i. WTO should have its own jurisdictional power to tariffs reduction for LDCs to the developed nations market.
- ii. WTO should encourage LDCs to recourse to the DSU and should have power to retaliate to any member nations who are creating trade discrimination in revenge.
- iii. There should be special provisions for poor and cheap labor cost countries.
- iv. WTO should become the subsidiary organ of the United Nations which will bring more strength and trust in international trade. And the dispute settlement system will become the sword of justice.
- v. A member state should get compensation instantly in money through DSU which will be fruitful for the victim. Immediate payment of compensation in money will be the proper punishment for breaching the WTO trade rules.
- vi. The WTO should carry on checks and balance on member states. Thereby, it can bring down the barrier and encourage the member state to recourse to the DSU.

- vii. DSU must have jurisdictional power to punish member states for the protection of world trade.



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