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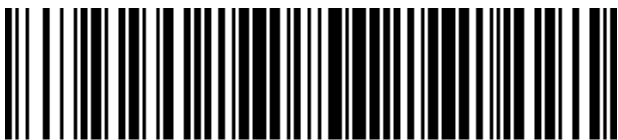
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**Comparison of Dispute Settlement under GATT and WTO: A Fundamental Study**

Maitrayi Parahar

## **COMPARISON OF DISPUTE SETTLEMENT UNDER GATT AND WTO: A FUNDAMENTAL STUDY**

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One of the major powers of the WTO is its dispute settlement system, which came into existence in 1<sup>st</sup> January, 1995. This system has quickly become the most important international tribunal. The institutions of WTO dispute settlement function more or like the court of international trade; where there is compulsory jurisdiction, disputes are settled mainly by applying rules of law, decisions are binding on the parties and sanctions may be imposed on them if decisions are not observed by them completely.

From the day of its establishment, the WTO dispute settlement mechanism has been quite busy; more than 80 cases were filed within its first two years and more than 800 cases had been filed at the time of writing. This had indirectly placed confidence in the system and also put political pressure on all the other states to observe its rules because even the most important trading nations are both the complainants and the respondents in the various trade disputes

### **DISPUTE SETTLEMENT IN GATT**

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The dispute settlement system of WTO was the result of over forty years of experience and evolution of dispute settlement under the GATT 1947. the WTO system can only be recognized against the background of WTO procedures.

The GATT avoids mentioning the term “dispute”. But the makers of the GATT could predict the problems that would arise because of future actions or non-actions of one or more GATT contracting parties concerning the matters covered on GATT. The main procedure for dealing with these problems is diplomatic consultation. There are 19 provisions for consultation in GATT 1947. One of these include Article XXII, is a general provision which talks about ‘sympathetic consultation’ and consultation ‘with respect to any matter affecting the operation of its Agreement.’

GATT Article XXIII talks about a specific mechanism to correct nullification and impairment of the GATT. Nullification or impairment can take place because of the following reasons-

1. Failure of a party to carry out its obligations under the GATT.
2. The application of a measure by a party regardless of whether the measure conflicts with the GATT.
3. The existence of any other situation that can cause trouble.

Therefore, the dispute settlement procedure addresses more than just the breach of the GATT. Article XXIII talks about a series of steps that are to taken in order to deal with possible nullification or impairment. Each step is a advancement to the previous one if it is ineffective to settle the dispute.

1. The party concerned presents 'written representations or proposals' to the other contracting parties or party which should further give this representation or proposal to sympathetic consideration.

2. The matters may be referred to the contracting parties which shall properly investigate and make proper recommendations to the parties concerned. On the other hand, this may take the form of a ruling on the matter. During the time of investigation, the contracting parties may consult with any appropriate inter-governmental organization.

3. The contracting parties may authorize any contracting party or parties to suspend the application of concessions or obligations under the GATT as a countermeasure if the circumstances are serious enough. The party against which the action is directed may withdraw from the GATT on a sixty days notice.

Article XXIII and dispute settlement under the GATT 1947 were shaped due to various state practices. In the beginning, diplomatic negotiations were the the only way to deal with the disputes. After that, the working parties began to investigate and form recommendations. Working parties mainly included representatives of various countries who were receiving recommendations from their governments. In 1955, contracting parties of GATT started referring their disputes to Panels, which was a group of people who acted as neutrals, non-government representatives. Panel decisions had no binding effect but were referred to the GATT Council for making appropriate recommendations. The GATT Panel decision process of dispute settlement was successful. With time as this procedure was utilized frequently, it became necessary to formalize the Panel procedures.

The recommendations of the Panel were mainly based on legal rather than based on diplomatic grounds. To an expectional degree, the decisions of the GATT panel adopted by the GATT Council were implemented and observed by the States.

Even after a huge success of GATT Panel dispute resolution process, it had some serious shortcomings as well. These short comings included delay in formation of the Panels and the Panel process, blocking of the adoption of Panel reports in the GATT Council and delay in the



implementation of Council recommendations. The Tokyo Round of multilateral trade negotiations added dispute resolution procedures to the various codes approved in 1979.

All these difficulties were addressed in the new system of dispute settlement adopted by the WTO.

## **DISPUTE SETTLEMENT IN WTO**

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WTO dispute settlement process is the result of the Uruguay Round. This mechanism gives a speedy solution to trade disputes. This settlement system is applied to all the disputes covered under the WTO Agreement.

### **STAGES IN SETTLEMENT OF TRADE DISPUTES**

#### **STAGE 1: CONSULTATIONS (ARTICLE 4 OF DSU)**

Before bringing any dispute for mediation or taking any other actions, both the WTO member countries should try to resolve their disputes by consultation. If a WTO member requests for consultation with another Member regarding measures which affect the operations of the former member, the latter member must accept such request within a period 10 days after the date of receipt of such request and shall enter into consultation within 30 days. If the consultation does not provide any satisfactory solution to the problem within 60 days after the date of receipt of the request for consultation, then the complaining party may request for construction of the panel. All such requests for consultation and construction shall be notified in writing including reasons for such requests to the Dispute Settlement Body by the complaining member.

#### **STAGE 2: ESTABLISHMENT OF PANELS (ARTICLES 6, 8 AND 11 OF THE DSU)**

If no satisfactory solution is reached through consultation between the member countries, the complaining member may request for the establishment of panels in writing to the Dispute Settlement Body including a summary of the case and issues involved. The panel is established at the second meeting of DSB at which request appears as an agenda item of the meeting. The function of the Panel is to help the DSB in resolving the matter in dispute. The panel sees the entire dispute, including the facts of the case and issues involved in it and examines whether it conforms with the covered agreement between the member countries. The Panel shall provide its final report to the parties within 6 months from the date when panel procedures start.

#### **STAGE 3: SELECTION OF PANELLISTS (ARTICLE 8 OF THE DSU)**

After the establishment of the panel, the next step is to select panellists. The panellists are selected by the WTO Secretariat. The parties cannot oppose the selection unless they state reasons satisfactory to the Secretariat. The panel shall consist of three panellists. The parties can agree to

have five panellists on board if they consider necessary within 10 days from the establishment of the panel. The WTO Secretariat assists the parties in the selection of panellists by creating a list of all governmental and non-governmental individuals which have certain qualifications from which panellists may be chosen by the parties.

Members may, at any reasonable time, make an addition to the list of individuals by suggesting the name of individuals who can assist the parties by providing any information related to international trade law or any of the matter as covered in the agreement because of which dispute arose in the first place. The addition to the list can be made only after the approval of the DSB.

If panellists are not selected within 20 days after the date of establishment of the panel, the Director-General, in consultation with the Chairman of DSB and Chairman of relevant Council or Committee appoint panellists which they consider appropriate. The chairman of the Dispute Settlement Body, then informs the members of the composition of the panel within 10 days.

#### STAGE 4: PROCEDURE OF PANEL (ARTICLES 10 AND 12 OF THE DSU)

The panellists shall, within one week after the composition of the panel fix a timetable for the panel process. After this, the panel decides a deadline for written submission to be made by each party. Each party has to submit its submissions with the secretariat which shall transfer each submission to the panel and submission made by one party shall be sent to the other party as well. At the first substantive meeting of the panel, the complaining party shall be the first to present their case ahead of the responding party.

The third parties who have notified the Dispute Settlement Body having substantial interest in the subject matter of the dispute are also asked to present their views during the same meeting. Any rebuttals between the parties shall be made at the subsequent meeting of the panel. Here, the responding party shall be the first to respond against the complaining party. The parties, before that meeting, have to submit their written rebuttals to the panel. The panel, if they consider necessary, put any questions before the parties to be answered in the duration of that meeting.

Where after the examination, a solution has been reached between the parties, the panel shall submit a written report to the Dispute Settlement Body which shall have a brief description of the case along with the solution which has been reached. Where the solution has not been found, the panel shall send a written report to the Dispute Settlement Body mentioning its findings of the case and recommendations, if any, it makes.

The report has to be sent within six months of its examination. In case of urgency, including the case of perishable goods, the report has to be sent within three months. The maximum period during which the report has to send is nine months from the establishment of the panel.

#### STAGE 5: INTERIM REPORT (ARTICLE 15 OF THE DSU)

Following the oral arguments and rebuttal that has been performed and examination has been made, the panel shall issue a draft report to the parties. The parties have to submit their comments in writing after receiving the draft report within the period set by the panel.

After the expiration of the said period for receiving the comments from the parties, the panel shall issue an interim report, including its findings in the draft report and its new findings and conclusion. Both the parties, within the time given the panel may submit its written request to revise its interim report accordingly.

At the request made by the parties, the panel shall call for a further meeting to discuss the comments made by the parties to the dispute. If both the parties are satisfied with the solution reached, then such a revised interim report shall be the final panel report and is circulated among the members.

In case, the parties are not satisfied with the outcome of the report reached then any objections of the members shall be considered at the meeting of the Dispute Settlement Body. Such objections have to be reported at least 10 days before the meeting of the Dispute Settlement Body.

The final report shall be adopted by the Dispute Settlement Body within 60 days from the date panel report is circulated to the members unless any party to the dispute is unsatisfied with such report and notifies its decision of appeal to Dispute Settlement Body or the Dispute Settlement Body unanimously decides not to adopt such report, as the case may be. In case of an appeal, the report shall deem to be invalid for adoption by the Dispute Settlement Body unless the Standing Appellate Body provides its Appellate Body Report.

#### STAGE 6: APPEAL (ARTICLE 17 OF THE DSU)

Either of the parties unsatisfied with the ruling of the panel report can appeal to the Standing Appellate Body established by the Dispute Settlement Body. Only parties to the dispute can appeal to a panel report and not the third parties. Third parties can be allowed to be heard only in case such third party has notified in writing to the Dispute Settlement Body of its substantial interest in such dispute.

The proceeding of the Appellate Body shall not exceed 60 days from the date a party to the dispute notifies its intention of appealing to the Appellate Body to the Dispute Settlement Body. In case of delay, the maximum period granted to the Appellate Body is 90 days. The Appellate Body has to submit in writing to the Dispute Settlement Body its reasons for the delay together with the period within which the final decision is notified.

The Appellate Body will not re-examine any shreds of evidence, issues or previous arguments but its examination shall be limited to laws covered in the panel report or legal interpretation evolved by the panellists. The Appellate Body has the power to uphold, modify or reverse the panel report and provide a conclusive report.

STAGE 7: ACCEPTANCE OF REPORT BY DISPUTE SETTLEMENT BODY (ARTICLE 30 OF THE DSU)

The Dispute Settlement Body has to either accept the Appellate Body report or reject it within a maximum period of 30 days after receiving such a report. The report can only be rejected unanimously.