

## **An Evaluation of the Dispute Settlement System in the World Trade Organization**

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**Abstract:** *The main goal of the World Trade Organization (WTO) upon its founding was to guarantee the unhindered and unrestricted flow of goods and services. The Dispute Settlement System, which guarantees prompt resolution of disputes, is the foundation of the WTO. The purpose of this study was to examine how the WTO's Dispute Settlement Body resolves trade disputes. This study explicitly looked at the WTO Dispute Settlement System, identifying its goals and determining whether it facilitates the realization of these goals. The study also assessed the types of disputes that fall under the purview of the WTO Dispute System Body. The research used the doctrinal research approach to accomplish this aim. In the World Trade Organization, trade disputes often occur when a member state or states adopt a measure or measures that the WTO deems to be at odds with the commitments outlined in the WTO agreements. Realizing the practical significance of the member states' obligations requires the prompt and organized settlement of trade disputes. Thus, the study outlined some of the difficulties DSB is facing as well as future directions. These include, among other things, the protracted dispute resolution procedure, the appellate body dilemma, the lack of transparency, and the handling of new trade issues. The study suggested that the system be made more open and visible to the general public as a result. Additionally, the system has to select panelists who are qualified to handle the cases that are brought before panels due to their increasingly complicated substance.*

**Keywords:** Dispute, World Trade Organization, settlement, Trade Dispute

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## INTRODUCTION

The World Trade Organization's (WTO) dispute settlement mechanism is a key component that strives to establish a clear and efficient procedure for resolving trade disputes between member nations. However, recent events and brand-new difficulties have stoked doubts about the efficiency and effectiveness of the WTO's dispute resolution process.

According to Ihara (2017) the WTO Dispute Settlement has, in many instances, resulted in trade compromises and successes between contracting parties under multilateral agreements; yet, the systems systemic and legitimacy issues are of greatest concern. The new resolutions were supposed to promote carefree trade relations and a peaceful resolution of disputes, but in reality, they imposed trade sanctions and occasionally restricted trade because the dispute resolution process did not enforce the report due to national laws.

The institutional problems that affect competency, bias, and transparency are another problem in the system. As the panelists are typically from the larger representation countries, there may be bias on the panelists' part in making a report in accordance with the dispute settlement board based on their satisfaction and trade relations with other countries as well as their prior encounters. The qualification of the panelists selected by the Dispute settlement board is not seen much, and on what basis the report made by them is competent to be followed by a country and their law is yet to be determined. Also noteworthy is the fact that the majority of WTO DSU sessions take place behind closed doors. To ensure openness, justice, and fairness for all parties involved in the dispute, the panel hearings are expected to take place behind closed doors.

Also, a larger portion of issues that come up before the World Trade Organization (WTO) are simply about broken promises. It frequently occurs when a member country implements a trade policy measure or engages in acts that some members believe are in violation of the WTO agreement's commitments. As a result, a member state that believes another state or group of states has weakened or impeded free trade may seek to have such impediments declared to be in breach of WTO principles and goals.

Developing and least developed member states, especially Africa, despite their trade endeavors being devoid of activities before the WTO, trade and will continue to trade despite the importance of the WTO's dispute settlement system in providing security and predictability in international trade and, consequently, to the promotion of the global economy. The Dispute Settlement Body (DSB) is still one of the WTO's least studied topics among developing and underdeveloped countries.

Furthermore, the new dispute settlement system will only live up to expectations if individuals who must use it thoroughly comprehend its rules and how crucial they are to advancing the global

economy. Therefore, it is essential that this study be chosen in order to further explore current changes in the WTO Dispute Settlement Body, particularly the non-active participation of developing nations, particularly Africa, in the WTO's activities. This research will undoubtedly make a substantial contribution to knowledge.

## LITERATURE REVIEW

The WTO's Dispute Settlement System has been a significant mechanism for resolving trade disputes among member states, although it has faced challenges in achieving promptness<sup>1</sup>. Despite these challenges, the system has been generally successful, with a high number of cases settled and a high level of compliance with rulings<sup>2</sup>. The system has been particularly active; with a large number of disputes brought to the WTO for resolution<sup>3</sup>. This indicates that the system has played a crucial role in aiding dispute settlement among member states<sup>4</sup>.

There are numerous important duties assigned to the WTO Dispute Settlement System. It is a system governed by laws that offers judicial resolution of conflicts<sup>5</sup>. According to Marceau<sup>6</sup>, the system is quasi-judicial, with independent entities handling decision-making. The 'reverse consensus' principle underlies its operation, whereby disagreements may only be resolved with the agreement of all parties<sup>7</sup>. The system seeks to ensure that reciprocal agreements are honoured and to prevent unilateralism<sup>8</sup>. Procedural measures like panel proceedings and consultations are also included<sup>9</sup>. In the course of dispute resolution procedures, third parties may bear some of the responsibility that primary players do<sup>10</sup>.

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<sup>1</sup> Davey, W. J. (2005). The WTO Dispute Settlement System: The First Ten Years. *Journal of International Economic Law*, 8(1), 17–50. <https://doi.org/10.1093/jielaw/jgi003>

<sup>2</sup> Schoenbaum, T. J. (1998). WTO Dispute Settlement: Praise and Suggestions for Reform. *International and Comparative Law Quarterly*, 47(3), 647–658. <https://doi.org/10.1017/s0020589300062217>

<sup>3</sup> WTO DISPUTE SETTLEMENT. (2008). *The Law and Policy of the World Trade Organization*, 168–319. <https://doi.org/10.1017/cbo9780511818394.005>

<sup>4</sup> Horn, H., Johannesson, L., & Mavroidis, P. C. (2011). The WTO Dispute Settlement System 1995-2010: Some Descriptive Statistics. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2094281>

<sup>5</sup> Marceau, G. (2005). Consultations and the panel process in the WTO dispute settlement system. *Key Issues in WTO Dispute Settlement*, 29–45. <https://doi.org/10.1017/cbo9780511754340.006>

<sup>6</sup> Ibid

<sup>7</sup> n46

<sup>8</sup> Mavroidis, P. C. (2015). Dispute Settlement in the WTO (Mind Over Matter). *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2631475>

<sup>9</sup> Wagner, M. (2020). Panel: Dispute Settlement System of the World Trade Organization (WTO). *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3644759>

<sup>10</sup> Bartels, L. (2012). Procedural Aspects of Shared Responsibility in the WTO Dispute Settlement System. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2181526>

In order to successfully settle disputes between member states, the World Trade Organization's (WTO) dispute settlement process faces a number of obstacles. Chatagnier<sup>11</sup> draws attention to the mechanism's potential to intensify ongoing conflicts, especially in light of the elimination of tools for economic policy and the denial of formidable economic instruments. More strong and less trade-dependent nations are more prone to start disputes, Sattler<sup>12</sup> and Davis<sup>13</sup>, who also highlight the importance of economic power, trade dependency, and domestic politics in dispute initiation and resolution. In addition, Davis<sup>14</sup> emphasizes how successful the WTO dispute settlement procedure is in settling trade disputes, especially when it comes to policy modification and length of dispute. However, the incentives and regulations of the system can deter proactive dispute resolution, especially in developing nations. All of these elements work against the WTO's ability to resolve disputes amongst its member states<sup>15</sup>. According to Asal *et al*<sup>16</sup> observed with dissatisfaction that the least developed and emerging nations must contend with a number of DSB restrictions, including financial and legal restraints. Furthermore, it is noted that decisions and recommendations based on the DSU may have an impact on a far wider range of nations in addition to the parties involved in a dispute, as evidenced by WTO case law. The DSB mediates trade disputes amongst WTO member states in order to preserve the liberal, progressive, and predictable growth of global trade. In order to accomplish this achievable goal, members' impartiality and honesty need be.

What factors influence a nation's choice to formally enter a trade dispute that is directly relevant to its exporting interests? The factors influencing impacted nation participation decisions in formal trade litigation brought before the World Trade Organization (WTO) between 1995 and 2000 are empirically examined in this paper.<sup>17</sup>

<sup>11</sup> Chatagnier, J. T., & Lim, H. (2020, December 10). Does the WTO exacerbate international conflict? *Journal of Peace Research*, 58(5), 1068–1082. <https://doi.org/10.1177/0022343320960203>

<sup>12</sup> Sattler, T. (2008). *Dispute Initiation in the World Trade Organization*. <https://www.semanticscholar.org/paper/Dispute-Initiation-in-the-World-Trade-Organization-Sattler-Bernauer/f8bd218d745ccdf66ba7805170882bba287c9a15>

<sup>13</sup> Davis, C. L. (2008). *The Effectiveness of WTO Dispute Settlement: An Evaluation of Negotiation Versus Adjudication Strategies*. <https://www.semanticscholar.org/paper/The-Effectiveness-of-WTO-Dispute-Settlement%3A-An-of-Davis/5f2af57cbbe98c0f868f1c1aacd07e5a92da1f15>

<sup>14</sup> n54

<sup>15</sup> Bown, C. P. (2004). Participation in WTO Dispute Settlement: Complainants, Interested Parties and Free Riders. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.546442>

<sup>16</sup> Juraeva A, Soyipov K and Chaoen W, “WTO DISPUTE SETTLEMENT AND THE CHALLENGES AROUND IT” (2022) 6 Review of Law Sciences 30 <<http://dx.doi.org/10.51788/tsul.rols.2022.6.2./vqwl9830>>

<sup>17</sup> Bown CP, “Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders” (*The World Bank Economic Review*, August 31, 2005) <<https://doi.org/10.1093/wber/lhi009>>

It is pertinent to note that, The World Trade Organization (WTO) plays a crucial role in facilitating the settlement of disputes related to international trade. The nature and organs of the WTO have a significant impact on the resolution of these disputes. These organs include the following:

1. **Dispute Settlement Body (DSB):** The primary organ responsible for settling disputes within the WTO is the Dispute Settlement Body. It is composed of all WTO members and oversees the dispute settlement process. The DSB has the authority to establish dispute settlement panels, adopt panel and Appellate Body reports, and authorize the implementation of recommendations.
2. **Panel and Appellate Body:** Dispute settlement panels are established by the DSB to examine the case. If a party is dissatisfied with the panel's findings, they can appeal to the Appellate Body. The Appellate Body provides an additional layer of review and ensures a more comprehensive examination of legal issues. The decisions of the Appellate Body are binding on the parties involved.
3. **Legal Framework:** The WTO has a well-established legal framework governing dispute settlement. The Dispute Settlement Understanding (DSU) sets out the rules and procedures for resolving disputes among WTO members. This legal framework provides a systematic and structured process for handling trade disputes.
4. **Timelines and Procedures:** The DSU establishes specific timelines for each stage of the dispute settlement process, ensuring a relatively prompt resolution. The procedures are designed to be transparent and fair, allowing parties to present their cases and respond to the arguments of the other party.
5. **Enforcement Mechanism:** One of the unique features of the WTO dispute settlement system is its ability to enforce rulings. If a party does not comply with the recommendations and rulings of the dispute settlement process, the complaining party can seek authorization from the DSB to take countermeasures.
6. **Multilateral Nature:** The WTO's multilateral nature ensures that dispute settlement is not conducted on a bilateral basis but within a multilateral framework. This helps in maintaining a level playing field and preventing powerful economies from exerting undue influence.

Consequently, the following gaps are seen in the course of reviewing relevant literature. The methods used by earlier researchers reveal the gaps in the literature, as discussion in these important areas mostly refers to the survey method, random method, and purposive method, among other approaches that are relatively new to the field of law. This made it necessary to establish the doctrinal legal research technique, sometimes referred to as the "black letter" approach since it emphasizes the text of the law rather than the application of the law. The main reason the researcher uses this approach is that it enables the researcher to write a thorough and descriptive study of the legal roles that can be found in primary sources, such as legislation, regulations, and court decisions.

Another disparity in the geographic scope of earlier research is the overwhelming emphasis placed on wealthy nations over less developed or rising countries, which are frequently the targets of superpowers when it comes to trade dispute resolution. The results of this study will close the gaps in the areas where the research indicates recommendations from the study.

To summarize, the WTO's structure and mechanisms, specifically the panels, Appellate Body, and Dispute Settlement Body, offer a methodical and regulation-driven approach to resolving conflicts pertaining to global commerce. By maintaining justice, openness, and enforceability, this method seeks to settle disputes between WTO member nations.

## **MATERIALS AND METHODS**

This study makes use of the doctrinal legal research methodology which is also known as the "black letter" methodology, which focuses on the letter of the law rather than the law in action. The essence of the researcher adopting this method is because it allows the researcher to compose a descriptive and detailed analysis of legal roles found in primary sources (cases, statutes or regulations). As a result the Marrakesh agreement creating the World Trade Organization (WTO), the WTO agreement, particularly the Dispute Settlement Understanding (DSU) and report on cases handled by the WTO shall be the principal sources of data.

The primary source of data for the research is cases, statutes and regulations of the WTO. This method was adopted because it allows the researcher to compose a descriptive and detailed analysis of legal rules found in primary sources (cases, statutes, or regulations). While the secondary sources of data in this area shall be annual report, documentations and other publications, papers and journals (published and unpublished) and official reports.

## **RESULTS AND DISCUSSION**

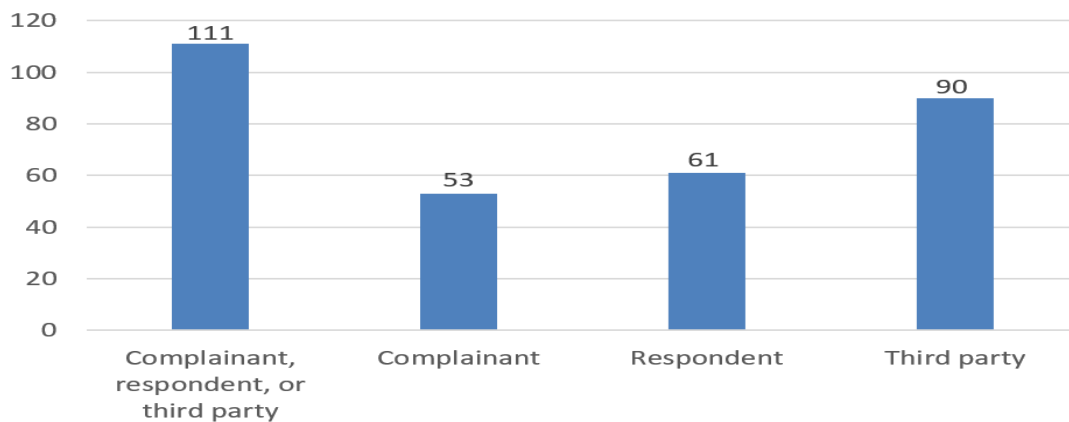
As of 31 December 2022, WTO members referred 615 disputes to the Dispute Settlement Body. Not all of these disputes required formal rulings to resolve them. A mutually agreed solution is always the preferred outcome, and consultations among disputing members within the framework of WTO dispute settlement can often be sufficient to resolve the matter in dispute.

Disputes are initiated through a formal request for consultations, whereby the complaining member invites the member whose measures are being challenged to discuss the disputed matter, with a view to resolving it without recourse to further litigation. These requests are circulated to all WTO members.

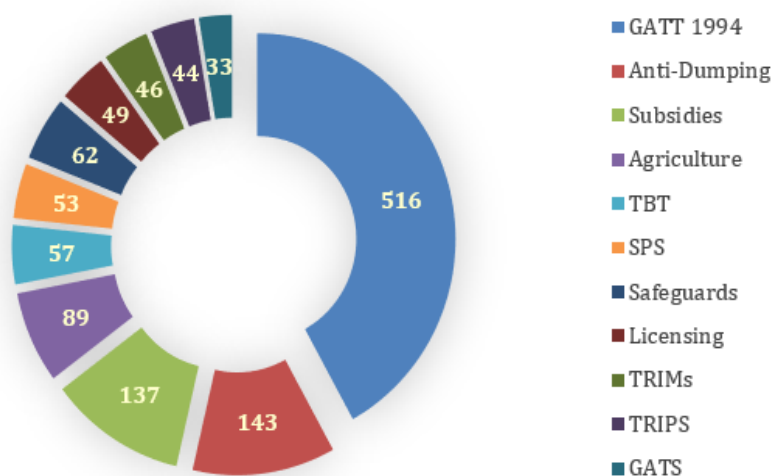
Between the entry into force of the WTO on 1 January 1995 and 31 December 2022, a total of 615 requests for consultations were circulated to the WTO membership.

During that period, **53** WTO members initiated at least one dispute, and **61** members were a respondent in at least one dispute. In addition, a total of **90** members have participated as third parties in proceedings between two or more other WTO members. Overall, a total of **111** members have been active in dispute settlement, as a party or a third party.

**Chart 1: Participation of WTO members in dispute settlement (1995 – 2022)**



Source: “WTO | Dispute Settlement - Dispute Settlement Activity Some Figures” [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispustats\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm).



**Chart 2: Agreements raised in WTO disputes (1995-2023)**

Source: “WTO | Dispute Settlement - Dispute Settlement Activity Some Figures”

[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispustats\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm).

Chart 2 above represent disputes arising from agreement from the year 1995 to 2023. It is important to note that; the WTO dispute settlement system is “integrated”, such that several agreements can be at issue in the same dispute. The total numbers in the chart above therefore exceed the total number of distinct disputes initiated. In cases involving trade in goods, the GATT 1994 is frequently invoked alongside more specific agreements, which explains why it appears in 516 of the 621 disputes initiated between 1995 and 2023.

Where the parties are unable to reach a mutually agreed solution through consultations, the complaining member can request the establishment of a panel to examine the matter, and either party can later appeal the rulings of the panel.

As of 31 December 2023, a panel had been established in respect of 372 disputes (that is, in 60% of all disputes initiated). This led to panel reports in 290 of these disputes (not all cases in which a panel is established result in a panel report, as the parties might settle their dispute even after a panel has been established). This was followed by an appeal in 191 disputes (that is, an appeal was notified in 66 per cent of all cases in which a panel report was circulated in the original proceedings).

Since December 2019, the Appellate Body has not been able to form Divisions of 3 Appellate Body members to hear further appeals due to the fact that Appellate Body members whose terms had expired have not been replaced. As of December 2023, appeals in 30 proceedings were pending before the Appellate Body and cannot be further advanced until new members are appointed.

## **CONCLUSION**

Many factors contribute to international cooperation in the current era of globalization, and states are realizing that they can benefit from entering into international agreements that limit their own behavior or from establishing international organizations with some degree of governance and coercion.

In addition to the broad topics covered by the WTO agreement, the organization has established an institutional framework to carry out its goal, of which the dispute settlement mechanism is the most important. The framework, which forms the backbone of the WTO, represents a significant advancement in the area of public international law. The trading nations gave a legal tribunal an unparalleled amount of authority to uphold the WTO Agreement's duties. For other international organizations, the DSU serves as an example. Indeed, it is noted that the WTO's legal system, which includes courts, mandatory jurisdiction, appeal processes, and legally enforceable decisions, establishes a framework for the peaceful settlement of member disputes that other international organizations may choose to emulate. The DSU's initial ten years of dispute settlement practice



have validated the system's efficacy. The method has been put to good use, and both academic and practitioner observers have mostly agreed with this assessment. However, the mechanism's heavy use has also brought to light a few issues with its actual use.

### Acknowledgements

None

### Conflict of Interest

None

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