

# How Dispute Settlement is made under WTO?

Ever since its establishment in 1995, the WTO is doing a commendable work in settling trade disputes among the member countries. There is no favour for big or developed countries, no favour for political super powers etc. under WTO. The institution is most respected for its dispute settlement mechanism.

For the discharge of dispute settlement responsibilities, the General Council of the WTO has rules and procedures which are contained in the Dispute Settlement Understanding (DSU). Based on the DSU legal framework, the responsibility of dispute settlement is done by the Dispute Settlement Body (DSB).

## Dispute Settlement Body (DSB)

As mentioned, the Dispute Settlement Body is responsible for dealing with disputes among the member countries. For that, the DSB is administering the DSU, i.e. for overseeing the entire dispute settlement process.

## Constitution of the DSB

The DSB has a broad structure as it is made up of representatives from all member governments. The members from different countries are usually represented by ambassadors or people with equivalent positions.

The DSB performs a number of activities related to dispute settlement. This is because dispute settlement is a process often involving many stages. There are other bodies within the DSB like dispute settlement panels and appellate bodies that look after the various dispute settlement procedures. The main authorities and responsibilities of the DSB are:

To establish dispute settlement panels,

To adopt panel and Appellate Body reports,

To maintain surveillance of implementation of rulings and recommendations and

To authorize the suspension of obligations under the covered agreements of the DSU

The DSB has one regular monthly meeting. But it meets whenever it is necessary to carry out the dispute settlement functions. When a Member requests, the Director-General convenes additional special meetings.

### Stages of dispute settlement

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. The dispute settlement mechanism is based on certain principles- that the process should be equitable, fast, effective, and mutually acceptable.

Main thrust of the dispute settlement mechanism is that the dispute should be solved through consensus as far as possible. For this the procedure for dispute settlement is made very flexible under the DSB. Parties can settle the issue at any stage through discussions.

There are three main stages to the WTO dispute settlement process:

- (i) consultations between the parties;
- (ii) adjudication by panels and, if applicable, by the Appellate Body; and
- (iii) the implementation of the ruling, which includes the possibility of countermeasures in the event of failure by the losing party to implement the ruling.

The dispute settlement process is made through many stages as we mentioned. There is approximate time period for each stage of a dispute settlement procedure.

Following table gives the time frame for dispute settlement procedure:

Time period	Procedure
60 days	Consultations, mediation, etc

45 days	Panel set up and appointment of the panelists
6 months	DSB adopts the report (if no appeal)
3 weeks	Final Panel report to WTO members
60 days	DSB adopts the report
Total 1 year	Without appeal
60 – 90 days	Appeals report (when appeal is filed)
30 days	DSB adopts report
Total 1 Y and 3 M	(With appeal)

A member can file compliant and WTO gives 60 days for consultation and discussion by the parties before going to further steps. If the compliant insists to go with the complaint, the DSB should appoint a panel to make enquiry into the matter and should submit its findings in six months.

### **Dispute Settlement Panel**

After the filing of the complaint, the DSB can establish a Panel for inquiring the dispute. The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal.

The WTO Secretariat prepares a list of six persons as the panelists. Generally, citizens of the disputing countries and countries joined as third parties are not selected as panelists.

DSB Panel makes enquiry into the matter and submits report within the time frame (including the interim report and the final report).

The Panel report contains, in its conclusion, the judgment reached by the panel as well as recommendations regarding correction of the measures in question.

When the Panel has made the report, appeal can be filed to the DSB. The appeal should be made within 60 days of circulation of the Panel report.

If no appeal is made by the members, the DSB adopts the “recommendation and rulings”, which are legally binding the parties concerned.

### **Appeal on the report submitted by the Panel**

If there is an objection to a panel report and the option of appeal is used, the disputing parties may request the Appellate Body to examine the appropriateness of the legal interpretations employed by the panel. Appeal procedure means the Appellate Body has to examine verdict by the panel.

### **Appellate Body**

The Appellate Body has been created by the Dispute Settlement Body as a standing tribunal to hear appeals from WTO panel reports.

Main function of the Appellate Body is to hear appeals from reports issued by the Panels in disputes brought on by WTO members.

### **Functions of the Appellate Body**

It is a standing body of seven persons that hears appeals from reports issued by panels in disputes brought by WTO Members. The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a panel, and Appellate Body Reports, once adopted by the Dispute Settlement Body (DSB), must be accepted by the parties to the dispute. The Appellate Body has its seat in Geneva, Switzerland.

Appellate Body Members can also determine, through binding arbitration the “reasonable period of time” for the implementation by a WTO Member of Appellate Body or panel rulings as recommended by the DSB.

### **DSB Adoption of the Appellate Body verdict**

The DSB ratifies the report prepared by the panel/Appellate Body (in case of an appeal) and it will be binding for the members.

The DSB monitors the implementation of the rulings and recommendations, and has the power to authorize ‘retaliation’ when a country does not comply with a ruling.

US vetoing of the appointment members to the Appellate Body

Recently, the US has vetoed appointment of judges of the Appellate Body.

The US raised mainly procedural objections to the appointment, blaming that DSB verdicts generally are against it. Washington accused that the Appellate Body had overreached and created law through legal rulings.

US claims that the Appellate Body, through its rulings, adds or diminishes to the rights of WTO members by reinterpreting WTO agreements. The WTO members never agreed to those interpretations.

The US also warned about the disregard for the 90-day deadline for issuing rulings. Similarly, it objected to the continued service by Appellate Body members in handling cases after their terms have expired. But the major complaint is the accused 'judicial overreach' by the Appellate Body, which is a more controversial issue and will be difficult to resolve.

Other than the US, few members also have suggestions about reforming the DSB. Still, there is no unanimous opinion about the reform. More importantly, none is as critique as the US in the case of DSB functions.

The US demanded changes in the functioning of the Appellate Body and asked for an amendment of the existing rule which allows judges to continue on cases they are assented to before their terms ended.

Many WTO members questioned the US action of blocking the appointment of judges to the Appellate Body. The DSM, according to the WTO, is "recognized as the fundamental pillar of the organization and enjoys wide support and confidence among the membership, which values it as a fair, effective and efficient mechanism to solve trade problems."

Any reform of the WTO should prioritize the reform the WTO dispute settlement system because of the acute and immediate crisis in the functioning of the Appellate Body.

Over the last one year, several countries have submitted reform packages for WTO that also includes changes in Dispute Settlement Mechanism.