

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISPUTE SETTLEMENT

WORLD TRADE ORGANIZATION

3.1 Overview



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NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

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WHAT YOU WILL LEARN

The World Trade Organization (the “WTO”) was established and became operational on 1 January 1995. It is the youngest of all major international intergovernmental organizations and yet, it is arguably one of the most influential in these times of economic globalization. It has also been one of the most controversial and contested international organizations. To date, the most successful feature of the WTO has been its dispute settlement system. Some of the disputes dealt with by the WTO dispute settlement system have triggered considerable public debate and have attracted much media attention. This has been the case, for example, of the dispute on the European Union’s preferential import regime for bananas¹, the dispute on the European Union’s import ban on meat from cattle treated with growth hormones², the dispute on the United States’ import ban on shrimp harvested with nets not equipped with turtle excluder devices³, the dispute on the United States’ special tax treatment of export-related earnings⁴, the dispute on a French ban on asbestos⁵, and most recently, the dispute on the United States’ safeguard measures on steel.⁶ Many of these disputes involve, directly or indirectly, developing countries.

This Module is the first of four on the dispute settlement system of the WTO. It gives a general introduction to the WTO and then describes the basic features of the WTO’s dispute settlement system. Particular attention is given to the position of developing countries in both the WTO in general and its dispute settlement system in particular. Subsequent modules in this Course deal with specific elements of the WTO dispute settlement system: the panel process (Module 3.2), the appellate review process (Module 3.3) and the implementation of recommendations and rulings (Module 3.4).

The first Section of this Module describes the origins of the WTO, its objectives, functions, institutional structure, membership and decision-making procedures. The second Section examines the basic rules of WTO law and policy, such as the non-discrimination principles, the market access rules and the fair trade rules, as well as the exceptions to these rules on economic and non-economic grounds. The third Section describes the position of developing country Members in the WTO system and the special and differential treatment these

¹ European Communities - Regime for the Importation, Sale and Distribution of Bananas (“EC – Bananas III”), *complaint by Ecuador, Guatemala, Honduras, Mexico and the United States* (DS27).

² EC Measures concerning Meat and Meat Products (Hormones) (“EC – Hormones”), *complaints by the United States* (DS26) and *Canada* (DS48).

³ *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (“US – Shrimp”), *complaint by India, Malaysia, Pakistan and Thailand* (DS58).

⁴ *United States – Tax Treatment for “Foreign Sales Corporations”* (“US – FSC”), *complaint by the European Communities* (DS108).

⁵ *European Communities – Measures Affecting the Prohibition of Asbestos and Asbestos-Containing Products* (“EC – Asbestos”), *complaint by Canada* (DS135).

⁶ *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, *complaints by the EC, Japan, Republic of Korea, China, Switzerland, Norway, New Zealand and Brazil* (DS248, DS249, DS251, DS252, DS253, DS254, DS258 and DS259).

Members enjoy under WTO law. The fourth Section deals with WTO's unique dispute settlement system and examines the origins of the dispute settlement system, its object and purpose, its jurisdiction, the access to the system, the methods of dispute settlement, and the institutions and the proceedings of WTO dispute settlement. The fifth Section addresses the use made by developing country Members of the WTO dispute settlement system and gives an overview of the special rules and procedures provided to allow these Members to use the system more easily and effectively. Finally, the sixth Section, briefly addresses past and current negotiations on the reform of the WTO dispute settlement system.

1. THE WORLD TRADE ORGANIZATION (WTO)

Objectives

On completion of this section, the reader should be able to describe the historical origins of the WTO and the main elements of the *Agreement Establishing the WTO* as well as the policy objectives of the WTO, its functions, its institutional structure, its membership, its decision-making procedures and its budget.

1.1 Origins of the WTO

1.1.1 General Agreement on Tariffs and Trade of 1947

Article XVI:1 WTO

Article XVI:1 of the *Agreement Establishing the World Trade Organisation* states:

Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.

The origins of the WTO undisputedly lay in the General Agreement of Tariffs and Trade on 1947 (“GATT 1947”). As is clear from Article XVI:1, quoted above, these origins remain relevant because the decisions, procedures and customary practices of the GATT 1947 still guide the WTO in many of its actions.

ITO

In 1946 negotiations were started in London at the initiative of the United States on the establishment of an international organization for trade to complete the Bretton Woods structure of international economic institutions already consisting at the time of the World Bank and the International Monetary Fund. The negotiations on the Charter of the International Trade Organization (the “ITO”) were continued in Geneva in 1947. In parallel with the negotiations on the ITO Charter, countries also negotiated in Geneva on the reduction of tariffs and on general clauses to protect the agreed tariff reductions. The latter negotiations were successfully concluded in Geneva and resulted in the General Agreement on Tariffs and Trade of 1947. While the GATT 1947 was intended to be the first agreement concluded under the auspices of, and administered by, the ITO, the negotiators were not able to reach agreement on the ITO Charter in Geneva in 1947. It was decided, however, to apply the GATT 1947 on a provisional basis while waiting for the completion of the negotiations on the ITO Charter. In Havana in 1948, agreement was reached on the ITO Charter. However, in the following years the United States Congress refused to approve the Charter and consequently the ITO was never established.

GATT

The demise of the ITO left an important gap in the Bretton Woods structure of international economic institutions. To handle problems relating to their trade relations, countries would as from the early 1950s onwards, turn to the only existing multilateral “institution” for international trade, the GATT 1947. Although the GATT was conceived as a multilateral *agreement* for the reduction of tariffs, and *not* an international *organization*, it would over the years successfully “transform” itself - in a pragmatic and incremental manner - into a *de facto* international organization. In particular with regard to the reduction of tariffs the GATT was very successful. However, it was less successful with respect to the reduction of non-tariff barriers. Negotiations on the reduction of non-tariff barriers are much more complex and, therefore, required among other things a more “sophisticated” institutional framework than the GATT offered. Furthermore, the GATT was only concerned with trade in goods. However, in view of the ever increasing importance of services in the economic activity of many countries, it was clear from the early 1980s that for trade in services multilateral GATT-like disciplines would need to be agreed upon and administered.

1.1.2 Uruguay Round Negotiations (1986-1993)

Uruguay Round

In September 1986, the GATT Contracting Parties decided in Punta del Este, Uruguay, to start a new round of negotiations on the further liberalization of international trade. The agenda for these negotiations was very broad and ambitious and included for the first time trade in services, as well as the very controversial issues of trade in agricultural products and trade in textiles. Also, the improvement of the institutional mechanisms of the GATT and its dispute settlement system was on the agenda. The establishment of a new international organization for trade however, was initially not on the agenda of the Round. It was only in 1990 that the first proposals for the establishment of a new international trade organization were tabled by Canada and the European Community, followed in 1991 by a joint proposal by Canada, the European Community and Mexico. Initially many developing countries were quite critical with respect to the idea of establishing a new international organization for trade, partly because they considered that UNCTAD could and should fulfil this function. Also the United States objected to the establishment of a new

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