Order Code RS20088
Updated December 17, 2004

Dispute Settlement in the World Trade Organization: An Overview

Jeanne J. Grimmett
Legislative Attorney
American Law Division

Summary

Dispute resolution in the World Trade Organization (WTO) is carried out under the WTO Dispute Settlement Understanding (DSU), whose rules and procedures apply to virtually all WTO agreements. The DSU provides for consultations between disputing parties, panels and appeals, and possible compensation or retaliation if a defending party does not comply with an adverse WTO decision by a given date. Automatic establishment of panels, adoption of reports, and authorization of requests to retaliate, along with deadlines for various stages of the dispute process and improved multilateral surveillance and enforcement of WTO obligations, are aimed at producing a more expeditious and effective system than that which existed under the GATT. To date, 324 WTO complaints have been filed, slightly over half involving the United States either as a complaining party or defendant. WTO Members have been negotiating on DSU issues under a Doha Development Round mandate, though little progress has resulted so far. Expressing dissatisfaction with WTO dispute settlement results in the trade remedy area, Congress directed the Executive Branch to address dispute settlement issues in WTO negotiations in its grant of trade promotion authority to the President in August 2002 (P.L. 107-210). Three 108th Congress bills – S. 676, S. 1258, and H.R. 2365 – would have created a commission to review WTO decisions adverse to the United States and report its findings to Congress; H.R. 2365 and S. 1258 also addressed other WTO-related dispute settlement issues. This report will be updated.

Background. From its inception, the General Agreement on Tariffs and Trade (GATT) has provided for consultations and dispute resolution among GATT Contracting Parties, allowing a party to invoke GATT dispute articles if it believes that another's measure, whether violative of the GATT or not, has caused it trade injury. Because the GATT does not set out a dispute procedure with great specificity, GATT Parties over time developed a more detailed process including *ad hoc* panels and other practices. The procedure was perceived to have certain deficiencies, however, among them a lack of deadlines, the use of consensus decision-making (thus allowing a Party to block the establishment of panels and adoption of panel reports), and laxity in surveillance and

implementation of dispute settlement results. Congress made reform of the GATT dispute process a principal U.S. goal in the Uruguay Round of Multilateral Trade Negotiations.

WTO Dispute Settlement Understanding. The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which went into effect January 1, 1995, continues past GATT dispute practice, but also contains several features aimed at strengthening the prior system.[1] A Dispute Settlement Body (DSB), consisting of representatives of all WTO Members, administers dispute proceedings. While the DSB ordinarily operates by consensus (i.e., without formal objection of any Member present), the DSU reverses past consensus practice at fundamental stages of the process. Thus, unless it decides by consensus *not* to do so, the DSB is to establish panels; adopt panel and appellate reports; and, where WTO rulings have not been implemented and if requested by a prevailing party, authorize the party to impose a retaliatory measure. The DSU also sets forth deadlines for various stages of the proceedings and improves multilateral monitoring of the implementation of adopted rulings. Given that panel reports are to be adopted automatically, WTO Members have a right to appeal a panel report on issues of law. The DSU created a standing Appellate Body to carry out this new appellate function; the Body has seven members, three of whom serve on any one case.

The DSU provides for integrated dispute settlement – that is, the same rules and procedures apply to disputes under virtually all WTO agreements unless a specific agreement provides otherwise. If a dispute reaches the retaliatory stage, this approach allows a Member to impose a countermeasure in a sector other than the one at issue or "cross-retaliate." The preferred outcome of the dispute mechanism is "a solution mutually acceptable to the parties and consistent with the covered agreements"; absent such a solution, the primary objective of the process is withdrawal of a violative measure, with compensation and retaliation being avenues of last resort. The new dispute procedures have proved popular, with 324 complaints filed from January 1, 1995, to date; slightly more than half of these involve the United States as either a complaining party or a defendant. The Office of the United States Trade Representative (USTR) represents the United States in WTO disputes.

The DSU was scrutinized by Members pursuant to an Uruguay Round Declaration, which called for completion of a review within four years after the WTO Agreement entered into force. The United States proposed, *inter alia*, shorter deadlines, increased transparency, and recognition of a right to modify the list of products subject to retaliation. Members did not decide on any specific DSU revisions in the initial review and have negotiated further on the issue, as agreed in the November 2001 Doha

---

[1] The text of the DSU, as well as WTO panel and Appellate Body reports and background information on the WTO dispute process, is available at [http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm]. WTO disputes are listed and summarized by the WTO Secretariat in its "Update of WTO Dispute Settlement Cases," available at the WTO website, above. A summary of U.S. dispute settlement activity is provided by the Office of the United States Trade Representative in its "Snapshot of WTO Cases Involving the United States," at [http://www.ustr.gov] (search under Trade Agreements, Monitoring and Enforcement). For statistical information on cases involving the United States, *see* CRS Report RS21763, *WTO Dispute Settlement: Stages and Pending U.S. Activity Before the Dispute Settlement Body*, by Todd B. Tatelman. For the status of current cases in which the United States has been successfully challenged, *see* CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett.

Ministerial Declaration. The Declaration envisioned a May 2003 completion date and early adoption of results separate from any overall package of agreements emerging from the Doha Round. WTO Members did not meet their extended deadline of May 31, 2004, but are continuing to negotiate – without a new target date – under the overall Doha Work Programme for further talks adopted by WTO Members August 1, 2004. On December 9, 2004, the USTR asked for public comments on the U.S. dispute settlement reform proposals as well as on the many proposals made by other WTO Members (69 *Fed. Reg.* 71466).

The steps in a WTO dispute proceeding are as follows:

Consultations (Art. 4). If a WTO Member requests consultations with another Member under a WTO agreement, the latter must generally respond within 10 days and enter into consultations within 30 days. If the dispute is not resolved within 60 days after receipt of the request to consult, the complaining party may request a panel. The complainant may request a panel earlier if the defending Member has failed to enter into consultations or if the disputants agree that consultations have been unsuccessful.

Establishing a dispute panel (Arts. 6, 8). If a panel is requested, the DSB must establish it at the second DSB meeting at which the request appears as an agenda item, unless it decides by consensus not to do so. The panel is generally composed of 3 persons. The Secretariat proposes the names of panelists to the disputants, who may not oppose them except for "compelling reasons." If there is no agreement on panelists within 20 days from the date the panel is established, either disputing party may request the WTO Director-General to appoint the panelists.

Panel procedures (Arts. 12, 15). After considering written and oral arguments, the panel issues the descriptive part of its report (facts and argument) to the disputing parties. After considering any comments, the panel submits this portion along with its findings and conclusions to the disputing parties as an interim report. Absent further party comments, the interim report is considered to be the final report and is circulated promptly to WTO Members.

A panel must generally circulate its report to the disputants within six months of the date the panel is composed, but may take longer if needed. The period from panel establishment to circulation of the report to all Members should not exceed nine months.

Adoption of panel reports/appellate review (Arts. 16, 17, 20). Within 60 days after a panel report is circulated to WTO Members, the report is to be adopted at a DSB meeting unless a party to the dispute appeals the report or the DSB decides by consensus not to adopt it. Within 60 days of being notified of an appeal (extendable to 90 days), the Appellate Body (AB) must issue a report that upholds, reverses, or modifies the panel report. An appellate report is to be adopted by the DSB, and unconditionally accepted by the disputing parties, unless the DSB decides by consensus not to adopt it within 30 days after circulation to Members.

The period of time from the date the panel is established to the date the DSB considers the panel report for adoption is not to exceed nine months (12 months where the report is appealed) unless otherwise agreed by the disputing parties.

Implementation of panel and Appellate Body reports (Art. 21). Thirty days after the panel and any AB reports are adopted, the Member must inform the DSB how it will implement the WTO ruling. If it is "impracticable" to comply immediately, the Member will have a "reasonable period of time" to do so. The period will be: (1) that proposed by the Member and approved by the DSB; (2) absent approval, the period mutually agreed by the disputing parties within 45 days after the date of adoption of the report or reports; or (3) failing agreement, the period determined by binding arbitration. Arbitration is to be completed within 90 days after the reports are adopted. To aid in determining a compliance period, the DSU gives the arbitrator a non-binding guideline of 15 months from the date of adoption. Where there is disagreement as to whether a Member has complied in a case, a panel may be convened to resolve the dispute; the compliance panel has 90 days to issue its report, which may be appealed.

The period of time from the date the panel is established to the date the compliance period is determined is not to exceed 15 months unless the disputing parties agree otherwise. If the panel or the AB has extended its time, the additional period is to be added to these overall deadlines. In such case, the total time is not to exceed 18 months, unless the disputing parties agree that exceptional circumstances warrant an extension.

Compensation and suspension of concessions (Art. 22). If defending party fails to comply with the WTO recommendations and rulings within the compliance period, the party must, upon request, enter into negotiations with the prevailing party on a compensation agreement within 20 days after the expiration of this period; if negotiations fail, the prevailing party may request authorization from the DSB to retaliate.

If requested, the DSB is to grant the authorization within 30 days after the compliance period expires unless it decides by consensus not to do so. The defending Member may request arbitration on the level of retaliation or whether the prevailing Member has followed DSU rules in formulating a proposal for cross-retaliation; the arbitration is to be completed within 60 days after the compliance period expires. Once a retaliatory measure is imposed, it may remain in effect only until the violative measure is removed or the disputing parties otherwise resolve the dispute.

Compliance Issues. While many WTO rulings have been satisfactorily implemented, a number of difficult cases have tested the implementation articles of the DSU, highlighting some deficiencies in the system and prompting suggestions for reform.[2] For example, ambiguities in the DSU have resulted in the problem of "sequencing," an issue that first manifested itself in late 1998 and early 1999 during the compliance phase of the U.S.-European Communities (EC) dispute over the EC's banana import regime. Article 22 of the DSU allows a prevailing party to request authorization to retaliate within 30 days after a compliance period ends if the defending party has not complied. Article 21.5 provides that disagreements over the adequacy of compliance measures are to be decided using WTO dispute procedures, "including whenever possible resort to the original panel"; the compliance panel's report is due within 90 days and may be appealed. The DSU does not integrate Article 21.5 into Article 22 processes, nor does it expressly state how compliance is to be determined so that a prevailing party may pursue action under Article 22.

---

[2] Some of these issues are discussed in CRS Report RL31860, *U.S.-European Union Disputes in the World Trade Organization*, by Raymond J. Ahearn and Jeanne J. Grimmett.

Members discussed, but did not resolve, the sequencing issue during the review of the DSU provided for in the Uruguay Round and Doha Declarations. Multilateral action is needed to revise WTO rules in this area given the January 2001 adoption of an Appellate Body report that in effect concluded that a panel convened to arbitrate the level of trade retaliation under Article 22.6 does not have a mandate to first decide if a WTO Member is in compliance with WTO rulings, and stated that rules regarding sequencing must be decided by WTO Members as a whole (*United States – Import Measures on Certain Products from the European Communities,* WT/DS165). In the meantime, disputing parties have been entering into bilateral agreements regarding the sequencing of compliance panels and requests to retaliate in specific proceedings.[3]

WTO Dispute Settlement and U.S. Law. The DSB's adoption of panel and appellate reports finding that a U.S. measure violates a WTO agreement does not give the reports direct legal effect in this country. Thus, federal law would not be affected until Congress or the Executive Branch, as appropriate, changed the law or administrative practice at issue.[4] Authorities for Executive Branch action in compliance with certain adverse WTO decisions are provided for in §§ 123 and 129 of the Uruguay Round Agreements Act (URAA), 19 U.S.C. §§ 2254(b)(3), 3533, 3538. The DSU generally applies to disputes involving state and local measures covered by WTO agreements and Members are obligated to ensure compliance at this level (DSU, Art. 22.9 and n.17). Only the federal government may bring suit against a state or locality to declare its law invalid because it is inconsistent with a WTO agreement; private remedies based on WTO obligations are also precluded by statute (URAA, § 102(b),(c), 19 U.S.C. § 3512(b),(c)).

Section 301 of the Trade Act of 1974. Sections 301-310 of the Trade Act of 1974, 19 U.S.C. §§ 2411 *et seq.*, provide a means for private parties to petition the United States Trade Representative (USTR) to take action regarding harmful foreign trade practices. If the USTR decides to initiate an investigation, whether by petition or on its own accord, regarding an allegedly WTO-inconsistent measure, he or she must invoke the WTO dispute process to seek resolution of the problem. The USTR may impose retaliatory measures to remedy an uncorrected foreign practice, some of which may involve suspending a WTO obligation (e.g., a tariff increase in excess of negotiated rates). The USTR may terminate a Section 301 case if the dispute is settled, but under § 306 must monitor foreign compliance and may take further retaliatory action if compliance measures are found to be unsatisfactory. A "carousel" provision added to § 306 in P.L. 106-200 directs the USTR periodically to revise the list of imports subject to any Section 301 retaliation unless the USTR determines that implementation of WTO obligations is imminent or the USTR and the Section 301 petitioner agree that revision is unnecessary.

Article 23 of the DSU requires WTO Members to use DSU procedures in disputes involving WTO agreements and to act in accordance with the DSU when determining whether a violation has occurred, determining a compliance period, and undertaking any

---

[3] *See generally* Rhodes, "The Article 21.5/22 Problem: Clarification Through Bilateral Agreements?," 3 J. Int'l Econ L. 553 (2000).

[4] *See* Uruguay Round Agreements Act (URAA) Statement of Administrative Action, H.Doc. 103-316, v. 1, at 1032-33 (1994). Uruguay Round implementing legislation provides that "[n]o provision of any of the ... Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect." URAA, § 102(a)(1), 19 U.S.C. § 3512(a)(1). *See also* H.Rept. 103-826, Pt. I, at 25.

retaliatory action. Section 301 may be generally be used consistently with the DSU, though some U.S. trading partners continued to complain that the statute allows unilateral action and forces negotiations through its threat of sanctions.

The EC challenged Section 301 in the WTO in 1998, with the dispute panel finding that the language of § 304, which requires a USTR determination as to the legality of a foreign practice by a given date, is *prima facie* inconsistent with Article 23 because in some cases it mandates a determination and statutorily reserves the right for the determination to be one of inconsistency with WTO obligations before the exhaustion of DSU procedures. The panel also found, however, that the serious threat of violative determinations and consequently the *prima facie* inconsistency was removed because of U.S. undertakings, as set forth in the Uruguay Round Statement of Administrative Action (H.Doc. 103-316) and made before the panel, that the USTR would use its statutory discretion to implement Section 301 in conformity with WTO obligations. Moreover, the panel could not find that the DSU was violated by § 306, which directs the USTR to make a determination as to imposing retaliatory measures by a given date, given differing good faith interpretations of the "sequencing" ambiguities in the DSU. *See United States – Sections 301-310 of the Trade Act of 1974; Report of the Panel* (WT/DS152/R)(adopted January 2000). In June 2000, the EC challenged the "carousel" statute described above on the ground that, among other things, it requires unilateral suspension of (or threats to suspend) WTO concessions or other obligations other than those whose suspension has been authorized by the DSB; the case remains in consultations (*United States – Section 306 of the Trade Act of 1974 and Amendments Thereto* (WT/DS200)).

Recent Legislation Related to WTO Dispute Settlement. In its grant of trade promotion authority to the President in August 2002 (P.L. 107-210), Congress directed the Executive Branch to address dispute settlement issues in WTO negotiations, particularly to seek the adherence of panels to previously-agreed standards of review, and provisions encouraging the early identification and settlement of disputes. It also required the Secretary of Commerce to provide a written report to the Congress by December 31, 2002, setting forth the U.S. strategy for addressing congressional concerns regarding whether dispute panels and the Appellate Body have added to U.S. obligations or diminished U.S. rights under WTO agreements on antidumping, subsidies and countervailing measures, and safeguards. Timely submission of such a report is a condition of the application of expedited legislative procedures to an agreement negotiated under WTO auspices. In December 2002, the United States, along with Chile, tabled a proposal in the WTO that would make it easier for disputing parties to resolve their disputes bilaterally. The Secretary reported to the Congress on U.S. dispute settlement strategy on December 30, 2002, stating that the Administration would address congressional concerns in two ways: through Doha Round negotiations on the DSU and WTO rules and, pending completion of the negotiations, by working within the current system "to avoid panel or Appellate body findings that would be of concern."[5]

Three 108th Congress bills – S. 676, S. 1258, and H.R. 2365 – would have created a commission to review WTO decisions adverse to the United States and to report its findings to Congress. S. 1258 and H.R. 2365 also addressed other WTO-related dispute settlement issues, including private party participation in dispute proceedings.

---

[5] The report is available at [http://www.ita.doc.gov/ReporttoCongress.pdf]. U.S. dispute settlement proposals tabled in the WTO are attached as annexes to the Secretary's report.