

The “Presentation” aims answering the following questions:

1. How Dispute settlement System (DSS) at WTO works? And what are the main stages of dispute proceeds?
2. How long time to settle a dispute through the DSS?
3. Did DSS support the developing countries?
4. Did the Developing Countries succeeded in making the use of DSS effective?
5. Is the DSS at WTO fair? At least for third world countries?
6. Did the developing countries succeeded in making effective use of WTO DSS?
7. What is the difference in the Dispute settlement mechanism between GATT and WTO?

- **How Dispute settlement System (DSS) at WTO works? And what are the main stages of dispute proceeds?**

Stage 1: The consultation stage

The consultation stage begins the WTO DSS (Dispute Settlement System) into action, The process get started by the complainant filing a request for consultation with the defendant, in which request the complainant will set out its objections to the trade measure in question.

The parties are required to negotiate to reach a mutually satisfactory solution within 60 days.

In this Stage the diplomacy plays an important role at this stage and good numbers of WTO cases are settled.

Stage 2: The Litigation (Panel)

In the event that the parties fail to reach a mutually satisfactory solution the complainant can request for the establishment of a panel to hear the dispute.

Issuing the Report:

After the conclusion of the case the panel issues an interim report and then ultimately a final report which is sent to the DSB for adoption, unless the other party appeals, If on appeal the case favors the defendant the case will end there. However, if the case favors the complainant the AB will call upon the defendant to bring its trade measures into conformity with the covered agreement in question.

The panel (up to **45 days** for a panel to be appointed, plus 6 months for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country “in the dock” can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel). (up to **45 days** for a panel to be appointed, plus 6 months for the panel to conclude).

Stage 3: the implementation

The appellate report also goes for adoption by the DSU (Dispute Settlement Understanding). If it is impracticable for the defendant to comply immediately, the defendant is given a reasonable time within which to comply, and failing compliance the complainant may request for a compliance panel. This marks the implementation stage of the WTO DSS.

The WTO DSS provides for three remedies:

Cessation: the DSU puts preference upon cessation, that is, the removal of measures that have been found to be WTO inconsistent and its not a voluntary remedy.

Compensation: which is understood not to be in monetary form, it is usually in the form of trade concessions such as offering enhanced market access to the successful party.

Retaliation: The remedy of retaliation applies under some principles. The general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment.

➤ *How long time to settle a dispute through the DSS?*

These approximate periods for each stage of a dispute settlement procedure are target figures—the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate as the following:

- 60 days Consultations, mediation, etc
- 45 days Panel set up and panellists appointed
- 6 months Final panel report to parties

- 3 weeks Final panel report to WTO members
- 60 days Dispute Settlement Body adopts report (if no appeal)

Total = One Year (without appeal)

- 60-90 days Appeals report
- 30 days Dispute Settlement Body adopts appeals report

Total = One Year and Three Months (with appeal)

Case – US & Venezuela (16 Months)

Accordingly, on 23 January 1995, Venezuela complained to the Dispute Settlement Body that the United States was applying rules that discriminated against gasoline imports, The United States appealed.

The Appellate Body completed its report, and the Dispute Settlement Body adopted the report on 20 May 1996, one year and four months after the complaint was first lodged. one year and four months after the complaint was first lodged.

➤ *Did DSS support the developing countries?*

A number of provisions exist in the (Dispute Settlement Understanding) that afford developing countries special and differential treatment at the consultation stage.

Falling for examination under this section is Article 3(12), which gives complainant-developing countries the right to opt for a speedy dispute resolution mechanism under the 1966 Decision, Article 4(10), which urges parties to give special attention to the particular problems and interests of developing countries and finally, Article 12(10), which allows for extension of time in the context of consultations involving a measure taken by a developing country. This section begins with Article 3(12).

Under the 1966 Decision:

The benefit of the 1966 Decision is that it offers developing countries an accelerated system for the resolution of disputes between them and developed countries. For example, under the Decision, the panel is to report to the WTO within 60 days. This period of time is shorter than the one provided for under the DSU, under the DSU the panel is given six months to issue its report on a confidential basis to the parties to the dispute, plus another three weeks for translation prior to its circulation to the DSB. Browne notes that if the 60 day time frame is observed, this could be a significant benefit to developing countries whose firms generally do not have sufficient strength to withstand extended applications of measures restricting their exports.

Special Attention to Problems of Developing Countries (Article 4(10)):

Article 4(10) which states that: “***During consultations Members should give special attention to the particular problems and interests of developing country Members.***”

By using the word “should”, the provision only *urges* and *advises* members to give special attention to the particular problems and interests of developing countries and therefore is not a mandatory provision, it does not create an enforceable obligation on the part of the members, so it does not exactly state how such special attention must be given, members could just say ‘we have given special attention to the particular problems of developing countries’ and they will comply with the provision.

Extension of Time under Article 12(10)

The next Article for consideration is Article 12(10). Article 12 (10) provides as follows:

In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long...

In terms of this Article, where consultations involve a measure taken by a developing country the periods under paragraph 7 and 8 of Article 4 may be extended upon agreement by the parties or by the DSB. Paragraph 7 of Article 4 provides that if consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultation the complaining party may request the establishment of a panel.

Article 12(10) allows for the period of consultation to be extended so that parties may have more time to further explore possibilities of reaching a mutually satisfactory result.

This provides some advantages to the developing country. At the commencement of the case because of their level of development, developing countries usually face many challenges. One of the pre-conditions for defending WTO rights is availability of information compiled at the national level traditionally collected through commercial representatives and attachés stationed in embassies. Developing countries do not usually have this luxury and may therefore require more time to fully prepare for a meaningful consultation. Moreover, developing countries lack local expertise. Extension of time allows the developing country more time to gather its expertise and to seek assistance from other bodies more extensively.

There exists two great limitations with Article 12(10); the advantage it carries is only available to a developing country when that developing country is a defendant, the extension or relaxation of time limits is not available to a developing country that is a complainant. Furthermore, the provision only applies to extension of time in respect of consultation time frames and not for instance time frames at the implementation stage.

Procedure at the Implementation Stage:

Article 21(2) of the DSU provides that-”Particular attention *should* be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement. “

While it is not clear on this, and this is one of its problems, Article 21(2) can be read as requiring that particular attention be paid to matters affecting the interests of developing countries in or during procedures for the surveillance and implementation of the recommendations and rulings of the DSB. The lack of clarity on where and when such particular attention should be paid to matters affecting the interests of developing countries is undesirable and weakens the utility of this provision in respect to developing countries.

There is another case of imprecision with Article 21(2). While the provision requires that particular attention should be paid to matters affecting the interests of developing countries it does not say who should pay that attention.

Furthermore, the word 'should' has been used which indicates that while paying attention to matters affecting the interests of developing countries may be a desirability it is not a mandatory requirement.

➤ *Is the DSS at WTO fair? At least for third world countries?*

Theoretically the answer is “YES” hence, all Members have equal access and in which decisions are made on the basis of rules rather than on the basis of economic power, but particularly the answer might be “NO” at least for third world countries.

The (WTO) dispute settlement system has already offered many examples of developing country Members prevailing in dispute settlement over large trading nations, including the withdrawal of the WTO-inconsistent measures the developing country Member had challenged.

But at the same time the developing countries often do not have a sufficient number of specialized human resources who are experts in the intricacies of the substance of WTO law or the dispute settlement procedure.

Nelson Mandela, commenting on the Uruguay Round, said: "The developing countries were not able to ensure that the rules accommodated their realities... it was mainly the preoccupations and problems of the advanced industrial economies that shaped the agreement." He added that rules applied uniformly are not necessarily fair because of the different circumstances of members.

Generally, Developing countries have little power within the WTO framework, have discovered that seeking recourse in the dispute settlement system is costly and requires a level of legal expertise that they may not have. Furthermore, the basis on which the system is run—whether a country is violating free trade rules—is not the most appropriate for their development needs.

➤ *Did the Developing Countries succeeded in making the use of DSS effective?*

Nevertheless that the developed countries some time reap the benefits of any international system or organization such as WTO but at the same time they are trying to commit themselves of the DSS even when they are a compliant to encourage other countries respecting the DSS rules, for example on 23 January 1995, Venezuela complained to the Dispute Settlement Body that the United States was applying rules that discriminated against gasoline imports, and formally requested consultations with the United States. Just over a year later (on 29 January 1996) the dispute panel completed its final report.

(By then, Brazil had joined the case, lodging its own complaint in April 1996. The same panel considered both complaints.) The United States appealed. The Appellate Body completed its report, and the Dispute Settlement Body adopted the report on 20 May 1996, one year and four months after the complaint was first lodged.

The characteristics by country below shows some facts related to question Did the developing countries succeeded in making effective use of WTO dispute settlement?

CASE CHARACTERISTICS BY COUNTRY

Complainants	Frequencies by matter
Developed Country against Developing Country	27
Developed Country against Developed Country	36
Developing Country against Developed Country	16
Developing Country against Developing Country	9

➤ *What is the difference in the Dispute settlement mechanism between GATT and WTO?*

Under GATT contracting parties could bring cases before international body but there was no effective enforcement mechanism, but in WTO an effective enforcement mechanism exists.

The most important rule of positive consensus that existed under GATT 1947 has been changes under WTO, for example there needed to be a positive consensus in the GATT Council in order to refer a dispute to a panel. Positive consensus meant that there had to be no objection from any contracting party to the decision. Importantly, the parties to the dispute were not excluded from participation in this decision-making process.

In other words, the respondent could block the establishment of a panel. Moreover, the adoption of the panel report also required a positive consensus, and so did the authorization of countermeasures against a non-implementing respondent. Such actions could also be blocked by the respondent.

In the WTO the DSS the consensus has been changes to negative consensus (or reverse), which means the adoption of the panel report also required no objection from any contracting party to the decision.