

Advancing Fairness and Justice in the System of Dispute Settlement of World Trade Organization [WTO]

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Abstract— The rules of International Trade are pacts of the World Trade Organization [WTO] to ensure non-discriminatory and free trade between nations. WTO offers a medium for negotiation and resolves trade disputes, which are about broken promises to ensure economic growth and development. So, settling disputes in a timely and structured manner is significant to establish fair and free trade. The purpose of this research is to examine the current system of the WTO dispute settlement mechanism, focusing on the critical stage of implementation and enforcement to prevent the damaging effects of trade disputes. Data for the study was primary and secondary in nature and was obtained from the WTO DS Statistics 1995 to 2017 and academic journals. The data of the cases generated for the study were analyzed, presented, and interpreted using tables and charts. The finding of the study shows that the dispute settlement mechanism established by WTO is an efficient, dependable, and rule-oriented system. Thus, the researcher concludes that the dispute settlement mechanism established by WTO is an efficient, dependable, and rule-oriented system to resolve disputes. Finally, the researcher recommends that the WTO members should form an agreement to avoid abusing the Dispute Settlement Mechanism, which could influence the quality of case reviews and the willingness of WTO members to participate or comply with the decision.

Keywords— Dispute Settlement, WTO, GATT, International Trade, Dumping, Trade Injury,

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I. INTRODUCTION

AROUND the world, the World Trade Organization [WTO] is the only global international organization dealing with the rules of trade between nations with the sole aim to ensure that trade flows as smoothly, predictably and freely as possible.² It is a forum for governments of the different nations to negotiate trade agreements, and it is also a place for them to settle trade disputes.³ The WTO established in 1995 has created a strong and prosperous international trading system, thereby contributing to unprecedented global economic growth.⁴

The WTO was born out of negotiations, and everything it does is the result of negotiations. It offers a medium for negotiation agreements between disputing parties or nations plus legal and institutional structure for the agreements' implementation and monitoring. Hence, this research seeks to examine the system of dispute settlement mechanism under the WTO regime.

In any ideal trade relations, great emphasis is placed on the attainment of trade harmony to create a conducive environment to ensure a prosperous trade system. However, it would appear that dispute is a common phenomenon in any human setting and when it exists, it creates multifaceted problems, which adversely affect the attainment of peaceful relations. In the business world, there are bound to be frictions, which result from differences in interest and aspirations of both parties to trade [buyer and seller], hence dispute is almost unavoidable. So, resolving disputes usually encompasses compromise, concession, and a game of giving and take between disputing parties.

The dispute settlement system is one of the main pillars of the World Trade Organization.⁵ The dispute settlement mechanism has been functioning as the most important tribunal for settling trade-related disputes.

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² WTO. "Overview". The World Trade Organization, Accessed May 19, 2018, https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm

³ WTO. "Who we are". The World Trade Organization, Accessed February 22, 2018, https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm.

⁴ WTO. "Overview". The World Trade Organization, Accessed May 19, 2018, https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm

⁵ WTO. "Dispute Settlement". The World Trade Organization, Accessed April 4, 2018, https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm.

The members are obliged contractually to abide by the decision of the World Trade Organization dispute settlement system. The agreement is insignificant if its obligations cannot be enforced when one of the signatories fails to comply with such obligations. An effective mechanism to settle disputes thus increases the practical value of the commitments the signatories undertake in an international agreement. Truly, voluntary compliance of alleged member is the fundamental of the effective functioning of the system but settling disputes in a timely and structured manner are important. It helps to prevent the detrimental effects of unresolved conflicts and to mitigate the imbalances between stronger and weaker players by having their disputes settled based on rules rather than having the power to determine the outcome. Hence, it worth very much to examine the current World Trade Organization dispute settlement mechanism, stage of implementation, and enforcement to prevent damaging effects of trade disputes. And this has not been the subject of wider public discussions, which this work seeks to examine.

This research work is based on certain research questions. The following research questions are thereby generated: To what extent is efficient, WTO provides a dependable and rule-oriented system? To what extent the rights of Members under the WTO covered Agreements can be enforced? How are the rights of aggrieved Members are upheld in the process of dispute settlement under the WTO covered Agreements?

The purpose of this research is to examine the current WTO dispute settlement mechanism, focusing on the critical stage of implementation and enforcement. The specific objectives of the study are: to examine how efficient, dependable, and rule-oriented system is provided by World Trade Organization to resolve disputes; to examine how dispute settlement mechanism established by WTO can ensure that members' rights under the WTO covered agreements can be enforced; and, to examine how the rights of aggrieved Members are upheld in the process of dispute settlement.

The study is narrowed down to the examination of the current dispute settlement mechanism, focusing on the critical stage of implementation and enforcement to educate the general public and students on the nature, problems, and solutions of the international trade dispute. It will also serve as a resource base to other scholars and researchers interested in carrying out further research in this field afterward, if applied, it will go to an extent to provide new explanation to the topic.

The remaining parts of the paper were arranged four; Section two sets out conceptual framework reviewing the definitions and causes of dispute in International Trade, Section three explained the methodological approach of the study, Section four provides statistics and a case study while Section five presented the summary and conclusions of the study.

II. LITERATURE REVIEW

The World Trade Organizations' dispute settlement system was initiated in 1995 and governed by rules and procedures.⁶

Bosche noted the following innovations in the dispute settlement system; First, the quasi-automatic adoption of requests for the establishment of panels, panel reports, and of the request to authorize the postponement of concessions. Also, the stringent time settings for different phases of the dispute settlement process and lastly, the likelihood of appellate evaluation of panel reports.⁷ Dispute settlement under agreements like the WTO is most frequently triggered when one country is alleged to have changed policy to provide import protection above the limit to which it had agreed in prior negotiations by members of the organization.

2.1 MAIN ACTIVITIES OF THE WORLD TRADE ORGANIZATION [WTO]

Activities of the World Trade Organization [WTO] are numerous. These include:⁸

2. Implementation and monitoring;
3. Dispute settlement;
4. Building trade capacity; and
5. Outreach.

One of the main activities of WTO is to negotiate the reduction or elimination of trade obstacles. Other main activities are: Implementation and monitoring; Dispute settlement; Building trade capacity; and Outreach.

The World Trade Organization's procedure for resolving trade disputes under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for eliminating barriers to trade, among member countries. The dispute is most frequently triggered when one country is alleged to have changed policy to

⁶ Annex 2 to the Agreement Establishing the World Trade Organization. It is aimed to speedy up settlement of disputes between Members of the WTO.

⁷ Bossche, P The Law, and Policy of the WTO. Text, Cases, and Materials [Cambridge: Cambridge University Press, 2005]. 172

⁸ WTO. "What is the WTO". The World Trade Organization Annual Report 2011, https://www.wto.org/english/res_e/publications_e/anrep11_e.htm Accessed May 14, 2018]

1. Trade negotiations;

provide import protection above the limit to which it had agreed in prior negotiations by members of the organization. Then, member countries bring disputes to the World Trade Organization [WTO] if they think their rights under the agreements are being overstepped. The World Trade Organization dispute settlement provides the mechanism which is equally available and binding for all fellow-members of the WTO. Judgments by specially appointed independent experts are based on interpretations of the agreements and individual countries' commitments to the World Trade Organization. So, every Member can be sure that there is a comprehensive mechanism to enforce its rights under WTO agreements.⁹

The World Trade Organization agreements, in its unique features, contain a special provision for emerging countries, including stretched and enough periods to implement agreements and commitments, measures to increase their trading opportunities, to handle disputes, to implement technical standards, and to support them in building their trade capacity.¹⁰

2.2 DISPUTE SETTLEMENT

Dispute settlement is the process of resolving a dispute or a conflict by meeting at least some of each side's needs and addressing their interests. It is also referred to as one of several different processes used to resolve disputes between parties, which include negotiation, mediation, arbitration, collaborative law, and litigation. The basic principles and methods governing the settlement of international disputes today are significantly the same as those that were identified and preserved in the Charter of the United Nations in 1945.¹¹ Parties to a dispute are under an obligation to settle it peacefully.¹² And in the absence of a precise treaty obligation, they are free to decide the particular means of dispute settlement they prefer. However, any settlement will inevitably depend, directly or indirectly, on the agreement of the parties.¹³

2.2.1 Dispute settlement in the World Trade Organization

The World Trade Organization is a place to settle trade disputes. Disputes in the World Trade Organization [WTO] are essentially about broken promises. According to WikiMili, "A former Director-General of the World Trade Organization [WTO] characterized the World Trade Organization [WTO] dispute settlement system as "the most active international adjudicative mechanism in the world today."^{14 15}

2.3 CAUSES OF DISPUTE IN INTERNATIONAL TRADE

In international trade, there are provocative trade relations between countries that can lead to a disputable situation, trade dispute, trade conflict, and trade war. A disputable situation in trade is a situation where there is a contradiction and respective pressure in the relations between countries and there are no financial losses or worsening of trade conditions. The trade dispute is when there is pressure in the relations, associated with the material losses caused by the measures taken by one country, which worsens the trade conditions of the other country [or countries] that require settlement. Trade conflict is a high degree of pressure in the relations, associated with the substantial losses caused by the measures taken by both countries or parties to each other that requires settlement. And the trade war is the highest degree of pressure in the relations between countries, associated with the use of severe unaffordable measures of trade policy like an economic blockade, boycott, embargoes, etc. that can lead to large financial losses of the targeted country.

In Paragraph 1, Article 1 of the Dispute Settlement Understanding, it is clear that disputes brought under consultation and dispute settlement provisions are subject to the mechanism whilst consultations and settlement between parties regarding their rights and obligations are provided under Agreement Establishing WTO [WTO Agreement].¹⁶

In line with the aforementioned forms of disputes, the Dispute Settlement Understanding rules and procedures apply to these agreements specifically: Agreement on Agriculture - Agreement on Sanitary and Phytosanitary Measures [SPS], Agreement on Implementation of Article VI of GATT 1994 [Anti-dumping measures], Agreement on Safeguards [SG] - General Agreement on Trade in Services [GATS], Agreement on Subsidies and Countervailing Measures [SCM], Agreement on Technical Barriers to Trade [TBT], Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS], Agreement on Trade-Related Investment Measures [TRIM], General Agreement on Tariffs and Trade [GATT], Government Procurement Agreement [GPA] and

⁹ WTO. "What is the WTO". The World Trade Organization Annual Report 2011, https://www.wto.org/english/res_e/publications_e/anrep11_e.htm Accessed May 14, 2018

¹⁰ WTO. "What is the WTO". The World Trade Organization Annual Report 2011, https://www.wto.org/english/res_e/publications_e/anrep11_e.htm Accessed May 14, 2018

¹¹ UNO. Article 2, paragraph 3 of the UN Charter, www.un.org/en/charter-united-nations/ Accessed May 19, 2018

¹² UNO. Article 2, paragraph 3 of the UN Charter, www.un.org/en/charter-united-nations/ Accessed May 19, 2018

¹³ UNO. Article 33 of the UN Charter, www.un.org/en/charter-united-nations/ Accessed May 19, 2018

¹⁴ UNO. Article 33 of the UN Charter, www.un.org/en/charter-united-nations/ Accessed May 19, 2018,

¹⁵ WikiMili, https://wikimili.com/en/Dispute_settlement_in_the_World_Trade_Organization Accessed November 5, 2020

¹⁶ Paragraph 1, Article 1 of the Dispute Settlement Understanding

WTO Agreement

A Member of the World Trade Organization can claim that benefits accruing to it directly or indirectly are invalidated or impaired due to three types of circumstances; violation complaints, non-violation complaints, and situation complaints. There exist varieties of causes of disputes in international trade under each aforementioned category. For example, in Michael Johnson's study,¹⁷ of GATT existence and then the WTO which includes: direct protectionism [abuse of public procurement procedures developed to protect domestic producers from foreign competition]; dissatisfaction of one party with the fact that the trading partner distorts trade by subsidizing certain types of production; dissatisfaction of one party with the fact that the country partner misuses the anti-dumping tools allowed by WTO with the aim of protection; direct conflicts in the international trade between the national regulations and relevant rules of law of a trading partner, that reflect the interest of certain communities; hidden protectionism [abuse of national standards or discriminatory application of national taxation to reduce the competitiveness of imported goods compared to domestic ones]; a disagreement as to a possibility of application of agreed rules and definitions in particular cases; attempts of one country to impose upon the other its own national standards abroad with using one of the ways: either by extraterritorial imposition of technical standards on foreign products or by extraterritorial application of national regulations; dissatisfaction of one party with violation of the rule of most favored nation treatment by the other party by excessive restrictions on imports compared with a third party, and others.¹⁸ Apart from abuses of policies and disagreements between parties in international trade, subsidizing and dumping are major threats to market share and causes of injury to other countries, and these are being corrected through countervailing, safeguard, and antidumping measures.

2.4 DUMPING AND TRADE INJURY

According to WTO, trade injury is as a result of dumping.¹⁹ Dumping mean a condition of international price discrimination, where the price of a product, when sold in the importing country, is less than the price of that product in the market of the exporting country.²⁰ However, according to WTO technical information on anti-dumping, injury either refer to as [i] material retardation of the establishment of the local industry [ii] material injury to local industry, or [iii] threat of material injury to local industry^{21 22}

2.5 DISPUTE SETTLEMENT IN THE ANTI-DUMPING

Dumping is a situation whereby the price of a product, when sold in the importing country, is less than the price of the same product in the market of the exporting country. Disputes in the anti-dumping area may be as a result of a member challenging the imposition of anti-dumping measures, or the imposition of preliminary anti-dumping measures.²³ There is a special standard panel's review of the determination of the national authorities imposing the measure, and this is only for anti-dumping disputes.²⁴

2.6 DETERMINATION OF INJURY

According to WTO technical information on anti-dumping, discovery of injury to the local industry is only allowed if [1] there is a close gathering of dumped imports into the market attended by the local industry, and [2] dumped imports are causing injury to the producers of all or almost all of the products within that market.²⁵

2.7 SUBSIDIES

A subsidy is government policy or financial contribution by the government or any public body within the territory of a Member to encourage export of goods and deject the deal of goods on the domestic market through direct payments, subsidized cost loans, tax holiday or tax relief for exporters, or government-bankrolled

¹⁷ Johnson, Michael D. C. "EU-US Trade disputes: their causes, resolution and prevention", [BP Essay Contest 2001, European University Institute, Robert Schuman Centre for Advanced Studies: 2001]] he identifies different causes of dispute while studying the disputes between the EU and the U.S. for the period

¹⁸ Johnson, Michael D. C. "EU-US Trade disputes: their causes, resolution and prevention", [BP Essay Contest 2001, European University Institute, Robert Schuman Centre for Advanced Studies: 2001]]

¹⁹ Thomas R. Howell, Dewey Ballantine, Dumping: Still a Problem in International Trade, [*International Friction and Cooperation in High - Technology Development and Trade: Papers and Proceedings* 1997], <https://www.nap.edu/read/5902/chapter/28> Accessed May 19, 2018, https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

²⁰ WTO, "A unique Contribution" https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm Accessed May 19, 2018],

²¹ Article VI of General Agreement on Tariffs and Trade [GATT] and the Anti-Dumping Agreement,

²² WTO, "Technical Information on Anti-dumping", https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm Accessed May 19, 2018]

²³ WTO, "Technical Information on Anti-dumping", https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm Accessed May 19, 2018

²⁴ Petersmann, E.U. *The GATT/WTO Dispute Settlement System: International Law, International Organizations, and Dispute Settlement*, [London: Kluwer Law International, 1997].

²⁵ Bown, C.P., Participation in WTO Dispute Settlement: Complainants, Interested Parties and Free Riders, Working Paper 2003b, <http://people.brandeis.edu/~cbown/research.html> May 19, 2018

transnational promotion and other incentives. Subsidy is aimed to reduce the price of good and services paid by foreign importers and increase price of the same goods and services for domestic consumers to encourage the export of goods. Lots of subsidies directly linked to the volume of exports are outlawed under the World Trade Organization [WTO], except for Least Develop Nations.²⁶

Economic analysis has proved that market failures of various kinds can sometimes be addressed efficiently with subsidies. It also worth mentioned that subsidies can distort trade flows if they give an artificial competitive advantage to exporters or import-competing industries. The Subsidies Agreement defines three categories of subsidies according to specificity: subsidies that are prohibited outright [hereinafter “red-light subsidies”], subsidies that are not prohibited but which may be subject to countervailing measures [hereinafter “yellow-light subsidies”], and subsidies that are neither prohibited nor subject to countervailing measures [hereinafter “green-light subsidies”].²⁷ Generally, there are six primary categories of subsidies, divided by a purpose: export subsidies, subsidies contingent upon the use of domestic over imported goods, industrial promotion subsidies, structural adjustment subsidies, regional development subsidies, and research and development subsidies.²⁸

Subsidies, sometimes, act as a barrier to trade, by changing the competitive relationships that develop unsurprisingly in a free trading system. In this case, exports of subsidized products may injure the domestic industry producing the same product in the importing country. Likewise, subsidized products may gain artificial advantages in third-country markets and impede other countries' exports to those markets.²⁹ During the Tenth Ministerial Conference organized by WTO in 2015 at Nairobi, Kenya, members of the WTO agreed to remove export subsidies for agricultural products to avoid inflation.^{30,31}

2.8 SAFEGUARD

A safeguard means a restraint on international trade or economic development to protect communities from development aggression or home industries from foreign competition.³²

It is allowed under the World Trade Organization [WTO] for any member to take safeguard actions by restricting imports of goods provisionally to guard a local industry from injury or threat to cause injury to domestic production as a result of increased importation. Safeguard actions are projected to guard local industries, citizens, and other indigenous groups with resource management knowledge.³³

Besides, safeguard measures were designed and enacted in Article 19 of GATT which are always available to safeguard a particular local industry from causing, or threatening to cause, serious injury to the industry as a result of an increase in imports of any goods. In the WTO agreement, there are sets of requirements to safeguard investigations by national authorities. It also sets out standards for assessing the severity of the injury caused or threatened, the elements, and conditions which must be considered in determining the proportion of injury caused or impact of imports on the local industries.

2.9 TRADE REMEDIES: ANTI-DUMPING, SAFEGUARD, AND COUNTERVAILING MEASURES

Under the World Trade Organization, there are measures established to offset dumping causing injury to the domestic industry; offset subsidization causing injury to the domestic industry, and prevent or remedy serious injury to the domestic industry caused by a flow of imports and give time to facilitate modification. These measures include anti-dumping, safeguard, and countervailing measures. The Agreement on

²⁶ Understanding the WTO: The Agreements Anti-dumping, subsidies, safeguards: contingencies, etc, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm accessed June 17, 2018]

²⁷ Jianming Shen, A Critical Analysis of China 's First Regulation on Foreign Dumping and Subsidies and Its Consistency with WTO Agreements, 1997, Berkeley Journal of International Law, Volume 15 Issue 2 Article 4, <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com.ng/&httpsredir=1&article=1164&context=bjil> accessed on June 14, 2018

²⁸ Kym Anderson, Subsidies and Trade Barriers, Centre for International Economic Studies School of Economics University of Adelaide Adelaide SA 5005 Australia [Cambridge University Press, 2004] <https://www.webportglobal.com/Images/a3/a3808fac-a51b-4960-bfec-9c236b057764.pdf>, accessed on June 16, 2018]

²⁹ Kym Anderson, Subsidies and Trade Barriers, Centre for International Economic Studies School of Economics University of Adelaide Adelaide SA 5005 Australia [Cambridge University Press, 2004] <https://www.webportglobal.com/Images/a3/a3808fac-a51b-4960-bfec-9c236b057764.pdf>, accessed on June 16, 2018]

³⁰ WTO members secure “historic” Nairobi Package for Africa and the world, Ministerial Conference, 10th, Nairobi, https://www.wto.org/english/news_e/news15_e/mc10_19dec15_e.htm, [accessed on June 16, 2018]

³¹ WTO, “Ministerial Declaration on Cotton” https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Language=ENGLISH&SourcePage=FE_S_S002&Context=RD&PostingDateFrom=18/12/2015&PostingDateTo=21/12/2015&IsEnglishSelected=True&IsFrenchSelected=True&IsSpanishSelected=True&IsAllLanguageSelected=True&FullTextHash=371857150&languageUIChanged=true# accessed on June 14, 2018]

³² Kate Horner Niranjali Amerasinghe Sebastian, “Addressing the Drivers – A case for the WTO?” Bock Environmental Investigation Agency CIEL Greenpeace International <https://www.greenpeace.org/archive-international/Global/international/briefings/forests/2013/20130604-REDD-Drivers.pdf> accessed on June 18, 2018]

³³ The WTO “Anti-dumping, subsidies, safeguards: contingencies, etc” https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm accessed on June 16, 2018]

Implementation of Article 6 of the General Agreement on Tariffs and Trade [GATT] 1994 tagged the Anti-Dumping Agreement is one of the mentioned 13 agreements that deal with the measures that WTO Members can take against imports at dumped prices. The Anti-Dumping Agreement sets forth rules regarding the imposition of anti-dumping measures against dumped imports. Subject to strict conditions, carefully drafted through rigorous diplomatic negotiations, it arguably allows Members of the WTO to interfere with the free flow of goods by subjecting imports at dumped prices to a supplementary duty for a limited period.³⁴

Anti-dumping measures can be put on imports of specific products if the investigation justifies it by the authority.³⁵ In anti-dumping measures, the rule of the utmost care must be established in their application; preferential treatment for the most-favored-nation treatment is not an exception. Provisional measures include imposing a provisional anti-dumping [or countervailing] duty by prescribed procedures; requesting the posting of a cash deposit, bond, or any other form of security; eliminate or limit subsidy, to increase prices or to cease exports. Safeguard measures, which are also instruments for the protection of indigenous industries, its implementation requires the government to provide offsetting concessions or consent to countermeasures taken by the trading partner unlike of anti-dumping measures.

Countervailing measure mean safeguarding action set by the importing country to determine whether imported goods are benefiting from subsidies thus result in an injury. This measure which include increased duties and others can be undertaken when it is proved that imported goods have resulted in injury or benefitted from subsidies by the investigating authority of the importing country.³⁶ However, the WTO Agreement on Subsidies and Countervailing Measures regulates the application of countervailing measures by members' countries and members have right to seek withdrawal of subsidy, or request for the imposition of countervailing duties, or the undertaking of price changes that would counterbalance the subsidy through the WTO's dispute-settlement procedure.³⁷

2.10 LEGAL FRAMEWORK DISPUTE SETTLEMENT UNDER WTO

The WTO dispute settlement mechanism provides for the discipline applicable to all dispute settlement procedures under Dispute Settlement Understanding [DSU]. This covers the procedures for mediation, conciliation, good offices, and arbitration within 1 year 3 months. Table 1: Duration of a Dispute Settlement procedure

Duration of a Dispute Settlement procedure

These approximate periods for each stage of a dispute settlement procedure are target figures. The agreement is flexible. Also, the countries can settle their dispute themselves at any stage. Totals are also approximate.

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 the World Trade Organization [WTO] members
60 days	Dispute Settlement Body adopts report [if no appeal]
Total = 1 year [without appeal]	
60–90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1 year 3 months [with the appeal]	

Source: Understanding the WTO: Settling Disputes - A unique contribution

Source: Understanding the WTO: Settling Disputes - A unique contribution

The legalization of the GATT's dispute settlement procedure in the 1995 establishment of the WTO's Dispute Settlement Understanding was one of the major achievements of the negotiations under the Uruguay Round. The WTO dispute settlement procedure consists of three broad stages: Consultations; Panel and, if requested, Appellate Body review; and, Implementation. These actions include initiating the dispute; requesting a panel and, in doing so, setting out the scope of dispute; asking the WTO Director-General to appoint panelists if the disputing Members cannot agree on the WTO Secretariat's proposed slate; seeking authorization to impose countermeasures against a non-complying Member; requesting that the prevailing Member's retaliation proposal be arbitrated; and imposing retaliatory measures even if the Dispute Settlement Body has authorized

³⁴ The Agreement on Implementation of Article 6 of the General Agreement on Tariffs and Trade [GATT] 1994]

³⁵ European Commission "Types of trade defense measures" http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151017.pdf accessed on June 18, 2018.

³⁶ The OECD Economic Outlook: Sources and Methods 2014 <https://stats.oecd.org/glossary/detail.asp?ID=460> accessed on June 18, 2018]

³⁷ The WTO "WTO countervailing measures" https://www.wto.org/english/thewto_e/glossary_e/countervailing_measures_e.htm accessed on June 18, 2018].

them. The ultimate goal of the dispute settlement of the WTO is to prompt compliance with the recommendations and rulings. To facilitate such compliance, the Dispute Settlement Body keeps national implementation under observation, until the dispute is resolved.

2.11 SUMMARY

Dispute settlement under the World Trade Organization is mostly caused when a member believed that a policy has been changed by another member in which it had been agreed upon in prior negotiations by members of the organization. The World Trade Organization provides a standard for negotiating agreements aimed at reducing difficulties to international trade and ensuring a level playing field for all and preventing trade injuries.

The World Trade Organization Agreements allow every member to apply anti-dumping, countervailing and safeguard measures, which permit them to depart from certain obligations contained in the WTO Agreements. The main objectives of these measures are to offset dumping causing injury to the domestic industry; offset subsidization causing injury to the domestic industry and prevent or remedy serious injury to the domestic industry caused by a flow of imports and give time to facilitate modification. However, such measures may only be applied after a domestic investigation is conducted and certain substantive and procedural requirements provided in the respective Agreement are met.

III. Research Methodology

In the course of conducting this research, a doctrinal methodology is adopted where both primary and secondary sources are examined and analyzed. The primary sources include judicial interpretation of WTO cases, while secondary sources include WTO Agreements, statistics, books, and academic or scholarly articles.

IV. Data Presentation And Results

Cases as a result of a dispute between parties that are unable to be resolved through consultations. However, it is required that parties disagreeing submit their disagreement to the members of the panel instituted by WTO. The disagreeing members are required to submit their case to the panel for further procedures to resolve the dispute.

4.1 Dispute Settlement through Consultations

Some members of WTO in the process of dispute settlement opt for dispute resolution through consultations. However, according to Arie Reich, the poorer countries have a higher propensity to settle the case through consultations than richer countries presented in Table 1 below.

Table 1 – Percentage of Parties that Agree to Settle or Terminate the Case [1995-May 2017]

	Percentage of Complainants that Settled	Percentage of Respondents that Settled
High-Income Countries:	17.96%	15.79%
	[74/412]59	[63/399]
Upper Middle-Income Countries:	17.05%	17.07%
	[22/129]60	[21/123]
Lower Middle-Income Countries:	20.25%	18.18%
	[16/79]61	[12/66]
Low-Income Countries	0	0
	[0/0]	[0/0]

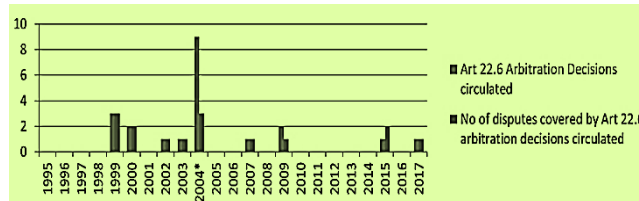
Source: Arie Reich, *The Effectiveness of The WTO Dispute Settlement System: A Statistical Analysis*, EUI Working Paper LAW 2017/11

Using the Table 1 above, the percentage of complainants that agree to withdraw their complaint after a mutually agreed solution was reached is only slightly higher for Lower Middle-Income Countries [20.25%] than for High-Income Countries [17.96%] – less than 2.5%. Hence, it is concluded that the poorer countries have a higher propensity to settle the case than richer countries.

4.1.2 Disputes brought to the WTO, Panels and Appellate Body from 1 January 1995 – 31 December 2017

From 1995 to the end of 2017, more than 400-panel reports, Appellate Body reports, and arbitral awards or decisions were circulated or more than 500 if counted based on the individual disputes covered by each report to advance the settlement of the 535 disputes submitted to the WTO by its members.³⁸

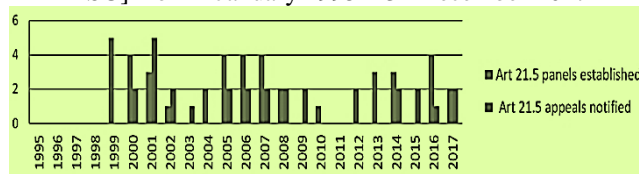
Chart 1: Number of disputes brought to the WTO, panels established and notifications of appeal 1 January 1995 – 31 December 2017



Source: WTO DS Statistics -1995- 31 May 2018

From 1 January 1995 to 31 December 2017, 308 dispute cases had been established and 235-panel reports had been successfully documented in respect of the cases established [Appendix II]. This was followed by an appeal in 156 disputes of all cases in which a panel report was circulated in the original proceedings [Reference: Appendix II]. The number of panels established and appeals in this chart also relate to the number of separate disputes in respect of which a panel has been established, or an appeal has taken place. The chart shows that in 2004, there is a high rate of arbitration decisions circulated but not all disputes covered by Article 22.6 of Dispute Settlement Understanding

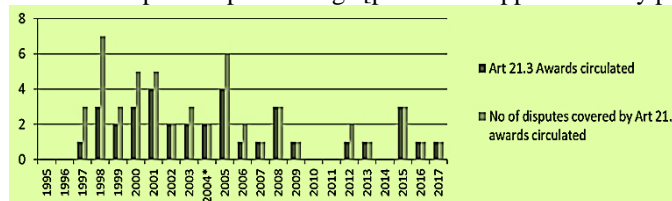
Chart 2: Number of arbitrations to determine the period for implementation of a ruling [Article 21.3(c) of the DSU] from 1 January 1995 – 31 December 2017



Source: WTO DS Statistics -1995- 31 May 2018

As of 31 December 2017, an arbitration to determine the period for implementation had taken place in 51 disputes [Reference: Appendix II]. The number of disputes in which arbitration panels are established and appeals are notified were shown in Chart 2 to ascertain the period for implementation from 1995 to 2017. And several panels established and appeals notified in 2008 and 2017 is the same meaning that most, if not all, of the final report of the panel established, was appealed.

Chart 3: Number of compliance proceedings [panel and Appellate Body proceedings]³⁹



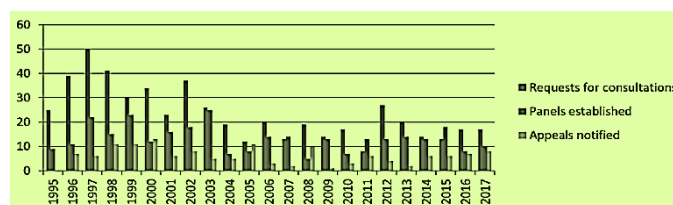
Source: WTO DS Statistics -1995- 31 May 2018

From 1995 to December 2017, a compliance panel had been established in 44 disputes [Appendix II] that is, in less than 20 percent of the disputes in which original panel - and possibly appellate – proceedings had been initiated. In 27 [Appendix II] of these disputes that are, in around 60 percent of cases in which a compliance panel was established, the compliance panel's report was appealed.

Chart 4: Number of arbitrations to determine the level of suspension of obligations [Article 22.6 of the DSU] 1 January 1995 – 31 December 2017

³⁸ WTO DS Statistics -1995- 31 May 2018 https://www.wto.org/english/tratop_e/dispu_e/numbers_of_disputes_by_stage_e.xlsx

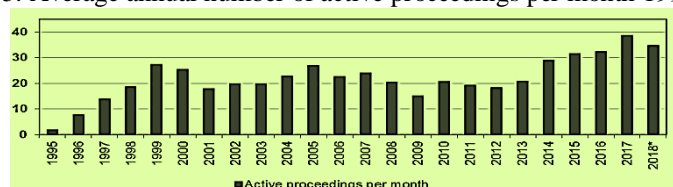
³⁹ Article 21.5 of the DSU] 1 January 1995 – 31 December 2017



Source: WTO DS Statistics -1995- 31 May 2018

From 1995 to 2017, an arbitration to determine a permissible level of retaliation had been needed in only 15 disputes [Appendix II]. Chart 4 shows the number of disputes in which arbitration on the level of retaliation under Article 22.6 of the Dispute Settlement Understanding took place, every year, from 1995 to 2017 and the rate of retaliation is quite high compare to the number of panels established.

Chart 5: Average annual number of active proceedings per month 1995-2018



Source: WTO DS Statistics -1995- 31 May 2018

From 1995 to 2017, annual averages are calculated based on the number of active proceedings per month, then average of active proceedings from January to December of every year equals to average annual number of active proceedings. Therefore, the general level of dispute settlement activity varies subject to number of active disputes over a period. The number of active disputes increased significantly compared with 2016, extending the trend of recent years. In 2017, the three WTO legal divisions dealt with 38.5 panels, appellate, and arbitration proceedings on average each month, compared with 32.3 in 2016. The number was over 33 percent more than in 2014.⁴⁰

Table 2: Total number of dispute settlement reports 1 January 1995 – 2018

Type of report	Number of reports [by distinct matter]	Number of disputes covered
Original panel reports adopted	179	224
Original Appellate Body reports adopted	113	153
Compliance panel reports adopted	32	34
Compliance Appellate Body reports adopted	22	24
Reasonable period [RPT] arbitral awards [Article 21.3[c] DSU]	37	52
Retaliation arbitral decisions [Article 22.6 DSU]	21	15
Total	414	

Source: WTO DS Statistics -1995- 31 May 2018

However, if panels established are counted based on dissimilar matters then the total number of panels established would be lesser. Because several disputes of the same matter could be examined by a single panel.

4. 2 Findings

After the presentation of the data obtained, the findings are as follows:

[1] WTO dispute settlement has demonstrated a high record of cases and enforcement of rulings which would appear to reflect that members have confidence in the ability of the system to resolve disputes and to uphold their rights under the trade agreements. This implies that the dispute settlement mechanism established by WTO is an efficient, dependable, and rule-oriented system.

⁴⁰ WTO DS Statistics -1995- 31 May 2018 https://www.wto.org/english/tratop_e/dispu_e/numbers_of_disputes_by_stage_e.xlsx

[2] The developing countries have a higher tendency to settle the case through consultations than richer countries.

[3] The developing countries' active use of the Dispute Settlement Mechanism indicates that not only were WTO members aggressively willing to use the Dispute Settlement Mechanism to resolve trade disputes but also that an equal and fair opportunity was available to deal with bilateral trade disputes through a rules-oriented and legal process. This implies that the dispute settlement mechanism is capable of ensuring members' rights under the WTO covered agreements.

[4] As a result of the rise in real dispute cases, more experience and more proficient litigation skills are being exhibited, which also provides robust guidelines for WTO members to follow as a steady level has been maintained in the average annual number of active proceedings per month in the recent years.

V. Summary, Conclusions And Recommendations

The interpretation of data has led to some findings, regarding an examination of the dispute settlement mechanism under the world trade organization regime. However, specific objectives of this research work were to examine how efficient, dependable, and rule-oriented system is provided by World Trade Organization to resolve disputes; and, examine how dispute settlement mechanisms established by WTO can ensure that members' rights under the WTO covered agreements can be enforced. The researcher provides statistics of dispute settlement cases, data presentation, and interpretation. Using the statistics on the use of the WTO Dispute Settlement Mechanism from 1995 to 2017. For this research, the statistics compiled and maintained by the WTO⁴¹ and Arie Reich [2017]⁴²

5.1 SUMMARY OF THE MAJOR FINDINGS

After the presentation of the data obtained, the findings are as follows:

[1] WTO dispute settlement has demonstrated a high record of cases and enforcement of rulings, which would appear to reflect that members have confidence in the ability of the system to resolve disputes and to uphold their rights under the trade agreements. This implies that the dispute settlement mechanism established by WTO is an efficient, dependable, and rule-oriented system.

[2] The developing countries have a higher tendency to settle the case through consultations than richer countries.

[3] The developing countries' active use of the Dispute Settlement Mechanism indicates that not only were WTO members aggressively willing to use the Dispute Settlement Mechanism to resolve trade disputes but also that an equal and fair opportunity was available to deal with bilateral trade disputes through a rules-oriented and legal process. This implies that the dispute settlement mechanism is capable of ensuring members' rights under the WTO covered agreements.

[4] As a result of the rise in real dispute cases, more experience and more proficient litigation skills are being exhibited, which also provides robust guidelines for WTO members to follow as a steady level has been maintained in the average annual number of active proceedings per month in the recent years.

The results of the study are, however, in conformity with the general perception of the average researcher.

5.3 CONCLUSIONS

The purpose of this research is to examine the current WTO dispute settlement mechanism, focusing on the critical stage of implementation and enforcement. The specific objectives of the study are to: examine how efficient, dependable, and rule-oriented system is provided by World Trade Organization to resolve disputes; examine how dispute settlement mechanism established by WTO can ensure that members' rights under the WTO covered agreements can be enforced; and examine how the rights of aggrieved Members are upheld in the process of dispute settlement. Based on the review of related literature, discussion of results, and general observations, the following are the major conclusions of the study:

[1] The dispute settlement mechanism established by WTO is an efficient, dependable, and rule-oriented system to resolve disputes;

[2] 2. The dispute settlement mechanism established by WTO is capable of ensuring members' rights under the WTO covered agreements

[3] The rights of aggrieved Members are upheld in the process of dispute settlement under WTO. Hence, from this point of view, all members must adhere to the Agreements of WTO.

⁴¹ WTO DS Statistics -1995- 31 May 2018,

https://www.wto.org/english/tratop_e/dispu_e/numbers_of_disputes_by_stage_e.xlsx

⁴² Arie Reich, The Effectiveness of The WTO Dispute Settlement System: A Statistical Analysis, EUI Working Paper LAW 2017/11, European University Institute, Badia Fiesolana, I-50014 San Domenico di Fiesole [FI], Italy www.eui.eu, cadmus.eui.eu are being analyzed.

5.4 RECOMMENDATIONS

Based on the findings of the study, the following recommendations are made:

[1] It is significant for all WTO members to form a consensus to avoid abusing the Dispute Settlement Mechanism, which could lead to the prevalence of a trade protectionist atmosphere. Although the effectiveness of the overall Dispute Settlement Mechanism operation has been mostly positive, there are still some issues concerning aspects of the system and execution that need to be reconsidered and clarified to avoid influencing the quality of case reviews and the willingness of WTO members to participate.

[2] To develop a robust internal mechanism that enable the private sector to inform the WTO of the trade barriers it encounters and seek redress through the government of its country.

[3] Establishing consistent counting about WTO dispute settlement activity can be complicated. This is because how disputes are counted depends on how they are treated as separate or related at various stages of the process.

[4] To consider communally agreed solution and consultations among disputing members. These can be sufficient to resolve the matter in dispute within the framework of WTO dispute settlement.

[5] WTO dispute settlement demonstrates a high record of cases and enforcement of rulings. However, in cases where the losing member is not willing to comply, WTO remedies do not provide much assistance to the complaining party.

Ibraheem Ladi Amosa. “Advancing Fairness and Justice in the System of Dispute Settlement of World Trade Organization [WTO].” *IOSR Journal of Economics and Finance (IOSR-JEF)*, 12(3), 2021, pp. 39-49.