Scientific Research Publishing

Modern Economy, 2022, 13, 442-448
https://www.scirp.org/journal/me
ISSN Online: 2152-7261
ISSN Print: 2152-7245

The Developing Countries under WTO's Dispute Resolution Process: A Way to Protect Companies in Today's Global Trading Competition

Nome Razaranaina

Université de Fianarantsoa, Fianarantsoa, Madagascar
Email: nomeraza21@gmail.com

How to cite this paper: Razaranaina, N. (2022). The Developing Countries under WTO's Dispute Resolution Process: A Way to Protect Companies in Today's Global Trading Competition. *Modern Economy, 13,* 442-448.
https://doi.org/10.4236/me.2022.133024

Received: January 25, 2022
Accepted: March 26, 2022
Published: March 29, 2022

Abstract

This study aims at giving more explanation to the efficiency of World Trade Organization's dispute resolution process according to developing countries. Actually, in a multilateral trading system, many developing countries do not choose this procedure. After the global health crisis, many countries tend to take protectionism trade's measures instead of promoting free exchange principles. It is true that the importance of the exportation demonstrates the national economic growth by creating foreign currency; nevertheless, many public companies are still victims of abusive practices from international societies. In fact, there are more and more illegal practices in the field of international trade. Those are the reasons why this research has been done. The goal is to push Malagasy's government to raise awareness about the importance of adopting appropriate juridical measures in order to protect the commercial interest of the companies as far as global commercial changes are concerned. The dispute settlement body already existed since the General Agreement on Trade and Tariffs of 1947(GATT). The contracting parties had chosen to settle diplomatic conflict resolutions as far as commercial disputes are concerned instead of choosing juridical ways.

Keywords

Developing Countries, WTO

1. Introduction

This study aims at giving more explanation to the efficiency of World Trade

Organization's dispute resolution process according to developing countries. Actually, in a multilateral trading system, many developing countries do not choose this procedure (Matsushita, Schoenbaum, & Mavroidis, 2006; Mavroidis, 2010). After the global health crisis, many countries tend to take protectionism trade's measures instead of promoting free exchange principles. It is true that the importance of the exportation demonstrates the national economic growth by creating foreign currency; nevertheless, many public companies are still victims of abusive practices from international societies. In fact, there are more and more illegal practices in the field of international trade. Those are the reasons why this research has been done. The goal is to push Malagasy's government to raise awareness about the importance of adopting appropriate juridical measures in order to protect the commercial interest of the companies as far as global commercial changes are concerned. The dispute settlement body already existed since the General Agreement on Trade and Tariffs of 1947 (GATT). The contracting parties had chosen to settle diplomatic conflict resolutions as far as commercial disputes are concerned instead of choosing juridical ways.

In other hand, the need of including in the Final Act some provisions governing the mechanism for settling interstate disputes was discussed during the Marrakesh Agreement in 1994. That is how the procedure of dispute settlement body was born. It is placed under the supervision of the General Council of the WTO and has its own rules of procedure. Let us not forget that the idea of improving the procedure was only discussed during the Uruguay's cycle in 1986. At that time, some specific bodies were established to facilitate the procedure. It was called "special groups". This kind of resolution took time to be accepted since the countries who are members of the WTO would rather choose diplomatic ways. Plus, each country has the right to refuse any special group establishment if it was about commercial disputes. However, the contracting parties can apply to an appeal court if the special group decision was not right for them.

The WTO is one of international organizations that have one of the most active international dispute settlements. As far as efficiency is concerned, since 1995, 607 disputes have been brought and resolved to the WTO. Over 350 of them have been successfully resolved. That is why, it is said that it has one of the most active international dispute settlement mechanisms in the world.

The goal of this paper is to demonstrate if the dispute settlement body of the World trade Organization is efficient. Thus, it is important to know what procedure the contracting parties should follow to apply to the dispute settlement body of the WTO. Moreover, is all the members have the same right in this process? What do the members have to do to have an access into the dispute settlement body?

In this paper, we are going to do a deep analysis of the commercial disputes of the World Trade's Organization's dispute resolution process. It mainly aims at demonstrating the efficiency of the dispute settlement body of this

organization.

2. Analysis of the WTO's Settlement of Disputes

The goal of the WTO dispute settlement system is to give a secured and positive solution to a dispute between the WTO's members. The DSU process aims at choosing a solution that can be acceptable for the parties rather than taking solutions from adjudication by a panel. That is why, consultations must precede every complaining.

According to Article 1 of the "Cooperation Agreement", all commercial disputes between the members of the WTO are ruled by the procedures included in it. All the members of the WTO can submit their dispute under the constituted organ when there is a violation of WTO's rules.

Resolving disputes between their members are the core activities of WTO. There is a dispute when a member violates one of the parts of the agreement or the commitment that existed in the WTO.

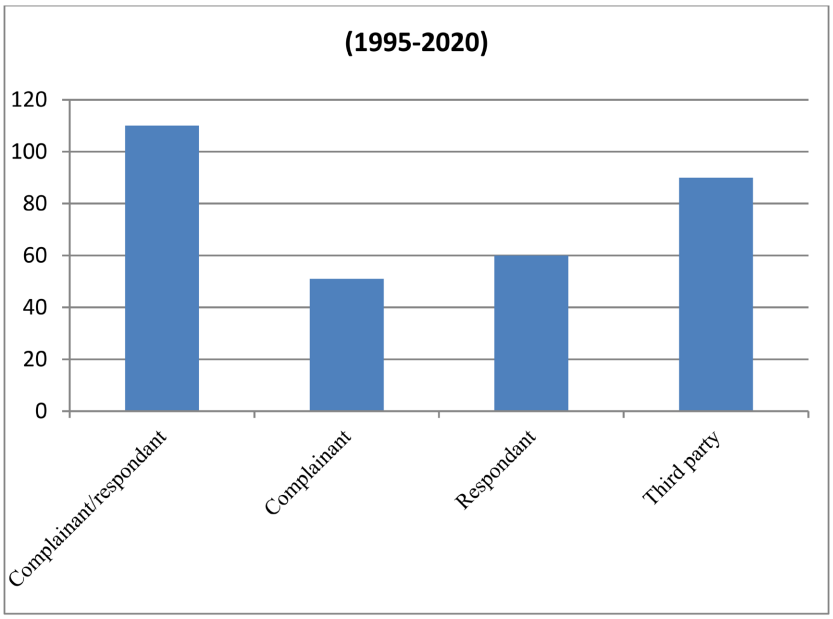
3. The Different Bodies of the Settlement's Disputes

Let us remind that there are three different application procedures depending on the kind of disputes:

- the consultation phase is the pacific way of resolution which can last sixty days. Panel can be explained as a group of three persons that are the "special group" or "panel". In other words, it is a group of three persons that can give a recommendation within a period of six months.
- the second option is the "quasi-judicial bodies" or "panels". It is settled in a way tribunals, in charge of adjudicating disputes between Members in the first instance. They are normally composed of three, and exceptionally five, experts selected on an ad hoc basis. Panels are not supposed to be a permanent body, the member composition changes with each dispute. However, the Secretary of the panel serves as an institutional memory to ensure continuity between all the different panels. The goal of this process is the achievement the DSU's objective which is providing security and predictability to the multilateral trading system.[1]
- the appellate body which was established in 1995 under the article 17 of the Understanding Rules and Procedures Governing the Settlement of Disputes also called DSU. There is seven persons in this Body of the Organization, they uphold or modify the conclusions given the panel.

From 1995 until 2020, the WTO's dispute settlement body has received 598 requests of consultations. The following figure demonstrates the number of developing countries that have chosen to submit their disputes under DSU.

[1]Article 3.2 DSU.



Any member who has noticed any violation of the agreement has the right to send a written request to the dispute settlement body. This is a short diplomatic way of resolution.[2] Unfortunately, most of the disputes are not resolved in the consultation phase even if the members even if it is supposed to be so. Consequently, developing countries are not convinced to adopt this kind of procedure (A). Actually, submitting a dispute under the special group is expensive and take more times, that is why establishing a preferential treatment is necessary (B).

4. The Procedure's Issue under the Dispute Settlement Body

According to the article 3.7 of the DSU "The aim of the WTO dispute settlement system is to secure a positive solution to a dispute. The DSU expresses a clear preference for solutions mutually acceptable to the parties to the dispute, rather than solutions resulting from adjudication by a panel"[3]. When the consultation phase doesn't satisfy the parties, they have to submit the disputes under the WTO's panel within sixty days.[4] In this case, the rules and procedures of the WTO are compulsory, any member who was not satisfied during the consultation phase cannot refuse the rules of the WTO panel (Canal-Forgues, 2004). The complication has created some troubles between the members. Developing countries are not motivated to submit their disputes under the DSB anymore because of two reasons:

- the process is expensive

[2]Art. 4 of the DSU.

[3]The panel composed for a specific dispute must review the factual and legal aspects of the case and submit a report to the DSB in which it expresses its conclusions as to whether the claims of the complainant are well founded and the measures or actions being challenged are WTO-inconsistent. If the panel finds that the claims are indeed well founded and that there have been breaches by a member of WTO obligations, it makes a recommendation for implementation by the respondent (Art 9, 11 of DSU).

[4]Article 4, DSU.

- developing countries do not have any representative settled in Geneva

4.1. The Process Is Too Expensive

The state who is concerned by any WTO's procedure violation has the right, if they consider it necessary, to send to the official body a request[5]. The competent state shall send the request even if the dispute concerns a private firm. It is important to remind that the World Trade organization and its Dispute Settlement System, must make available a qualified legal expert to any developing country member which so requests.

The role of the expert is to assist the developing country Member in a way ensuring the continued impartiality of the Secretariat. The legal expert can be involved during a pre-litigation phase only.

However, the main obstacle of submitting a request to the dispute settlement body is the cost of the process for developing countries. Actually, it is mainly too expensive. Many developing countries cannot afford it. It has become an important condition to have an access to the procedure (Orozco et al., 2001).

As the quasi-judicial bodies in a charge of adjudicating disputes between members, a legal expertise is necessary during the process. In reality, most of developing countries do not have any experimented and qualified legal expertise like it is the case in many developed countries where they are financially supported by public and private firms (Hayes & McMahon, 2001). Unfortunately, private firms in developing countries cannot afford to give financial support to the legal expertise. It has become an obstacle for some developing countries even some solutions were already proposed before. Therefore, they would rather not submit a request into the dispute's settlement body.

4.2. Developing Countries Are Not Represented in Geneva

As far as numbers are concerned, only 36 per cent of all the cases submitted under WTO dispute settlement system are from developing countries between 1995 and 2001. Most of their requests are for consultations, they constitute over two thirds of the requests for consultation. The countries that are most active of the dispute settlement system are Brazil, India, Mexico, Thailand and Chile.

Added to that, most of developing countries do not have a permanent representative in Geneva while all developed countries do.

Let us remind that it is compulsory for a complaint to have a permanent representative or a diplomat when there is a case of violations of commercial interests. They should have at least two permanent representative while for developed countries have ten.

For developing countries, this number limitation is caused not only by the geographical distance, transport costs but also the compensation is very expensive.

Added to that, when developing countries participate to the dispute settlement, they are considered as third parties during the Dispute Settlement pro-

[5]Article 3, 2nd paragraph, Mémorandum d'accord.

ceedings for example Belize, Cameron, Colombia, Costa Rica, Côte d'Ivoire, Dominica, Dominican Republic, Ghana, Grenada… Those countries were granted extended third party rights and were allowed to make statements during the process. It is necessary to remind that the participation of developing countries in the panel process as a third party is useful learning experience. In that way, they will have an idea of what will happening if they put their dispute to the WTO's dispute settlement system.

5. Conclusion

To sum up, resolving disputes through consultations is cheaper and satisfied more the parties. In other words, their solution is more satisfying and ensures long-term trade resolutions for the parties. The UNCTAD's report entitled "Dispute settlement" affirms that: "*The consultations enable the disputing parties to understand better the factual situation and the legal claims in respect of the dispute. Such understanding may allow then to resolve the matter without further proceedings and, if not, will allow a party to learn more about the facts and the legal arguments that the other party is likely to use when the dispute goes to adjudication*". In other words, consultations can be considered as an informal pre-trial mechanism.

Let us remind that their only and primary purpose is to settle all the disputes amicably. Not only the DSU recognizes the special situation of developing and least-developed country members, but also it must take into account the impact of all their decisions on the trade and economic life of the developing countries.

Added to that, there are a number of DSU provisions that provide for special and differential treatment for developing country members in the consultation and panel processes. There are also special rules for developing country members in respect of consultations and the panel process that can be found in many articles of the DSU.[6] Moreover, the last but not the least, the DSU also provides for further special rules for the least developed among the developing country members.

To conclude, the less participation of the developing countries is based on two reasons: not only they can't afford it because of the cost of the procedure, but they also don't have any permanent representative. This situation creates some injustice between all the members, because developing countries still need to be protected face to the economic and political power of the other countries.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

Canal-Forgues, E. (2004). *Le règlement des différends à l'OMC* (2e édition, p. 33).

[6]Articles 3.12, 4.10, 8.10, 12.10 and 12.11 of the DSU.

Bryulant.

Hayes, J. D., & McMahon, M. (2001). Molecular Basis for the Contribution of the Antioxidant Responsive Element to Cancer Chemoprevention. *Cancer Letters, 174,* 103-113. https://doi.org/10.1016/S0304-3835(01)00695-4

Matsushita, M., Schoenbaum, T. J., & Mavroidis, P. C. (2006). *The WTO: Law, Practice, and Policy* (2nd Ed., 989 p). Oxford University Press.

Mavroidis, P. C. (2010). *L'Omc et les Ped* (398 p). Larcier.

Orozco, J. C., Harth, M. L., & Orozco, J. C. (2001). *José Clemente Orozco: Prometheus*. (Claremont, Calif.). Pomona College Museum of Art.