8 Understanding the WTO dispute settlement process

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Summary

Much has been made of the shift from a politically based system of dispute settlement in the GATT era to the legally based system in the WTO. The introduction of stronger rules and tighter procedures suggests a more resolute and fairer system for settling trade disputes than existed until 1995. This chapter highlights and assesses this new system. It finds significant modifications and improvements, but also immutability and continued failings in WTO dispute settlement.

The WTO can only be effective if the procedures for enforcement and implementation of its rules are efficient and credible. The WTO's dispute settlement system must be able to administer properly the sweeping rules agreed at Marrakech in 1995. The system is seen to work well by most commentators (Jackson 2000; Krueger 2000; Hoekman and Kostecki 2001). First, it is very busy – with much higher levels of dispute activity in the WTO compared with the GATT. Second, the key flaws in the GATT system – blocking, delay and failure to implement rulings – have been pretty much eradicated. Third, it is more comprehensive in that it covers all the WTO agreements while the GATT only covered goods. And finally, resorts to unilateral retaliation by members, such as those practised by the USA under Section 301 of the Trade Act of 1974 (amended in 1988), have become less frequent. At first glance, therefore, it would appear that the new procedures for dispute settlement are a huge improvement on the GATT system. The system has certainly been resuscitated and by supplying the WTO with greater authority over its members, dispute settlement is seen to be not only more reliable, but also more impartial. This chapter, however, argues that while much has changed procedurally in dispute settlement, the impact of institutional reform has done little to alter the politics of dispute settlement in terms of either the international or domestic dimensions of trade politics. There is little difference in fact in the political structure of trade conflict resolution between the GATT and WTO systems. The political issues that tested the credibility of the GATT dispute settlement – the lack of transparency in procedures, the dominance of powerful states, the weakness of developing countries, the marginalisation of the least developed members, the relative lack of domestic legislative input, and the absence of civil society contribution – remain. Dispute settlement is still an opaque intergovernmental process, dominated by developed states. While there are much lauded claims of a shift from a power-oriented diplomacy towards a rule-oriented diplomacy – what is more often described as the judicialisation of dispute settlement – in the WTO

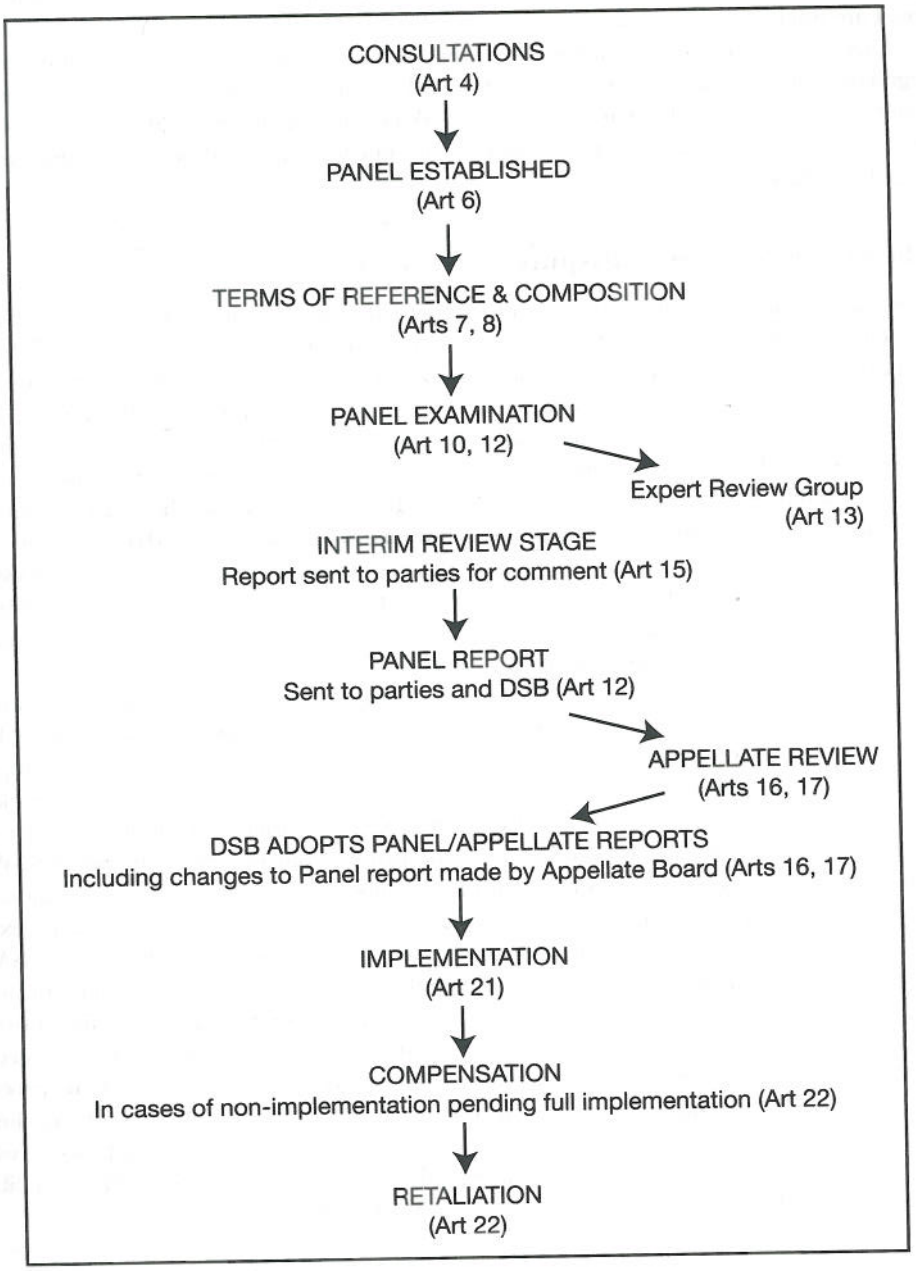

Figure 8.1: The dispute settlement process

Source: WTO homepage.

Notes: During all stages the WTO Director-General provides good offices, conciliation or mediation to encourage and support the parties to diplomatically resolve the dispute 'out of court'.

(Jackson 1997; Wilkinson 2000; Young 1995) the rules, norms and practice of dispute settlement are still largely determined by power politics.

This first section of the chapter discusses the process of WTO dispute settlement and highlights the procedural changes from the GATT system. The second section discusses the practice of dispute settlement using current WTO data to focus on the internal political processes. The concluding section considers the international and domestic dimensions of dispute settlement.

The judicialisation of dispute settlement

The rules and norms of WTO dispute settlement are set out in detail in the Dispute Settlement Understanding (DSU), a text that runs to twenty-seven Articles (WTO 2001) and applies to all disputes arising under the GATT agreements, the WTO agreements, as well as disputes regarding the operation of the DSU itself. The main body responsible for the DSU is the Dispute Settlement Body (DSB) – essentially the WTO General Council by another name. The DSB has sole authority in the dispute settlement process and is responsible for establishing panels, adopting final Panel Reports, overseeing the implementation of the Panel Reports and, where necessary, authorising retaliation and/or compensation measures (Hoekman and Kostecki 2001; Wilkinson 2000; WTO 2001). As a process, the WTO dispute settlement progresses through a number of quite distinct and time-bound stages as illustrated in Figure 8.1. Overall, the process is designed to settle disputes quickly and impartially using a rigorous set of procedures.

A dispute is triggered when a WTO member complains that a benefit guaranteed under the GATT or WTO agreements has been 'nullified or impaired' by another member. Third parties to the dispute can also at this time declare they have an interest. Once a complaint is lodged then the DSB administers the settlement of the dispute through what Hoekman and Kostecki (2001) have identified as five stages. Note that thereafter the DSB rather than the members controls the process, but with the proviso that during each stage the WTO actively encourages diplomatic settlement of disputes before a ruling has to be made, and clearly members have an interest in early settlement in the dispute if only to avoid expensive litigation. As a result, almost half of disputes are settled without a ruling. The USA, for example, settles almost half of its disputes, whether as a defendant or complainant, in the initial stages; these have included disputes over salmon imports with Australia, copyright protection with Greece, intellectual property rights with Sweden, and patent protection rights with Pakistan. Less than 20 per cent of conflicts go through all stages of the process.[1] Implicit in the whole process is that each stage is automatic, and that decisions reached at the final stage are indeed final, with no possibility for further appeal. The process, which takes between eighteen and twenty-four months to complete plus an additional fifteen months for implementation, develops as follows (WTO 2001):

- The process begins when a member believes it is a victim of a violation of WTO trade rules and requests consultations. This stage is best described as a diplomatic one involving bilateral consultations to try to solve the dispute. Indeed, many disputes are settled in the first sixty days. The WTO works in the background in this stage, providing 'good offices, consultation and mediation' and factual information on the legal context of the dispute in order to encourage settlement. The onus is, however, clearly on the conflicting parties to settle outside of the WTO machinery where at all

possible. Consultations are given sixty days to resolve the dispute; should they fail then the complaining member can request a panel.

- In the second stage rule orientation really kicks in and the DSB creates a panel to settle the dispute. It defines the terms of reference and also the composition of the panel. There are usually three panellists but this can be increased to five on request of the members. Panellists are nominated from a list drawn up by members and are experts who act independently of any government or organisation. If a dispute involves a developing country, there is a proviso that the panel include an expert from a developing country.
- The third stage involves information gathering, mediation and reporting over a period of between six and nine months. The panel meets with the parties, including third parties to the dispute, to hear arguments and, where necessary, collect information from external bodies. It uses this information to write a draft ruling – an Interim Review. Throughout this stage the primary aim of the panel is to find a 'mutually satisfactory solution' (Article XI) and the Interim Review should be an 'objective assessment' (Article XI) of the dispute. Where a dispute involves a developing country, the panel is required to explain in its report how it met the WTO's commitment to provide 'differential and more-favourable' treatment for developing countries (Article XI:11). It is important to note that the proceedings of this stage and the next are confidential.
- In the fourth stage the panel submits its report which must then be adopted by the DSB within sixty days unless one of the parties makes an appeal in writing or unless the DSB 'decides by consensus not to adopt' (Article XVI:4). Only parties to the dispute – not third parties – can appeal the Panel Report. Moreover, the appeal must be 'limited to issues of law covered in the panel report and legal interpretations developed by the Panel' (Article XVII:6). The latter is most improbable and has, to date, never occurred. The former is, however, frequent practice and when an appeal is lodged the DSB must launch an Appellate Review of the dispute. The Appellate Review consists of three independent experts appointed on a rotation basis from the Appellate Body (composed of seven such experts) to analyse the original Panel Report and issue a ruling – Appellate Review – within 60–90 days (Article XVII:1). Appellate Reviews are adopted by the DSB and must be 'unconditionally accepted' by the parties unless there is a consensus in the DSB not to adopt (Article XVII:14). Unlike Panel Reports, Appellate Review Reports are binding and final and cannot be appealed. Members are given a 'reasonable period of time' to comply with the ruling; this should not extend beyond fifteen months. Most cases are resolved in this stage and compliance takes place in less than a year.
- In the fifth and final stage of the DSU process, the DSB acts to ensure compliance with the report or authorises some means of compensation. The DSB scrutinises compliance with the recommendations of the report and should parties fail to comply with the ruling – a very rare occurrence – then Article XXII of the DSU gives the plaintiff the right to demand compensation or, should the parties fail to agree adequate levels of compensation, retaliation against the offending member. This involves the suspension of most favoured nation rights – that is, the plaintiff introduces bilateral tariffs to the equivalent value of the tariff imposed in the first instance. In the dispute over beef hormones involving the USA and the EU, the DSB ruled in favour of the USA in May 1998, and following non-compliance by the EU, authorised US retaliatory tariffs worth $116.8 million (a figure it calculated to be equal to the level of

damage to US exporting companies) against the EU in July 1999. Similarly, in May 2003 in the Foreign Services Corporations case, the DSB authorised the EU to apply $4 billion trade sanctions against the USA following non-compliance.[2]

How this differs from the GATT dispute settlement system

An agreed system for settling disputes had existed in the GATT since its inception, although this system evolved gradually into a more formal system than was originally conceived, especially in the last fifteen years of the GATT (Hudec 1993). For example, the practice of using working groups was replaced by the use of panels of experts not unlike the panels in the WTO and the right to a panel is carried over from the GATT's *1989 Dispute Settlement Procedures Improvements* (Wilkinson 2000). But because of the absence of fixed time schedules and also because panel rulings were very easy to block, some disputes would drag on for years, as in the case of the notorious bananas dispute that was never resolved in the GATT system; the EU simply refused to adopt the 1994 panel ruling. But examples of such blatant blocking were quite rare and the system did work reasonably well. Busch and Reinhardt (2003) find that in 64 per cent of GATT disputes, full or partial concessions were offered indicating that 'Overall the system was very efficacious, despite its legendary shortcomings' (2003: 154). Effective for developed countries that is, whose combined cases as defendants and complainants constituted 80.7 per cent of the total. The GATT system was much less effective for developing countries whose combined cases constituted 19.3 per cent and less developed countries (LDCs) who were not involved in any cases as either defendant or complainant,[3] clearly illustrating that the GATT 'system is … more responsive to the interests of the strong than to the interests of the weak' (quoted in Busch and Reinhardt 2002: 465).

The DSU represents an attempt to overcome both these failings in the GATT dispute settlement system. It aims to bring errant members to 'trial' and to encourage greater participation by developing countries. Built into the DSU are a number of reforms of the GATT system of dispute settlement that have created a more robust judicial form of dispute settlement. These changes include: a mechanism to prevent members from blocking decisions; a strict timetable for decision making in the various stages of dispute settlement; the creation of a high court of international trade – the Appellate Body – to make final and binding rulings on dispute cases; and an implementation system which allows for retaliatory and compensatory measures in the event of non-compliance. They were introduced to correct the perceived procedural weaknesses in the GATT system, the chief frailty being the practice of 'positive consensus' in which members could block the establishment of panels and also block the adoption of Panel Reports. 'Positive consensus' enabled members unilaterally to prevent the GATT from implementing its trade rules. That this occurred – however rarely – undermined members' faith in the whole GATT system, particularly the USA and the developing countries who led the charge for reforms of the dispute settlement system in the Uruguay Round of negotiations. Moreover, without an effective means of enforcing trade rules, countries may well revert to unilateral action to remedy unfair trade practices.

The DSU, by contrast, works on the basis of 'negative consensus'. All WTO members must agree *not* to establish a panel and agree *not* to adopt a panel or Appellate Report. Thus opportunities for delaying and blocking of dispute settlement unilaterally have been all but eradicated in the WTO. Furthermore, implementation procedures have been strengthened by the introduction of non-compliance measures such as negotiated compen-

sation and cross-retaliation. Though rarely used, retaliation was authorised and used in the late 1990s in two high-profile cases, the bananas dispute and the beef hormones dispute. The key changes to dispute settlement in the WTO can be summarised as follows:

- Decision making by 'negative consensus'.
- Time limits introduced at every stage of the process.
- Automatic establishment of panels.
- Automatic adoption of Appellate Reports.
- Standard terms of reference for panels and Appellate Reviews.
- Creation of an appeals process.
- Strengthening of the implementation of reports.
- Provision of compensation and retaliation measures in the event of non-compliance.

In essence, the process of dispute settlement is now automatic from the point of initial registration of a complaint to the implementation of a ruling. It is the automatic factor that, according to most, ensures that once a complaint is triggered, rule-based diplomacy drives the process. The process has, it is argued, become a judicial one in which politics plays little if any role so as to ensure a more even-handed system of dispute resolution (Jackson 1997). No longer, it is thought, can powerful states force weaker states into agreement against their interests. Neither can powerful states ignore the legitimate complaints of weaker states and thwart the implementation of multilateral trade rules. Disputes in the WTO, so the argument goes, are resolved by *rules not force*; by negotiation and decision with reference to the norms and rules agreed by WTO members rather than by reference to relative diplomatic and economic capabilities (Jackson 1997: 109–110). In the change from the GATT to the WTO, dispute settlement has passed through 'a critical juncture' into a multilateral rather than bilateral system governed by agreed rules and norms (Wilkinson 2000). And a rule-orientated system should mean, among other things, that dispute settlement is more responsive to smaller, and especially developing, countries (Jackson 1997). The provision of special and differential treatment in the WTO dispute settlement process, including rulings on panel composition to ensure that developing countries are represented on panels where disputes involve a developing country, as well as the general ruling found at various points in the DSU that developing countries be afforded 'differential and more-favourable' treatment in dispute settlement, would, in theory, also add weight to Jackson's conclusions.

Yet in order to make such conclusions we would need to pay as much attention to the political changes in dispute settlement as we have to the procedural changes.[4] As Wolfe argued in the first edition of *Trade Politics*, 'The WTO has an *economic* logic and a *legal* basis, but it is fundamentally a *political* entity' (1999: 218). To what extent has the political character of dispute settlement changed since the inception of the DSU? Having highlighted how the DSU is supposed to operate, this chapter now discusses how it actually works and, significantly, who works it.

The political economy of dispute settlement

The international dimension

Participation in the DSU matters not because high levels of dispute settlement serve to legitimise the WTO as Jackson and others would have us believe, but because participation

determines the rules and norms of the international trade system. Those who are most active in the DSU are more able to shape the interpretation and application of trade rules and norms to their advantage (Shaffer *et al.* 2003). When we look at the data on comparative participation of WTO members in dispute settlement, what is most obvious is that nothing much has changed from the GATT period. Dispute settlement continues to be dominated by the developed countries in general, and the USA and the EU in particular, especially in terms of initiating complaints. Of the total 277 cases brought before the WTO between 1995 and mid-2003, the USA was the plaintiff in 73 and the EU was the plaintiff in 62; together they account for 48.8 per cent of the total number of complaints.[5] More broadly, developed countries brought 71 per cent of the total number of complaints between 1995 and 2000, and significantly, 56 per cent of all complaints were lodged by developed countries *against* developing countries. By contrast, developing countries initiated just 26 per cent of cases (Park and Umbricht 2001). Furthermore, the USA and the EU have been third parties in most of the cases that have reached the Appellate Stage, where the impact on shaping WTO rules is greatest (Shaffer *et al.* 2003). Although there has been an increase in developing country participation, this increase is as defendants in disputes. Developing countries are increasingly the targets of developed country complaints. Furthermore, developing countries, unlike the USA and the EU, are also seldom repeat players in the system, especially the LDCs of Sub-Sahara Africa (Shaffer *et al.* 2003).[6]

What these figures illustrate is that the international dimension of dispute settlement is little changed. The WTO process is just as much dominated by power politics as the GATT process. Developing countries continue to play at best a supporting role in the dispute settlement system.[7] The endurance of power asymmetries in world trade relations rather than any lack of developing country trade complaints best explains the low levels of developing country participation in WTO dispute settlement. Asymmetries of power work in a number of ways to create barriers to developing country activism in the DSU. One obvious factor is the prohibitive cost of pursuing a trade dispute. Developing countries lack the human and financial resources to pursue disputes. They have few trained lawyers expert and experienced enough in WTO jurisdiction, and they lack the financial resources to hire expensive private lawyers to do their bidding. In addition, structural economic inequalities between states can create political and economic pressures to discourage developing countries from pursuing trade complaints. Developing countries, for example, are often dependent on developed countries, receiving bilateral aid and development assistance. Clearly, the risks of pursuing a trade complaint are great. International trade structures also reduce the efficacy of the implementation measures of the DSU for developing countries. As small economies they have little, if any, trade leverage in their relations with larger economies. Furthermore, the DSU compensatory measures involve trade concessions rather than monetary awards. Thus, even if a developing country runs the risk of lodging a complaint, incurs the expense of hiring private lawyers to make its case, and goes on to win, in the event of non-compliance, there is little in fact to gain. The remedies available are often meaningless to small economies.[8] The experience of Ecuador in the bananas dispute illustrates the point. To compensate Ecuador for EU non-compliance the DSB authorised retaliation. It then recognised that Ecuador had too few imports from the EU to have an important effect and so allowed Ecuador to suspend concessions relating to TRIPs (Anderson 2002).

In a broader sense, the operation of dispute settlement in the WTO tends to treat disputes as discrete, isolated events rather than as evidence of the imbalances and inequalities of international trade relations in general. The international dimensions of

trade conflict have expanded in recent years; as membership has grown so have the economic and political divisions and tensions between North and South and the USA and Europe. In the transition from the GATT to the WTO, dispute settlement has not overcome the structural imbalances of the international political economy.

The domestic dimension

Despite procedural changes, the WTO, like the GATT, is entirely an intergovernmental body with little public or domestic political input in dispute settlement. This lack of access and transparency – features carried over from the GATT system – generates public and government criticism of the process. Current debates on DSU reform show that some governments support the idea of increased public access to the DSU as well as improved transparency of the workings of the panels and Appellate Body. Interestingly enough, developing countries opposed the one occasion when the Appellate Body received briefs from NGOs. This was in the shrimp–turtle dispute in which the Appellate Body used information provided by an NGO in its report. Developing countries felt that in doing so the Appellate Body was far exceeding its authority. Furthermore, the NGO provided information in support of the defending member – which in this case was the USA – which was advantaged at the expense of the others in the dispute (India, Thailand, Malaysia and the Philippines). Based on their experience of this example of what others might view as minimal public participation in dispute settlement, developing countries argue against consideration of private briefs in the process.

It is the domestic dimension of the process that now raises the most penetrating questions about the DSU's political legitimacy in the context of debates about state sovereignty and public accountability. The lack of legislative involvement in the settling of disputes raises sovereignty issues that are aggravated by the lack of transparency in the Panel and Appellate Stages of the DSU. The US Congress, perhaps the most vocal legislative critic of WTO dispute settlement, has claimed the Appellate Body rulings frequently exceed its authority, threatening US trade policy sovereignty. Were it not for the fact that the USA is the successful plaintiff in more cases than it is the defeated defendant, we might expect frequent US recourse to unilateral retaliation. Previous behaviour in the GATT system – especially during the years leading up to and including the Uruguay Round – suggests the Americans might once again invoke Section 301 to retaliate against unfair trade practices and in doing so undermine the WTO.

The new dispute settlement system does nothing to change the essential fact that trade disputes belong to and pertain to governments (Weiler 2001). Trade is politically and socially significant and public interest in WTO dispute settlement is growing as trade disputes increasingly entail moral issues such as genetically modified foods and animal rights. We have seen that recent disputes that have environmental implications, such as the Tuna–Dolphin dispute over a US measure to try to protect dolphins in tuna fishing, have attracted high levels of public attention. Yet public access to the dispute settlement system – either indirectly through civil society groups or directly through legislatures – is non-existent. The confidential nature of dispute settlement means that WTO dispute settlement continues to work like a private club and, as a consequence of the judicialisation of the process, the political power of those on the inside – lawyers, experts, diplomats – is enhanced and 'the Rule of Law' becomes the 'Rule of Lawyers'. Whether states decide to pursue a trade dispute through the DSU will in many cases be decided not by public assessment but rather by the decisions of private lawyers on whether the case is winnable or not. (Weiler 2001:

Table 8.1 Key proposals for DSU change, 2001–2003*

Clarifications and amendments	*Developing country and LDC proposals*	*Developed country proposals*
Procedural issues:		
Appellate Body	Clarify workings to restrict influence of private parties and remove right to private briefs; improve rights of third parties in dispute; procedures should promote development	Make permanent or semi-permanent; increase size to 9 or 11, or authorise DSB to do so on ad hoc basis; develop guidelines on private briefs; improve public access to documents and allow public observer status; improve quality of reports
Function of panels	Extend time periods; procedures should promote development	
Consultations:	Consultations to take place in capitals of LDCs if involved in dispute	Shorten time periods; improve access by third parties in dispute; improve public access; improve quality of reports
Rule change:		
Special and differential treatment	Mandatory throughout the process; enhance role of WTO Trade and Development Committee	
Dispute initiation	DSB decision whether there is a case against an LDC	Strengthen surveillance by creating compliance panel and appeal process; weaken retaliation process and improve incentives to comply with ruling
Compliance	Collective retaliation; improve rights of third parties; recovery of costs for developed countries; developed countries to select trade concessions; trade compensation rather than retaliation	
Resources	Creation of trust fund to support legal costs for developing countries	

Source: The WTO: TN/DS/W series of documents available at http://www.docsonline.wto.

*The list is not comprehensive. It covers only key proposals for procedural and rules -based changes. In addition, it should not be read as indicating consensus. Divisions with in the developed countries are as deep as the divisions between the developing countries and the developed countries. The USA, for example, opposes proposals by Canada, New Zealand and Japan to modify retaliation measures, while the EU opposes some of the transparency measures that other developed countries prioritise. The developed countries have each submitted proposals whereas the developing countries and LDCs enjoy much more cohesion and have submitted joint proposals as the African Group, an LDC group and a large group led by India, as well as a number of individual proposals.

197). In addition, outcomes are decided by the preferences of the experts who sit on panels and the Appellate Body and recent research suggests that the more powerful the defendant the more likely the Appellate Body will be to deliver a conciliatory ruling (Garrett and Smith 1999). This brings us right back to the structural imbalances in international trade dispute settlement. The move to judicialisation and the creation of an Appellate Body may in fact have resulted in an increased accommodation of the interests of the WTO's most powerful members.

Members are currently reviewing dispute settlement in special sessions of the DSB.[9] The Doha Ministerial Declaration of November 2001 called for new negotiations on ways to 'improve and clarify' the DSU. Earlier attempts to negotiate amendments to the DSU in the period 1998–1999 failed and all the indications point to repeated failure this time around. At the time of writing the DSB had failed to reach agreement by the deadline of May 2003, a deadline that itself had been extended from July 2002. After some five years of negotiations on improvements during which over fifty proposals from members have been discussed, the latest report by the chairman of the special session of the DSB on dispute settlement states that on all aspects of the DSU 'convergence remains very limited' because of the 'complexity of the issues' and, perhaps more to the point, because of a 'diversity of participants' priorities and interests'.[10] The developed countries have prioritised increased transparency and procedural changes to the appeal process to make it more effective in the face of ever-increasing workloads. Developing countries, however, are opposed to increased transparency and are wary of strengthening the Appellate Stage of dispute settlement. Instead they prioritise three issues: improvements to the compensation and retaliation process; provision of legal costs to developing countries; and proper implementation of the special and differential treatment provisions of the DSU. Table 8.1 provides some details of the specific proposals of members.

There are also differences of opinion between members on the scope of the Doha Ministerial Declaration mandate. While some interpret the Declaration as a green light for negotiations to agree fundamental changes to the DSU, others read it more literally as a licence to agree only 'improvements and clarifications'.[11] Perhaps this divergence is more a matter of different perspectives on what can practically be achieved in the review process given the short time frame originally set for the negotiations. It may well be that the most members can hope for is clarification on issues such as the authority of the Appellate Body to use briefs from private actors, or the rights of third parties in dispute settlement. So far the work of the special sessions of the DSB has served to clarify positions on issues rather than to reach even a modicum of agreement on specific procedural and rule changes.

Dispute settlement in the WTO continues to work according to the exercise of power politics and it is the powerful members – WTO experts and private lawyers – who work the system. Commentators on the international and domestic dimensions of the practice of dispute settlement have tended to overplay the effects of procedural change and underplay structural political stasis.[12] The system has, without question, become more judicial, and there are notable advantages as a result. Yet the politics of dispute settlement has changed very little. The process remains intergovernmental, dominated by the powerful developed countries, and lacking in transparency. The judicialisation of dispute settlement has meant that the WTO can achieve its stated goal of making international trade relations more predictable and stable, but these conditions mainly benefit the major trading countries such as the USA and the EU. The endurance of power politics in dispute settlement prevents the WTO from achieving the broader goals of promoting the economic growth and sustainable development of the poorer countries set out in some detail in the Marrakech Declaration.

Of course, the DSU cannot be held solely responsible for the lack of development of the developing and LDCs. But its failure to make a positive difference in their trade relations with the developed world is a result of the power-based system of dispute settlement that persists in the contemporary international political economy.

Notes

1 Data from: 'WTO Dispute Settlement – Status in Brief'. Available HTTP: <http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#disputes> (accessed 4 May 2003).
2 Ibid. (accessed 8 June 2003).
3 Data taken from Busch and Reinhardt (2002: 466) which is an excellent source for detailed examination of data on participation rates in dispute settlement in the GATT and the WTO up to the year 2000.
4 This inattention probably results from the fact that the growing literature on dispute settlement is found predominantly in law journals and books rather than political science publications.
5 Figures calculated from WTO data. Available HTTP: <http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#disputes> (accessed 4 May 2003).
6 In their comparative analysis of developing country participation in the GATT and the WTO, Busch and Reinhardt (2002) go much further and argue that developing countries participate less in the WTO dispute settlement than they did in the GATT.
7 See Footer (2001) for an examination of the experience of developing countries in the DSU.
8 For a detailed discussion of these structural weaknesses see Shaffer *et al.* (2003). For analysis of the problems of retaliation measures in the DSU see Anderson (2002) and South Centre (1999).
9 The special sessions of the DSB were supposed to report on the DSU Review by 31 May 2003. This deadline has passed and no report is tabled at the time of writing (June 2003).
10 Reports of the Chairman, Péter Balás to the WTO Trade Negotiating Committee: 2 April 2003, TN/DS/7; 7 May 2003, TN/DS/8.
11 See minutes of the meetings of the special session of the DSB 12 June 2002, TN/DS/M/1 2002; 3 July 2002, TN/DS/M/2; 9 September 2002, TN/DS/M/3; 2 November 2002, TN/DS/M/4; 27 February 2003, TN/DS/M/5; 21 March 2003, TN/DS/M/6.
12 Hudec (1999) makes a similar observation when comparing dispute initiation in the GATT and the WTO.

Bibliography

Anderson, K (2002) 'Peculiarities of retaliation in WTO dispute settlement', *World Trade Review* 1: 123–134.

Busch, M.L. and Reinhardt, E. (2002) 'Testing international trade law: empirical studies of GATT/WTO dispute settlement', in D.L.M. Kennedy and J.D. Southwick (eds), *The Political Economy of International Trade Law: essays in honor of Robert. E. Hudec*, New York: Cambridge University Press.

Busch, M.L. and Reinhardt, E. (2003) 'The evolution of GATT/WTO dispute settlement', in J.M. Curtis and D. Ciuriak (eds), *Trade Policy Research 2003*, Ottawa: Department of Foreign Affairs and International Trade.

Croome, J. (1995) *Reshaping the World Trading System: a history of the Uruguay Round*, Geneva: World Trade Organization.

Footer, M.E. (2001) 'Developing country practice in the matter of WTO dispute settlement', *Journal of World Trade* 35: 55–98.

Garrett, G. and Smith, J.M. (1999) 'The politics of WTO dispute settlement', Paper presented to the Annual Meeting of the American Political Science Association, Atlanta, GA.

Hoekman, B.M. and Kostecki, M.M. (2001) *The Political Economy of the World Trading System*, 2nd edn, Oxford: Oxford University Press.

Hudec, R.E. (1975) *The GATT Legal System and World Trade Diplomacy*, New York: Praeger.

Hudec, R.E. (1993) *Enforcing International Trade Law: the evolution of the modern GATT legal system*, Salem, NH: Butterworth Legal Publishers.

Hudec, R.E. (1999) 'The new WTO dispute settlement procedure: an overview of the first three years', *Minnesota Journal of Global Trade* 8: 1–53.

Jackson, J.H. (1997) *The World Trading System: law and policy of international economic relations*, 2nd edn, Cambridge, MA: The MIT Press.

Jackson, J.H. (2000) 'Designing and implementing effective dispute settlement procedures: WTO dispute settlement, appraisal and prospects', in A.O. Krueger (ed.), *The WTO as an International Organisation*, Chicago: University of Chicago Press.

Krueger, A.O. (ed.) (2000) *The WTO as an International Organization*, Chicago: Chicago University Press.

Park, Y.D. and Umbricht, G.C. (2001) 'WTO dispute settlement 1995–2000: a statistical analysis', *Journal of International Economic Law* 4: 213–230.

Shaffer, G., Mosoti, V. and Qureshi, A. (2003) 'Towards a development-supportive dispute settlement system in the WTO', Sustainable Development and Trade Issues ICTSD Resource Paper No. 5, Geneva: International Centre for Trade and Sustainable Development. Available HTTP: <http://www.ictsd.org> (accessed 14 May 2003).

South Centre (1999) 'Issues regarding the review of the WTO dispute settlement mechanism', Trade-Related Agenda, Development and Equity Working Paper 1, Geneva: South Centre.

United States General Accounting Office (2002) 'World Trade Organization. The US experience in the dispute settlement system: the first five years', Testimony before the Subcommittee on International Trade, Committee on Finance, US Senate. Statement of Susan S. Westin, Associate Director, International Relations and Trade Issues, National Security and International Affairs Division, GAO/T-NSAID/OGC-00–202.

Weiler, J.H.H. (2001) 'The rule of lawyers and the ethos of diplomats: reflections on the internal and external legitimacy of WTO dispute settlement', *Journal of World Trade* 35: 191–207.

Wilkinson, R. (2000) *Multilateralism and the World Trade Organisation: the architecture and extension of international trade regulation*, London: Routledge.

Wolfe, R. (1999) 'The World Trade Organisation', in B. Hocking and S. McGuire (eds), *Trade Politics: international, domestic and regional perspectives*, London: Routledge.

WTO (2001) *The WTO Dispute Settlement Procedures*, 2nd edn, Cambridge: Cambridge University Press.

Young, M.K. (1995) 'Dispute resolution in the Uruguay Round: lawyers triumph over diplomats', *International Lawyer* 29: 389–409.

Key readings

Busch, M.L. and Reinhardt, E. (2002) 'Testing international trade law: empirical studies of GATT/WTO dispute settlement', in D.L.M. Kennedy and J.D. Southwick (eds), *The Political Economy of International Trade Law: essays in honor of Robert. E. Hudec*, New York: Cambridge University Press.

Busch, M.L. and Reinhardt, E. (2003) 'The evolution of GATT/WTO dispute settlement', in J.M. Curtis and D. Ciuriak (eds), *Trade Policy Research 2003*, Ottawa: Department of Foreign Affairs and International Trade.

Croome, J. (1995) *Reshaping the World Trading System: a history of the Uruguay Round*, Geneva: World Trade Organization.

Footer, M.E. (2001) 'Developing country practice in the matter of WTO dispute settlement', *Journal of World Trade* 35: 55–98.

Hoekman, M.J. and Kostecki, M.M. (2001) *The Political Economy of the World Trading System*, 2nd edn, Oxford: Oxford University Press.

Hudec, R.E. (1975) *The GATT Legal System and World Trade Diplomacy*, New York: Praeger.

Hudec, R.E. (1993) *Enforcing International Trade Law: the evolution of the modern GATT legal system*, Salem, NH: Butterworth Legal Publishers.

Jackson, J.H. (1997) *The World Trading System: law and policy of international economic relations*, 2nd edn, Cambridge, MA: The MIT Press.

Krueger, A.O. (ed.) (2000) *The WTO as an International Organization*, Chicago: Chicago University Press.

Shaffer, G., Mosoti, V. and Qureshi, A. (2003) 'Towards a development-supportive dispute settlement system in the WTO', Sustainable Development and Trade Issues ICTSD Resource Paper No. 5, Geneva: International Centre for Trade and Sustainable Development. Available HTTP: <http://www.ictsd.org> (accessed 14 May 2003).

South Centre (1999) 'Issues regarding the review of the WTO dispute settlement mechanism', Trade-Related Agenda, Development and Equity Working Paper 1, Geneva: South Centre.

Wilkinson, R. (2000) *Multilateralism and the World Trade Organisation: the architecture and extension of international trade regulation*, London: Routledge.

WTO (2001) *The WTO Dispute Settlement Procedures*, 2nd edn, Cambridge: Cambridge University Press.

Useful websites

http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm (Dispute Settlement Home Page, World Trade Organization).