

The Successes and Drawbacks of the WTO Dispute Settlement System

Globalization and Digitalization – Interconnections Between Taxation, Trade and Investment

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Introduction

1. Main Features of the WTO Dispute Settlement System
2. Advantages/Successes of the System
3. Drawbacks of the System

The World Trade Organization: Basic Facts

International Organization

- Secretariat based in Geneva
- Administers rules for international trade
- Platform for negotiations
- Member-driven, 164 Members at present



State-to-State Dispute Settlement System

- Two-tier system
- Panel (3 panellist from pool)
- ‘Standing’ Appellate Body (normally 7 members)
- Governed by the Dispute Settlement Understanding (DSU)



Advantages/Successes of the System

- Compulsory, exclusive and complaint-based
- Covers all agreements and broad variety of measures
- Actively used, 600+ disputes brought
- Panel/AB recommendations must be implemented immediately or within reasonable period of time
- Decent monitoring of compliance with rulings by Members
- (Was) 'less' political than other branches of public international law dispute settlement

Drawbacks of the System

Current Crisis:

- Appointment of AB Members by consensus (?)
- AB in impasse, panel reports appealed into the void
- Difficult for AB to restrain itself, tends to revisit facts

Other issues:

- Extremely lengthy and technical reports
- (Big) industry plays a large role, imperfect enforcement of trade rules
- System mainly used by 'big' players: EU, US, China
- Very large role for Secretariat in drafting reports behind the scenes
- Suspension of concessions as remedy does not always work for small countries

Conclusion

- One of the most successful dispute settlement systems in public international law
- Largely because of technical nature of the field and compulsory dispute settlement
- Now in political crisis, dysfunctional Appellate Body
- Revision of appointment rules Appellate Body Members?

Thank you for your attention!

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