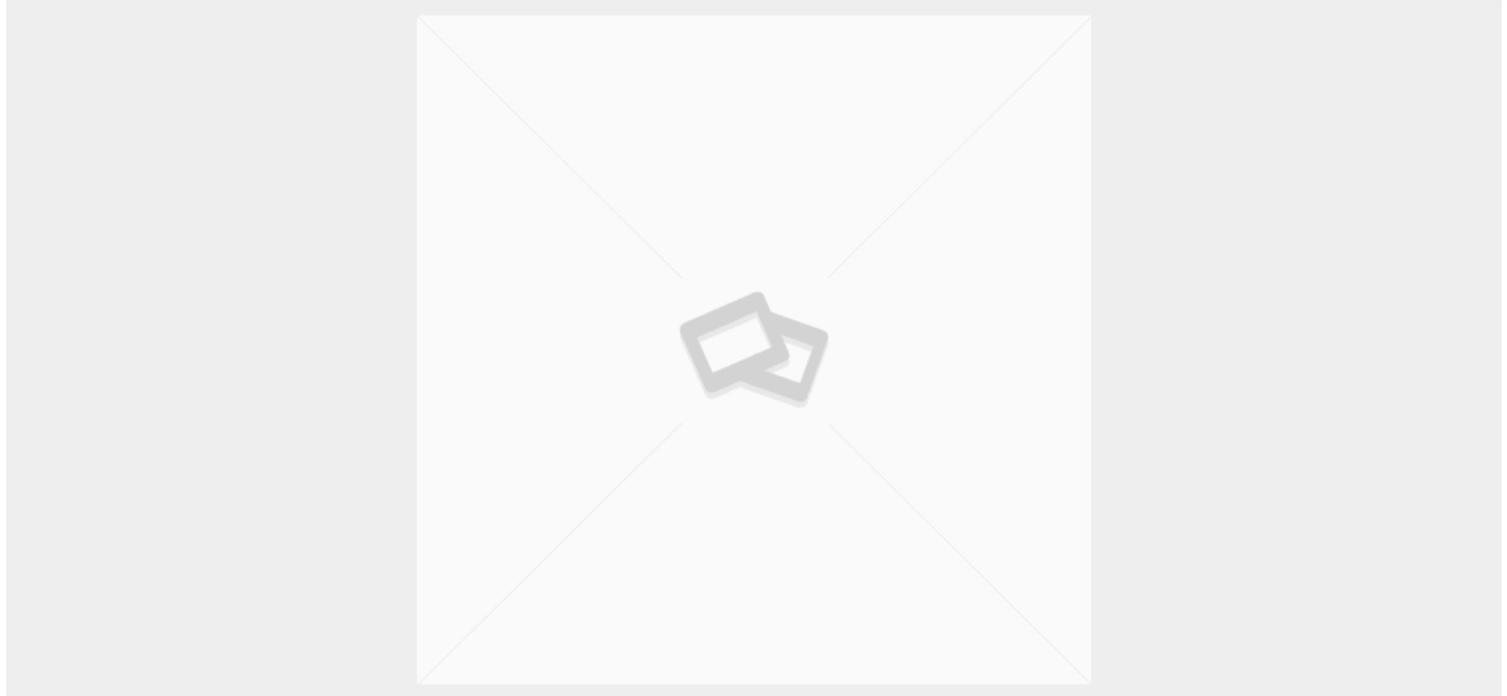


THE WTO DISPUTE SETTLEMENT PROCESS AND TBT AND TRIPS COMMITTEES

Posted on April 7, 2017 by Suzanne Zhou



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Jump to: 2 20 default wide Key points:

- WTO dispute settlement can only be used by states
- WTO disputes are addressed first through consultations between members, then by ad hoc panels, whose decisions can be appealed to a standing Appellate Body. Panel and Appellate Body decisions are given effect through adoption by the WTO's Dispute Settlement Body.
- It is generally up to the WTO member that has lost a case to determine how it will bring its measure into compliance in accordance with the panel/Appellate Body's recommendations
- Remedies under the WTO are prospective – remedies are only available for non-compliance

that persists after a reasonable period of time to comply with the decision has passed. No damages for past harm suffered are available.

- The WTO also has a number of committees which allow for members to discuss concerns more generally. These include the TRIPS Council and TBT Committee

40 default wide line Introduction

Disputes relating to the WTO agreements must be settled in accordance with procedures laid out in the WTO [Dispute Settlement Understanding](#) (DSU), which establishes a state-state dispute settlement procedure and appeals process. Dispute settlement is overseen by the WTO [Dispute Settlement Body](#) (DSB), which consists of representatives of all WTO members and is responsible for adopting panel and Appellate Body reports and overseeing compliance with recommendations.

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20 default 2. Who can use WTO dispute settlement? line Item 1

Under WTO law, WTO Members owe obligations to other WTO Members, and not to individuals or corporations that trade in goods or services or are holders of intellectual property rights. Only WTO Members (and not, for example, tobacco companies) can bring a case to the WTO dispute settlement system.

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20 default 3. Dispute resolution process line Item 2

A WTO Member may initiate a dispute where it considers that another Member has adopted measures that breach WTO obligations and that these measures impair benefits accruing to it under the WTO agreements (DSU article 3).

Request for consultations

The first stage of the dispute settlement process is for the complaining WTO Member to request consultations with the other Member in an attempt to resolve the complaint. WTO members may also choose to use other diplomatic dispute settlement methods such as good offices, conciliation, or mediation at this stage (DSU articles 4 and 5).

Panel proceedings

If the consultations do not resolve the matter, and the complaining Member elects to proceed with dispute settlement proceedings, it may request the establishment of a panel to hear the dispute. A request for the establishment of a panel must identify the specific measures about which the

Member is complaining and provide a summary of the legal basis of the complaint. (DSU article 6).

The panel is made up of three members who are nominated by the WTO Secretariat and (in theory) appointed by the disputing parties. The Director-General of WTO may appoint panellists if the disputing parties cannot agree on the panellists. The role of the panel is to examine the relevant measures in light of the relevant provisions of the WTO agreements and to make recommendations to the DSB as to whether the measures at issue comply with relevant WTO rules (DSU articles 7, 8 and 11).

Other WTO Members (apart from the complaining Member/s and the responding Member) with a substantial interest in a matter may apply to become a third party to the dispute during the panel process. Third parties receive the submissions of the disputing parties and have the opportunity to make written and oral submissions to the panel (DSU article 10).

After a panel report has been issued and has been placed on the DSB's agenda for consideration, the DSB will adopt it unless all of the Members agree by consensus not to adopt the report (which has never happened). The panel report 'takes effect' once it has been adopted by the DSB (DSU article 16).

Appellate Body

Parties may appeal a panel report. Appeals are heard by the WTO's standing Appellate Body, consisting of seven permanent members who sit in benches of three. They are limited to issues of law covered in the panel report and legal interpretations developed by the panel. Third parties may participate in appeals, although only parties may initiate them. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel (DSU article 17).

Like panel reports, after an Appellate Body report has been issued, the report will be adopted by the DSB unless the DSB decides by consensus not to adopt it (which has never happened) (DSU article 17.14).

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20 default 4. Remedies line Item 2

The responding WTO member decides means of compliance if a violation is found

Where a panel or — in the case of an appeal — the Appellate Body concludes that a measure is inconsistent with a covered WTO agreement, it may suggest ways in which the Member could implement the recommendations.(DSU article 19.1) However, generally speaking, it is up to the

responding WTO Member to determine how it will bring its measure into compliance. The DSB is responsible for maintaining surveillance of the implementation of its rulings and recommendations (DSU article 21).

If it is impracticable for the responding Member to comply immediately with the ruling, the Member will be given a 'reasonable period of time' in which to comply; this period of time may, in the absence of agreement between the parties, be determined by arbitration (DSU article 21.3). Should the parties disagree about whether the measures have been brought into compliance, a panel may be established to determine this question (DSU article 21.5).

Remedies are prospective

The recommendations of the DSB operate prospectively, meaning that the complaining Member is not entitled to a remedy in respect of harm suffered before the expiry of the 'reasonable period of time' to comply with the decision of the panel or Appellate Body.

Where there has been a failure to comply, the DSB may authorise 'suspension of concessions'. If this happens, the complaining WTO Member may temporarily cease to perform some of its WTO obligations towards the other Member (such as by raising tariffs on goods produced by that Member). A member may only suspend concessions up to the level of nullification or impairment suffered since the expiry of 'the reasonable period of time' (DSU article 22)

Unlike the system of remedies in international investment law, monetary compensation for loss or damage that has been suffered is not an available remedy.

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20 default 5. WTO committees line References

In addition to dispute settlement, the WTO also has a number of committees, which provide an opportunity for WTO members to discuss and monitor the operation and implementation of specific agreements. The discussion of Members' measures by a committee does not mean that there will be dispute settlement proceedings in relation to those measures — committees are intended in part to help members resolve issues without resort to formal disputes. Two committees are of particular relevance for WHO FCTC implementation:

TBT Committee

The [Committee on Technical Barriers to Trade](#), comprised of representatives of all WTO Members, deals with the operation of the TBT Agreement, giving Members the opportunity to consult on any matters relating to the operation of the Agreement or the furtherance of its objectives. It includes representatives of each WTO Member (TBT article 13). [Technical regulations](#) which may have a

significant effect on the trade of other members and are not based on an international standard must be notified to the TBT Committee (TBT articles 2.5 and 2.9). Members may also discuss other measures of relevance to TBT obligations.

TRIPS Council

The [TRIPS Council](#) is the body responsible for administering the TRIPS Agreement, including monitoring its operation (TRIPS article 68). It is comprised of representatives of all WTO Members. WTO Members are required to notify the TRIPS Council of legislation implementing TRIPS and other laws and regulations that affect [intellectual property rights](#) (TRIPS article 63.2). Members discuss these measures and their compliance with the TRIPS Agreement at TRIPS Council meetings.

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