

THE ROLE OF DISPUTE SETTLEMENT WITHIN WTO: CASE STUDY OF TARIFF TREATMENT ON IT PRODUCTS WITHIN EU

ROLUL SOLUȚIONĂRII LITIGIILOR ÎN CADRUL OMC: STUDIU DE CAZ A TRATAMENTULUI TARIFAR PENRU PRODUSELE IT ÎN UE

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Rezumat: Una dintre cele mai importante instituții internaționale reprezintă Organizația Mondială a Comerțului (OMC), care are ca funcție esențială liberalizarea schimbului de bunuri și servicii. Complexitatea și diversitatea țărilor membre a OMC, necesită un organ care va promulga statul de drept, drepturile și obligațiunile fiecărui guvern. Această cercetare științifică are ca scop, analiza comprehensivă a importanței organului de soluționare a litigiilor în cadrul Organizației Mondiale a Comerțului, atât componentele fundamentale, funcțiile, cât și durata procesului de rezolvare a disputelor internaționale. Prin prisma divergenței apărute între Uniunea Europeană și Japonia, SUA, alături de China, cercetarea va examina valoarea sugestivă a sistemului de soluționare a disputelor în cadrul OMC. Pentru a obține o investigație exhaustivă, metodele de cercetare vor include articole științifice, date statistice, deducții, și viziuni ample ale analiștilor și profesorilor universitari.

Cuvinte cheie: Organul de soluționare a litigiilor, Organizația Mondială a Comerțului, Consiliul General al OMC, Secretariat al OMC, Decizie prin consens, Comerț al bunurilor și serviciilor, Cerere de consultație.

JEL CLASSIFICATION: F13, F15, F53, J52

INTRODUCTION

Nowadays, the world is witnessing a fast-changing environment, where the liberalization of goods and services, along with the process of globalization is employed. Due to this fact, countries require an organizational structure, that would regulate trade along with countries' obligations and rights when imposing tariffs and duties while exporting or importing. World Trade Organization acts as a critical element of administrating fair trade and competition while preserving intellectual property of each country's unique identity. This research will present the fundamental role of clarifying the disputes within an international institution, along with these vital goals:

- examining the main purpose of the dispute settlement determined by WTO;
- evaluating the duties of main parts which contribute to the dispute settlement as well as the decision-making process;
- interpret the significance of dispute settlement in regards to the case of European Union on Information Technology products.

This paper will achieve its objectives through verified scientific data proposed by WTO and European Commission, along with scholarly articles and statistical data.

MAIN PURPOSE OF DISPUTE SETTLEMENT

The Dispute Settlement, established during the Uruguay Round of negotiations, embodies a tremendously important component within World Trade Organization (WTO) since its inception from 1995 on January 1st, considering it allows for countries to negotiate while reaching a certain agreement on issues that arise during international trade. According to WTO, "a dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO" [3]. A global institution as WTO which connects 164 countries with distinctive cultures, levels of economic development, social and political systems, requires a developed Dispute Settlement Body that would regulate and enforce member states to comply with WTO's rules on commerce. Over the course of years, there has been more than 600

disputes in regards to various economic and trade related topics within the WTO's framework, also, futuristically speaking, there are more arguments and appeals from governments to come, that Appellate Body will analyze and lay a groundwork for legal recommendations.

This mechanism, acting as a voice of its affiliates, consists of a rigorous system and has specific bodies that undertake the decisions in the dispute settlement process as the WTO Secretariat, panels, the Appellate Body, arbitrators, independent experts and several specialized institutions [4]. The Dispute Settlement Body (DSB) is made up of ambassadors from all member countries within the international organization, where they come together for the General Council of WTO and contradict the emerged controversies.

The process of dispute settlement is initiated when the General Council of WTO authorizes for DSB to receive accountability under the legal framework that contains methods, rules of dispute arrangements, also known as Dispute Settlement Understanding (DSU). Therefore, the primary duty of DSB speaks for supervising, through monitoring and surveilling the entire settlement process while carrying out all the DSU regulations. It accomplishes its functions through the consignment of a dispute to a decision, also regarded as establishing the panel, by making the conclusions binding though a report, and when a member does act in conformity with the rules, it can adopt retaliation[4]. Along with DSB, a vital representative in the decision-making process is undertaken by the WTO Secretariat or even by the Director General, in case the debate concerns a least-developed nation, where no valuable solution has been reached during discussions. In addition, a panel is appointed by the DSB which contains three to five judicial competent experts when it is necessary. A panel shall evaluate legal and unbiased features of the issue, then fulfill a report with the conclusions and findings to the DSB stating whether the complaint and actions accommodate the WTO regulations. Moreover, the dispute process is conducted by the Appellate Body which comprises seven permanent associates with four-year terms, that offers a consistent overview of the legal aspects delivered by the panel. The dispute settlement process could also incorporate arbitrators that have the purpose of questioning the decisions adjudicated by DSB, in conjunction with scientific, environmental, health, technical field experts that would contribute in consulting the risks or side effects of a misunderstanding [4].

The fundamental objective of the Dispute Settlement is to promote security and equality in the governmental laws, regulations applied to commercialization of goods and services within the multilateral trading regime, corresponding to the Article 3.2 from DSU [5]. Dispute settlement allows for the rule of law to be enforced in complex environments, while making the exchange system more reliable and secure for its members. Furthermore, once a country is not cooperative with WTO agreement signed when it associated with the organization, then the body of dispute settlement can reconcile rapidly, and efficiently a contradiction, through its independent regulations, for instance with trade sanctions or reaching a harmonized negotiation between parties. Another distinct responsibility of dispute settlement portrays protection and positive interpretation of rights and obligations of the members. This implies that on the assumption if a country adopts new tariffs on goods, while being neglectful of WTO's regulations, that potentially harms a trading partner, then the complainant is assured to have its concerns investigated by the DSB [3].

Due to the complexity of some disputes, the process duration until reaching a final agreement can extent from 60 days up to a year in order to satisfy both parties. The first stage of consultations, takes up to 60 days, where countries try to negotiate by themselves; however if their views do not intertwine, the Director-General will mediate. Within 45 days, once the panels are formed by the DSB if the consultations fail, then it comes out during 6 months with a report filled with recommendations and findings in regards to the disagreement, also whether a technical or scientific subject will emerge, the experts in the field would join. It is vital to acknowledge that parties should attend meetings and take part in the oral presentations, otherwise a decision would be taken without their approval. Once the report has been filled, the responded country shall revise its tariff policies and adapt to WTO's dispute settlement rules [6].

In order to better comprehend the significance of dispute settlement within WTO, we will examine the occurred disagreement, initiated on September 28th 2008, between European Union with the

complainants United States of America, Japan, and China in regards to tariff treatment on information technology products, lasting until August 16th, 2010. In this fast-changing technological environment, WTO is constantly modernizing to meet producers and consumer's demand for goods and services. The dispute of EU with IT products portrays a request on how to treat increasingly multifunctional high-tech goods [3].

It should be mentioned that the ITA was signed in 1996 between the major trading partners that reached a common denominator of instituting zero duties on IT products with the aim of nourishing international trade, however over the last decade, the world has observed a volatile and unpredictable change of electronics. According to ITA, it implies the 'maximum freedom of world trade in IT products' and 'encourage the continued technological development of the information technology industry on a world-wide basis', guaranteeing that trade regimes 'evolve in a manner that enhances market access opportunities for information technology products'. Nonetheless, the global market for trading IT goods have increased from \$1.2 trillion in 1996 to \$4 trillion in 2008 [3], as a result the argument on tariff treatment emerged. Due to the fact that IT goods have started to converge, while there was not enough detailed categorization of sophisticated multi-media devices, so it gave room for countries to impose tariffs that contradict with the ITA of WTO.

The first demand appeared from Japan, which stated its concerns on EU disobeying the obligations on IT Agreement (ITA), a plurilateral agreement with the goal to diminish taxes and tariffs on IT products, imposed by WTO [7]. Even though Japan was granted duty-free privileges on technologies with EU in conformity with ITA, EU were applying rather high duties, up to 14% on importing those goods. Some of the products included were: flat panel display devices, with digital DVI connectors used for connecting to computers and other equipment; set-top boxes, which have a communication function of accessing Internet and recording; and multifunctional digital machines, used for scanning, printing, copying, and faxing [3]. Together with United States and Chinese Taipei, Japan has solicited the formation of a panel within dispute settlement. In 2009 on 21st July, the DSB was familiarized that the panel would not be able to come up with a decision within six months; however the report was postponed several times due to the entanglement of the dispute, with the conclusion submitted in August 16th, 2010. The final statement presented by the panel, included findings of the EU not complying with the ITA, while articles Art. II:1(a) and II:1(b) from GATT Agreement of 1994 required a more thorough revision along with a more detailed classification of IT products [1].

Furthermore, once the dispute was resolved, U.S ambassador Ron Kirk mentioned the importance of dispute settlement through these words: "An important victory for U.S. technology manufacturers and workers, as well as the millions of consumers who use these products every day at work and at home[...]. This ruling affirms the principle that changes in technology are not an excuse to apply new duties to products covered by the ITA. Technological innovation drives economic growth and improves living standards for working families and consumers in all countries. The high-tech sector is a vital part of our economy and has played a leading role in many states' economic growth"[2].

CONCLUSIONS

This extensive research has delivered a wider comprehension of the mission statement of dispute settlement within a tremendously vital global institution as WTO. It has been confirmed that DS acknowledges and protects the rights along with the obligations of each member state, while considering every concern that was raised during a certain circumstance, at the same time trying to bring deeper analysis of disagreements. Moreover, through the case study of European Union on IT goods, the research has brought a different perspective on how necessary is for Dispute Settlement, also for WTO to adapt to the increasingly technological environment by reforming itself and constantly modernizing. This exhaustive research managed to evaluate the role of DS by demonstrating that the bodies involved in the decision making process work efficiently under the laws and regulations established by the DSU in order for international trade to keep evolving.

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