

## The World Trade Organization's (WTO) dispute settlement system and some cases related to agricultural goods

Settling trade disputes in a timely, effective and structured manner helps to reduce the possible negative impact on trade between countries and prevents regulatory imbalances between the parties.

The purpose of this note<sup>1</sup> is to inform the member countries of the Inter-American Institute for Cooperation on Agriculture (IICA) about some of the core concepts needed to resolve conflicts between countries in accordance with the rules established under the dispute settlement system of the World Trade Organization (WTO).

This document was prepared based on the input from two IICA-WTO joint technical forums held in [August 2017](#) and [June 2018](#).

### 1. What is the WTO dispute settlement system?<sup>2</sup>

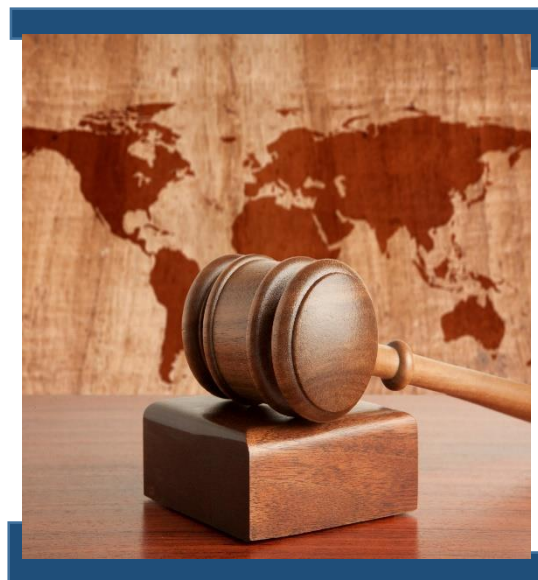
It is an integrated set of rules applied uniformly to disputes relating to any of the international trade agreements signed by WTO members.<sup>3</sup> The system provides the security and predictability that governments and the private sector require to manage their economic activities. It was one of the major outcomes of the Uruguay Round.

The system's most important function is to clarify the content and ensure the enforcement of the rights and obligations established in the [Understanding on Rules and Procedures Governing the Settlement of Disputes \(DSU\)](#) included as Annex 2 of the WTO Agreement. The DSU establishes the time-frames and procedures to be followed in completing the various stages of a trade dispute.

It clearly states that adjudication should be sought only when the parties fail to reach a mutually agreed solution consistent with the WTO Agreement.

### 2. What are the objectives and purpose of the WTO dispute settlement system?

As established in the DSU, the main objectives and functions of the WTO dispute settlement system are to:



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<sup>2</sup> For further information about the settlement of international trade conflicts, see [Guidelines for Dispute Settlement in the WTO](#), produced by IICA in June 2014.

<sup>3</sup> For more information about this term, see IICA n/d, p. 8.

- Provide security and predictability to the multilateral trading system (paragraph 2 of Article 3 of the DSU).
- Preserve the rights and obligations of WTO members (paragraph 2 of Article 3 and paragraph 2 of Article 19 of the DSU).
- Clarify the provisions of the WTO Agreement and interpret them correctly (paragraph 2 of Article 3 of the DSU).
- Give preference to mutually agreed solutions (paragraph 7 of Article 3 and Article 11 of the DSU).

### 3. What are the stages of the WTO dispute settlement system?

Broadly speaking, the WTO dispute settlement process is divided into three stages: (i) consultations between the parties, (ii) resolution of the dispute, and (iii) implementation of the ruling.

Disputes are settled in one of two ways: the parties may reach a mutually agreed solution during the consultation process, or in the event that there is no satisfactory resolution, they may make recourse to the adjudication process, in which an impartial third party resolves the dispute by means of a panel, the Appellate Body or arbitrators. The system also establishes that the parties may resort to good offices, conciliation and mediation at any point in the process.



### 4. Who are some of the players involved in the WTO dispute settlement system?

Some of the players in the dispute settlement system are as follows:

- WTO members themselves, in their capacity as parties (they take part as “complainants” or “respondents”) and third parties (they have an interest in the dispute and enjoy certain rights).
- The WTO Secretariat, which provides legal assistance to the adjudicating bodies and administrative assistance to the Dispute Settlement Body (DSB).
- The policy institutions, i.e., the Dispute Settlement Body, which supervises the dispute settlement process.
- The quasi-judicial bodies, such as the panels tasked with examining the factual and legal aspects of the dispute; the Appellate Body, which is the standing body that considers only the legal aspects of the dispute; and arbitrators.
- External participants, such as experts or specialized institutions, which provide technical assistance on complex factual issues involved in conflicts.
- Non-state participants, such as nongovernmental organizations (NGOs), which may have an interest in a dispute but are not entitled to take part.

All the aforementioned players are subject to specific rules related to the impartiality of decisions and rules of conduct designed to ensure the integrity and confidentiality of the dispute settlement system.

## 5. What is involved in the consultation process of the dispute settlement system?



Whatever the scenario, it is preferable for members to find a mutually acceptable solution to any dispute, as provided for in the Dispute Settlement Understanding. Most WTO conflicts have been resolved at the consultation stage, without the need for an adjudication process.

Consultations between the parties are the first stage in settling any trade dispute and are a precondition for commencing work with a panel. In other words,

a complainant may only have recourse to a panel when resolving the dispute in consultations with the respondent has proven impossible.

Consultations between the parties are confidential. However, all mutually agreed solutions must be communicated to the Dispute Settlement Body and to the pertinent committees and councils.

The main objective of the consultations process is to afford the parties an opportunity to discuss the dispute and find a solution before having recourse to adjudication under the DSU. In the consultations process, the parties share information, assess strong and weak points, put forward their arguments, reduce the scope of the dispute and, in many cases, reach a mutually acceptable solution. The complaining party may also decide not to pursue the matter any further.

Consultations usually last longer than the established minimum time of 60 days. The inclusion of third parties in the consultations process will depend on whether the complainant wishes other WTO members to have the opportunity to take part.

## 6. What is involved in the process of adjudication by a panel?

If the parties fail to settle their dispute through consultations, the complaining party may request that a panel be established to resolve the matter. The panel studies all the evidence presented to it, assesses its credibility, determines its importance, and ensures that the complaint is well-founded. At this stage, other members may present oral arguments to the panel and file written submissions, as third participants.

The panel prepares a report setting forth its findings, i.e., the conclusions it has reached concerning the factual and legal aspects that it was asked to consider. The panel also explains the reasons for its findings. If the panel concludes that a measure (for example, a law, program, procedure, etc.) is incompatible with an agreement, the report must include a recommendation, so that the DSB can inform the responding Member that it needs to bring the measure in question into line with the provisions of the agreement.

## 7. What is involved in the Appellate Body process?

If the parties do not accept the panel's report, they may file an appeal with the Appellate Body. This action marks the beginning of the second and last stage of the adjudication process under the dispute settlement mechanism. This body's main function is to consider the issues of law addressed

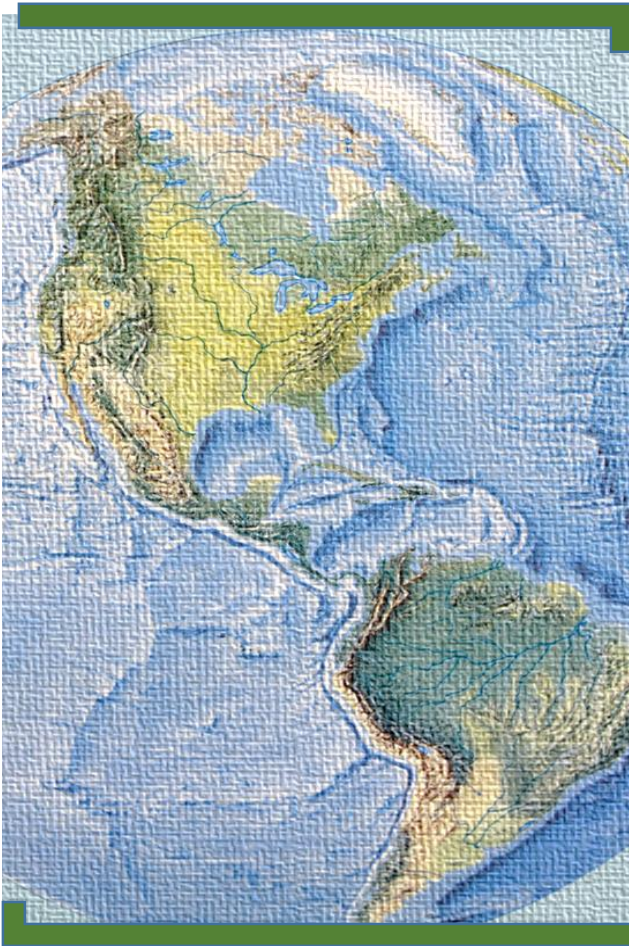
in panel reports; in other words, it may not address other, non-legal matters — for example, it cannot reexamine existing evidence or request new evidence in order to prove something.

Only the parties to the dispute may file an appeal. In a panel procedure, third parties are not entitled to appeal a panel's report.

Finally, the members of the Appellate Body must make every possible effort to reach their decisions by consensus. When this is not possible, the decision on the matter reviewed will be adopted by a majority.

### **8. How are the Appellate Body's decisions implemented?**

Members are given a deadline for implementing the recommendations and decisions adopted by the DSB, which is negotiated by the parties. Everything is valid once it has been confirmed that a WTO member's measure is incompatible with the established agreements.



### **9. What role do developing countries play within the dispute settlement system?**

Developing countries are considered to have played an active part in the dispute settlement system since its creation, either as parties or third parties. Given their circumstances, there is a mandate that applies both to them and to small economies, so they can resolve their disputes in a fair, predictable and rapid manner. On the other hand, it is accepted that these countries need to enhance their technical capabilities in order to make effective use of this mechanism.

### **10. Which countries in the Americas have made recourse to the WTO dispute settlement mechanism?**

The countries of the Americas that make most use of the WTO dispute settlement system are the United States, Canada, Argentina, Brazil and Mexico (see Table 1). Furthermore, some countries participate as third parties when they are interested in a specific complaint. For developing countries benefit from participating as third parties, as it enables them to enhance their expertise and improve their capacity to participate in this mechanism and prevent trade disputes.

**Table 1. Some cases of the WTO dispute settlement mechanism in which countries in the Americas are involved as respondents, complainants or third parties.**

Dispute	Respondent	Complainant	Third Parties
DS524 Costa Rica - Measures Concerning the Importation of Fresh Avocados from Mexico Request for Consultations: 8 March 2017 Current status: in consultations	Costa Rica	Mexico	None.
DS448 United States - Measures Affecting the Importation of Fresh Lemons Request for Consultations: 3 September 2012 Current status: in consultations	United States	Argentina	None.
DS386 United States - Certain Country of Origin Labelling Requirements Request for Consultations: 17 December 2008 Current status: authorization to retaliate granted	United States	Mexico	Argentina, Australia, Brazil, Canada, China, Colombia, European Union, Guatemala, India, Japan, Korea (Republic of), New Zealand, Peru, Chinese Taipei
DS384 United States - Certain Country of Origin Labelling (COOL) Requirements Request for Consultations: 1 December 2008 Current status: authorization to retaliate granted	United States	Canada	Argentina, Australia, Brazil, China, Colombia, European Union, Guatemala, India, Japan, Korea (Republic of), Mexico, New Zealand, Peru, Chinese Taipei
DS293 European Union (previously EC) - Measures Affecting the Approval and Marketing of Biotech Products Request for Consultations: 14 May 2003 Current status: settled or terminated (withdrawn, mutually agreed solution)	European Union	Argentina	Australia, Brazil, Canada, Chile, China, Chinese Taipei, Colombia, El Salvador, Honduras, Mexico, New Zealand, Norway, Paraguay, Peru, Thailand, Uruguay, United States
DS284 Mexico - Certain Measures Preventing the Importation of Black Beans from Nicaragua Request for Consultations: 17 March 2003 Current status: settled or terminated (withdrawn, mutually agreed solution)	Mexico	Nicaragua	None.
DS237 Turkey - Certain Import Procedures for Fresh Fruits Request for Consultations: 31 August 2001 Current status: settled or terminated (withdrawn, mutually agreed solution)	Turkey	Ecuador	Colombia, European Communities, United States
DS203 Mexico - Measures Affecting Trade in Live Swine Request for Consultations: 10 July 2000 Current status: in consultations	Mexico	United States	None.
DS144 United States - Certain Measures Affecting the Import of Cattle, Swine and Grain from Canada Request for Consultations: 25 September 1998 Current status: in consultations	United States	Canada	None.

Source: WTO, 2018.

## References

- IICA (Inter-American Institute for Cooperation on Agriculture, Costa Rica). n/d. Basic glossary of terms commonly used in the World Trade Organization (WTO) (on line). San Jose, Costa Rica, CAESPA. Consulted on 15 June 2018. Available for download from: <http://repositorio.iica.int/bitstream/11324/6565/2/BVE18039757i.pdf>.
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- WTO (World Trade Organization, Switzerland); IICA (Inter-American Institute for Cooperation on Agriculture, Costa Rica). 2014. Guidelines for Dispute Settlement in the WTO (on line). San Jose, Costa Rica. Consulted on 15 June 2018. Available for download from: <http://repositorio.iica.int/bitstream/11324/6025/2/BVE17099238i.pdf>.

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