

EFFECTIVENESS OF THE WORLD TRADE ORGANIZATION'S DISPUTE SETTLEMENT MECHANISM

Abdurrahman Alfaqih*

Fakultas Hukum Universitas Internasional Batam
Jalan Gadjah Mada, Baloi Sei Ledi, Batam, Kepulauan Riau 29422

Abstract

Many WTO (World Trade Organization) member States have made use of the WTO dispute settlement mechanism. Nevertheless, the debate over the effectiveness of this mechanism is still happening and is an important issue to be discussed. This article aims to explain the effectiveness of the WTO dispute settlement mechanism. Its timeframe, participation (particularly developing countries) and its achievements are used to measure such effectiveness. This article concludes that the WTO dispute settlement mechanism effectively resolves the disputes among the members.

Keywords: effectiveness, dispute settlement mechanism, WTO.

Intisari

Tidak sedikit negara-negara anggota WTO (*World Trade Organization*) memanfaatkan mekanisme penyelesaian sengketa dagang internasional di WTO. Namun demikian, perdebatan tentang keefektifan mekanisme ini masih terus terjadi dan menjadi isu yang penting untuk dikaji. Tulisan ini bertujuan untuk menjelaskan argumentasi efektifitas mekanisme penyelesaian sengketa dagang internasional di WTO. Pendekatan waktu, partisipasi (khususnya negara berkembang) dan pencapaian menjadi tolak ukur pengukuran efektifitas mekanisme tersebut. Tulisan ini menyimpulkan bahwa mekanisme penyelesaian sengketa dagang internasional di WTO berjalan secara efektif.

Kata kunci: efektifitas, mekanisme penyelesaian sengketa, WTO.

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* Correspondence address: abdurrahmanalfaqih@gmail.com

A. Introduction

Since first introduced in 1995, many World Trade Organization (WTO) member states whether developed or developing countries have made use of the WTO dispute settlement system to resolve their trade disputes cases due to the main goal of WTO dispute settlement system which provides security and predictability of the multilateral trading system. It is known that there are two main functions in the WTO: legislative and judicial. The former function pertains to the purpose of the WTO as a forum in which to accomplish trade agreements and has been very slow in actions due to the long deadlock in multilateral negotiations until the coming through at the Doha Ministerial Conference in November 2001. The latter function is carried out by the dispute settlement system which is one of the new key characteristics of the current global trade system and has made the actual achievements. Although some scholars claim that WTO dispute settlement does not provide an effective dispute mechanism, it has been recognized by others since the development of this system that WTO dispute settlement has generally been successful in helping members effectively resolve disputes as well as in obtaining compliance. Therefore, this essay will argue the effectiveness of the dispute settlement system in WTO by using three main key indicators: timeframe, participation and achievement. By this order, this essay will be elaborated into three parts: brief overview of WTO dispute settlement process, the effectiveness of WTO dispute settlement system and followed by the elaboration upon two proceedings for both successful and unsuccessful.

B. Discussion

1. WTO Dispute

It is necessary to explain the mechanism of the WTO dispute settlement in order to know the legal framework with relation to the effectiveness first before analyzing the three aforementioned variables in measuring WTO'S effectiveness. As it is stated in "Understanding the WTO", written and published by World Trade Organization, Information and External Relations Division in 2011, dispute settlement is the fundamental practices of the multilateral trading system that can contribute to the stability of the global economy. It seems that the action depends on this system has become a requirement because the rule could not be enforced without an instrument of settling disputes or at least it would be less effective. Thus, this system emphasizes the rule of law which is based on clearly-defined rules, with timetables for completing a case in order to make the trading system more secure and predictable.¹ Accordingly, the dispute settlement mechanism is called the judicial body of the WTO mechanism. Despite the fact that this system provides a legal aspect to accelerate resolution of disputes and prevents deliberate 'blocking actions', it also has a power to organize panels, adopt or reject panel and Appeal Body (AB) reports, maintain surveillance of the implementation of decided rulings, and authorize limited trade transactions.² This authority derives from the Articles XXII and XXIII of the GATT which basically transformed the dispute settlement process from a diplomatic or a power-based approach into a legalized or a rule-based procedure that can be found in the dispute settlement understanding.³

¹ World Trade Organization, 2011, *Understanding the WTO*, World Trade Organization, Switzerland, p. 55.

² Biranchi Narayan P. Panda, "Is Dispute Settlement System of the World Trade Organisation an Adjudicative or Adjustive?", <http://ssrn.com/abstract=2055725>, retrieved on 21 April 2013.

³ Kim Van der Borgh, "The Review of the WTO Understanding on Dispute Settlement: Some Reflections on the Current Debate", *American University International Law Review*, Vol. 14, No. 4, 1999, p. 1223.

Furthermore, there are three stages in the dispute settlement regime of the WTO.⁴ The first stage is the consultation stage which has been said as the source of the dispute settlement system because it starts the WTO dispute settlement system action. In other words, the process will start when the complainant requests for consultation⁵ through the questions that describe their objections to certain trade actions. In this stage, the parties are required to negotiate to attain a mutually satisfactory solution within 60 days.⁶ The second stage is the panel proceedings stage which consists of litigation. This phase occurs when the parties have failed to make a mutually satisfactory solution here the complainant can request for the establishment of a panel to hear the dispute.⁷ The third and final stage is, depending on the outcome of the case, the implementation stage. In this stage, the panel will issue an interim report⁸ after the conclusion of the case and then a final report will be sent to the Dispute Settlement Body (“DSB”) for adoption by consensus unless the other party appeals.⁹ The case will finish when the defendant takes an advantage from the case in the appeal. However, the Appellate Body will call upon the defendant to bring its trade measures into conformity with the covered agreement in question, if the case benefits the complainant.¹⁰ The appellate report also goes for adoption by the DSB. If it is impracticable for the defendant to comply immediately, the defendant is given a reasonable time within which to comply¹¹ and failing compliance the complainant may request for a compliance panel.

2. Effectiveness of WTO Dispute Settlement System

It is strongly argued that the WTO dispute settlement is outstandingly effective. However, there is still rejection of this opinion with regards to the length of process and the lack of retaliatory power particularly for developing countries. The legal proceedings in the WTO dispute settlement take often a relatively long time in duration and might require additional costs. Moreover, the limited retaliatory authority from developing countries might deter making complaints if there is no hope for their views of imposing rulings in their favor, especially since there is no mechanism for collective punishment of recalcitrant respondents. Furthermore, small developing countries may workout self-constraint in blaming their struggles in order not to threaten the privileges that they rely on, including development aid and unilateral trade preferences.¹² All of these arguments are constructed to counter the effectiveness of the WTO dispute settlement.

a) Timeframe

One of the indicators to measure the effectiveness of the WTO dispute settlement is time duration. Opinion which have said that the panel in the WTO dispute settlement takes too long time or even prolong the proceedings is simply not true. As a matter of fact that the WTO disputes run significantly faster, on an average, than cases in other international or regional organizations, such as the ICJ, the ECJ and NAFTA.¹³ “The average timeframe for WTO panel proceedings is 10 months,

⁴ Gosego Rockfall Lekgowe, “The WTO Dispute Settlement System: Why it Does not Work for Developing Countries?”, <http://dx.doi.org/10.2139/ssrn.2045470>, accessed on 21 April 2013.

⁵ See Understanding on Rules and Procedures Governing the Settlement of Disputes, Art. 4(1), (2) and (3), *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 2 (“DSU”).

⁶ DSU Art. 4(7).

⁷ DSU Art. 4(7) and Art. 6(1) and (2).

⁸ DSU Art. 16.

⁹ DSU Art. 14.

¹⁰ DSU Art. 19(1).

¹¹ DSU Art. 21(3).

¹² Henrik Horn, *et al.*, “Is The Use Of The WTO Dispute Settlement System Biased?”, <http://www.econ-law.se/Papers/Disputes000117.PDF>, accessed on 21 April 2013.

¹³ Yonov Frederick Agah, “WTO Dispute Settlement Body Developments in 2010: An Analysis”, *Trade Law & Development*, Vol. 4, No. 1, 2012, p. 243.

excluding the time it takes to compose a panel and translate reports. Compare this to the ICJ's 4 years, the ECJ's 2 years and NAFTA's Chapters 20 and 11 proceedings of 3 years and 5 years, respectively".¹⁴ It is also faster than the investor-state arbitrations at the World Bank's International Centre for the Settlement of Investment Disputes, known as ICSID. On average, it takes over 3 1/2 years for ICSID to deal with the cases.¹⁵ Time spent by parties making their submissions is not the sole reason for this but it is because of the length of time needed by the decision-makers to do their work. "Surprisingly, it takes about 14 months between the last hearing and the issuance of an ICSID award."¹⁶ Yet there are some WTO panel proceedings that have taken longer than 10 months, and even almost a year, these are exceptional cases. There are two high profile cases have taken several years to go through the system: the "Airbus" and "Boeing" cases because they are marked as the most difficult and expensive cases. And they do not represent the norm which is the only reference that the WTO dispute settlement system considers. Therefore, time limits in the WTO fair quite well when compared with dispute procedures in international organizations for matters of comparable complexity.

Furthermore, it has been recognized that the WTO dispute settlement takes an appropriate time during the dispute process, which means that there is no deliberate delay or prolongation occurring in that system unless the parties have designed so. It could be seen, for instance, from the description statistic data occurred between 1995 and 2010

that shows the average applied time for every phase process in the WTO dispute settlement as follows:¹⁷

1. In the consultation stage, the average time that a country with disputes needs is around five to six months from the date of request for consultation until the date the panel was established, while the statutory deadline is two months.
2. Next phase is panel which has 15 months as an average process time. In this phase, the statutory states that the duration of the panel process is six months which can be extended to nine months if the parties need it, even though, the Dispute Settlement Understanding tends to propose without any further extension.¹⁸
3. The next stage is Appellate Body (AB) process. As it is stated in the statutory deadline for its completion is 60 days, but with the possibility to extend it to 90 days. The data shows that the average duration is 90.3 days. "On 113 out of 127 occasions, that is, 89% of the total number, the AB completed its work within 91 days."
4. Then turn to Compliance panels (Art. 21.5 DSU) which have a statutory 90 days-deadline with the possibility of extension but there is no maximum delay of process.¹⁹ In practice compliance panels take on average around eight months to complete their work.
5. Finally, it is about the average reasonable period of time (RPT) for implementation of the WTO adjudicating bodies' recommendations. The average time for RPT when agreed bilaterally is 9.29 months which is awarded by the arbitrator in the awards circulated, while the average time for RPT when awarded by arbitrator is 11.7 months which

¹⁴ *Ibid.*

¹⁵ Anthony Sinclair, *et al.*, "ICSID Arbitration: How Long Does it Take?", *global Arbitration Law Review*, Vol. 4, No. 5, 2009, pp. 18-20.

¹⁶ *Ibid.*

¹⁷ Henrik Horn, *et al.*, "The WTO Dispute Settlement System 1995 2010: Some Descriptive Statistics", *Journal of World Trade*, Vol. 45, No. 6, 2011, p. 32.

¹⁸ DSU Art. 12(9).

¹⁹ DSU Art. 21(5).

is a total length of agreed period between parties of RPT during which implementation must occur.²⁰

From the aforementioned data, it could be stated that between 1995 and 2010, the WTO dispute settlement have not intentionally prolonged the proceeding unless the parties required so. Thereby, in general, the WTO dispute settlement mechanism could be considered as an effective system in terms of timeframe.

b) Participation and Achievement

Another indicator is the participation aspect, particularly for developing countries,²¹ and its achievements.²² It is believed that one of the principle factors in influencing developing countries' participation and compliance with WTO panel and appellate body decision is the effectiveness, at least in principle, of the dispute settlement system in resolving disputes between countries of diverging political and economic power.²³ Point of fact, in 2010 developing countries made for the majority of the cases initiated.²⁴ For instance, developing countries were complainants in more than 45% of cases and defendants in more than 43% between 1995 and 2009.²⁵ Moreover, after two decades of practice, this system has contributed significantly to the governance of global trade interactions with great benefits

and clear adjudication process and as a result, many countries have developed innovative actions for managing everyday problems arising in worldwide trade.²⁶ For example, the preparation of South Korea government for the case against US anti-dumping measures on colour televisions confirms that demands close collaboration between officials and business people has a positive impact on domestic trade policy-making. The result of this dispute leads South Korea to be more confident participation in the WTO and more positive view of the benefits of 'globalization' of the economy.²⁷ Another good illustration is the successful allegation of Costa Rica of its rights under the Agreement on Textiles and Clothing against US safeguard actions which reflects a signal to other developing countries that the WTO dispute settlement system would protect proportionally the interests of all members.²⁸ This suggests that so far the WTO has achieved its main objective, namely, settles disputes between members so as to provide "security and predictability to the multilateral trading system."²⁹

Furthermore, the WTO dispute settlement system generally has an admirable compliance proof³⁰ which shows that the standard compliance rate within ten years is 83%.³¹ Despite the fact the number of new

²⁰ The arbitrators have to respect the statutory deadline. It should be noted that the DSU provides a guideline to the Arbitrators when it comes to determine the RPT: it should not be longer than 15 months. The DSU admits, however, that the RPT can extend beyond 15 months if need be. See DSU Art. 21(3c).

²¹ This is because of many arguments that the WTO dispute settlement does not benefit the developing countries. See Gosego Rockfall Lekgowe, *Loc.cit.*

²² Both participation (which is more quantitative) and achievement indicators seem to be relevant for examining the effectiveness of WTO dispute settlement. See Konstantinos D. Magliveras, "Measuring the Effectiveness of International Organizations: A Theoretical Approach", *Paper*, the 69th Midwest Political Sciences Association Conference, Chicago, 31 March to 3 April 2011.

²³ Douglas Ierley, "Developing Countries Compliance with and Participation in the WTO Dispute Settlement System: Another Look at the Dispute over Bananas", *Law & Policy in International Business*, Vol. 33, No. 4, 2002, p. 615.

²⁴ See Yonov Frederick Agah, *Loc.cit.*

²⁵ Thomas Bernauer, *et al.*, 2010, *The World Trade Organization's Dispute Settlement Mechanism – Analysis and Problems*, Center for Comparative and International Studies, Zurich, p. 4.

²⁶ Roberto Echandi, 2013, *How to Successfully Manage Conflicts and Prevent Dispute Adjudication in International Trade*, International Centre for Trade and Sustainable Development (ICTSD), Switzerland, p. 3.

²⁷ World Trade Organization, "Managing the Challenges of WTO Participation: Case Studies", https://www.wto.org/english/res_e/booksp_e/casestudies_e/introduction_e.htm#fntext1, accessed on 22 April 2013.

²⁸ *Ibid.*

²⁹ DSU Art. 3(2).

³⁰ William J. Davey, "Compliance Problems in WTO Dispute Settlement", *Cornell International Law Journal*, Vol. 42, No. 1, 2009, p. 119.

³¹ William J. Davey, "The WTO Dispute Settlement System: The First Ten Years", *Journal International Economic Law*, Vol. 17, No. 8, 2005, p. 46.

cases has slightly increased, some of the ten problem disputes prominent have since been settled during ten years period.³² This current compliance rate achievement has a significant impact on an international state-to-state dispute settlement system. In addition, this successful rate in the WTO system is clearly better than the success rate in the International Court of Justice.³³ Moreover, the successful number of consultations in WTO cases is also remarkable. For instance, there are 414 registered consultation requests within 10 years of the new regime of WTO dispute settlement operation which is higher than with the GATT (around 300). 125 of these 414 requests led to a panel examination and adopted panel reports. "Of these 125 panel reports, 78 have been appealed. In 85% of appeals, panel reports were reversed or modified." In almost 90% of adopted dispute reports at least one violation of legal obligations under the WTO was found.³⁴ This, one at a time, proves an advanced level of appeals and a significant achievement rate of appeals.

The outstanding achievement of WTO dispute settlement, therefore, indicates that many countries of WTO members are using and want to use the WTO system to resolve disputes due to the believe that the system has made an important and a significant input to the development of international trade law. And, all of this fact seems to be a mark of its success.³⁵ Thus, that WTO dispute settlement is not only effective to convey an advancement to adjust the trade barrier and shorten the duration of the dispute, but also remarkable that the dispute system has been relatively successful to resolve trade disputes.³⁶

3. Successful and Unsuccessful Proceedings: A Brief Overview

Thirdly, an elaboration upon the successful and unsuccessful cases seems to be important part of this discussion in order to support the arguments that state although many cases have been successfully resolved under the WTO dispute settlement mechanism, there are still some cases that have taken a long time to sort out or where no final decision has been made.

a) Successful Cases

1) The Costa Rica's Successful Case

This case was entitled United States — Restrictions on Imports of Cotton and Man-Made Fibre Underwear which the short one is US – Underwear (Dispute DS24). The compliant of this case was Costa Rica whereas United States was a respondent with India as third party. This case has been claimed by scholars as a successful case because this case showed how the dispute process worked under legal power approach which resolved the problem effectively.

On 22 December 1995, Costa Rica requested consultations with the United States concerning US restrictions on textile imports from Costa Rica. Costa Rica alleged that these restrictions were in violation of the ATC agreement. Therefore, on 5 March 1996, the DSB (Dispute Settlement Body) established a panel at its meeting based on Costa Rica's request. India reserved its third-party rights.

On 4 April 1996, the Panel was composed. The report of the panel was circulated to members on 8 November 1996. The Panel found that the US restraints were not valid. Then, On 11 November 1996, Costa Rica notified its decision to appeal against one

³² See John H. Jackson, *et al.*, 2008, *Legal Problems of International Economic Relations (5th Edition)*, Thomson/West, St. Paul, p. 284.

³³ See Tom Ginsburg and Richard H. McAdams, "Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution", *WM. & Mary Law Review*, Vol. 45, 2004, p. 1229.

³⁴ See Thomas Bernauer, *et al.*, 2010, *Op.cit.*

³⁵ See Donald McRae, "Measuring the Effectiveness of the WTO Dispute Settlement System", *AJWH*, Vol. 3, No. 1, 2008, p. 3.

³⁶ Davis Christina, "WTO Dispute Settlement as a Tool for Conflict Management", <http://ssrn.com/abstract=1668819>, accessed on 23 April 2013.

aspect of the Panel report. The report of the Appellate Body was circulated to Members on 10 February 1997. The Appellate Body upheld the appeal by Costa Rica on that particular point. The Appellate Body report and the Panel report as modified by the Appellate Body report were adopted by the DSB on 25 February 1997 with three points in the summary of key Panel/AB Findings First: ATC Art. 6.10 (transitional safeguard measures - prospective application): The Appellate Body reversed the Panel's finding and concluded that in the absence of express authorization, the plain language of Art. 6.10 create a presumption that a measure may be applied only prospectively, and thus may not be backdated so as to apply as of the date of publication of the importing Member's request for consultation. Second: ATC Art. 6.2 (transitional safeguard measures - serious damage and causation): The Panel refrained from making a finding on whether the United States demonstrated "serious damage" within the meaning of Art. 6.2, stating that ATC Art. 6.3 does not provide sufficient and exclusive guidance in this case. However, the Panel found that the United States had not demonstrated actual threat of serious damage, and therefore violated Art. 6. The Panel also found that the United States failed to comply with its obligation to examine causality under Art. 6.2. Third: GATT Art. X:2 (trade regulations - enforcement): Although disagreeing with the Panel's application of Art. X:2 to the issue of backdating under ATC Art. 6.10, the Appellate Body agreed with the Panel's general interpretation of Art. X:2

that certain country-specific measures may constitute "measures of general application" under Art. X:2, although a company or shipment-specific measure may not. It also noted the fundamental importance of Art. X:2 which reflects the "principle of transparency" and has "due process dimensions".³⁷

In terms of implementation of adopted reports, at the meeting of the DSB on 10 April 1997, the US informed the meeting that the measure which had been the subject of this dispute had expired on 27 March 1997 and had not been renewed, effectively meaning that the US had immediately complied with the recommendations of the DSB.³⁸

2. US – Zeroing (Korea)

This is another successful case for South Korea because the United States as respondent had fully implemented the DSB's recommendations and rulings within the reasonable period of time agreed by the parties on 19 December 2011. After following every stage in dispute settlement process which started from the consultation on 24 November 2009 followed by the establishment of panel on 18 May 2010, Korea had won this case against United States.³⁹ Korea requested consultations with the United States regarding their use of zeroing in three antidumping cases involving certain products from Korea, namely, stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades and parts thereof.

Korea claimed that the effect of the use of zeroing by the US Department of Commerce (USDOC) in these three cases had been either to artificially create margins

³⁷ See World Trade Organization, "United States — Restrictions on Imports of Cotton and Man-Made Fibre Underwear", https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds24_e.htm, accessed on 23 April 2013.

³⁸ US – Underwear Appellate Body Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted 25 February 1997, DSR 1997:I, 11 & US – Underwear Panel Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/R, adopted 25 February 1997, as modified by Appellate Body Report WT/DS24/AB/R, DSR 1997:I, 31. See World Trade Organization, "United States — Restrictions on Imports of Cotton and Man-Made Fibre Underwear", https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds24_e.htm, accessed on 23 April 2013.

³⁹ See World Trade Organization, "United States — Use of Zeroing in Anti-Dumping Measures Involving Products from Korea", https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds402_e.htm, accessed on 23 April 2013.

of dumping where none would otherwise had been found, or to inflate margins of dumping. In its consultation request, Korea alleged that the USDOC's use of zeroing in its final determinations, amended final determinations, and anti-dumping duty orders in the three cases in question was inconsistent with the United States' obligations under Article VI of GATT 1994 and Articles 1, 2.1, 2.4, 2.4.2, and 5.8 of the Anti-Dumping Agreement.⁴⁰

Finally, the Panel found that the United States acted inconsistently with the first sentence of Art. 2.4.2 by using the zeroing methodology in calculating certain margins of dumping in the context of the three original investigations at issue. Therefore, after getting eight months of reasonable period for the United States to comply with the DSB recommendations and rulings, United States finally notified that they had fully implemented the recommendations on 19 December 2011.⁴¹

b) Unsuccessful Cases

1) EC and Certain Member States – Large Civil Aircraft Case

This case is recognized as an important issue and high stakes which lead to the prolongation and seems to be unsuccessful case in the WTO dispute settlement. This case which was known as European Communities — Measures Affecting Trade in Large Civil Aircraft (Dispute DS316) has been started since 6 October 2004 with the consultation from the United States (complainant) with the Governments of Germany, France, the United Kingdom, and Spain (the “member states”),

and with the European Communities (“EC”) (respondent) concerning measures affecting trade in large civil aircraft.⁴² According to the request for consultations from the United States, measures by the EC and the member States provide subsidies that are inconsistent with their obligations under GATT 1994: Art. III:4, XVI:1, XXIII:1 Subsidies and Countervailing Measures: Art. 1, 2, 3.1, 3.2, 5, 6.3, 6.4.⁴³

The panel for this case was established on 20 July 2005 which is more than two months after the United States request for the establishment of a panel because there was a differed establishment of panel on 13 June 2005. Australia, Brazil, Canada, China, Japan and Korea reserved their third-party rights. Then, by 23 September 2005, there was a meeting where the DSB initiated the procedures provided in Annex V of the SCM Agreement. One of the United State request points is asking for the Director-General to compose the panel on 7 October 2005. But the Director-General rejected himself on this matter on 17 October 2005 and Deputy Director acted in place of the Director-General to compose the panel. In this stage, it seems that the complexity of the matters had influenced the prolongation in composing the panel.⁴⁴

In this case, the panel would not be able to complete its work within six months from 13 April 2006 due to the substantive and procedural complexities involved in this dispute.⁴⁵ However, the panel completed the work at the end of April 2010. In this sense, the WTO dispute settlement seems to prolong

⁴⁰ *Ibid.*

⁴¹ Panel Report, *United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea*, WT/DS402/R, adopted 24 February 2011.

⁴² See World Trade Organization, “European Communities — Measures Affecting Trade in Large Civil Aircraft”, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm, accessed on 23 April 2013.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Appellate Body Report, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WT/DS316/AB/R, adopted 1 June 2011.

the case. Moreover, the result of this case was still on the status of compliance proceedings ongoing, which means that the case has not been resolved yet.⁴⁶ It can be seen from the implementation stage, that the United States claimed that the European Union and certain member States had failed to comply with the DSB's recommendations and rulings, thus they requested approval by the DSB to take countermeasures under Article 22 of the DSU and Article 7.9 of the SCM Agreement on 9 December 2011.⁴⁷

Even though, the European Union objected to the level of postponement of concessions or other obligations included in the United States' request at the DSB meeting on 22 December 2011, and claimed that the principles and procedures set forth in Article 22.3 of the DSU had not been followed. The European Union also stated that the United States' proposal is not allowed under the covered agreements. The European Union requested the matter be referred to arbitration under Article 22.6 of the DSU. The DSB agreed that the matter raised by the European Union in its statement at that meeting was referred to arbitration as required by Article 22.6 of the DSU.⁴⁸

Then, on 19 January 2012, the United States and the European Union requested the Arbitrator to suspend its work. As stated in paragraph 6 of the Agreed Procedures, in the event that the DSB, following a proceeding under Article 21.5 of the DSU, rules that the measure taken to comply does not exist or is inconsistent with a covered agreement, either party may request the Article 22.6 arbitrator to resume its work. In accordance

with the parties' joint request, the Arbitrator suspended the arbitration proceedings from 20 January 2012 until either party requests their resumption.⁴⁹

Finally, this case tends to be the long taking time case in the WTO dispute settlement mechanism which has not been resolved yet, and could be reflected as the unsuccessful case.

2) US – Shrimp and Sawblades Case

This case which was known as United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China (Dispute DS422) seems to be unsuccessful case.⁵⁰ Although the current status released by WTO as implementation notified by respondent which was United States, China as complainant did not share the United States' view, thereby, China pressed the United States to respect its obligation.

This case began with China requested consultations On 28 February 2011 with the United States regarding the latter's anti-dumping measures on certain frozen warm water shrimp from China. China alleged that the US Department of Commerce's ("USDOC") use of zeroing in the original investigation and several administrative reviews to calculate dumping margins for the subject imports is inconsistent with the United States' obligations under Article VI:1 and VI:2 of the GATT 1994 and Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.2, 9.3, and 9.4 of the Anti-Dumping Agreement.

On 22 July 2011, China requested complementary consultations with the United States with regard to the zeroing practice by the USDOC in its anti-dumping measures on

⁴⁶ Panel Report, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WT/DS316/R, adopted 1 June 2011, as modified by Appellate Body Report, WT/DS316/AB/R.

⁴⁷ World Trade Organization, "European Communities — Measures Affecting Trade in Large Civil Aircraft", https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm, accessed on 23 April 2013.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ There are six third parties involved in this case: European Union; Honduras; Japan; Korea, Republic of; Thailand; Vietnam. See World Trade Organization, "United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China", https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds422_e.htm, accessed on 23 April 2013.

diamond sawblades and parts thereof from China with the considerations that the zeroing practices in the cited measures are inconsistent with the United States' obligations under Article VI:1 and VI:2 of the GATT 1994 and Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.2, 9.3, and 9.4 of the Anti-Dumping Agreement. On 13 October 2011, China requested the establishment of panel. Then, on 13 October 2011, China and the United States informed the DSB of an Agreement on Procedures.

At its meeting on 25 October 2011, the DSB established a panel. The European Union, Honduras, Japan, Korea, Thailand and Vietnam reserved their third party rights. Following the agreement of the parties, the panel was composed on 21 December 2011. On 8 June 2012, the panel report was circulated to Members with some summary key findings as follows:

1. Therefore the Panel concluded that the United States had acted inconsistently with its obligations under this provision.
2. The Panel rejected China's claim concerning the separate rate, but noted that the calculation of the separate rate on the basis of individual margins calculated with zeroing necessarily incorporated the WTO-inconsistent zeroing methodology.

At its meeting on 23 July 2012, the DSB adopted the panel report. Then, on 27 July 2012, both parties had agreed with the reasonable period of time for the United States to implement the DSB recommendations and rulings shall be 8 months. Accordingly, the reasonable period of time expired on 23 March 2013. Finally, in terms of implementation of adopted reports the United States informed the DSB that it had implemented the DSB recommendations and rulings within the reasonable period of time at the DSB meeting on 26 March 2013. However, China did not agree with United States' view that it had fully implemented the DSB recommendations. Furthermore, China advocated the United States to honour its obligation.⁵¹

C. Conclusion

In brief, it has been proven that the WTO dispute settlement is an effective instrument for resolving the disputes between WTO member countries. In terms of timeframe, the system works in a proper and ordered way. The increase in participation particularly from developing countries and the outstanding achievement in resolving the disputes enabled this system to reach effectively its main objective namely, to settle disputes between members states so as to provide security and predictability to the multilateral trading system.

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