

# India, WTO and Dispute Settlement

## ➤ Introduction

- WTO is a global/international organization which deals with the rules regulating the multilateral trading system. It was established on 1st January 1995 as a result of negotiations amongst various countries which is referred to Uruguay round of negotiations (from 1986 to 1994). It replaced the earlier system of GATT (this dealt with trade of only goods)
- The highest decision making body is the ministerial conference. It meets once in two years. The first conference was held in 1996 in Singapore and the latest in 2017 (11th MC). Below this there is General Council, which consists of ambassadors of member countries who meet many times a year and take the decisions. The General council also meets as the Trade Policy Review and Dispute Settlement Body
- The HQ of WTO is in Geneva (Switzerland)
- Presently there are over 160 member countries under WTO and more than 20 countries have applied to become a member
- The decisions in WTO are taken by consensus i.e. every member country must agree to the proposal
- India is a founder member country
- The functions of WTO are
  - Administering trade agreements
  - Acting as a forum for trade negotiations
  - Settling trade disputes
  - Reviewing national trade policies
  - Assisting developing countries in trade policy issues, through technical assistance and training programmes
  - Cooperating with other international organizations

## ➤ Dispute Settlement

- For resolving the disputes, the General Council will use the rules and guidelines under the Dispute Settlement Understandings, based on which the responsibility of resolving these disputes is given to DSB (Dispute Settlement Body)
- The DSB meets regularly once a month but whenever a member demands for a meet, the Director General has the power to convene meeting of DSB
- The DSB has representation from all the member countries. The functions of the DSB are
  - Adoption of Appellate Body reports
  - Setting up of Dispute settlement panels
  - Implementation and surveillance of the rulings and recommendations etc
- A dispute arises whenever a member country/countries is/are of the opinion that another member country is violating any of the agreements of global trade or any commitment that he has promised to fulfil
- Earlier GATT also had a procedure for dispute settlement but there was no time limit fixed and it was easier for the members to block the rulings as a

result of which the cases dragged on for many years. In case of WTO, the Uruguay round of negotiations introduced a better structured mechanism with the time limits (which are flexible) in each of the stages in dispute settlement. As per this, a dispute may take around 12 months to be resolved and 15 in case the ruling is appealed before the appellate body. In case of perishable goods, the time taken could be reduced by accelerating the process. Another major difference between the GATT system and the present one is that, earlier the member countries were allowed to block the adoption of the ruling but under WTO, all the member must agree if the ruling has to be blocked/rejected

- Though there is a clear and structured process for dispute resolution, WTO prefers resolving these issues through consultations/discussions amongst themselves
- The process that will be followed will be
  - A member country approaches the DSB and files a complaint against another member country
  - The DSB appoints a panel which will conduct enquiries about the issue/matter on which the complaint has been filed (submit the report within six months)
  - Once the report has been submitted, the DSB has the power to accept/reject the findings of the panel
  - If any of the party is not satisfied then they can go for appeal to the Appellate Body - AB (it is a seven-member body set up by the DSB, of these seven members, 3 members will hear the appeals, each member will have a tenure of 4 years and can be reappointed, the tenures of these members are stacked in order to ensure that all of them do not finish their tenure simultaneously). The appellate can either uphold or modify or reverse the panel's findings
  - The DSB can accept/reject the appeals report. The faulting country (which has lost the case) must within 30 days must convey its decision (either to comply with the ruling or go to appellate) in the next 30 days from the date of adoption of the report adoption
  - Once the report has been accepted the faulting country
    - Can correct the policy so as to comply with the rules/agreements
    - Continue to violate the rules but pay compensation (form of remedy) to the complainant country
    - If the faulting doesn't agree to pay compensation, then the complainant may ask permission to retaliate against the faulting country by imposing certain trade measures

➤ **Recent news**

- US blocking the appointments to appellate body
  - US on one side has imposed tariffs on steel and aluminium imports from many of its trading partners and on the other side has been blocking the appointment of experts to the appellate body for almost two years now

- The sanctioned strength of judges under the appellate is 7 but presently there are only 4 members (of which tenure of one judge will be over by this year's December). If the same situation continues then by the end of 2019 there will be only one member left and to take up the appeals (but there is a need of having at least three judges in the appellate to take up any of the appeals)
  - Since 1995 more than 500 disputes (of these more than 100 have been filed by US alone) have been filed at WTO. After the report of the panel is accepted by the DSB, many a times both the parties have approached the AB. AB has adjudicated on very complex and diverse issues such as environmental protection, renewable energy subsidies, tax evasion, money laundering, patent protection, animal welfare, food safety etc. Hence the dispute settlement system has been referred to as the crown jewel of the institution and is the only real functioning system since the commencement of WTO as the organisation has not been able to implement many of the agreements because of the differences of opinion among the member countries
  - Member countries looking for an alternative
    - The member countries of WTO have been discussing article 25 of the DSU, which offers an alternative mechanism for dispute resolution in case the member countries are agreed upon it
- **India and DSB**
  - On November 6, a panel set up by DSB has submitted a report in favour of Japan. It has stated that India has failed to show that the imports of iron and steel have injured the domestic market. The Indian government had earlier imposed safeguard duty on imports of iron and steel to protect the domestic market
  - In the last five years, this is the fourth time that the global trade watchdog has ruled against India
  - This is a matter of concern for India as there are many issues wherein other countries (mainly US) can approach/approached the DSB
    - MEIS (Merchandise Exports from India Scheme)
    - SEZ policy (Special Economic Zone)
    - EPCG (Export Promotion of Capital Goods)
    - US has alleged that India has been under reporting its farm subsidies
    - US recently has reduced the benefits for India under GSP
- **Issue of export subsidies**
  - Subsidies have a trade distorting effect and are prohibited under the WTO law, at the same time they also play a very important role in promoting the development in developing/underdeveloped countries. Hence a compromise was made between these two arguments under article 27 of ASCM (Agreements on Subsidies and Countervailing Measures). This provides a special and differential treatment for developing countries. India along with 20 other countries belong to annex VII(b) countries

- As per WTO rules, any country that clocks a per capita income of \$1000 for three consecutive years must end export subsidies. Further if any sector achieves export competitiveness i.e. having over 3.25% of the global exports in two consecutive years, export subsidies must be phased out in the next 8 years
- When this rule was introduced, the countries were given a grace period of eight years, as per IMF, India crossed this threshold in 2015 (2017 was the third year) and hence it should also be given this grace period
- US has dragged India to DRM under WTO, which has set up a panel in 2018 to investigate the allegations of US against India
- India achieved export competitiveness in textile sector in 2010
- The GoI presently promotes more exports under MEIS (Merchandise Exports from India Scheme) wherein duty benefits are given to various products going to various countries
- The commerce ministry is working on a new scheme which would replace the MEIS and also be WTO compliant (it has been done as India has been dragged to WTO's Dispute Settlement body by US over the export subsidies. The argument has been that these incentives given by the GoI are hurting the American companies)

➤ **Farm Subsidies**

- The roots of the disagreement lie in the way subsidy is calculated and classified under WTO rules. US alleges that India has been grossly under reporting the subsidy that it provides for wheat and rice production
- The Indian authorities have clarified that the market price support (MPS - difference between MSP i.e. the price at which government procures the food grains and the External Reference Point (ERP) which is set up by WTO at 1986-88 prices) for rice is 5.45% of value of production for FY14, which is well below the prescribed limit of 10%
- On the other hand, US alleges that the MPS given by India on rice for FY14 was 77% of value of production
- US also has alleged that India has been reporting a negative MPS for wheat, whereas actual MPS is 65% of production value (issue with this calculation is that US has considered total wheat produced rather than considering only procured by the government. The government procures less than half of the wheat produced). Another issue with the calculation is the exchange rates taken. India takes the exchange rate to convert the MSP into dollar terms