

## Lecture 32: Dispute Settlement in WTO

Dear students, in this class we are going to discuss about the WTO dispute settlement system and the last class we were elaborately looking into the GATT dispute settlement system.

### CONCEPTS COVERED

- **Introduction to Dispute Settlement**
- **WTO dispute settlement**
- **Consultation process**
- **Conclusion**



So, this class we will see that what is happened you know what developments happened in the Uruguay Round of Negotiations and then finally, come out with the agreement on the dispute settlement understanding and what was the process and what is the process, panel process then appellate body process and also we will see that the time frame, the deadlines what are the other processes which is you know is provided under the WTO dispute settlement system. The WTO dispute settlement system is considered to be one of the strongest dispute settlement systems which prevailing presently in the world.

## Dispute Settlement

- **The WTO has one of the most active international dispute settlement mechanisms in the world.**
- **Since 1995, 621 disputes have been brought to the WTO and over 350 rulings have been issued.**
- **The General Council discharges its responsibilities under the [DSU](#) through the DSB ([Article IV:3](#) of the [WTO Agreement](#)). Like the General Council, the DSB is composed of representatives of all [WTO Members](#).**



The only reason is that the agreement on the dispute settlement understanding is a single undertaking. Single undertaking when you sign the WTO agreement you have to sign the dispute settlement understanding agreement as along with all other WTO agreements that is why it is single undertaking. So, it means that you can sign all the agreements, but you cannot say that I am not going to sign the agreement on dispute settlement. So, it is a single undertaking. And this is one of the dispute settlement system is the contribution of the WTO a strong dispute settlement understanding, a strong dispute settlement system which is provided by the WTO. And this is the bedrock of all WTO agreements that is why every member country is forced to comply with the WTO agreements and that is why we are studying this particular course what are the rules, what are the agreements, what is the dispute settlement system. Every 164 countries those who are you know dealing with 99.99 percent of the world trade has to be a part of the dispute settlement system. And so far we saw that 621 disputes, there is no match with the GATT period too many disputes came before the WTO under different agreements. It may be GATT, it may be SPS, it may be TBT or anti-dumping, as safeguard duties and countervailing duties, customs valuation, etcetera. 621 disputes came, but almost you can see that 50 percent may be you know more than 50 percent or around 50 percent of the cases after the negotiations, after consultations, they compromised the countries compromised the disputes and finally, end up in 350 rulings. It means around 50 percent of the cases the parties talked each other and they agreed to change their measures and the disputes the actual disputes came to the ruling level is 350 in each 350 numbers. So, here also the general counsel of the WTO discharges the functions of DSU through the dispute settlement body. So, article 40 of the WTO agreement which talks about the dispute

settlement understanding and the dispute settlement body is composed of representatives of all WTO members which will adopt all the panel reports and appellate body reports.

## Dispute Settlement

- **Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy.**
- **Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced.**
- **The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable.**
- **The system is based on clearly defined rules, with timetables for completing a case.**

So, everybody says that dispute settlement system is the central pillar of the multilateral trading system without which this multilateral trading system is going to wither away and this dispute settlement system is the unique contribution of WTO and that is the bedrock of the global economy. So, without this dispute settlement agreement and the implementation of the provisions in other agreements are going to be very difficult. And now the so-called criticism that power-based system has become 100 percent completely rule-based system. So, earlier under the GATT system it was very difficult to enforce and WTO there is 100 percent enforcement, enforcement procedures are mentioned. And the new system is clearly based on written rules with a clear cut deadlines, time-tables for completing the case and you cannot drag the case for three years or four years and clear cut timetable deadlines and very strict deadlines are provided for the panel and appellate body procedures which we will see later.

## How disputes are settled

- Settling disputes is the responsibility of the **Dispute Settlement Body (the General Council in another guise)**, which consists of all WTO members.
- The **Dispute Settlement Body** has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal.
- It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.



And the disputes are settled in the dispute settlement body and the dispute settlement body consists of all members all WTO members, but they are actually not adjudicating the disputes. So, the dispute settlement body establishes panels it is a panel of experts they are not permanent members or it is not a body actually. It is a panel of experts and panel of experts forms the panel findings they will come out with the reports, rulings at the panel stage. And these panel reports, so far there is no panel reports rejected by the dispute settlement body. It means that the negative consensus system is working very well with the WTO and the rulings are binding on the parties.

## DSU

- 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.



And also the procedures are clearly mentioned under the agreement on dispute settlement understanding and appeal process is also clearly mentioned. And the entire dispute settlement process is overseen by the dispute settlement body. It means that all the members overseeing the working of panel and appellate body compliance recommendations and panel reports.

## DSB

- **The DSB is responsible for administering the DSU, i.e. for overseeing the entire dispute settlement process.**
- **The DSB has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations and authorize the suspension of obligations under the covered agreements ([Article 2.1](#) of the DSU).**



And the authority you can see that the appointment of these authorities the DSB has the authority to establish panels and adoption of panel reports and appellate body reports are also with the DSB. Moreover, implementation supervision is also with the dispute settlement body whether these rulings are actually implemented by members. So, if the members are not implemented, what action can be taken? Arbitrations and authorization of suspension of obligations, is also possible. It means simply sanctions can be imposed on the other member who is not obeying the WTO dispute settlement body orders reports.



## DSB

- **The DSB is responsible for the referral of a dispute to adjudication (establishing a panel); for making the adjudicative decision binding (adopting the reports); generally, for supervising the implementation of the ruling; and for authorizing “retaliation” when a Member does not comply with the ruling.**

So, the adjudicating body is panels and appellate body. And even the DSB can authorize retaliation when a member does not comply with the ruling. So, that is why there is a power, there is a rule-based system and the procedures for the dispute settlement mechanism, and there is a sanction or a punishment for non-implementation of these particular decisions.

## DSB

- **The DSB meets as often as is necessary to adhere to the time-frames provided for in the DSU ([Article 2.3](#) of the DSU). In practice, the DSB usually has one regular meeting per month.**
- **When a Member so requests, the Director-General convenes additional special meetings. The staff of the WTO Secretariat provides administrative support for the DSB ([Article 27.1](#) of the DSU).**

And here you can see that in regular meetings they discuss and the director general of WTO convenes these particular meetings and the full administrative support is given by the WTO secretary.

## Decision Making in the DSB

- The general rule is for the DSB to take decisions by consensus ([Article 2.4](#) of the DSU).
- [Footnote 1 to Article 2.4](#) of the DSU defines consensus as being achieved if no WTO Member, present at the meeting when the decision is taken, formally objects to the proposed decision.



We already talked about the general council the DSB take decisions according to consensus and the consensus is different from what we mentioned in the GATT, there it is a positive consensus here it is the negative consensus. So, majority of the members should oppose then only it is going to be rejected and so far our experience is that there is no reports rejected so far. No rejection of reports since 1995 it shows that the system is working very fine.

## Decision making

- when the DSB establishes panels, when it adopts panel and Appellate Body reports and when it authorizes retaliation, the DSB must approve the decision unless there is a consensus against it ([Articles 6.1, 16.4, 17.14](#) and [22.6](#) of the DSU).
- This special decision-making procedure is commonly referred to as “negative” or “reverse” consensus.



And the decision making is through the panels and the DSB authorizes retaliation and approves the decisions and also special decision making is also procedure is also available, consensus. So, we said negative consensus or reverse consensus process. So, otherwise automatically the reports are adopted.

## DSU

- When the DSB administers the dispute settlement provisions of a plurilateral trade agreement (of [Annex 4](#) of the WTO Agreement), only Members that are parties to that agreement may participate in decisions or actions taken by the DSB with respect to disputes under these agreements ([Article 2.1](#) of the DSU).



And also you can see that the members also participate in the decision making, all the members the decision is binding on the members.

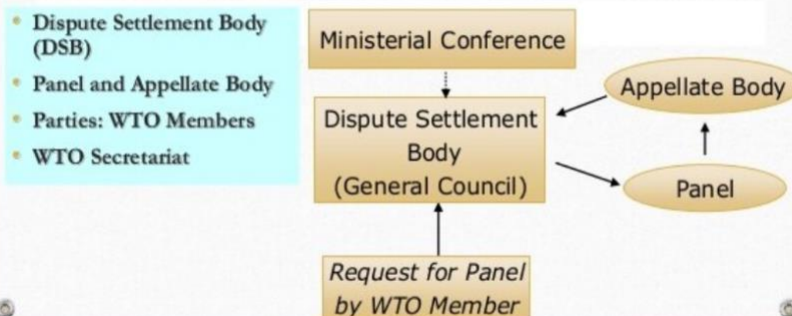


## Negative Consensus

- when the DSB establishes panels, when it adopts panel and Appellate Body reports and when it authorizes retaliation, the DSB must approve the decision unless there is a consensus against it ([Articles 6.1](#), [16.4](#), [17.14](#) and [22.6](#) of the DSU).
- This special decision-making procedure is commonly referred to as “negative” or “reverse” consensus.
- At the three mentioned important stages of the dispute settlement process (establishment, adoption and retaliation), the DSB must automatically decide to take the action ahead, unless there is a consensus not to do so.
- This means that one sole Member can always prevent this reverse consensus, i.e. it can avoid the blocking of the decision (being taken).

And also so we talked about positive consensus and here the consensus is on a negative consensus, positive consensus of GATT, negative consensus of WTO. So, the reverse consensus is implemented through the DSU and here you can see that the three important stages of dispute settlement process. So, establishment of the panel, adoption of the report and in the case of non-compliance there is a retaliation process. So, that means, no sole member or a group of members cannot block any decision taken by the DSU. So, no members can individual members can block the reports.

### Structure of the WTO DSS



So, here you can see that the dispute settlement body the general council sit as dispute settlement body and all the members 164 representatives are there in the general council and they approve the panel reports and appellate body reports and the panels request this is not judgments are passed by panel and appellate body and the panels and appellate body request the members to you know make their rules or make their legislation make their measures in conformity with the WTO agreements and also the panel and appellate body clearly says that yes this particular country violated this particular provision and finally, you make your laws, the measures in conformity with the WTO agreement and here.

## Who Can Use

- **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.**



So, who can go to the WTO dispute settlement system? As we know that in anti-dumping in the other cases countervailing duties so many companies are involved usually the exporters and importers are involved in international trade and individuals you know it may be companies it may be individuals they are, but individuals or companies cannot go to the WTO only the member countries on behalf of that particular industry take up as a state you can take up this particular case with the WTO dispute settlement system. So, no companies will be permitted. So, anti-dumping duties are imposed on individual companies, but the case will be fought by the respective states. So, complaining state and the respondent state.

## Locus Standi

- A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations.
- A third group of countries can declare that they have an interest in the case and enjoy some rights.



So, the WTO members can only approach and WTO members means member countries can approach and there is a group of countries those who can interested parties can join as third parties and they have some rights. So, the parties to the dispute and third parties can join those who have an interest in that particular dispute you can join as a third party to that particular dispute.

## When can Approach DSU

- 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)**.



So, again who can approach and what circumstances the member can approach the dispute settlement understanding and here the same votes and another member adopt a

particular measure that in breach of WTO obligation that is the one situation and the next situation is any kind of measures or laws which impair the benefits accruing to a particular member under the WTO agreement or impede then they can approach the WTO dispute settlement system and for you know asking for panel and dispute body.

#### In India – Quantitative Restrictions, the Appellate Body held:

*This dispute was brought pursuant to, inter alia, Article XXIII of the GATT 1994. According to Article XXIII, any Member which considers that a benefit accruing to it directly or indirectly under the GATT 1994 is being nullified or impaired as a result of the failure of another Member to carry out its obligations, may resort to the dispute settlement procedures of Article XXIII. The United States considers that a benefit accruing to it under the GATT 1994 was nullified or impaired as a result of India's alleged failure to carry out its obligations regarding balance-of-payments restrictions under Article XVIII:B of the GATT 1994. Therefore, the United States was entitled to have recourse to the dispute settlement procedures of Article XXIII with regard to this dispute.<sup>102</sup>*

*If any Member should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of*

- (a) the failure of another Member to carry out its obligations under this Agreement, or*
- (b) the application by another Member of any measure, whether or not it conflicts with the provisions of this Agreement, or*
- (c) the existence of any other situation, the Member may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other Member or Members which it considers to be concerned.*



And we saw this case earlier also India quantitative restrictions case the appellate body clearly said that what is the process to be adopted under article 23 of the GATT 1994. So, according to the appellate body it says that members which considers that a benefit accruing to it indirectly under GATT 1994 is being nullified or impaired as a result of the failure of the another member to carry out its obligations may resort to the dispute settlement procedures under article 23. It means that the particular state must prove that a benefit accruing to it is impaired or nullified by the action of the other member country then they can approach. So, it is very clear India quantitative restrictions case the appellate body pointed out point number (1) the failure of one another member to carry out its obligations under this agreement they can go to the WTO dispute settlement system. (2) the application by another member of any measure which whether or not it conflicts with the provisions of this agreement any laws or any measures which conflict with the WTO agreement. (3) any situations so, the written representations or proposals to the other member or members which is to be considered. It means that any member is not conformity with any of the measures they can also approach WTO dispute settlement system no other member can approach.



## Different from GATT

- A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively.
- The Uruguay Round agreement also made it impossible for the country losing a case to block the adoption of the ruling.
- Under the previous GATT procedure, rulings could only be adopted by consensus, meaning that a single objection could block the ruling.
- Now, rulings are automatically adopted unless there is a consensus to reject a ruling



So, it is absolutely different from GATT and what are the ways we already said that it is completely a rule based system. (2) the panel procedures are clearly mentioned. (3) the appeal procedures, the appellate body procedures are mentioned very clearly and (4) the adoption of the reports, most importantly the adoption of the reports are by a negative consensus not by positive consensus and no members can block or veto any report or reject a particular ruling.

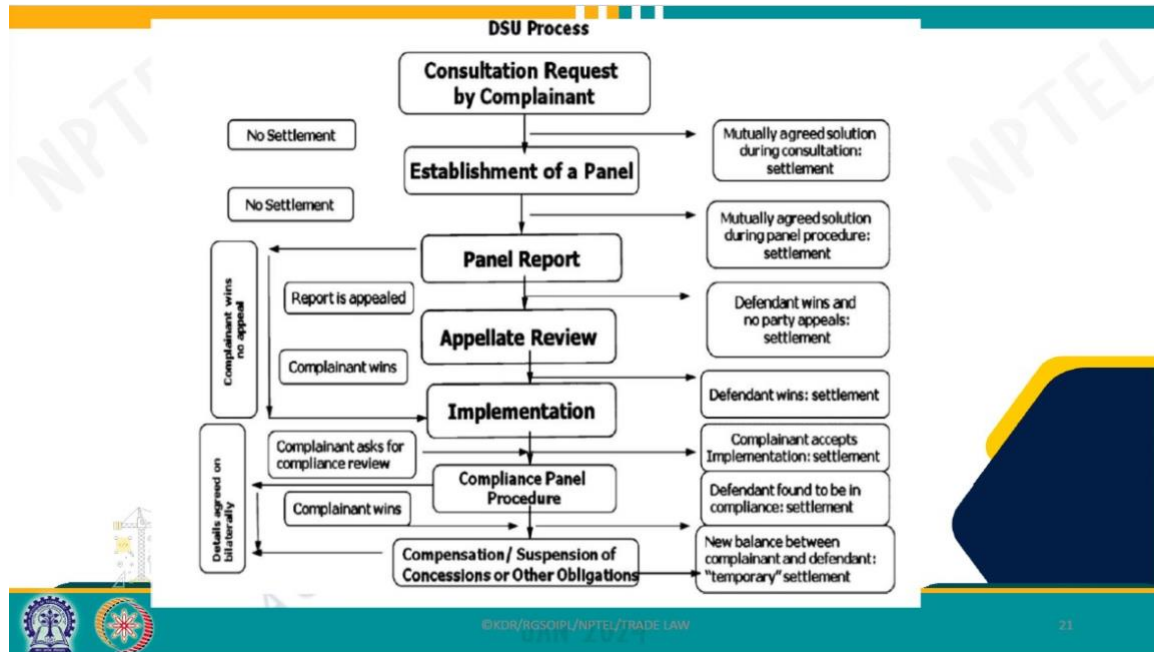
## 4 stages of dispute

1. consultations
2. Panel Report
3. Appellate Body Report
4. Implementation and surveillance





So, the four stages of disputes are mentioned under the WTO agreement. The first stage is consultations, and second stage is the panel report, and the third stage is the appellate body report, and the fourth stage is the implementation and surveillance. So, which includes retaliation, retaliation, cross retaliation all these will under the implementation issues. So, we will see the process one by one.



So, in the nutshell let me explain this very simply. So, one consultation request from one member country will go to the DSU and for consultations and the consultations found to be. So, the consultation letter will go to the other country on a particular dispute the other country may accept or reject even the consultation, but the WTO clearly says that there must be a consultation before going to the WTO disputes element system. So, if the consultation fails one member can go to the establishment of request the WTO-DSU to the DSB to form establish a panel. So, before panel formation also mutually agreed solution is available the members can any point of time, the parties can go on with mutually agreed solution. So, the DSB will form a panel, the panel will come out with a report, the panel report may be appealed or may not be appealed. So, the parties can, both the parties can appeal, then there is an appellate review, appellate review mechanism by the appellate body, then any party, one party wins or there can be settlement as well otherwise it will go for implementation. And implementation if the implementation period any dispute with regard to the implementation period then the parties can go on with Article 23 arbitrations. So, the arbitrators, compliance panel, arbitrators will decide a reasonable period of time for implementation and if any complaint with regard to the non-implementation of the report then a compliance panel is again formed, a compliance review is made. So, even if the compliance panel is formed,

there can be a settlement. So, if the compliance panel found that there is again a violation then the compliance panel can go ahead with suspension of concessions. So, then also there can be a temporary settlement. So, there can be compensation can be given for non-implementation or suspension of concessions also can be ordered by the review panels. So, this is very briefly the entire process and we will see elaborately.

## Coverage

- **The covered agreements consist of all of the Multilateral Trade Agreements, plus the plurilateral Agreement on Government Procurement.**
- **The Agreement on Trade in Civil Aircraft is not subject to the DSU rules.**
- **The DSU is administered by DSB.**
- **Objective – Article 3(7) – secure positive solution to a dispute.**
- **Law – customary rules of interpretation of public international law.**



So, here you can see that the agreements, the covered agreements are all WTO agreements under the multilateral trading system. Plurilateral agreements like government procurement is also under the WTO disputes settlement system. Civil agreement, trade in civil aircraft. So, here we said positive solution to the dispute not positive consensus. Positive solution to the dispute by using negative consensus and what is the law? What is the law dealt by the panel and appellate body? Customary rules of interpretation of public international law. So, the trade law becomes part of the public international law. It became part of the customary rules of international law.

**Article 3.2 of the DSU states:**

*The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.*

**Article 3.7 of the DSU states in relevant part:**

*The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred.*



So, here article 3.2 of the DSU very clearly says that the dispute settlement system of WTO is a central element in providing security and predictability to the multilateral trading system. That's why at the very beginning I said that this is a corner stone, the dispute settlement system is a corner stone of the entire multilateral trading system. The members recognize that it serves to preserve the rights and obligations of members under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements. So, the interpretation is very clear. So, the DSB cannot diminish any rights rather than interpret the rights. So, it clearly says the aim of the dispute settlement mechanism under article 3.7 is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. So, a positive dispute resolution mechanism is provided under Article 3 of the DSU. So, what is the role? It is clearly says.

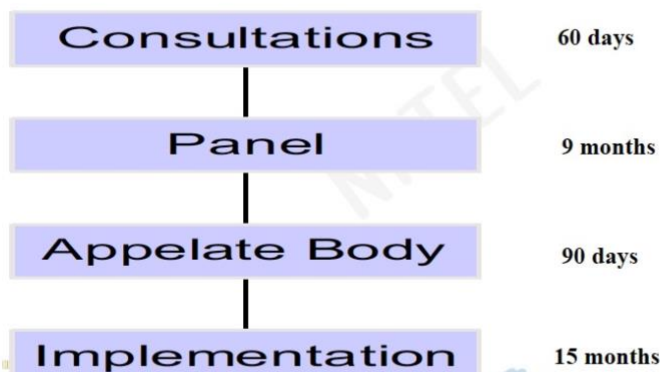
## How Disputes are Settled

- The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal.
- It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.



And disputes the adjudication bodies are panel and appellate bodies. And non-implementation, we already said that there can be authorization of compensation, authorization of retaliation for non-compliance.

## Dispute Settlement in the WTO: Main Procedures




So, it is basically there is a clear cut time frame the main procedures consultation 60 days panel formation and working 9 months and you know, including reports. Appellate body 90 days only 3 months time then finally, the implementation period is 15 months. So, we already said that if there is any dispute with regard to the implementation period or with

regard to non-implementation, there can be a review panel as well as arbitration. And we will see the provisions in detail.

**Time Frame**

**How long to settle a dispute?**  
 These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc
45 days	Panel set up and panelists appointed
6 Months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)

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So, it is very clear. So, consultation time frame is very clear deadlines: consultation 60 days panel setup panelist appointment 45 days and the final report, panel report to the parties 6 months then panel report to the WTO members will be circulated 3 weeks then dispute settlement body adopts the report if there is no appeal then 60 days time. So, total 1 year without appeal the entire case should be closed within 1 year then 60 to 90 days time. So, only 3 months is given to the appellate body to come out with the appeal reports. So, appeal should be you know disposed of within a period of 90 days then another within 30 days time the dispute settlement body adopts the report. So, the total time frame which is given is 1 year and 3 months with appeal you cannot go for 3 years or 4 years 1 year and 3 months a clear cut time period is given under the framework is given under the WTO disputes settlement system.



## 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).**

And with regard to the consultations the WTO members should send consultation letters to the other member and try to resolve the complaint through consultations or other diplomatic means or other alternate dispute resolution mechanisms like you can use the good offices of other parties through conciliation through mediation. So, all the methods can be used by the parties.

## Consultations

- **First stage: consultation (up to 60 days).**
- **Before taking any other actions, the countries in dispute have to talk to each other to see if they can settle their differences by themselves.**
- **When good offices, conciliation, or mediation are entered into within 60 days after the date of receipt of a request for consultations (A.5).**
- **If the parties to a dispute agree, procedures for good offices, conciliation, or mediation may continue while the panel process proceeds.**
- **Lack of guideline for the functioning of the consultation process.**
- **guidelines**

And the consultation stage 60 days time. So, it is a before taking any action the board the parties should talk each other. So, 60 days time is given to the parties for any kind of

conciliation using good offices mediation etcetera is given 60 days time. So, if the parties do not agree, then the parties can ask for the formation of a panel after 60 days time.

## Second stage

- **The panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude).**
- **If consultations fail, the complaining country can ask for a panel to be appointed.**
- **The country “in the dock” can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).**

And second stage is the formation of the panel appointment of panel members. So, 45 days time for the panel and the total 6 months time the panel procedures to be completed and the report to be issued. So, there is no blocking of reports here. We again and again say there is a negative consensus mechanism and automatic adoption of reports. So, I would say that the WTO dispute settlement system is a path breaking agreement as far as the trading system is concerned. Because without which this particular dispute settlement system dispute settlement understanding agreement the multilateral trading system cannot work the international trade is not going to be smoothly happened. So, when compared to the GATT system the GATT system have its own glitches. The last class I said that even though it was working very well and the number of disputes has gone up after the adopting the Tokyo round of negotiations because of the adoption of individual agreements individual codes. Then, up to the Uruguay round of negotiations, the members come out with a full-fledged agreement, on dispute settlement understanding. Dispute settlement understanding is with elaborate rules and procedures for consultations for the formation of the panel and formation of the appellate body, then implementation mechanism, a strict timetable, and strict deadlines are provided under the DSU. So, the jurisdiction of the members to approach is also clearly mentioned who can approach the dispute settlement understanding. Only the WTO members not individuals or not companies can approach the dispute settlement mechanism. So, it is very clear, that only the members, member states can take up disputes to the WTO dispute settlement body. And the number has gone up more than 600 and 50 percent of the disputes are settled even after approaching the dispute settlement body. It is a welcome thing that the

members are able to resolve the disputes, but in more than 50 per cent of the cases, almost 50 per cent of the cases the rulings are issued. So, it means that when compared to the GATT system without any procedures, less number of disputes, but with clear-cut disputes, there are more number of disputes. The member countries are using, more and more member countries are using the dispute settlement system elaborately under the new system which shows the success of the new system. So, next class we will see the what is the process of the panel, how the panel works, how the panel system is going to work that we will see in the next class.

Thank you.