

International Trade Law

Module five (Dispute settlement mechanisms)

Unit one (solving WTO trade disputes)

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Resolving a dispute in a peaceful way

CHAPTER I PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international

disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

CHARTER OF THE UNITED NATIONS

AND

STATUTE OF THE
INTERNATIONAL COURT OF JUSTICE



SAN FRANCISCO · 1945

mediations

Mediation is a form of alternative dispute resolution in which a neutral third person helps the parties reach a voluntary resolution of a dispute. Mediation is an informal, confidential, and flexible process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. It can help people resolve civil, family, juvenile and other matters in a less adversarial setting. Court mediation programs have been shown to save the parties time and money, improve satisfaction with the court's services and reduce future disputes and offenses.

The mediator helps the parties to:

- communicate better,
- explore legal and practical settlement options, and
- reach an acceptable solution of the problem.

The mediator does not decide the solution to the dispute; the parties do. Mediation can result in a legally enforceable contract agreed to, in writing, by the parties.

conciliation

Regulations on the Procedure of International Conciliation 1961

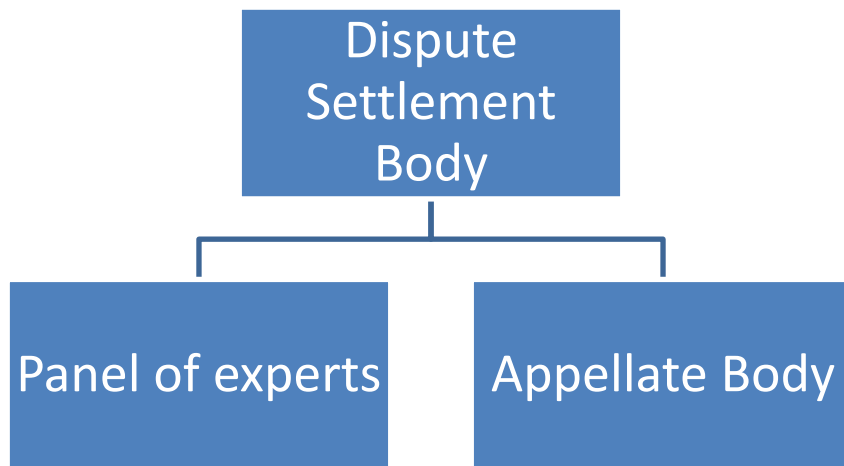
Article 1

For the purpose of the present provisions, "conciliation" means a method for the settlement of international disputes of any nature according to which a Commission set up by the Parties, either on a permanent basis or on an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them, or of affording the Parties, with a view to its settlement, such aid as they may have requested.

arbitration

A leading method for resolving disputes arising from international commercial agreements and other international relationships. As with arbitration generally, international arbitration is a creation of contract, i.e., the parties' decision to submit disputes to binding resolution by one or more arbitrators selected by or on behalf of the parties and applying adjudicatory procedures, usually by including a provision for the arbitration of future disputes in their contract. The practice of international arbitration has developed so as to allow parties from different legal and cultural backgrounds to resolve their disputes, generally without the formalities of their respective legal systems.

Special mechanisms of resolving disputes in WTO



Principles of settling disputes in WTO

- No unitary actions/retaliations
- Quasi Judicial system of solving disputes
- Obligatory Jurisdiction of DSB
- Rule of Law
- Equity
- Developing and non developed countries assistance

Standing

Only States are parties to GATT agreement

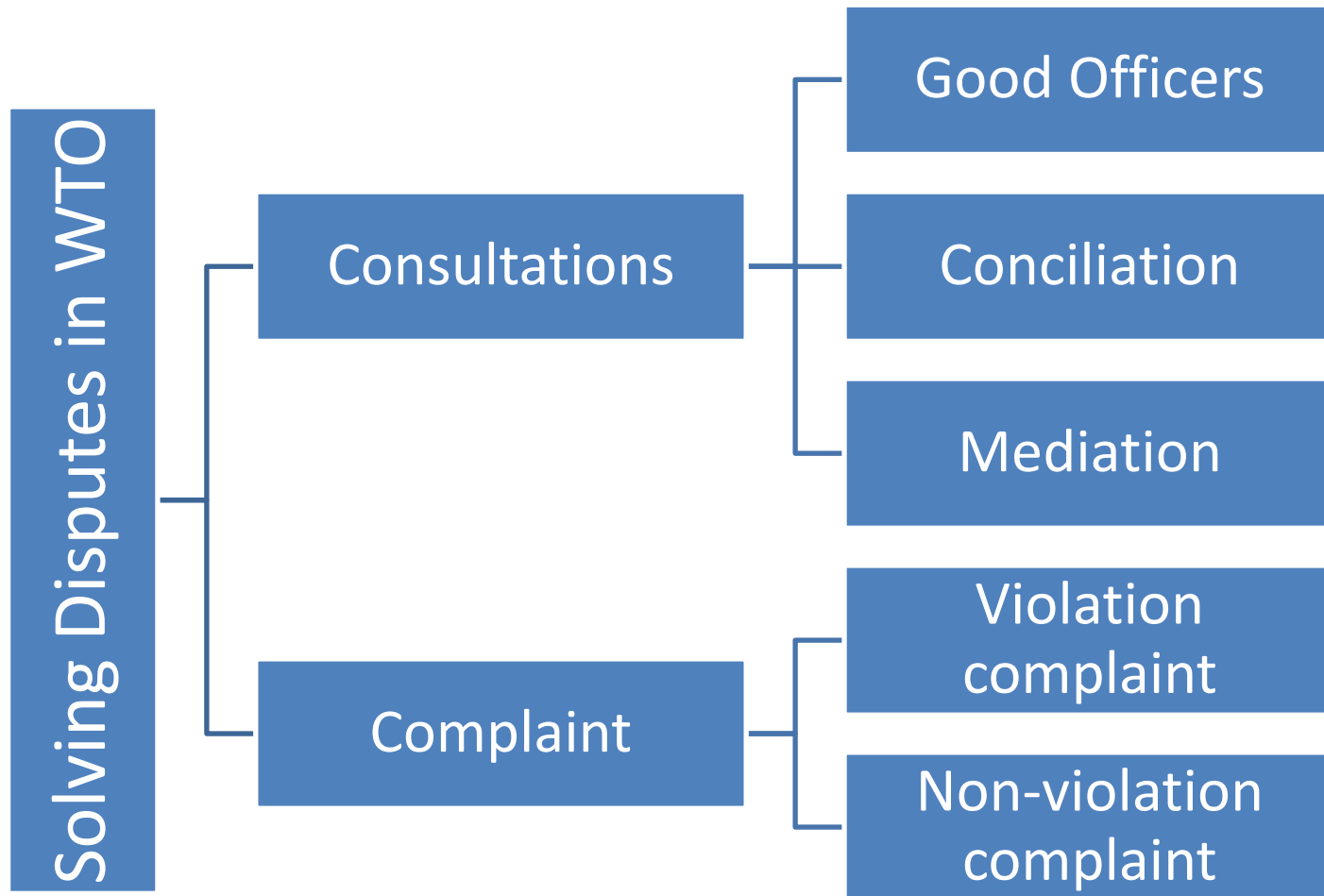
Article XXIII Nullification or Impairment

1. If any contracting party 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 contracting party to carry out its obligations under this Agreement, or
 - (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
 - (c) the existence of any other situation,

Usually rights which stem from the agreement but not only (eg. Also just expectations of rights)

Broken law – Unlawfulness
or
Broken Expectations - Fairness

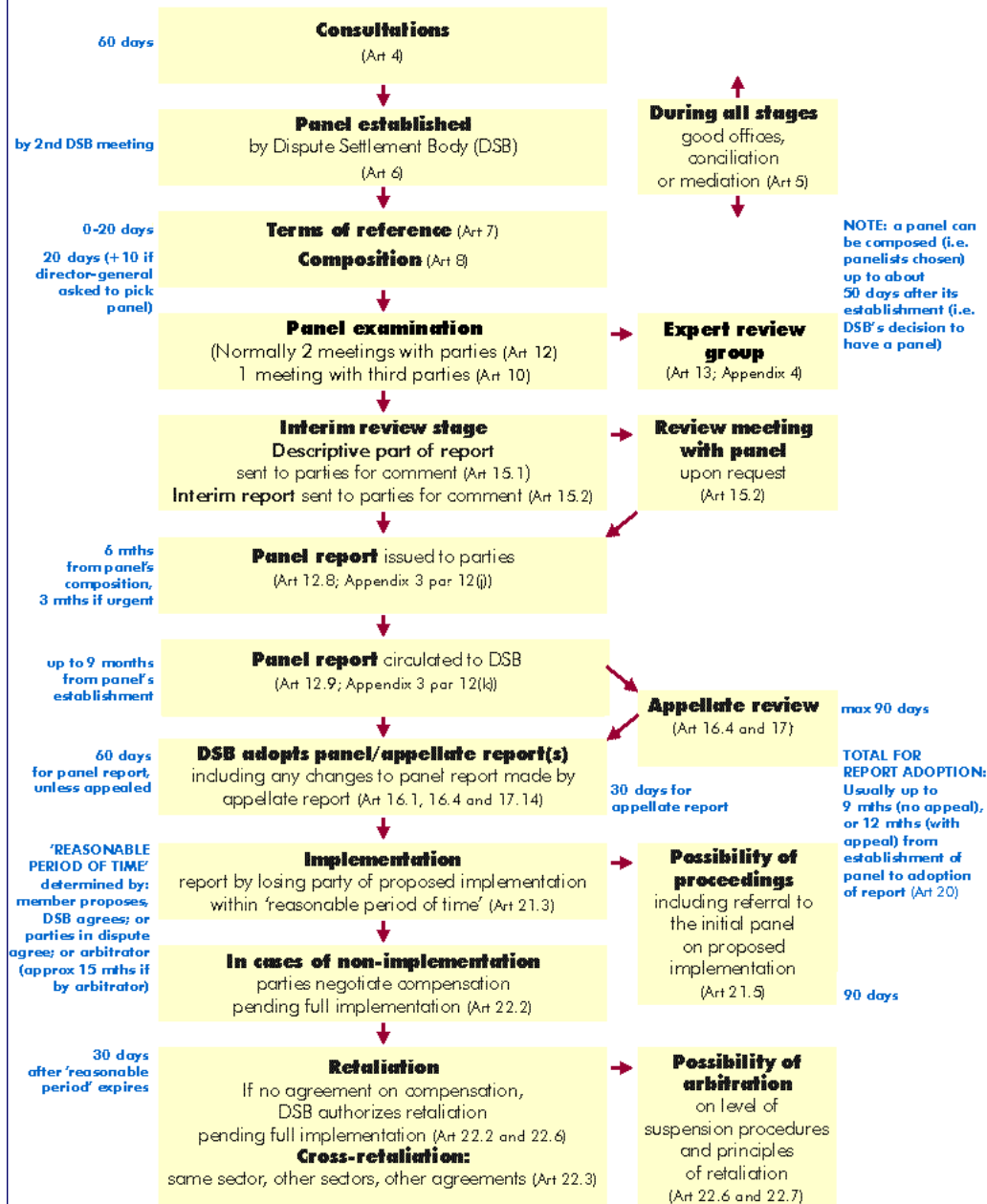
Dispute Settlement Methods under the DSU



The panel process

NOTE: some times are maximums, some minimums, some binding, some not

The various stages a dispute can go through in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle 'out of court'. At all stages, the WTO director-general is available to offer his good offices, to mediate or to help achieve a conciliation.



Source: Understanding WTO
https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm

THANK YOU FOR YOUR ATTENTION