



An analysis of the institutional mechanisms of the world trade organisation and its roles in the international trading system

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Abstract

The World Trade Organisation (WTO) is the most comprehensive international body shaping and facilitating international trade and governance. Through its institutional arrangements, the WTO shapes and promotes international trade and enhances economic inclusion, growth and development by providing practical systems that encourage collaboration and free flow of trade by eliminating barriers to the growth and development of trade. The overriding objective is to ensure a free, fair, predictable and smooth flow of trade. This is achieved through the deployment of the legal and multilateral trade rules and disciplines approved by and binding on WTO members. This paper intends to offer a critical analysis of the institutional mechanisms of the WTO, focusing primarily on its core objectives, roles and interplay in the international trading system. It also x-rays the historical development of the WTO systems, structure and the principles underlying its efforts. By assessing the components of WTO institutions, this paper exposes the strengths and weaknesses of the WTO while also making useful recommendations for its effectiveness in an ever-evolving world. The research further aims at providing valuable contributions to the ongoing discourse on international trade while furnishing policymakers and stakeholders with useful insights for reform purposes.

Keywords: World trade organisation, institutional mechanisms, roles, international trade

Introduction

This work seeks to evaluate the principal institution governing the conduct of trade in WTO and the modus operandi of trade dealings under these institutions. They include: preparatory committee, intersessional committee, and dispute resolution body. These shall be discussed seriatim.

1. Preparatory Committee

A preparatory committee denotes a body constituted to undertake preliminary works before the formal establishment or commencement of a certain body or activity. Historically, a preparatory committee was established by the United Nations Economic and Social Council in 1946 and its inaugural session was held in Church House, London the same year ^[1]. The committee was primarily charged with creating an International Trade Organization as a third world economic pillar alongside the World Bank and International Monetary Fund. The members of the committee were the 23 founding contracting parties to the General Agreement on Tariffs and Trade (GATT). The committee however failed to achieve its mandate but, the negotiated trade rules, the GATT, did take effect from 1 January 1948. The system became known as the multilateral trading system and for 47 years, GATT served as an ad hoc international organization, taking up some of the functions originally intended for the ITO.

Importantly, the Preparatory Committee of WTO was established by a decision of ministers at the Marrakesh Ministerial Meeting ^[2]. The key thrust of the committee was to perform such functions as were necessary to ensure the efficient operation of the WTO immediately as of the date of its coming into existence. The scope of these mandates were primarily three-fold obligations ^[3]. First, it had the

responsibility to undertake matters concerned with administrative, budgetary and financial matters. This task involved preparing recommendations on financial regulations, including guidelines for the assessment of WTO members' budget contributions, the budget estimates for the first year of operation of the WTO, the transfer of the property including financial assets, of the Interim Commission for the International Trade Organisation (ICITO) ^[4] and GATT to the WTO, the transfer and the terms and conditions of the transfer of the GATT staff to the WTO Secretariat, and the relationship between the International Trade Centre and the WTO, among others.

Secondly, it had responsibility pertaining to institutional, procedural and legal matters. Under this role, the preparatory committee was responsible for appraising and approving the schedules submitted to it in accordance with the "Decision on Acceptance of and Accession to the Agreement Establishing the World Trade Organization" and to propose terms of accession. This role also involved making proposals relating to terms of reference for the bodies of the WTO, particularly those established in Article IV of the WTO Agreement, and to make recommendations while also submitting a report on its activities to the General Council of the WTO concerning the appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement.

The third obligation of the preparatory committee was hinged on matters related to the entry into force of the WTO Agreement and the scope of the WTO. In this connection, the preparatory committee had responsibility to convene and prepare the Implementation Conference, initiate the work programme arising from the Uruguay Round ^[5] as set out in the final Act ^[6], undertake work resulting from Decisions of

the Marrakesh meeting, discuss suggestions for the inclusion of additional items on the agenda of the WTO's work programme and also, to convene the first meeting of the Ministerial Conference or the General Council of the WTO, whichever meets first while also preparing the provisional agenda thereof.

2. Intersessional Committee

Established by the Contracting Parties to GATT, this committee functions as an ad hoc body that ensures effective operation of the General Agreement between the various sessions of GATT, including: intersessional procedures, namely: provisions for mail, telegraphic ballots and provisions for an Intersessional Committee^[7]. In the initial rules of procedure, the Committee consisted 17 members, elected at the last session in each calendar year in which the composition must reflect the criteria stipulated under the Basic Instruments and Selected Documents (BISD)^[8]. The Committee was vested with the power to establish working parties and to make recommendations to the Contracting Parties where a dispute had been referred to the Committee. Its rules again, required the Committee to meet in Geneva on the call of the Executive Secretary, with at least ten days' advance notice. The life of intersessional committee was formally brought to an end by the Decision of the Contracting Parties on 4th June 1960. The Decision created council of representatives and conferred on same, the specific functions previously delegated to the Intersessional Committee and to its Chairman under the Intersessional Procedures.

3. Dispute Resolution Body

Strictly, trade involves complex interactions, increase in trade frictions, and deals which offer huge benefits and opportunities for the economies concerned. In this light, the WTO deals with global rules of trade between countries and its succinct aim is to provide security, stability and predictability for the global economy through its Dispute Resolution Body (DRB) otherwise known as Dispute Settlement Body (DSB) and system. The DSB therefore has the jurisdiction to resolve any dispute arising from agreements in which the Dispute Settlement Understanding (DSU) expressly applies or to those agreement listed under Article 2:2 Appendix 1; except where the parties consent to alternative means of dispute resolution, in which case the arbitration results is final and cannot be appealed.

In disputes involving rules and procedures where the parties to a dispute cannot agree on rules and procedures within 20 days of the establishment of a panel, the Chairman of the Dispute Settlement Body shall in consultation with the parties to the dispute determine the rules and procedures to be followed^[9]. The stages of procedure are: Consultations between parties, Panel, Appellate Review, Implementation, Compliance and Compensation/ Retaliation^[10]. In practice, very few disputes make it all the way to the compensation/retaliation stage, as possibilities for resolution of the dispute abound at each stage.

The first stage of resolution, which is consultations are confidential, and without prejudice to the rights of any member in any further proceedings^[11]. In *Korea – Alcoholic Beverages*^[12], it the case of Korea that the complainants (United States and European Community) breached the confidentiality requirement by making reference to information got during consultations. The Panel, in a finding

not reviewed by the Appellate Body, held that requirement of confidentiality only binds parties to the consultations not to disclose any information obtained in the consultation to any parties that were not involved in the consultations. This Position has been adopted in several other disputes like *Australia-Automotive Leather II*^[13] and *EC-Bed Linen*^[14].

Similarly, is the United States- Anti-Dumping Investigation Regarding Imports of Fresh or Chilled Tomatoes from Mexico^[15]. This case arose from a complaint by Florida tomato growers, who accused Mexicans of dumping their tomatoes at unfairly low prices in the US^[16]. Mexico thus requested consultations with the United States, following which the case was settled.

Also, in *EU- Poultry Meat Preparations (Brazil)*^[17], the complainant (Brazil) was aggrieved with the respondent (European Union) with respect to EU measures relating to the importation of certain salted poultry meat preparations from Brazil, Brazil requested consultations with the European Union (EU) on the 8 of November 2021. The consultations were held in a virtual format on 9 and 10 December 2021^[18]. In a recent case, *China — Goods and Services (EU)*^[19], The European Union on 27 January 2022 requested consultations with China concerning measures allegedly imposed by China on the importation of goods from, and exportation of goods to, the European Union and on trade in services between the European Union and China. Consultations between the two parties took place on 14 and 15 March 2022.

Consultations provide opportunity for parties to meticulously consider issues in question with a view to resolve the issue in controversy without resorting to litigation^[20]. However, where consultation is not fruitful the complainant may explore the second stage.

The second stage is adjudication by panels^[21] and where applicable, by the Appellate Body, if the consultations fail to yield a satisfactory outcome. This is usually within 60 days after the date of receipt of the request for consultations. In other words, the complaining party may request establishment of a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute. Where the applicant wants the establishment of a panel in form other than standard terms of reference which determines the scope or limit of the panel's jurisdiction on the dispute, his written request shall include the proposed special terms of reference^[22].

In *EC- Bananas III*^[23], The European Communities introduced a regime for the importation, distribution and sale of bananas on 1 July 1993. The complainants (Ecuador, Guatemala, Honduras, Mexico, United States) alleged that the regime breached Articles I, II, III, X, XI and XIII of the GATT 1994 as well as provisions of the Import Licensing Agreement, the Agreement on Agriculture, the TRIMs Agreement and the GATS. The defending party (European Communities) argued that the mere identification of the legislation or regulations at issue was not sufficient but that the specific article infringed must be identified. Rejecting the respondent's submission, the Panel held that the request in this case, WT/DS27/6, dated 12 April 1996, referred to a regime for the importation, sale and distribution of bananas established by Regulation 404/93 (O.J. L 47 of 25 February 1993, p. 1), and subsequent EC legislation, regulations and administrative measures, including those reflecting the provisions of the framework agreement on bananas, which implement, supplement and amend that regime", and that

these contain sufficient identification of the specific measures at issue to fulfil the requirements of Article 6.2 of the DSU. The Panel noted that it was sufficient for the Complaining Parties to list the provisions of the specific agreements alleged to have been violated without setting out detailed arguments as to which specific aspects of the measures at issue relate to specific provisions of those agreements. The Appellate Body upheld this position by the Panel. The Appellate Body further observed that a panel request is normally not subjected to detailed scrutiny by the DSB, and that it is incumbent upon a panel to examine the request for the establishment of the panel very carefully to ensure its compliance with both the letter and the spirit of Article 6.2 of the DSU. The Appellate Body also noted that a panel request should be sufficiently precise for two reasons: first, it often forms the basis for the terms of reference of the panel pursuant to Article 7 of the DSU; and, secondly, it informs the defending party and the third parties of the legal basis of the complaint. In this light, the standard terms of reference are akin to the grounds for initiating adjudication measures and does not imply that a complaining must show legal interest and detailed explanation for requesting the establishment of a panel. Where the initial request does not disclose a claim, it cannot later be remedied by it in a written submission or in an oral submission. This meaning attached to this is simply to the effect that a prior complaint must show or indicate specific measures at issue which are to the complainant's thinking a violation to any multilateral trade agreements. Failure to do so may be incurable to the complainant's case and a subsequent inclusion in a written argument or reference in an oral adumbration will not be acknowledged but will rather be discountenanced. Also, in *US-Tax Treatment for foreign Sales Corporations* [24], the United States argued that the European communities request for the establishment of a Panel failed to identify specific measures at issue because the EC did not identify the specific products in question as the nature of export subsidy obligation imposed by the Agreement on Agriculture differ depending on the products at issue and commitments made by the United States there under. However, the Panel found that the request for the establishment satisfied the requirements of Article 6.2 of the DSU. Panels are composed of an ad hoc basis of three (or, if the parties agree, five) well-qualified individuals: generally, academics, private lawyers or, quite often, present or former members of government delegations to the WTO who are not parties to the dispute. Panelists serve in their individual capacity, not as representatives of their governments, and members cannot give instructions to Panelists or seek to influence them in any manner [25].

The Parties to the dispute can, by mutual agreement, select the Panelists themselves, based on suggestions made by the secretariat. If the party cannot agree on the composition of the panel within 20 days following the constitution of the panel, either of the parties can request that the Director General determine its composition [26]. Once the composition of the panel is determined, the panel process can begin [27]. The panel process is similar to that used under the GATT and in most domestic courts. The panel evaluates the factual and legal aspects of the dispute through written submissions from the parties, meetings with the parties, and the power to seek additional information and expert's opinions. The panel then makes an objective assessment of the matter by examining the facts of the case and the

relevant WTO agreements. In practice, panels make every effort to reach decisions by consensus but where a decision cannot be arrived at by consensus, decisions are taken by a majority vote. In such a circumstance, the dissenting or concurring opinion of any panelist is included in the panel report, but the author of the opinion remains anonymous [28]. Based on the evidence presented, the panel reaches conclusion on the legal claims. It then issues an interim report to the parties (the interim report is another new element introduced by the DSU and is intended to improve the quality of the panel reports). The parties can (and often do) comment on the findings contained in the report. After the interim review process is complete, the panel issues the final report to the parties taking into account the interim review comments. After the report is issued to the parties, it is translated into the official WTO languages of English, French and Spanish and then circulated to the full WTO membership and the public. After circulation, the panel report can either be appealed by any party to the dispute or adopted by the DSB. If there is an appeal, the appellate review begins. If no appeal is filed, the panel report is considered for adoption. Upon adoption, the panel's findings have legal force, and thus any findings of violation must be implemented by the responding party. Appeals of panel reports are made to the Appellate Body [29]. The Appellate Body is a standing body composed of seven persons with demonstrated expertise in law, international trade and the WTO agreements.

According to the working procedure, a notice of appeal shall contain a brief statement of the nature of the appeal, including the allegations of errors in issues of law covered in the panel report and legal interpretations developed by the panel [30]. These allegations of errors must relate to what the appellant wishes the Appellate Body to overturn. It could be a panel's conclusion with the supporting reasoning or an isolated legal finding forming part of the reasoning supporting a conclusion [31].

The Appellate Body has the authority to uphold, modify or reverse the legal findings and conclusions of the panel [32]. Therefore, it is not the role of the Appellate Body to engage in fact-finding or evaluation of the evidence, and findings of fact are, in a principle, not subject to Appellate Body review. However, factual findings can be reviewed pursuant to Art.11 of the DSU in limited circumstances. As with Panel, Appellate Body proceedings are confidential and the opinion expressed anonymous. Where consensus cannot be reached, decisions are taken by majority vote. Dissenting or concurring opinions of any Appellate body member are included in the report of the Appellate Body, but the author of the opinion remains anonymous.

The DSU provides that Appellate proceeding are generally to last no more than 60 days following the notification of the appeal. When the Appellate Body considers that it cannot provide its report within 60 days, it informs the DSB in writing of the reasons for the delay and estimates the date when it will submit its report.

After the Appellate Body report is circulated, this report along with the panel report as upheld, modified or reversed by the Appellate Body report – is placed on the agenda of a DSB meeting and is automatically adopted unless the DSB decides otherwise by consensus [33].

Under the working procedures, an appellant can withdraw its appeal at any time during the pendency of the Appeal [34]. A withdrawal terminates the appeal and, in such cases, the

Appellate Body would normally set out the procedural history of the appeal and conclude that it had completed its work in view of the withdrawal^[35].

The final stage is implementation of the findings and ruling. This last stage normally requires the DSB to adopt the Panel and Appellate Body reports as well as address the recommendations to the ruling party to implement. This stage also includes sanctions in the event of failure by the losing party to implement or accept the ruling. Article 21.1 of the DSU adds that prompt compliance with the recommendations or rulings of the DSB is essential in order to ensure the effective resolution of disputes. The first step required from the losing party is to notify the DSB at a meeting of its intention to implement the outcome of the dispute settlement mechanism within 30 days after the date of the adoption of the appellate reports^[36]. It is at the same meeting that the losing party will have to state whether or not it is able to comply immediately with the recommendations of the rulings. If immediate implementation is impracticable the losing party has a reason time to comply with the recommendations. However, the concerned member will have to prove the impracticability of the implementation. Thus, in *Canada – Pharmaceutical Patents*^[37], The arbitrator held that it is for the implementing Member to bear the burden of proof in showing if it is impracticable to comply immediately with the duration of any proposed period of implementation. The arbitrator also held that the longer the proposed period of implementation, the greater this burden will be. In this respect, a reasonable period of time for complying with the recommendations and rulings is not available unconditionally, but only if immediate compliance is impracticable. In *European Communities – Hormones*^[38], It was held that the reasonable period of time, as determined under Article 21.3(c), should be the shortest period possible within the legal system of the member to implement the recommendations and rulings of the DSB. However reasonable period of time does not apply in all cases. For instance, in the event of prohibited subsidies the panel must recommend that the subsidizing member withdraws the subsidy without delay and must specify the period of time for the withdrawal^[39]. Consequently in *Brazil- Aircraft*, the DSB gave Brazil a period of 90 days to bring its Aircraft subsidies in compliance with the WTO law^[40].

The reasonable period of time can be determined in one of three ways, to wit:

- a. Proposal by the member concerned and approved by consensus of the DSB^[41]. This hardly happens, however the DSB has in some cases approved request by the implementing member of the extension of reasonable of time awarded by the arbitrators^[42]. Notably, the implementing member bears the burden of proving that the proposed period of implementation constitutes a reasonable period of time.
- b. Mutual agreement of the parties to the disputes within 45 days of the adoption of the report; as was the case in *US-softwood lumber v. and Dominican Republic-import and sale of cigarettes*^[43].
- c. Determination by arbitration^[44], upon the request of a member, by individual arbitrator or group of arbitrators.

In *US – Shrimp*^[45], India, Malaysia, Pakistan and Thailand were aggrieved over the United States import prohibition of shrimp and shrimp products from countries that had not

used a certain net in catching shrimp. Reasoning that such prohibition was in breach of GATT article. XI, they individually requested consultations with the US and the setting up of the panel. The applications being similar in kind were consolidated into a single case. The Panel found that the US prohibition, based on section 609, on imported shrimp and shrimp products violated GATT article. XI. On appeal, the Appellate Body by way of affirming the panel's ruling, held that although the US import ban was related to the conservation of exhaustible natural resources covered by exception under Art. XX(g), it could not be justified under article XX because the ban constituted an arbitrary and unjustifiable discrimination under the chapeau of article XX because of the rigidity and inflexibility in its application, and the lack of transparency and procedural fairness in the administration of trade regulations.

Another case which reflects the significance of the Dispute Settlement system is the *Australia - Tobacco Plain Packaging (Honduras)*^[46], where Honduras challenged the Australia's Tobacco Plain Packaging Act 2011, and its implementing regulations; the Trade Marks Amendment (Tobacco Plain Packaging) Act 2011; which inter alia aimed at discouraging the use of tobacco products in Australia. The Appellate Body upheld the Panel's finding that the TPP measures were apt in contributing to Australia's objective of improving public health by reducing the use of, and exposure to, tobacco products.

The Compliance review can be adopted where either of the parties can request for a panel, possibly, the original panel to determine within 90 days any issue of disagreement in respect of implementing the recommendations/rulings in order to achieve full compliance with the recommendation^[47]. This is known as compliance panel procedure. As was stated in *Canada-Aircraft* as well as in *US –shrimp*, the compliance panel must consider the new measure taken to comply in its totality, including its consistency with the covered agreement and not only the recommendation and rulings of the DSB.^[48]

The final and most serious consequence a non-implementing member faces in the WTO disputes settlement system is retaliation. Retaliation requires the prior approval of the DSB, and is applied selectively by one member against another. It is a situation where an implementing member party requests the DSB to authorize it to suspend concessions owed to a non-implementing member, for failing to agree within 20 days of the expiry of the reasonable period of time. The level of retaliation must be equivalent to the level of nullification or impairment, and must be imposed in the same sector in which the violation or nullification was found. However, the complainant can impose sanction in a different sector under the same agreement or in a different agreement where it is impracticable or ineffective to remain within the same sector or agreement.

Furthermore, the DSB authorization is automatic and must come within 30 days of the expiry of the reasonable period of time, unless there is a consensus to reject the request. If the parties do not agree on the proposed terms of retaliation, arbitration may be requested to determine same^[49].

Finally, the DSB is made up of all member governments, usually represented by ambassadors or equivalent^[50]. In others, members of the DSB are governmental representatives. In most cases they are diplomatic delegates who reside in Geneva (where the WTO is based) and who

belong to either the trade or the foreign affairs ministry of the WTO Member they represent. As civil servants, they receive instructions from the government of their country on the positions to take and the statements to make in the DSB. Thus, the DSB is a political body.

Conclusion/ Recommendation

The institutional mechanisms of the WTO are the engines that pump life into international trade and governance. Its roles range from facilitating international trade, promoting economic and technical cooperation and resolving disputes arising from trade dealings among members. The institutional arrangements insist on doctrines of transparency, non-discrimination and predictable rules to fulfil its objectives. To maintain its relevance and effectiveness in superintending over global trade and governance, it is suggested that adequate attention should be directed towards strengthening the Dispute Resolution systems such that it is proactive to dispense complaints laid before it promptly. Further, it is recommended that the WTO should strive towards sanctioning unilateral and protectionist trade measures by developed nations. This will suggest a level playing field and a high-level sense of inclusivity. Additionally, modern and ever-evolving developments in technology, environment and trade require that the WTO should step up with measures to cater for ideals that affirm or aligns with the ideals of the WTO.

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8. Basic Instruments and Selected Documents (BISD) is an annual publication which comprise of basic information about the WTO and key WTO documents for a given calendar year. Its initial sections list WTO Members and observers, and the Chairpersons of WTO bodies.
9. WTO Secretariat, *A Handbook on the WTO Dispute Settlement System* (Cambridge University Press, 2017)5; DSU arts. 3:2, 21; 22, and 1.2
10. S Lester and B Mercurio, *World Trade. Law, Text, Materials and Commentary* (Oxford: Hart Publishing and Portland Oregon 2008) 158.
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15. DS49, <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds49_e.htm> accessed August 2, 2022.
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19. DS610 China — Measures Concerning Trade in Goods and Services, <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds610_e.htm> accessed August 10, 2022.
20. DSU art. 4:5; (n16).
21. Panels are quasi-judicial bodies that are usually empowered to adjudicate disputes between parties on ad hoc basis. Its composition is usually three persons but in exceptional circumstances they are made up of three persons who are experts in the field of international law and are not affiliated to governments. Note that they must be appointed from WTO member states. Details on panel procedures are contained in the Dispute Settlement Understanding (DSU), under which a panel is envisioned to complete its work within six months. But in cases of urgency, its work may be completed within three months. Panel reports are

- required to be considered for adoption by the DSB 20 days after they are issued to members while the DSB is expected to adopt it within 60 days of its issuance, unless consensus decision says otherwise or the parties notifies the DSB of its intention to appeal.
- An appellate body comprises of seven members, three of whom will act on anyone case. Also, appeals are restricted to issues of law contained in the panel report and legal interpretations formulated by the panel. Appellate proceedings are not required to exceed 60 days from the date a party formally gives notice of its intention to appeal the panel's decision. The outcome of the appeal is required to be adopted by the DSB and completely accepted by the parties within 30 days after being issued to members, unless the DSB decides to the contrary, by consensus.
22. Arts. 4.7; and 6.2
 23. DS27: 'European Communities — Regime for the Importation, Sale and Distribution of Bananas', <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm#top> accessed August 10, 2022.
 24. US-FSC: Tax Treatment for "Foreign Sales Corporations" Appellate Body Report, WT/DS108/AB/R, adopted 20 March 2000, DST 2000: III, 1619 Paragraphs 7.23 and 7.29.
 25. In order to avoid conflict of interests or the appearance of impropriety, the DSB has adopted rules of conduct requiring panelists to be independent and impartial and to avoid direct or indirect conflict of interests. Parties to the dispute can allege a violation of the rules and, if upheld can remove a panelist from the Panel. See WT/DSB/RC/1
 26. Article.8.10 mandates that, when a dispute involves a developing country, at least one panelist must be from a developing country member if the developing member so requests.
 27. Art. 7 provide the standard terms of reference for panels.
 28. Simon and Lester(supra) 160.
 29. Rule 20(1) of the working procedure for Appellate Review, WT/AB/WP/7 dated first may, 2003
 30. *Ibid*, Rule 20(2) (d). Rule 20 (2) a-c stipulate other formalities that the notice of appeal should contain.
 31. For example, in *Japan-Alcoholic Beverages* 11, Taxes on Alcoholic Beverages, Appellate Body Report, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R adopted 1 November 1996, DSR, 1996; 1, 97 at p.99-100, where the allegation was that the panel erred in its interpretation of Art.111.2 of GATT 1994; by finding that the likeness can be determined purely on the basis of physical characteristics, consumer uses and tariff classification
 32. DSU art. 17 (13).
 33. Simon and Lester(supra) 162.
 34. Rule 30 of the working procedures for the Appellate Review
 35. *India-Autos*: Measures affecting the Automotive Sector, Appellate Body Report, WT/DS146/AB/R, WT/DS175/AB/R, adopted April, 2002, paragraphs 14-118
 36. DSU art. 21:3.
 37. Award of the Arbitrator, 'Canada – Pharmaceutical Patents', para. 45, <<https://jsumundi.com/en/document/decision/en-canada-patent-protection-of-pharmaceutical-products-arbitration-under-article-21-3-c-of-the-understanding-on-rules-and-procedures-governing-the-settlement-of-disputes-award-of-the-arbitrator-friday-18th-august-2000>> accessed September 26, 2022.
 38. DS26: European Communities — Measures Concerning Meat and Meat Products (Hormones), <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm#top> accessed August 10, 2022. In this case, the US claimed that the European Communities(EC) had taken certain measures under the Council Directive Prohibiting the Use in Livestock farming of certain substances having a Hormonal action and that the measure restrict or prohibit imports of meat and meat products from the United States, and are apparently inconsistent with Articles III or XI of the GATT 1994, Articles 2, 3 and 5 of the SPS Agreement, Article 2 of the TBT Agreement and Article 4 of the Agreement on Agriculture. The panel found that the EC ban on imports of meat and meat products from cattle treated with any of six specific hormones for growth promotion purposes was inconsistent with Articles 3.1, 5.1 and 5.5 of the SPS Agreement. Aggrieved by the findings of the Panel, the EC appealed to the Appellate Body. The Appellate Body upheld the panel's finding, but reversed the panel's finding that the EC import prohibition was inconsistent with Articles 3.1 and 5.5 of the SPS Agreement.
 39. Also, Article 26.2 of the DSU implicitly exclude the application of the reasonable period of time in situation complaints.
 40. *Brazil- Aircraft* (Art.21.5-canada): Export Financing Program for Aircraft- Resource by Canada to Art.21.5 of the DSU, Panel
 41. DSU art. 2(4).
 42. *US- FSC*, op.cit, US-section 110(5) of the US copyright Act- Arbitration under Art. 21.3(c) of the DSU, Award of Arbitrator, WT/DS160/14, 18th July 2001: US-1916 Act, WT/DS136/13, 18th July, 2001
 43. WT/DS302/AB/R, adopted 19 May, 2005. In these cases, the parties reached an agreement on the reasonable period of time before the arbitrator issued an award, which became unnecessary.
 44. DSU arts. 21 (39 c) and 2.
 45. DS58: United States — Import Prohibition of Certain Shrimp and Shrimp Products, <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm> accessed August 10, 2022.
 46. DS 435: Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging, <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds435_e.htm> accessed August 10, 2022.
 47. DSU art. 21 (5).
 48. *Canada-Aircraft* (Art. 21.5-Brazil), Appellate Body Report, Para 37, 40-42; *United States-shrimp*(Art.21.5-Malaysia)- Appellate Body Report, WT/DS58/AB/RW, adopted 21. Nov.2001, para.85-87.
 49. *Ibid* arts. 22.2; 22.3 (f) stipulates the sectors in which each WTO agreement fails with respect to the suspension of obligation; 22.4; 22.6; 22.7; 23.3 (a) and (b); and 3.7
 50. WTO, 'Legal texts: the WTO Agreements', <https://www.wto.org/english/docs_e/legal_e/ursum_e.htm> accessed 10 August 2022.