General Aspects of WTO Dispute Settlement: Historical Evolution, Main Actors, & Jurisdiction
In this presentation we will examine:

1) How has GATT/WTO dispute settlement evolved over time?
2) Who is involved in WTO dispute settlement?
3) What can be challenged through WTO dispute settlement?
1) How has GATT/WTO dispute settlement evolved over time?
GATT Dispute Settlement

• GATT 1947 provisions – XXII and XXIII
• Early approach – short Chairman rulings
• 1950s and 60s – “Working Party” reports
• 1970s and 1980s – mostly panel proceedings, but:
  – Possibility of losing party “blocking” adoption
  – Concerns about legally erroneous decisions
  – Fragmented system under the Codes
  – No obligation to use system, and few disciplines on retaliation
WTO Dispute Settlement

- Integrated dispute settlement covering all agreements (except Annex 3, the TPR)
- Creation of Appellate Body and right of review
- Obligation to avoid unilateral retaliation
- Automatic establishment of panels
- Reverse consensus: Respondent cannot block adoption of panel reports
Some Major Trends over Time

• Increased legalization of dispute settlement from GATT to WTO: **diplomacy vs. law**

• **Many** disputes and decisions

• **Subject matter** of disputes covers all of the main agreements and obligations

• Active participation by **developing countries**, with almost no participation by LDCs (as complainant or respondent)
Overall figures
(as of 17 November 2015)

- Requests for consultations: 500
- Mutually agreed solutions: 110
- Panels established: 237/289
- Panel reports adopted: 165
- Appellate Body reports adopted: 105
- Compliance panels reports adopted: 30
- Appeals of compliance panels: 22
- Arbitrations on "retaliation": 19
- Authorizations to "retaliate": 18
Consultations According to Agreement at Issue
Trends in the Use of the Dispute Settlement Mechanism

As complainants

[Bar chart showing trends from 1995 to 2015 with red for Developing and yellow for Developed countries]
Trends in the Use of the Dispute Settlement Mechanism

As respondents

[Bar chart showing trends from 1995 to 2015 for Developing and Developed countries]
Complainants

- US: 21%
- EC: 18%
- Brazil: 5%
- Canada: 7%
- Japan: 4%
- Other developed countries: 6%
- Other developing countries: 23%
- Australia: 1%
- Argentina: 4%
- Mexico: 4%
- Korea: 3%
Respondents

- US: 25%
- EC: 19%
- Other developed countries: 19%
- Other developing countries: 19%
- Argentina: 4%
- Mexico: 3%
- India: 4%
- Australia: 3%
- China: 7%
- Korea: 3%
- Canada: 4%
- Brazil: 3%
- Japan: 3%
### Most frequent complainants/respondents

<table>
<thead>
<tr>
<th>Member</th>
<th>No of cases initiated</th>
<th>Member</th>
<th>No of cases defended</th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>108</td>
<td>US</td>
<td>124</td>
</tr>
<tr>
<td>EC / EU</td>
<td>95</td>
<td>EC / EU</td>
<td>97</td>
</tr>
<tr>
<td>Canada</td>
<td>34</td>
<td>China</td>
<td>33</td>
</tr>
<tr>
<td>Brazil</td>
<td>27</td>
<td>India</td>
<td>22</td>
</tr>
<tr>
<td>Mexico</td>
<td>23</td>
<td>Argentina</td>
<td>22</td>
</tr>
<tr>
<td>India</td>
<td>21</td>
<td>Canada</td>
<td>18</td>
</tr>
<tr>
<td>Argentina</td>
<td>20</td>
<td>Japan</td>
<td>15</td>
</tr>
<tr>
<td>Japan</td>
<td>21</td>
<td>Brazil</td>
<td>16</td>
</tr>
<tr>
<td>Korea</td>
<td>17</td>
<td>Mexico</td>
<td>14</td>
</tr>
<tr>
<td>Thailand</td>
<td>13</td>
<td>Korea</td>
<td>15</td>
</tr>
</tbody>
</table>
2) Who is involved in WTO dispute settlement, and what are their respective roles?
**Actors involved in a WTO Dispute**

- The Complaining Member(s)
- The Responding Member
- The Dispute Settlement Body
- Third Parties
- The Panel
- The Appellate Body
- The WTO Secretariat
  - Role of Director-General
  - Legal Affairs and Rules Division
  - Appellate Body Secretariat
<table>
<thead>
<tr>
<th>Roles &amp; decisions</th>
<th>Comp’ing party</th>
<th>Resp’ding party</th>
<th>3rd parties</th>
<th>DSB</th>
<th>Panels and AB</th>
<th>Secreatiat</th>
<th>Private Law firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Whether the initiate dispute?</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- What measures to review?</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Which WTO obligations are relevant?</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Which WTO exceptions are relevant?</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Making written/oral submissions on the law to Panels/AB?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Making written/oral submissions on the facts to Panels/AB?</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>-</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Provides assistance to parties or 3 parties?</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>- Provides assistance to Panel/AB?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>-</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>- Makes decision on WTO-consistency of challenged measures</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Establishes the Panel?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>- Adopts the Panel/AB report(s)?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>
3) What can be challenged through WTO dispute settlement?
General: 5 Requirements of WTO Case

- Must be brought by government in WTO Member country (e.g. no private party access)

- Must be against another WTO Member country (not some other body)

- Must be against one or more measures attributable to that Member (not private action)

- Must allege a violation (or “non-violation nullification and impairment”) of one or more WTO obligations

- Must identify the measure(s) and WTO obligation(s) in the Panel Request
1. Must be brought by a WTO Member Government (e.g. no private party access)

- May be brought by **any** WTO Member
- May be brought by **more** than one Member (co-complaints)
- The fact that it is brought by a Member government does not mean that the **industry** interests are not actively involved
2. Must be against another WTO Member country (not some other body)

- Cannot request an *advisory opinion*
- Cannot, e.g., bring a case against the *World Trade Organization*, or a WTO Committee
- Cannot bring a case against *non-WTO* Members
3. Must be against one or more “measures” attributable to that Member

- In principle, **any act or omission** attributable to a WTO Member can be a measure of that Member for purposes of dispute settlement proceedings.
- **Laws** as such, or administrative acts
- **Agency** and court decisions (e.g. Tyres)
- **Practice** and **unwritten** measures (e.g. zeroing)
- Private conduct if **controlled** by government
- **Provincial** and **local** government measures
4. Must allege a violation (or non-violation nullification and impairment) of one or more WTO obligations

- May bring case in respect of any and all provisions of the WTO agreements establishing obligations for Members (except Annex 3, the TPR)

- All Members consent to the jurisdiction of WTO dispute settlement panels upon becoming a WTO Member (unlike, e.g. ICJ)

- Cannot claim violation of non-WTO treaties or domestic law
5. Must identify the measure(s) and WTO obligation(s) in the Panel Request

- A panel cannot make findings on measures or claims not covered by the panel request.
Thank you!

• Questions about WTO dispute settlement?