Trade Conflicts: The Role of WTO Dispute Settlement

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Programme

1. WTO Dispute Settlement: Introduction
2. Use of WTO Dispute Settlement
3. Steel Disputes before the WTO
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1. WTO Dispute Settlement: Introduction
Coverage: Dispute Settlement and the ‘Iceberg of Protectionism’

Visibility / Transparency

WTO Cases
- With Panel
- Without Panel

Problems that are discussed bilaterally or within FTAs

Unchallenged Violations
- Lack of priority
- Scarcity of resources
- Opportunity considerations

Legally admissible restrictions and obstacles to international trade (no violations):
- Unregulated issues (e.g. investment, movement of capital, movement of persons, tax issues).
- Exceptions included in the agreements
- Anticompetitive practices of private actors
1. WTO Dispute Settlement: Introduction

Institutional Setup

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<th>Goods</th>
<th>Services</th>
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| Additional details                  |         |         |
| Other goods agreements and annexes  |         |         |
| Services annexes                    |         |         |

| Market access commitments           |         |         |
| Countries’ schedules of commitments |         |         |
| Countries’ schedules of commitments (and MFN exemptions) | | |
1. WTO Dispute Settlement: Introduction

Procedure

National initiation procedure

Consultation request by complainant

- No settlement

Establishment of a panel

- No settlement

Panel report

- Appeal

Appellate review

- Defendant wins: settlement

Implementation

Complainant questions compliance

Compliance panel procedure

- Complainant wins / seeks retaliation

Compensation / Suspension of concessions or other obligations

Mutually Agreed Solution: Settlement

Defendant wins / no appeal: settlement

Defendant is found to be in compliance: settlement

„Temporary“ settlement
2. Use of WTO Dispute Settlement

Use over time (1995-2005)

- Complaints
- Circulated Panel Reports
- Circulated Appellate Body Reports
- Art. 21.5 Complaints
- Ratio of panel reports that were later appealed
2. Use of WTO Dispute Settlement
Main users (1995-2005)
2. Use of WTO Dispute Settlement
3. Steel Disputes Before the WTO
Use over time (1995-2005)
3. Steel Disputes Before the WTO

Main Users (1995-2005)

- US
- EC
- Mexico
- Brazil
- Korea
- Japan
- India
- Turkey
- Thailand
- Poland
- Hungary
- Czech R.
- Egypt
- China
- Switzerland
- Norway
- New
- Taiwan
- Guatemala
- Venezuela
- Argentina

Number of complaints

Complainant
Defendant
3. Steel Disputes Before the WTO

Disputed Provisions

- GATT
- Anti-dumping
- Safeguards
- WTO Agreement
- Subsidies and Countervailing M.
- Dispute Settlement Understanding

Number of Complaints
3. Steel Disputes Before the WTO

Example: The Case Against US Steel Safeguards

Positive Experience (selection):
• The case was examined and reports were presented within an acceptable period of time;
• The safeguard measures were repealed;
• Uncontrolled escalation was avoided;

Negative Experience (selection):
• The measures remained in force from 3-02 – 12-03;
• No provisional measures were available;
• The system could not deter the US Government from implementing the Safeguard measure;
• Adverse economic effects could not be avoided
4. Strengths and Weaknesses

Strengths of the System (Selection)
• No blocking possibilities for defendants;
• Model character of appellate review system;
• Short time-frames (at least on paper….)
• Flexibility in the use;
• So far, the system has enjoyed broad legitimacy.

Potential Weaknesses of the System (Selection)
• Lack of effective enforcement / no provisional measures.
• Retaliation is a poor means for ensuring compliance;
• Time-frames are not always respected;
• Developing countries and LDCs find the system difficult to use.
• Imbalance between political and legal decision-making;
• Private parties may not bring complaints (weakness?).
5. Outlook

- Usage of the Dispute Settlement Understanding (DSU) has recently decreased. However, it is too early for a general interpretation of this trend.
- WTO dispute settlement might gain additional importance in light of the suspension of the Doha Round.
- The major risk to the DSU is an excessive burden of politically delicate cases that should rather be resolved at the negotiating table.
- „DSU Review“ negotiations since 1998 has been unsuccessful. However, there is no urgent need for changes to the system.
6. Conclusions
WTO Dispute Settlement, Trade and Other Policies

Input market policies:
- Natural resources
- Energy
- Environment
- Infrastructure
- Competition
- Trade
  unilateral/ pref. multilateral
  * DSU

Factor market policies:
- Capital markets
- Labour / Social
- Investment
- Taxes
- R&D / education
- Migration
- Industrial policy

Output markets policies:
- Product market
- Competition
- Procurement
- Infrastructure
- Trade
  unilateral / pref. multilateral
  * DSU
7. Further Information
WTO Dispute Settlement

- WTO Homepage: http://www.wto.org
(See in particular the „Dispute Settlement Gateway“ at: http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)


- Documentary movie on the Steel case: „Steel War“ by David W. Syz; ecodocs; (http://www.ecodocs.ch)
THANK YOU FOR YOUR ATTENTION!

This presentation as well as further publications by Thomas A. Zimmermann on WTO dispute settlement are available at the following websites (Sub-site „Publications“):

http://www.zimmermann-thomas.ch
http://www.zimmermann-thomas.de
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