THE COMPARATION OF THE DISPUTE SETTLEMENT SYSTEM BETWEEN GATT AND WTO

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ABSTRAK

Perdagangan dunia yang semakin global dan tidak mengenal batas negara mengakibatkan suatu negara sangat bergantung dengan negara lainnya. Perdagangan antar negara tidak hanya melibatkan dua negara saja, melainkan seringkali melibatkan lebih dari dua negara. Akibatnya bermunculan lembaga atau institusi yang bersifat Internasional, termasuk di dalamnya peraturan-peraturan perdagangan baru. Kesepakatan GATT dan WTO merupakan wujud kesediaan pengaturan perdagangan internasional, sehingga ini merupakan sarana alternatif penyelesaian masalah perdagangan internasional.

Key Words: GATT and WTO, Dispute.

I. INTRODUCTION

The establishing of GATT was started in February 1946 when the United Nations Economic and Social Council had an International Conference on Trade and Employment in order to make a draft about a convention establishing an International Trade Organization (ITO).

While the United Nations Economic and Social Council still worked in the establishing of the ITO, some countries wanted to start bringing down trade barriers and also to create an interim tariff reduction agreement, which they planned to operate until the ITO was legally establish . The General Agreement on Tariffs and Trade (GATT Agreement) was signed on 30 October 1947, by 23 countries. (Pryles. et.al, 1996: 712) The original GATT 1847 agreement was never intended to establish a permanent organization although it did have some institutional elements.

The GATT agreement worked on two levels, the first level was called the day-today level, this level contains the rules to seek about the circumscribe projectionist government activity, in this level the dispute were to be resolved and also the discussion in this level only can be held on general issues, the second level was called the Round, which involves the multilateral trade negotiation in order to improve the liberation and the general structure of the GATT.

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The international regulation of international trade has its genesis in the belief of national leaders that some international mechanism is essential to prevent the pursuit of self-interested national regulation of international trade in a manner that, when combined with retaliatory actions, relates in a sharp and chaotic restriction in the over-all level of international trade.

The emergence of the GATT as the central international trade institution of the postwar period was a development that none of the countries participating in the drafting of the General Agreement had anticipated.

The GATT frameworks were only an extension of the old ITO Preparatory Committee, because the GATT agreement was only intended as an interim device until ITO was established, so the GATT agreement did not establish any institutional framework, however, GATT was not part of the ITO, there were big legal and structural differences between these two organizations and also some political differences.

The ITO Charter was never ratified, because of the failure of ITO, GATT developed institutional and dispute settlement elements over the 40-odd years of its history, also at the same time as GATT rules.

There are two major limitations were imposed on the GATT legal structure : (1) The governments agreed to accept the legal obligations of the General Agreement 'provisionally' and further, except for the tariff concessions and the most-favored-nation guarantee; and (2) A decision to avoid making GATT a formal international organization.(Robert Hudec, 1990 : 51)

The GATT had managed to construct a fairly promising set of legal institutions during its first fifteen years, but starting in about 1963-64 it had reversed direction under the influence of a pronounced "anti-legalist" orthodoxy.

There were two preference approaches of GATT dispute resolution, some countries, like the United State of America, preferred a more adjudicative approach, reason why these countries preferred to choose the judicature approach was because this approach would promote certainty in commercial trading relations and the international rule of law. (J. H. Bello, and, A. F. Holmer 1994, 1096).

Other countries particularly the members of the European Union (EU), preferred a more diplomatic, flexible or consultative approach to dispute settlement, these countries favor the settlement through careful negotiation and appropriate compromise. (M.K. Young,1995:390).

The dispute settlement system when GATT/WTO is a very important thing in the international trade, because there are lots of disputes may arise in international trade, such as the disputes between private traders and the disputes between the private traders and governments which relate to the domestic law of export and import. This paper will try to examine the development of the dispute settlement system of GATT/WTO in international trade.

II. THE SEVEN MAJOR ROUNDS OF GATT

The laws of the GATT 1947 are carried on to the new GATT 1994. The new GATT Round (The Uruguay Round) began with a ministerial meeting in Punta deal Este, Uruguay, in September 1986. Originally, this Uruguay Round was scheduled to be concluded by December 1990. However, due to insurmountable differences of opinion between the negotiating partners, especially over the agricultural sector.

Currently the GATT has 108 signatories, the multilateral agreement contains a set of stipulations regulating world trade, furthermore, it also represents a forum in which member states can discuss their trade problems and negotiate reductions of tariff barriers.

Up to now, seven major rounds of trade policy negotiations have taken place, whose aims were tariff cut and the duration of other restrictions on trade, for example the "Dillon Round" (1960-1962) which planned a compensation for the disruptions to the trade of non-member states caused by the setting up of the European Economic Community as well as a 20 % tariff reduction for a broad range of industrial goods, the Kennedy Round (1964-1967) led to a global tariff reduction of roughly 30 % for industrial goods, in addition, an anti-dumping code was elaborated and international agreements for the gain market. Whereas the first six round of GATT negotiations so far resulted in substantial linear tariff cuts, they had little effect in other fields. At the Tokyo Round (1973-1979) there were additional negotiations on the removal of non-tariff barriers to trade. These non-tariff barriers, are artificial barriers design to circumvent tariffs, such as technical specification or hygiene stipulations. The Tokyo Round led to a reduction of customs tariffs for the industrial products of the nine major industrialized countries. Four principles in this agreement are: (Agus Brotosusilo,1996:577).

1. The non-discrimination, according to Article I of the General Agreement, each member country, or contracting party, has to treat the

trade of all other member countries equally. It requires member countries to extend the Most Favored Nation (MFN) treatment, or equal treatment, to other member countries, except in certain circumstances laid down elsewhere in the General Agreement.

2. The open market principle. This principle is realized by the General Agreement through a prohibition of all forms of protection except custom tariffs and the establishment of a procedural framework for tariff negotiations.
3. The fair trade principle. The General Agreement prohibits export subsidies on manufactured products and also limits the use of export subsidies on primary products.
4. The trade dispute settlement through the consultation process. Negotiations with trading partners to offset increases, introduction of consultative and conciliation procedures.

The ongoing Uruguay Round also sets out to review existing GATT regulations and, need to be extended. In addition, there is the issue of government subsidies and the question of safeguard clauses, which member states can issue if importing a certain commodity causes serious disruptions on the domestic market.

III. GATT DISPUTE SETTLEMENT SYSTEM

There are number of ways in which disputes could or may arise under either GATT or the WTO Agreement. They generally accepted on whether a member's of laws or practices are in conflict with GATT 1947 or the WTO Agreement and nullify or impair benefits arising under GATT 1947's Article XXIII also permitted an action to be brought where the "attainment of an objective of the General Agreement is being impeded.

The GATT dispute settlement is unique. The General Agreement is a legal document, there are so many ways that dispute arise in international trade. Dispute frequently arise concerning the legal rights and obligations of various contracting parties. As an institution, the GATT consciously or by force of circumstances, has established customary ways of handling those disputes.(W. Kenneth Dam,1970: 351).

The reflections on the nature of GATT dispute settlement will lead to a discussion of the new Understanding on Rules and Producers Governing the Settlement of Disputes (GATT Skretariat,1994:404).

GATT dispute settlement rules and procedures codified by the Understanding on Dispute Settlement reached in Tokyo Round embraced

both conciliation and adjudication approaches and also the new Understanding on Rules and Procedures Governing the Settlement of Dispute, reached in the Uruguay Round.

Dispute Resolution procedures under the GATT which were coming from the conclusion of the Uruguay Round were widely thought to constitute one of GATT 1947's most serious shortcoming.

The new Understanding is the result of a systematic effort at codifying the whole matter into a unified and coherent whole. Coherence of the dispute settlement system has been deeply disturbed by the Tokyo Round Codes each of which has provided for a separate framework for dispute settlement.

The development of the GATT which dispute settlement procedures is not confined to the amendments negotiated and agreed on the multilateral level. It is also the process of a continuous implementations, interpretation and the transformation of procedural usage.

There are four procedural issues that are of critical importance when resolving disputes under GATT 1947/the WTO Agreement : (1) Who may allege a non-conforming circumstance, (2) Who decides on the merits of those allegations and any defense to them and how is that decision to be arrived at, (4) What remedial measures may the dispute resolution forum impose if a non-conforming circumstance is found to exist, and (4) They must a party or the parties to the dispute accept and implement the remedial measures prescribed by the dispute resolution forum.

The GATT has traditionally operated by consensus, this was meant that at every stage of the dispute settlement process, one of the disputants could block that process. The respondent to a claim could block the decision to establish a panel, the losing party could block the adoption of the report by the GATT Council, and until the report was adopted it had no legal effect (GATT and Resolution of International Trade Disputes, 1994: 2).

There are three kinds of activities that must be put together under the general heading of dispute settlement in GATT, which are treaty enforcement, dispute avoidance, and dispute settlement. The only dispute procedure contained in the final text of GATT was a nullification and impairment provision copied almost verbatim from the Geneva draft of the ITO charter. (W. Dam, Kenneth, 1970: 355).

Several of important changes have been made to the dispute resolution process of the GATT/WTO in the WTO Agreement. There are two kinds of perceptions with respect to dispute settlement in GATT and the WTO. Firstly, the board understanding of dispute settlement and this refers

to two means to handle dispute such as consultation, good office, conciliation and mediation on the one hand, which is often called in doctrine the conciliation or negotiation approach and panel proceedings on the other, which is referred to as the adjudication approach. Secondly, the narrow perception, this perception referring to only panel proceedings this is considered by some writers as the basic and only genuine dispute settlement procedure (Lei Wang, 1995:173).

Both of the Understandings refer to consultation or conciliation and dispute settlement in parallel. It already mentions above that the dispute settlement system in GATT takes place under two Articles of the General : (1) Article XXII and Article XXIII.

Article XXII which provides for consultation in case a contracting party considers the Agreement is not operating properly for its benefit and Article XXIII which allows any party which has not obtained a satisfactory adjustment of its interests to bring the matter before the contracting parties. These circumstances sometimes lead to a confusion with respect to exact concept of the GATT/WTO dispute settlement mechanism.

In the history of GATT, both conciliation and adjudication means were used to handle disputes, and the scope of the Agreement of an Understanding on Rules and Procedures Governing the Settlement Dispute (DSU) covers both approaches, it is fair to consider both approaches under the umbrella of the dispute settlement mechanism in the WTO.

This GATT 1947 only provided a rough outlines of dispute settlement mechanisms, articles XXII and XXIII of the GATT agreement did not explain the procedures for the process of dispute settlement. Under the Article XXII of the GATT 1947, a dispute being entered into by two Contracting Parties which begins with a consultation which is a first step of settling the dispute under GATT. Articles XXII provides for consultations in case a contracting party considers the Agreement not operating properly for its benefits. Consultation and negotiations may still be necessary in order to find out whether a given difference can be called a dispute (M. Hilf,1991:294).

The necessity of a consultation is explicitly continued in the text of Article XXIII Section 2, which allows the matter to be referred to Contracting Parties only after no satisfactory adjustment is effected between the Parties concerned within a reasonable time, or if the difficulty was of the type describe in paragraph 1 (c) of that Article(The General Agreement on Tariffs and Trade, 1947:Article XXIII, Section 2).

The retaining of the consultations as an initial phase does not mean, that the place and importance of this mode of dispute settlement has remained unchanged . Under the former provisions, consultations were the crucial stage of settling disputes. The emphasis put on the importance of this stage is considerably reduced, strict limits are established.

For many negotiating partners, the problem of conciliating disputes also has substantial political significance, since this is an instrument which ensures the observance of commitments entered into and the enforcement of existing rights derived from the GATT regime.

Article XXIII of the GATT Agreement deal with Nullification or Impairment. To know the definition of nullification, first of all we have to know that a nullification is hard to prove, in the violation cases, this nullification element has been transformed as it requires only a breach of a GATT obligation, this transformation is in line with the general move of the violation procedure in the direction of the elements of State-responsibility in general public international law but still this interpretation is impossible in relation to the non-violation procedure.

According to Article XXIII section 1, if these consultations do not result in a settlement of the dispute, the parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties and according to Article XXIII Section 2 the working parties or panels examine the dispute, consider the various questions of fact and of law involved, record their findings and send their report to the Contracting Parties for a decision but this is only as the Article said and not by a political will, so strictly speaking it is only a jurisdictional body (G. Lacarriere, 1987:121).

There are seven of principals complaints about the GATT 1947 dispute settlement procedures, which were : (1) Disuse, a complaint partially allayed by markedly increased use from 38 complaints from the combined 1960s and 1970s to 115 complaints in the 1980s; (2) Delays in establishment of panel; (3) Delays in appointing panel members; (4) Delays in the completion of panel reports; (5) Uncertain quality and neutrality of panelists and panel reports; (6) Blocked panel reports; and (7) Non-implementation of panel reports.

The General Agreement contains no provision for reference of their actual disputes or questions of interpretation to the International Court of Justice. There is no provision in the General Agreement for the establishment of an internal tribunal to resolve actual disputes or to promulgate authoritative interpretations on questions of interpretation.

(Kenneth W. Dam , 1970 , 351). Consequently, some of those GATT 1947 Dispute resolution issues and methodologies particularly those deal with outside Article XXIII which was described as part of the WTO Agreement.

In addition, DSU's Article 13 Section 1 provides that, "Members affirm their adherence to the principles for the management of disputes applied under Article XXII and XXIII of GATT 1947..."

On paragraph 5 of the Annex of the Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement, it requires a detailed justification of the nullification or impairment from the complainant leaving (A. Bogdandy,1992:101)

The improvement promote openness of consultations by way of imposing an obligation to notify requests for consultations to the Council of the dispute settlement, by requiring this in writing including the reasons for the request, and by obligation to notify all mutually agreed solutions to the Council. This obligation has no meaning of ensuring compliance (E.C. Forgues, and Rudolf. O., 1990:70).

Until now, no GATT Panel and no GATT dispute settlement ruling have ever based their legal findings on Article XXIII section 1 (c) or on the impeding of the attainment of any objectives of the Agreement. In view of the vague language and criteria for such situation complaints and complaints over impeding of GATT objectives, it is to be welcomed that these unpredictable types of complaints have fallen into disuse. Since 1947 only one GATT dispute settlement case did the GATT authorize retaliation against the losing party.

IV. THE ESTABLISHING OF THE PANEL

Under the GATT agreement there is a panel, the panel's own deliberations, which take place in complete secrecy, are conducted in a most informal way. Because of the panel own the deliberations, this makes the GATT dispute settlement system procedure different with the traditional court procedure.

Under the reforms, once a party requests the appointment of a dispute settlement panel, Under the Article 6, if the complaining party so requests, at least by the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless the DSB decides not to establish a panel by a consensus and only the Dispute Settlement Body can block the establishment of that panel.

The complaining party has ten days to give an advance notice calling for the DSB meeting to be held within 15 days of the request. The DSB can decline the request to establish a panel if all DSB members agree by consensus. (M. K. Young, 1995: 402).

According to Article 7 Section 1, the panels shall provide the standard terms of references of panels unless the disputing parties agree otherwise within twenty days from the establishment of the panel. Still, according to Article 6 Section 2 of the DSU 1994 give the opportunity to the complaint to propose special terms of reference when requesting establishment of a panel. Under the Section 7 of this Article, if there is no agreement on panelists within 20 days after its establishment, and after consulting with the disputing parties, Director-General shall appoint the panelists.

The reason of this Article is because the DSU 1994 attempts to eliminate drawn-out dispute over the terms of reference for the panel and then provides default terms of reference in the event the parties cannot agree.

The limitation imposed by the term of reference is overly narrow, because the panels examine only trade implications of an environmental regulation, and this more useful decision could have been rendered by taking a broader perspective (J. Mc Donald,1992:472).

According to Article 8 Section 1 of the DSU 1994, which provides for the selection of panel members, panelists may consist of well-qualified individuals from various backgrounds, including such persons from trade departments for academics and according to Section 2 of this Article, the panelists are selected with a view to ensuring the independence of the Members, based on a sufficiently diverse background and a wide spectrum of experience. Section 5 of this Article, the panels consist of three members unless there is an agreement to have five. Section 6 of this Article provides for the Secretariat obligation to propose the nominations of the panel which shall not be opposed except for "compelling reason".

V. THE SANCTION SYSTEM UNDER THE GATT

The system of sanction built into the GATT conditions not only the manner of resolving disputes but also attitudes toward violations by a contracting party of the GATT. Only in one instance has the GATT ever authorized the only punishment available to parties who fail to comply with

the obligations as determined in a dispute settlement proceedings, it called the suspension of concessions.(D. W. Leebron,1995: 15).

The new Understanding shows a clear tendency at reintegrating the whole contentions mass into a single system which has been inspired from past experience.

An attempt has been made to merge into single system of dispute settlement, under the name of "covered agreements," the old matters and the new matters of GATT, that is to say services and intellectual property, as well as the special Protocols as far as they are not merged into the new GATT 1993 (P. Pierc,1993:16).

At present, when the dispute settlement procedures do not operate properly it is because at least one of the parties to the dispute considers that the procedures are being applied to inappropriate rules such as erroneous, obsolete, vague or too incomplete.

Any reform of the procedures therefore presupposes prior agreement on the rules themselves. Only when countries have defined or re-defined these rules will it be an opportunity to formulate the corresponding procedure for dispute settlement (G. Lacharriere, 1987:130).

Regardless, the DSU 1994 is a substantial step towards unifying the GATT dispute settlement processes with a considerably extended scope jurisdiction, although it is comprehensive, but still not yet sufficient.

VI. THE NEW DISPUTE SETTLEMENT SYSTEM OF THE 1994 AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

In view of the decidedly different histories, cultures, governments, and legal systems of the other GATT contracting parties, it should not be surprising that many other parties preferred the more political approach to resolving disputes. Many saw clarity, certainty, and the rule of law as not necessarily of more value than diplomacy, negotiations, and flexibility in view changing conditions and circumstances.

With respect to the dispute settlement rules, the final agreement departed only on the rim from the December 1991 "Dunkel Text". The new rules make fundamental changes to the GATT dispute settlement process by providing for : (1) Automatic establishment of a panel and automatic adoption of a panel report (unless the Council, by consensus, decides to the contrary); (2) An exceptional opportunity for appellate review of panel reports; (3) Rigorous surveillance of the implementation of adopted panel

reports; (4) Compensation, or WTO authorization, for the suspension of concessions if a report is not implemented in a reasonable period of time; (5) Expeditious arbitration in the event of disputes about a reasonable period of time for implementation or the appropriate level of compensation or suspension; and (6) Recourse to these procedures for practices considered as violating the WTO or nullifying or impairing WTO benefits (J. H. Bello, and F. H. Alan,1994:no 4,vol.28).

As the results of these changes, the resolution of GATT disputes would become a far more legalistic than political process. The dispute settlement regime under the WTO sets new standards in equality for member countries which have rights under the various agreements under the WTO.

The WTO Agreement will bring considerable institutional changes to the old GATT, the Contracting Parties will be renamed as Members of the WTO. The main organ of the WTO will be its Ministerial Conference, which will convene at least every two years (the Agreement Establishing the World Trade Organization, Article 4, Section 1). The duty of the WTO Council is to conduct the affairs in between the meetings of the Ministerial Conference. There are three councils operate under the WTO Council which are : (1) The Council for Trade in Goods. (2) The Council for Trade in Services, and (3)The Council for Trade-Related Aspects of Intellectual Property Rights (E. Vermulst, and D. Bart, 1995 : vol. 29, 132).

1. The WTO Dispute Settlement Body

The Dispute Settlement Body was establish when the WTO Council meets in relation to dispute settlement. The Understanding on Rules and Procedures Governing the Settlement of Dispute (DSU) at Annex 2 to the WTO Agreement is the first fully integrated text of GATT dispute settlement procedures.

The Understanding Rules and Procedures Governing the Settlement of Disputes (DSU), which annexed to the WTO Agreement, provides a mechanism to settlement disputes under the Uruguay Round Agreement.

The new regime under the DSU brings with it a proactive dispute resolution system to facilitate the resolution of complex major trade issues involving diverse interest groups with differing allegiances and involving such profound issues as sovereignty in the international trade environment.

There are two folds the innovations that brought by the WTO Understanding which are operational innovation and institutional innovation. The operational innovation are devoid to two :

a. The negative consensus rule and automaticity. This means that once a panel is established by the DSB in accordance with the negative consensus rule, panel procedures, up to the adoption the panel or Appellate Body reports, will not be interrupted by a veto the disputing party unless a mutually agreed upon solution reached half way, or if there any conciliation or good offices are resorted to on the way by disputing parties.
b. The advantage of the negative consensus rule. This consists of securing the automatically of the dispute settlement procedures by excluding a veto by the defendant.

The institutional is innovation is also divided into two :

a. The Dispute Settlement Body, the role of this body is to administer procedures of the WTO Understanding and the consultation and dispute settlement provisions of the covered agreement. In addition to the role, the DSB has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and also has the right to authorize retaliation under the covered agreement.
b. The Appellate Body, this body has the obligations to review panel rulings, this body was established by the WTO Understanding.

Some of the refinements in the WTO system also provide encouragement to the parties to avoid the final and unsavory sanction of decision by a panel and the limited rights of avoidance and appeal. There are four main changes under the new WTO system : (R. O' Moore, 1996 : no 1, vol.3, 25).

a. Elevation of the dispute settlement systems to a central role in the WTO machinery, including the establishment of a Dispute Settlement Body (DSB) and surveillance of outcomes. As the DSB is composed to the entirety of the WTO members, a more powerful panel is constituted should the other mechanisms fail to resolve the dispute.
b. Codification of existing rules of procedure and elevation to treaty status, providing potentially greater transparency and certainty.
c. Integration of dispute settlement across all WTO covered agreements.
d. Provision for semi-automatic establishment for panels, unless there is a consensus of members against such actions.

The WTO Agreement dispute settlement is administered by the Dispute Settlement Body (DSB), which includes representatives of all WTO Members. The DSB is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB and authorize retaliation. The DSB makes all its decisions by "consensus". The DSB is the WTO General Council acting in a specialized role.

WTO dispute settlement bodies will be required to interpret WTO provisions in the light of the whole WTO Agreement, for example, the national treatment provisions in GATT Article III, GATS Article XVII and TRIP's Article 3 and the WTO dispute system provides set timetables and other automatic mechanisms for action by parties. (R. O' Moore, 1996: 6).

Given the likelihood of an increasing case load and legal complexity of the WTO dispute settlement system, there is also an urgent need for ensuring a better transparency of the dispute settlement process at all three levels which are the panels, the Appellate Body, the DSB.

2. WTO Dispute Settlement Procedure

International dispute settlement mechanisms have become more innovative with the entry into force of the Understanding on Rules and Procedures Governing the Settlement of Dispute (WTO Understanding), on 1 January 1995.

Under the WTO Understanding, the parties should brought the dispute to the DSB, but there is a rule in the DSB that the Body cannot add to or diminish the rights and obligations provided in the covered agreements. There are several stages in a WTO Agreement dispute settlement proceeding :

a. The attempt by parties to resolve their difference through consultation, with consultations it will give the chance to settle the problems by discussion and to find out more facts, we can find the rules for this in Article 4 and Article 4 Section 7 of the DSU's, this means that the complain party may request the establishment of panel if consultations fail to settle a dispute within 60 days after the request for consultation. There are special shorter time-tables for the disputes concerning perishable goods and other case of urgency and some complaints by developing countries.
b. If the parties fail to resolve their dispute with the first stage, there is other opportunity under the Article 5 of the DSU, under this Article, for parties

to avail themselves of DSU's good offices and conciliation or mediation service. The complaining government generally must wait 60 days after a consultation request, before taking the next step and requesting establishment of a panel.

c. This stage is the other alternative for the second stage, Article 6 Section 1 of the DSU states that if consultations, good offices, conciliation, and mediation services fail, a panel may be established to hear the dispute as a matter of right. This mean that if the time period for consultations can give the resolution of their dispute, the DSB will establish a panel no later than at the second DSB meeting at the request of a complainant unless there is a consensus in the DSB not to establish a panel. A panel request must be in writing and must provide specific information on the dispute. The standard terms of reference call for the panel to address the relevant provisions of any Uruguay Round agreement cited by the parties to the dispute.

d. If the DSB decides to establish the panel, the WTO Secretariat maintains a foster of a qualified panelists and proposes panel member and the WTO Director-General will select the panel members in consultation with the parties to the dispute. Panels are normally composed of three persons, experienced in trade policy and trade law, who normally are not citizens of the disputing parties. If the parties cannot agree on panel members within 20 days, Article 8 Section 7 of the DSU will allow the parties to have their own authorities in consultation with the chairs of the DSB and the relevant council or committee, so the parties can avoid the delays. The panel may suggest ways for implementing its recommendations.

e. This stage is the stage where to establish the terms of reference, such as what panel expects to decide. Article 7 of the DSU in order to avoid the delay, provides for the use of standard terms of reference absent timely agreement within 20 days by the parties to the contrary.

f. This stage is where the panel hears all interested and disputing parties, reviews their written submissions, and issues its report. Article 15 of the DSU states that, the panel submits its description of the dispute, the parties arguments , and the panel legal analysis to the parties for comment. There is also a time limit for the implementation of the various stages in the panel's processes, which is six to eight months of the establishment of the panel, this time limits is organized by the Appendix 3 of the DSU.

g. At this stage there are three articles of the DSU they are Article 16, Article 23 Section 1, Article 25, this stage is the DSB's consideration for

adoption of the report. Article 16 of the DSU prevents blockage of DSB's acceptance of a panel report by a single WTO member. There is a consensus which is called the reverse consensus, this is a methodology where the DSB will adopt a report unless there is a consensus against adoption. Article 23 Section 1, requires WTO members to use the dispute settlement system exclusively for them to seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements. Article 25 gives the permission for the parties to submit controversies in binding the arbitration in lieu of the use of a panel and DSB and Appellate Body review.

h. This stage is where the GATT breakthrough, gives the opportunity for appeal by any party to the dispute to the Appellate Body which is a standing body with seven members (Article 17 of the DSU), members in this Body serve for four year terms, except three initial appointees determined by lot whose terms expire at the end of two years. The Appellate Body was established at the first meeting on February 10,1995 by the DSB. The Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The Appellate Body will hear appeals in panels of three or five (it depends at the request of the parties). The Appellate Body has the obligations to uphold, modify, or reverse the panel's legal finding and conclusion. Under the Article 17 Section 6 of the DSU, there is a limited time considering issues of law covered in the panel report and legal interpretations developed by the panel, the procedure normally takes only 60 days. An Appellate Body's report is subject to the automatic adoption rules and reverse consensus applicable to panel reports.

i. At this stage, if either a panel or Appellate Body report has been adopted or monitoring of the implementation of the recommendations. Article 21 Section 3 of the DSU requires a losing respondent to indicate within 30 days of the adoption of a panel report what actions it plans to take to implement the panel's recommendation within a reasonable period of time, this reasonable period time may be that is set by the offending member and approved by the DSB, agreed by the contending parties, or where no solution is found within 45 days, this one is established by arbitration, and the normal period does not exceed 15 months.

j. The tenth stage is possible if the recommendations are not implemented. Under Article 22 Section 1 of the DSU, the prevailing party may seek negotiated compensation from the losing party, and also seek the withdrawal from the recalcitrant party of concessions previously made by

the prevailing party if the compensation negotiation fails. This means that if a Member does not comply with the recommendation to bring a measure into conformity with its WTO obligations, it must negotiate with the complaining Member(s) on compensation, and the negotiations must start by the end of the "reasonable period". If there is no agreement on compensation by 20 days after the end of the "reasonable period", a complaining Member may ask the DSB to authorize it to suspend trade benefits with respect to the non-complying party. By 30 days after the end of the "reasonable period", the DSB must grant such a request to suspend benefits unless there is a consensus otherwise. This such suspension must be equivalent to the benefits of the defending.

The DSU Appellate Body will change the dispute settlement process in several respects. First, it enables Members to appeal against panel reports. Second, this is the important one, the composition of the Appellate Body. Third, the panel procedure will be further enchanted by the limitation of the Appellate Body's competence to legal issue.

The WTO dispute settlement system also serves as a negotiating forum for future "GATT Rounds" on the multilateral liberalization of trade in goods as well as for future "GATT Rounds" on the progressive liberalization of international services trade through "successive rounds of negotiations... with a view to achieving a progressively higher level liberalization", according to Article XIX GATT.

There are three special dispute settlement procedures under the WTO under standing, they are : (N. Komuro, 1995: 139).

a. Special procedures for non-violation complaints and situation complaints. This means that the WTO Understanding applies to non-violation complaints and situation complaints, subject to special conditions.
b. Special or additional dispute settlement procedures containing in the covered agreements. Under the Appendix 2 to the WTO Understanding lists the sections of the covered agreements which contain special or additional dispute settlement procedures.
c. Special procedures involving least-developed country members. Under Article 24 of the WTO Understanding stresses that, in special procedures involving least-developed country Members, particular consideration shall be given to the special situation of those States.

3. The Coverage Of The WTO Dispute Settlement System

The disputes covered by the WTO Understanding are divided into two categories : (The WTO Understanding, 1995 : Article 1 section 1)

a. Disputes bring the pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to the WTO Understanding.
b. Disputes between WTO Members concerning their rights and obligations under the WTO Agreements and the WTO Understanding taken in isolation or in combination with any of the other covered agreements.

Not only does WTO Understanding deal with the traditional goods but also include services and intellectual property, and embraces dispute arising from the Understanding as well as from the WTO Agreement.

The new WTO dispute settlement system will thus be unified with a considerably extended scope of jurisdiction, also there are lots of Multilateral Trade Agreements continue to include special dispute settlement rules and procedures.

The coverage of the WTO dispute settlement mechanism is strictly limited to new disputes between WTO Members for which requests for consultation are made after the entry into force the WTO.

So, as long as the disputes on dumping or subsidies are concerned, coverage of the WTO dispute settlement mechanism is limited to new issues for which both the request for consultation and petitions by or on behalf the domestic industry have been made after the entry into force the WTO Agreement for the relevant WTO Member (N. Komuro, 1995 : 85).

There should be an understanding that the scope of the Member's rights and obligations under the covered agreement should be determined or modified by negotiations between concerned parties, not by the Body's adjudication.

4. Several Issues Under The WTO Agreement

There are several issues about how the four procedural issues are dealt under the WTO Agreement, the first issue is, Who may allege the existence of a GATT non-conforming circumstance :

a. State that only WTO member states may participate in WTO Agreement dispute resolution proceedings, whether as complainants, respondent, or interested parties, but there is no provision has been made for the participation of individuals or the initiation of proceedings by the WTO

Director-General. The Second issues is who decides on the merits of those allegations and any defense to them and how that decision come to.

b. The standards for review of the measures taken by a WTO member to determine their compliance with its WTO Agreement obligations or the WTO Agreement consequences of its actions are largely unspecified.
c. What remedial measures may the dispute resolution .forum impose of a WTO Agreement non-conforming circumstance is found to exist WTO Agreement panels are largely restricted to ordering parties not in compliance with the WTO Agreement to bring themselves into compliance.
d. Must a party or the parties to the dispute accept and implement the remedial measures prescribed by the dispute resolution forum. If the complainant is a weak trading partner, the suspension of trading concessions, the real retaliatory measure permitted against a party that has refused to bring itself back into compliance with the WTO Agreement.

There are two conditions should be met by the WTO Member for the unilateral retaliation that can be justified. First, the subjected field of the retaliation must not be covered by the WTO Agreement. Second, retaliatory measures must also be consistent with the provisions of the GATT and its covered agreements in accordance to Article 23 the WTO Understanding (The Understanding on Rules and procedures governing the Settlement the Disputes annexed to the WTO Agreement, Article 23).

VII. THE CHANGING INTO THE WTO DISPUTE SETTLEMENT SYSTEM

In order to prepare the WTO's entry into force, the WTO has established the WTO Preparatory Committee in April 1994 and the obligation of this committee was to launch the work program which was already agreed on the Uruguay Round, for instance on the links between trade and the environment..

The new rules which govern dispute settlement in the WTO system will endow the panel proceeding with a more pronounced litigation flavor. The Uruguay Round give lots of changing for the WTO Dispute Settlement Understanding.

The first changing is the competence of the Chairman of the new Dispute Settlement Body to determine the applicable procedural rules if a

difference arises as a consequence of the possible applicability of different Covered Agreement.

A remarkable feature of the 1994 DSU is the introduction of a great number of deadlines. The DSU introduces a number of changes compared with the Montreal interim agreement. The main differences are to be found in the provisions dealing with the second phase of the conflict resolution procedure based on GATT. The new deadlines are designed to enable the United Stated to use most deadlines laid down in Section 301 to 301 of the US 1974 Trade Act. The deadlines can be divided into : (1) Deadlines relating to the establishment of panels. (2) Deadlines with respect to the deliberation by the panel of a case, (3) Deadlines involving the adoption of reports, and (4) Deadlines affecting their implementation. (Wang, Lei, 1995:140).

For the provisions under the WTO regime The United State of America is the most pre-dominant country in this GATT/WTO matters. The provisions of US trade law are not necessarily in compliance with US obligations under the GATT, so legally speaking, for unilateral retaliation to be justified, two conditions must be met : (1) The subject-field of the retaliation must not be covered by the WTO Agreement, and (2) Retaliatory measures must also be consistent with the provisions of the GATT and its covered agreements in accordance with Article 23 of the WTO Understanding (N. Komuro, 1995: 153).

VIII. CONCLUSION

The GATT/WTO dispute settlement system has developed very well, although there are still lots of lacks that need to be more improve, so it can cover all of the international trade disputes because right now the GATT/WTO dispute settlement system as for as we know is still moving toward to be more legalistic than political process.

For the GATT dispute settlement system, it is necessary to stress that the legal way of thinking progressively expands in world trade law, not because of the law but as a result of the activity in the dispute settlement.

In what is likely to be greater regulatory intervention in international trade, a positive response to environmental needs can maximize the preservation of existing GATT disciplines, an open multilateral trading system, in moving towards sustainable development and the integration of decision making on international trade and the environment will contribute most effectively to increase economic welfare in its wider meaning.

The WTO dispute settlement system, appears to be working well up to date but only time will tell whether the support and commitment of the member countries of the WTO is maintained, which of itself will determine the success of the dispute settlement regime under the WTO.

The WTO dispute settlement system, still need to improve the access to the system as well as the factual basis for any complaint to be brought under the new system.

Although the DSU 1994 give a significant improvement for the dispute settlement procedure, still there are some gaps which have not been clarified, so if there are any increasing of complexity from the case, it would create more problems in the future.

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