

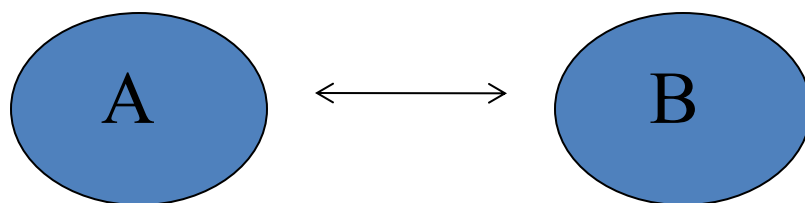
Raising Trade Issues and Disputes in the WTO

International Forum on WTO Law
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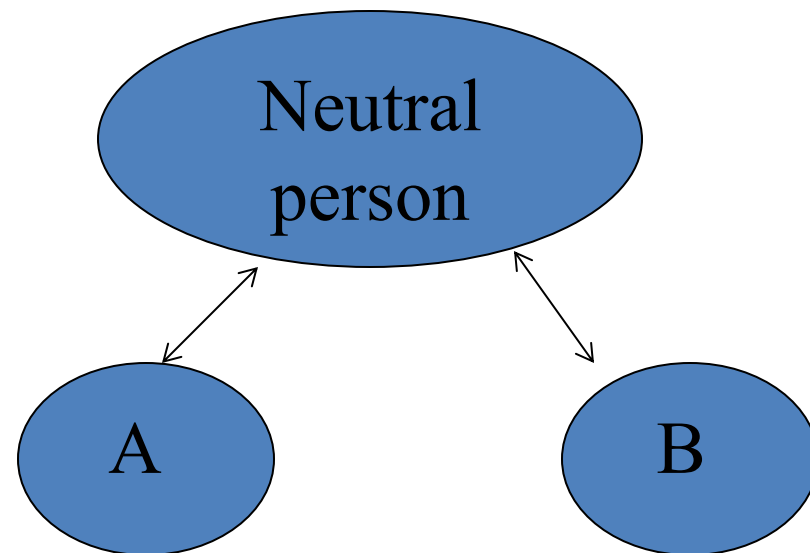
- **Soft DS Mechanisms**
- **WTO Litigation**
- **A Sample of Trade Issues**
- **Final Observations**

Autonomous



Non-binding { - **Negotiation**
Such as DSU negotiation

Heteronomous



Non-binding { - **Good offices** SPS facilitator
- **Conciliation**
- **Mediation**
binding { - **Arbitration** DSU Panel&AB

Overview

- Informal negotiation
- WTO Committees
- Request for explanation (SPS Art 5.8)
- Good offices, conciliation and mediation (WT/DSB/25)
- SPS Chairperson (G/SPS/61)

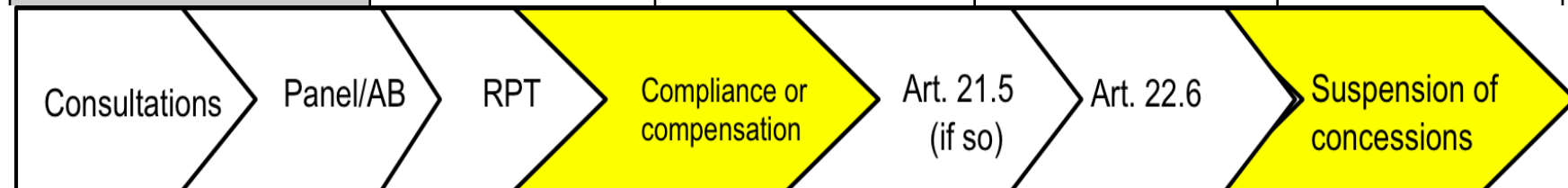
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WTO DSU Procedural Stages

Consultations	Bilateral but transparent
Panel procedure	1st Instance Court (facts and WTO law)
Appellate procedure	Body 2nd Instance Court. Are the legal interpretations and issues of law correctly applied and assessed by the Panel?
Reasonable period of time (RPT) by negotiation or arbitration	Assuming a WTO violation is found, how much time does the defendant have to comply with the Panel/AB recommendations?
Panel/AB under Art. 21.5 of the DSU	Is the measure taken during the RPT in order to comply with the Panel/AB report: a) existent, and/or b) consistent with the Covered Agreements?
Arbitration under Art. 22.6 of the DSU	If no implementation occurs, complainant can inflict trade damage to defendant / no room for punitive damage

MAS and other WTO Legal Remedies

	Mutually Agreed Solution	Compliance	Compensation	Retaliation
Member Implementing the Legal Remedy	Complainant and Defendant	Defendant	Complainant and Defendant	Complainant



MAS

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EC – Bananas DS27

The EU regulation allocated to Category B operators (EU&ACP companies) 30 per cent of the licences allowing for the importation of third-country and non-traditional ACP bananas at in-quota tariff rates. The US companies fall under Category A.

The AB found:

- This creates less favourable conditions of competition for like service suppliers of Complainants' origin (US) and violates Art XVII of GATS on NT
 - Operators are suppliers of "wholesale trade services"
 - The EU made a full commitment for wholesale trade services in its GATS Schedule of Specific Commitments.
- Also, it is inconsistent with GATS Article II on MFN
(see Para. 244 of AB report)

US – Tuna DS381



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- Mortality reduced near to zero
- Independent observer in each vessel
- International convention at the ETP Ocean

- Demonstrated dolphin mortality

US – Tuna DS381

Claims by Mexico:

- Violation of NT & MFN for both GATT and TBT
- Violation of Art 2.2 TBT as it is more restrictive than necessary

Panel and AB

- No violation of Art 2.2 TBT on more restrictive than necessary
- Violation of Art 2.1 TBT on NT/MFN

EC — Trademarks and GIs (DS290)

Different registration procedures for geographical indications for non-EU right holders

Panel:

- EC's GI Regulation does not provide national treatment to other WTO Members' right holders and products, as foreign nationals do not have guaranteed access to the EC's system for their GIs, unlike EC nationals

WTO Law on Ag Goods

We saw:

- i. Services under GATS
- ii. Technical Regulation under TBT
- iii. Geographical Indications under TRIPS

Note:

- Any WTO Covered Agreement relates to AG goods
 - Trade experts vs Ag experts
 - Complexity of the special law on Ag

- **Soft DS Mechanisms**
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Final Observations

1. Any WTO covered agreement might apply to trade in Ag goods
2. Various soft mechanism are available in the WTO
3. Binding WTO dispute settlement provides a stronger alternative than soft mechanisms