

United Nations Conference on Trade and Development  
Ad Hoc Committee on Sovereign Debt Restructuring Processes



*Resolving economic disputes multilaterally:  
Lessons from experience*

The World Trade Organization  
Dispute Settlement Process

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## Overview

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<ul style="list-style-type: none"><li>• Type of process</li><li>• Parties</li><li>• Adjudicators</li></ul>	<ul style="list-style-type: none"><li>• Applicable law</li><li>• Interpretative monitoring</li><li>• Enforcement &amp; implementation</li></ul>
	
<b>Procedural issues</b>	<b>Substantive issues</b>

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## Procedural Issues

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- Type of process
  - Panels, appeal, arbitration, ADR
  - Confidentiality
- Parties
  - State, non-state actors
- Adjudicators
  - Permanent, ad-hoc

## Type of process: Theory

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- Mandatory and exclusive process
  - All disputes under WTO law
  - Only disputes under WTO law
  - Confidentiality of proceedings
- Multiple tracks for dispute resolution:
  - Consultations (between the parties)
  - Conciliation, mediation, good offices
  - Panel + Appellate Body
  - Arbitration

## Type of process: Practice

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- In numbers:
  - 488 disputes initiated since 1995
  - 201 panel reports
  - 115 Appellate Body reports
  - 1 arbitration
- Timeline:
  - Official timeline for a dispute:
    - 9 months (panel report) + 3 months(AB report)
  - In practice: > 15 months

## Type of Process: Thinking Forward

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- Quasi adjudicatory process used extensively
- Timeliness of dispute resolution is a high priority for members
  - But diplomacy sometimes takes time...
- A few disputes are outliers:
  - Drawn out process
  - Lack of implementation

# Parties: Theory & Practice

- WTO Member states only:
  - Limited process for WTO third parties
  - Limited process for non-state actors
- Limited participation by developing countries
  - But increasing share of disputes between developing countries
- Virtually no participation by LDCs

# WTO Disputes: Illustrative Cases

State	Complainant	Respondent	Third Party
US	107	121	117
EU	95	80	143
Brazil	27	15	88
China	12	32	114
Indonesia	9	11	13
Thailand	13	3	69
South Africa	0	4	7
Bangladesh (LDC)	1	0	1

## Parties: Thinking Forward

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- Incentives to use the process:
  - Fixed cost / variable cost of disputes
  - Involvement of domestic industry
- Access for parties with an interest:
  - Need notice/information
  - Need standing
- Capacity constraints:
  - Legal resources support
  - Procedural safeguards

## Adjudicators

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- Panelists and arbitrators: Ad hoc
- Appellate Body:
  - Permanent body
  - AB members elected for 4-year term
- Concerns regarding consistency of interpretation by the panels
- Role of the Secretariat

## Substantive Issues

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- Legal (im)permeability of the WTO
  - WTO agreements as a single undertaking
  - Relationship with other trade law rules
  - Imports of public international law
- Interpretative monitoring
  - Special role of the DSB
- Enforcement & implementation
  - Internationally
  - domestically

## Scope of Applicable Law: Theory & Practice

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- Dispute settlement process bound by:
  - WTO agreements as a single undertaking
  - Customary rules of treaty interpretation
- Legal (im)permeability of the WTO:
  - Conflicts/friction between WTO law and other rules of international law
  - Limited public international law imports
    - Environmental law
    - Economic sanctions

## Applicable Law: Thinking Forward

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- Defining the applicable body of law:
  - General public international law
  - Specialized public international law
  - Domestic law?
- Dealing with states' other legal obligations:
  - Conflict of law rules
  - Legal effect of other adjudications

## Interpretative Monitoring: Theory & Practice

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- Special role of the Dispute Settlement Body
  - Theoretical gate-keeper
  - Effectively a discussion forum
- Interpretative decisions by the General Council
  - Not used to “overrule” the panels & AB
- Negotiation agenda

## Interpretative Monitoring: Thinking Forward

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- Independence of adjudicatory body
- Value of a feedback channel between dispute settlement and negotiation body
- Opportunity for states not party to the dispute to record their views on the outcomes

## Implementation & Enforcement: Theory & Practice

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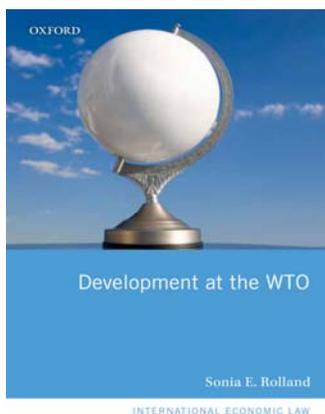
- At the WTO level:
  - DSB monitors implementation
  - Legal processes to adjudicate implementation
  - Retaliation options
- Domestically:
  - Political choice whether to implement WTO dispute resolution decisions
  - Legal options for invoking a WTO decision in domestic proceedings vary by country

## Implementation & Enforcement: Thinking Forward

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- 4 dimensions of implementation:
  - State-to-state
  - State-to-international organization
  - State-to-domestic public bodies
  - State-to-private entities (domestic and foreign)
- What coercive enforcement instruments?
  - Effectiveness of retaliation?
  - Who can trigger retaliations?
  - What legal/judicial controls?

## THANK YOU



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