



Advisory Centre on WTO Law
Centre Consultatif sur la Législation de l'OMC
Centro de Asesoría Legal en Asuntos de la OMC

TRADE TENSIONS: WARS BEYOND TARIFFS

UNCTAD
NON-TARIFF MEASURES WEEK 2019

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WTO DISPUTE SETTLEMENT

- WTO: comprehensive set of agreements covering goods, services and intellectual property.
- Binding dispute settlement. Two-tier system.
- Since 1995, 254 panel reports and 143 Appellate Body Reports. Aply assisted by WTO Secretariat staff.
- 90 per cent of cases appealed.

CRITICISM OF THE WTO

Current crisis driven by criticism of the Appellate Body:

- Judicial activism (“overreach”, “making law”)
- Issuing “advisory opinions”
- Making findings of fact, including on domestic law
- Treating its prior rulings as authoritative (the precedent issue)
- Failure to circulate reports within the 90 day deadline

US has refused to appoint new Appellate Body members.

Uncertainty about the future of Appellate Body, but continued functioning of panels.

THE ACWL

- ACWL - intergovernmental organization created in 2001 to support developing countries and least-developed countries (LDCs).
- The ACWL provides three types of services: (i) legal opinions free of charge; (ii) capacity building through training free of charge; and (iii) assistance in WTO dispute settlement proceedings for a subsidized and fixed fee.
- Legal Opinions: 2900 legal opinions on almost all aspects of WTO law.
- Training: regular weekly training, Ad hoc training in capitals.
- Dispute settlement: 60 disputes to date, including in particularly complex cases, such as *US — Steel and Aluminium Products* (DS564), i.e., 20 per cent of all WTO disputes since the creation of the ACWL.
- 36 developing countries that have become Members of the ACWL
- 44 LDCs that are automatically entitled to the services of the ACWL without having to become Members.
- 12 lawyers.

WTO DISPUTES INVOLVING NTMs

- Out of 12 current appeals, 8 involve NTMs.
- Out of 36 disputes at the consultations or panel stage, 16 involve NTMs.
- Claims raised under the TBT Agreement, the SPS Agreement, the TRIPs Agreement, the SCM Agreement, the GATS, the Customs Valuation Agreement, and the TRIMS Agreement.

DEVELOPING COUNTRIES

- Out of 164 WTO Members, the vast majority (127) are developing countries or LDCs.
- No formal definition of a developing country.
- As a matter of practice, WTO Members self-designate as developing country.
- In January 2019, the United States submitted a communication questioning the continued relevance of the practice of self-designating developing-country status in the WTO.
- It further presented a communication in February 2019 saying that a Member would not be able to claim S&DT in current and future negotiations if it met certain criteria.

US COMMUNICATION WT/GC/W/764

Criteria put forward by the United States	Currently self-declared developing countries that would fall under these criteria
WTO Members that are members or in the process of becoming members of the OECD	Chile; Colombia; Costa Rica; Israel; Mexico; South Korea; Turkey
WTO Members that are members G20	Argentina; Brazil; China; India; Indonesia; Mexico; Turkey; Saudi Arabia; South Africa; South Korea
WTO Members that are classified as a "high income" country by the World Bank	Antigua and Barbuda; Argentina; Bahrain; Barbados; Brunei Darussalam; Chile; Chinese Taipei; Hong Kong; Israel; Kuwait; Macao; Oman; Panama; Qatar; Saint Kitts and Nevis; Saudi Arabia; Seychelles; Singapore; South Korea; Trinidad and Tobago; United Arab Emirates; Uruguay
WTO Members that account for no less than 0.5 per cent of global merchandise trade (imports and exports)	Brazil; China; Chinese Taipei; Hong Kong; India; Indonesia; Malaysia; Mexico; Saudi Arabia; Singapore; South Africa; South Korea; Thailand; Turkey; United Arab Emirates; Vietnam