Overview

- Type of process
- Parties
- Adjudicators

- Applicable law
- Interpretative monitoring
- Enforcement & implementation

Procedural issues

Substantive issues
Procedural Issues

• Type of process
  – Panels, appeal, arbitration, ADR
  – Confidentiality

• Parties
  – State, non-state actors

• Adjudicators
  – Permanent, ad-hoc

Type of process: Theory

• 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

- 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

- 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

<table>
<thead>
<tr>
<th>State</th>
<th>Complainant</th>
<th>Respondent</th>
<th>Third Party</th>
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<td>Bangladesh (LDC)</td>
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Parties: **Thinking Forward**

- **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**

- 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

- 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

- 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**

- 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

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**Interpretative Monitoring: Theory & Practice**

- 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

- 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

- 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

• 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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