

# LL.M. in International Legal Studies



## WTO LAW

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Part III – Dispute Settlement 1

# GATT 1947 Dispute Settlement

- Article XXIII:2 GATT 1947 provided that the contracting parties themselves, acting jointly, had to deal with any dispute between individual contracting parties
- In the early years of GATT 1947, disputes were decided by rulings of the Chairman of the GATT Council

- Later, working parties adopted reports by consensus decisions
- They were soon replaced by panels made up of independent experts who were unrelated to the parties of the dispute
- Ad hoc arbitral **panels** were selected by the parties to the dispute and drafted reports

- Panel reports had to be politically adopted by the Contracting Parties – adoption by **consensus**
- -> Reports could be blocked by the veto of any Contracting Party, including the losing party
- -> A number of important disputes were blocked

# Weaknesses

- Requirement of consensus → possibility for the losing party to **block** both the adoption and implementation of a panel's findings
- Political influence played a crucial role -> solutions were often diplomatic compromises
- No fixed timetables - possibility for parties to delay the process
- -> Need for a reform

# WTO Dispute Settlement

# WTO Dispute Settlement: Characteristics

- **Rules-based** system (DSU)
- **Single integrated** dispute settlement system
- **Judicialized** system
- WTO members only
- Dispute settlement system applies only to "public" acts
- A member government believes that another member government is **violating** a multilateral WTO agreement or a commitment ("nullification or impairment of benefits")

# Objectives of WTO Dispute Settlement: Art. 3 DSU

- 1. Members affirm their adherence to the **principles for the management of disputes** heretofore applied under Articles XXII and XXIII of **GATT 1947**, and the rules and procedures as further elaborated and modified herein.
- 2. The dispute settlement system of the WTO is a central element in providing **security and predictability** to the multilateral trading system. The Members recognize that it serves to **preserve the rights and obligations** of Members under the covered agreements, and to **clarify the existing provisions** of those agreements in accordance with customary rules of interpretation of public international law. **Recommendations and rulings** of the DSB **cannot add to or diminish the rights and obligations** provided in the covered agreements.



- 3. The **prompt settlement** (...) is essential to the **effective functioning** of the WTO and the maintenance of a **proper balance** between the rights and obligations of Members.
- 4. Recommendations or rulings made by the DSB shall be aimed at achieving a **satisfactory settlement** of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.
- 7. Before bringing a case, a Member shall exercise its judgment as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a **positive solution** to a dispute.

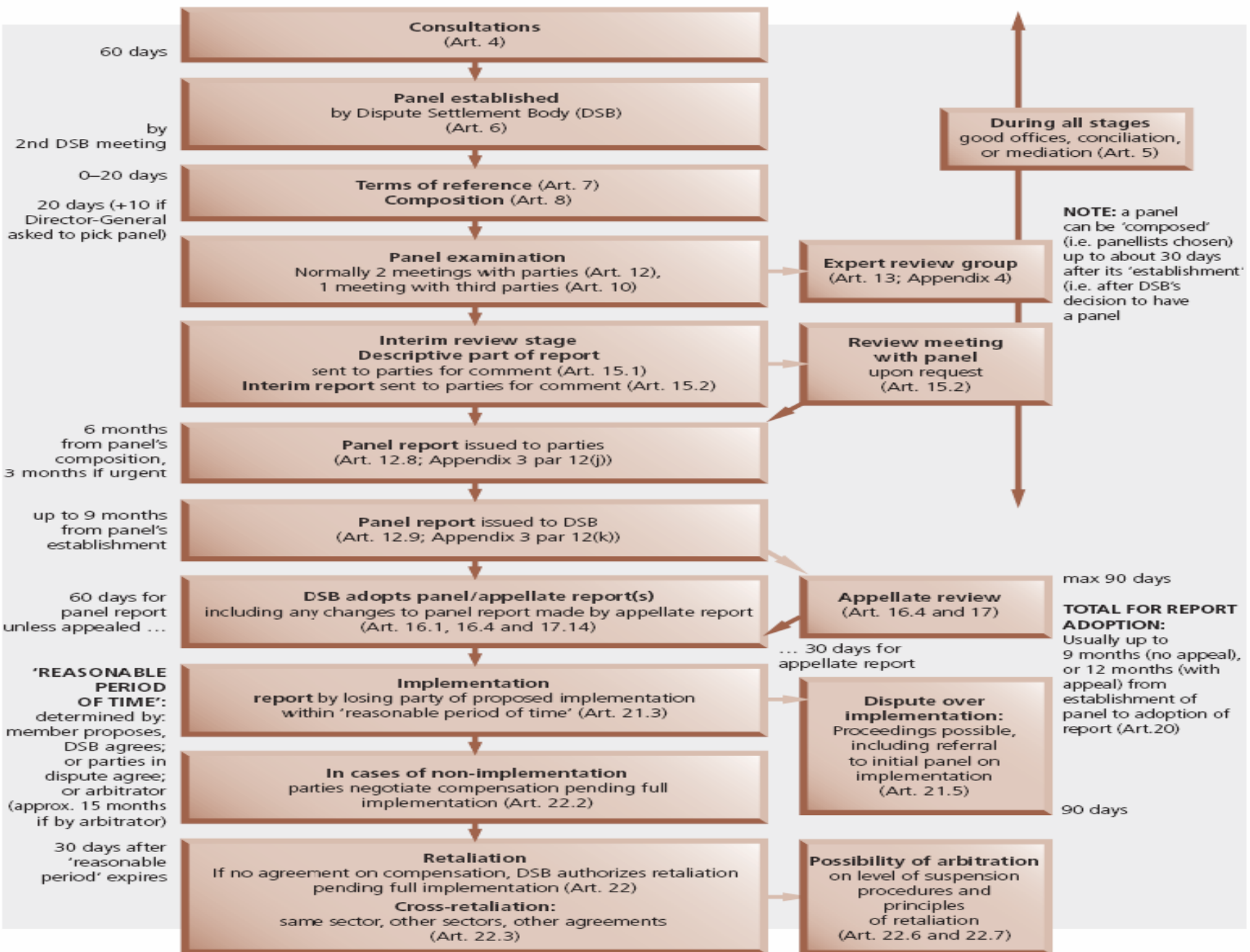
A **solution mutually acceptable** to the parties to a dispute and consistent with the covered agreements is clearly to be **preferred**. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to **secure** the **withdrawal of the measures** concerned if these are found to be inconsistent with the provisions of any of the covered agreements.

- 9. The provisions of this Understanding are without prejudice to the rights of Members to seek **authoritative interpretation** of provisions (...) under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

# Overview: three-stage mechanism

- 1. Consultations
- 2. Resolution of dispute
  - Panel procedure
  - Appeal procedure
- 3. Implementation of the decision

**Note:** some specified times are maximums, some are minimums, some binding, some not



# Consultations (Art. 4 DSU)

- Confidential, only between members concerned (but others with a "substantial trade interest" can request to join)
- Notified to DSB and circulated to all members
- If consultations fail within **60 days**, the establishment of a panel can be requested

# Establishment of panels

- Complainant requests establishment of panel
- Establishment within **45 days** (by DSB, based on negative consensus)
- Panel **composition**: 3-5 "well-qualified government and/or non-governmental individuals"
- **6 months** to conclude (3 months for urgent cases)